
FACILITIES LEASE

by and between

Robert E. Boyer Construction Inc.
as Lessor

and

SUMMERVILLE UNION HIGH SCHOOL DISTRICT
as Lessee

Dated as of **May 5, 2014**

FACILITIES LEASE

THIS FACILITIES LEASE (the “Facilities Lease”) is dated as of **May 5, 2014**, and is made by and between **Robert E. Boyer Construction Inc.**, a California corporation, as lessor (“the Building Entity”), and the **Summerville Union High School District**, a school district duly organized and validly existing under the Constitution and the laws of the State of California, as lessee (the “District”).

RECITALS

WHEREAS, the District desires to provide for the construction of certain facilities at **Summerville High School**, as further described herein, and has hired **BCA Architects** (the “Architect”) to prepare Plans and Specifications as herein defined, as more particularly described in **Exhibit A**, and as are on file at the District and incorporated herein by this reference (the “Project”). The parties acknowledge that the Plans and Specifications may be amended subject to a mutual agreement between the parties; and

WHEREAS, the Plans and Specifications were approved by the State of California’s Division of the State Architect (the “DSA”) on **April 23, 2014**; and

WHEREAS, the Building Entity has reviewed the General Construction Provisions set forth in **Exhibit D**, attached hereto and incorporated herein; and

WHEREAS, the District and the Building Entity agree that the General Construction Provisions shall govern the construction of the Project; and

WHEREAS, on the date hereof, the District has leased to the Building Entity, for the development and construction of the Project, a site located at the location of the proposed Work at its **Summerville High School** (the “Site”), as more particularly described on **Exhibit B**, attached hereto (the “Site”) pursuant to the terms of a Site Lease by and between the District and the Building Entity; and

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

WHEREAS, the Building Entity is authorized to lease the Site as Lessee and to develop the Project, and to have the Project constructed at the Site, and to lease the Site back to the District, and has duly authorized the execution and delivery of this Facilities Lease; and

WHEREAS, the Board of Education of the District (the “Board”) has determined that it is in the best interests of the District and for the common benefit of the citizens residing in the District to construct the Project by leasing the Site to the Building Entity, and by immediately entering into this Facilities Lease under which the District will lease back the Site from the Building Entity and

make Lease Payments on the dates and in the amounts set forth in the payment schedule, attached hereto as **Exhibit C** (the “Lease Payment Schedule”); and

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

WHEREAS, the District has a substantial need for modern school facilities to be provided by the Project and has entered into the Site Lease and the Facilities Lease under the authority granted to the District by Section 17406 of the Education Code of the State of California in order to fill that need; and

WHEREAS, the District and the Building Entity further acknowledge and agree that they have entered into the Site Lease and the Facilities Lease pursuant to Education Code section 17406 as the best available and most expeditious means for the District to satisfy its substantial need 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 the context otherwise requires, the terms defined in this Section shall, for all purposes of this Facilities Lease, have the meanings herein specified.
 - 1.1.1 “**District**” means the Summerville Union High School District, a school district duly organized and validly existing under the Constitution and the laws of the State of California.
 - 1.1.2 “**District Representative**” means the Superintendent of the District, or any other person authorized by the Board of Education of the District 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 Building Entity Authorized Representative.
 - 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, together with any duly authorized and executed amendment hereto.
 - 1.1.5 “**Building Entity’s Representative**” means the managing member, officer, or any other person authorized by the governing board of the Building Entity to execute instruments on behalf of the Building Entity, or any person authorized to act on

behalf of Building Entity under or with respect to this Facilities Lease, as evidenced by a resolution conferring that representative with such authorization adopted by the governing board of the Building Entity.

- 1.1.6 “Lease 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 C attached to this Facilities Lease.
- 1.1.7 “Lease Payment Schedule” shall mean the payment schedule, attached hereto as Exhibit C.
- 1.1.8 “Permitted Encumbrances” means, as of any particular time: (i) liens for general and *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; (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 Building Entity and the District consent in writing which will not impair or impede the operation of the Site.
- 1.1.9 “Plans and Specifications” means the plans and specifications for the Project as further defined in the General Construction Provisions.
- 1.1.10 “Project” or “Work” means the improvements and equipment to be constructed and installed by the Building Entity as more particularly described in Exhibit D, attached hereto.
- 1.1.11 “Site” means that certain parcel of real property and improvements thereon more particularly described in Exhibit B, attached hereto.
- 1.1.12 “Site Lease” means the Site Lease dated as of **May 5, 2014**, by and between the District and the Building Entity, together with any duly authorized and executed amendments thereto under which the District leased the Site to the Building Entity.
- 1.1.13 “Tenant Improvement Payments” has the meaning set forth in the General Construction Provisions, Section G-2.
- 1.1.14 “Term of this Facilities Lease” or “Term” means the time, commencing with the District issuing to the Building Entity a notice to proceed, during which the District’s obligation to make the Lease Payments under this Facilities Lease is in effect, as provided for in Section 4.2 of this Facilities Lease.
- 1.1.15 “Building Entity” means **Robert E. Boyer Construction Inc.**, a California corporation, organized and existing under the laws of the State of California, and authorized to do business in California, and its successors and assigns.

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

<u>EXHIBIT A:</u>	<u>THE PROJECT:</u> The description of the Project, including Plans and Specifications for the Project that have been approved by the Division of the State Architect.
<u>EXHIBIT B:</u>	<u>THE SITE:</u> The description of the real property constituting the Site.
<u>EXHIBIT C:</u>	<u>LEASE PAYMENT SCHEDULE:</u> The schedule of Lease Payments to be paid by the District hereunder.
<u>EXHIBIT D:</u>	<u>GENERAL CONSTRUCTION PROVISIONS:</u> The provisions generally describing the Project's construction.

ARTICLE 2

REPRESENTATIONS, COVENANTS AND WARRANTIES

- 2.1. Representations, Covenants and Warranties of the District. The District represents, covenants and warrants to Building Entity as follows:
- 2.1.1 Due Organization and Existence. The District is a school district, duly organized and validly existing under the Constitution and the 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 to execute the same.
- 2.2. Representations, Covenants and Warranties of the Building Entity. The Building Entity represents, covenants and warrants to the District as follows:
- 2.2.1 Due Organization and Existence. The Building Entity is a California corporation duly organized and existing under the laws of the State of California and authorized to do business in California, has the power to enter into this Facilities Lease and the Site Lease; is possessed of full power to own, rent 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.
- 2.2.2 Authorization. The Building Entity 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.

- 2.2.3 No Litigation. There is no pending or, to the knowledge of the Building Entity, threatened action or proceeding before any court or administrative agency which will materially adversely affect the ability of the Building Entity to perform its obligations under this Facilities Lease.
- 2.2.4 No Encumbrances. The Building Entity shall not pledge the Lease Payments or other amounts derived from the Site, and from its other rights under this Facilities Lease, and shall not mortgage or encumber the Site, except as allowed under the provisions of the Facilities Lease and/or the Site Lease to finance construction of the Project.
- 2.2.5 Continued Existence. For up to six (6) months following the Term of this Lease, the Building Entity shall not voluntarily commence any act intended to dissolve or terminate the legal existence of the Building Entity, provided the District is not in uncured default under this Facilities Lease. The Building Entity shall give the District sixty (60) days written notice prior to dissolving or terminating the legal existence of the Building Entity.

ARTICLE 3

CONSTRUCTION OF PROJECT

- 3.1. Site Conditions and Plans and Specifications. The Building Entity acknowledges that it has, to the extent necessary to complete the Project, investigated the Site, including, without limitation, a review of the soils reports for the Site as provided by the District, and concluded that there are no currently known problems with respect to the Site conditions. The Building Entity further acknowledges that it will have performed value engineering and a constructability review of the Plans and Specifications which were prepared by the Architect hired by the District and will have determined that prior to commencement of construction, the documents are adequate for the Project's construction, and the Building Entity has not identified any deficiencies in the Plans and Specifications that need to be cured.
- 3.2. Construction of the Project. The Building Entity agrees to cause the Project to be developed, constructed and installed in accordance with the terms hereof, and the Plans and Specifications on file with the District, and as described in Exhibit A, and the General Construction Provisions set forth in Exhibit D, including those things reasonably inferable from the Plans and Specifications as being within the scope of the Project and necessary to produce the stated result even though no mention of them is made in the Plans and Specifications. The Building Entity further agrees that it will cause the development, construction, and installation of the Project to be diligently performed. The Building Entity shall provide the District a complete copy of the executed construction contract documents within ten (10) days after execution of the construction contract; provided, however, that the Building Entity shall be allowed to remove all financial information from the construction contract with the exception of the total contract price. The District and the Building Entity may also approve additional changes in the Plans and Specifications for the Project as provided in Exhibit D. The District and the Building Entity will cooperate at all times in bringing about the timely completion of the Project. The Building Entity

shall cooperate with the District's efforts to obtain state funding for the Project by complying with any state requirements as reasonably requested by the District, including, without limitation, Sections 1859.104 to 1859.106 of Title 2 of the California Code of Regulations; however, the District shall be responsible for reimbursing the Building Entity for any costs reasonably incurred by the Building Entity associated with meeting those state funding requirements.

- 3.3. Guaranteed Maximum Price. The Building Entity will cause the Project to be constructed within the Guaranteed Maximum Price as set forth and defined in Article III of the General Construction Provisions, and will not seek additional compensation from District beyond the Tenant Improvement Payments and Change Orders approved by the parties (as defined in Exhibit D attached hereto) or the Lease Payments and Additional Payments pursuant to this Facilities Lease. If the Division of the State Architect requires changes to the Plans and Specifications submitted by the District, and such changes would increase the construction costs for the Project, then such increased costs will be handled as a Change Order pursuant to Exhibit D.
- 3.4. Reserved.
- 3.5. Tenant Improvement Payments. District agrees to make the Tenant Improvement Payments. Tenant Improvement Payments shall be paid pursuant to the procedures outlined in Exhibit D. Said payments shall not be paid on the same schedule as Lease Payments and shall not qualify as Lease Payments.

Failure of the District to make any Tenant Improvement Payments (unless properly withheld by the District under this Lease or the provisions found in Exhibit D) as set forth shall be a Default under this Facilities Lease, and the Building Entity's obligation to perform shall be suspended and excused until such Default is cured. If a Default is not cured by the District as allowed by the Facilities Lease, then the Building Entity may pursue any and all remedies afforded to it by the Facilities Lease for a Default by the District.

ARTICLE 4

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

- 4.1. Lease of Project and Site; No Merger. The Building Entity hereby leases the Site to the District, and the District hereby leases said Site from the Building Entity upon the terms and conditions set forth in this Facilities Lease. The leasing by the Building Entity to the District of the Site shall not affect or result in a merger of the District's leasehold estate pursuant to this Facilities Lease and its fee estate as Lessor under the Site Lease, and the Building Entity 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, for the purposes of the District's obligation to make Lease Payments, shall commence upon District Board approval, and shall terminate after the Notice of Completion is filed (the "Term").

Notwithstanding anything contained herein to the contrary, this Facilities Lease shall not commence prior to DSA's approval of the Plans and Specifications.

- 4.3. Termination of Term. Notwithstanding Section 4.2, the Term of this Facilities Lease shall terminate upon the earliest of any of the following events:
- 4.3.1 An Event of Default by the District and the Building Entity'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.
- 4.4. Project Completion. Completion of the Project shall be evidenced by a Notice of Completion that shall be filed with the County Clerk at the District's expense. The District shall not unreasonably withhold, delay or condition the preparation and issuance of the Notice of Completion.
- 4.5. Lease Payments.
- 4.5.1 Obligation to Pay. Subject to the provisions of Articles 3, 6 and 10 hereof, the District agrees to pay to the Building Entity, its successors and assigns, as rental for the use and occupancy of the Site, without deduction or setoff, except as provided for in Section 6.2.5 of this Facilities Lease, the Lease Payments during the Term in the amounts specified in the Lease Payment Schedule, attached hereto as Exhibit C and incorporated herein by reference.
- 4.5.2 Prepayment; Lease Payments to Constitute Current Expense of the District. The District agrees to prepay the total sum of the Lease Payments (as shown in Exhibit C) represented by this Facilities Lease to the Building Entity no later than June 1, 2014. Such prepayment shall represent the total Lease Payment obligation due to the Building Entity by the District pursuant to this Facilities Lease. District and the Building Entity understand and intend 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 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 Building Entity acknowledges that the District has not pledged the full faith and credit of the District, State of California or any state agency or state department to the payment of Lease Payments or any other payments due hereunder. The covenants on the part of the District contained in this Facilities Lease constitute duties imposed by law and it shall be the duty of each and every public official of the District to take such action and do such things as are required by law in the performance of the official duty of such officials to enable the District to carry out and perform the

covenants and agreements in this Facilities Lease agreed to be carried out and performed by the District.

- 4.6. Quiet Enjoyment. The Building Entity 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 the Building Entity's construction of the Project, without suit, trouble or hindrance from the Building Entity, except as otherwise may be set forth in this Facilities Lease. The Building Entity will, at the request of the District and at the Building Entity's cost, join in any legal action in which the District asserts its right to such possession and enjoyment to the extent the Building Entity may lawfully do so. Notwithstanding the foregoing, the Building Entity 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, the Building Entity 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 Lease Payments during the Term of this Facilities Lease as the same become due and payable, all right, title and interest of the Building Entity, 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 Lease 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 the Building Entity agrees to execute any instrument requested by the District to memorialize such termination of this Facilities Lease and transfer title to the District.
- 4.8. Fair Rental Value. The Lease Payments and Additional Payments coming due and payable during each month of the Term constitute the total rental for the Site and shall be paid by the District in arrears on the last day of each month for and in consideration of the right to use and occupy, and the continued quiet use and enjoyment of, the Site during each month. The District and the Building Entity have agreed and determined that the total Lease Payments and Additional Payments do not exceed the fair rental value of the Site. 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 Site, and the benefits there from which will accrue to the District and the general public.
- 4.9. Additional Payments. In consideration of the lease of the Site by the Building Entity to the District hereunder, the District shall pay the Lease Payments and shall also pay the following without deduction or offset, except as provided for in Section 6.2.5 of this Facilities Lease, all of which shall constitute additional rent (collectively the "Additional Payments") owing under this Facilities Lease:
- (a) Fees, expenses and other amounts, if any, which may be payable by the District to the Building Entity under any of the provisions of this Facilities Lease with the exception of Tenant Improvement Payments; and

- (b) Any costs, fees and expenses, if any, incurred by the Building Entity in connection with Section 5.3 of this Facilities Lease.

ARTICLE 5
MAINTENANCE; TAXES; INSURANCE AND OTHER MATTERS

- 5.1. Maintenance. Following delivery of possession of the Project by the Building Entity to the 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 Exhibit D hereto, 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. The District waives the benefits of subsections 1 and 2 of Section 1932 of the California Civil Code, but such waiver shall not limit any of the rights of the District under the terms of this Facilities Lease.
- 5.2. Utilities. 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 the District.
- 5.3. Taxes and Other Impositions. Except as otherwise agreed to in the General Construction Provisions, attached hereto as Exhibit D, all *ad valorem* real property taxes, special taxes, possessory interest taxes, bonds and special lien assessments or other impositions of any kind with respect to the Project, the Site and the improvements thereon, charged to or imposed upon either the Building Entity or the District or their respective interests or estates in the Project, shall at all times be paid by the District. In the event any possessory interest tax is levied on the Building Entity, its successors and assigns, by virtue of this Facilities Lease, the Site Lease, or General Construction Provisions, the District shall pay such possessory interest tax directly, if possible, or shall reimburse the Building Entity, its successors and assigns for the full amount thereof within thirty (30) days after presentation of proof of payment by the Building Entity.
- 5.4. Reserved.
- 5.5. Insurance. Following completion and acceptance of the Project by the District, 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. Such policy or policies shall provide coverage in the minimum liability limits of \$1,000,000 per occurrence with a \$2,000,000 general aggregate. Said policy or policies shall pay on behalf of said parties any amounts up to the limits of said policy for which they become liable for bodily and personal injury, death or property damage occasioned by reason of the use or operation of any District property or portion thereof arising out of the District's negligence.

The 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 the Building Entity a certificate stating that the insurance policies required by this Facilities Lease are in full force and effect.

The Building Entity's insurance as required under the terms of the General Construction Provisions shall continue to be primary for all injuries arising out of its operations or completed operations, except as stated above.

5.6. Reserved.

5.7. Cancellation or Change of Coverage. The District agrees that the insurance coverages required above in Section 5.5 shall be in effect at all times after acceptance of the Project by the District. After the District's acceptance of the Project, all insurance required to be carried by the District shall be primary except as provided herein. Insurance required in Section 5.5 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 the Building Entity.

5.8. Reserved.

5.9. Indemnification. Following completion and acceptance of the Project by the District, the District shall indemnify, defend and hold harmless the Building Entity and its successors and assigns, their officers, members, agents and employees from and against any claims, damages, costs, expenses, including reasonable attorneys' fees, and liabilities arising from all negligent or intentional acts or omissions of the District or its officers, agents, or employees, with respect to the District's use, operation, repair, alteration and occupancy of the Site and the performance of the District's obligations herein. Following completion and acceptance of the Project by the District, the Building Entity shall indemnify, defend and hold harmless the District, its officers, agents and employees from and against any claims, damages, costs, expenses, including reasonable attorneys' fees, and liabilities arising from the negligent or intentional acts or omissions of the Building Entity or its officers, agents, employees, contractors or subcontractors with respect to the Building Entity's use, alteration and occupying of the Site and its obligations under this Facilities Lease.

5.10. 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 the Building Entity will be given thirty (30) days' prior written notice of expiration, any intended cancellation or reduction of the coverage provided. The Building Entity is not responsible for the sufficiency of any insurance herein required.

5.11. 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 the Building Entity on defects in materials and workmanship for the Project following the Project's completion, the District shall first provide Plans and Specifications and obtain the Building Entity's prior written consent to any additions, modifications and improvements to the Project which are not minor modifications. For the purposes of this Section, a minor modification, addition

or improvement has a cost less than \$500,000.00. The Building Entity 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 the Building Entity 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, the District shall have the right, without the Building Entity'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.

5.12. Compliance with Laws, Regulations.

5.12.1 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 or as may have been remediated in accordance with Laws and Regulations; (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 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 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.

5.12.2 Excluded from the representations and warranties in subsection 5.12.1 above with respect to Hazardous Materials are those Hazardous Materials in those amounts ordinarily found in the inventory of, or used in the maintenance of, school buildings and facilities, the use, treatment, storage, transportation and disposal of which has been and shall be in compliance with all Laws and Regulations.

5.12.3 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 the 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.

5.13. Environmental Compliance by the District.

5.13.1 Subject to the Building Entity'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 Environmental 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 Environmental Regulations. Upon the occurrence of any Release or threat of Release of Hazardous Materials through no fault of the Building Entity, the District shall promptly commence and perform, or cause to be commenced and performed promptly, without cost to the Building Entity, 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 Environmental Regulations. Notwithstanding the above, to the extent permitted by Law, the District's environmental responsibility under this Section 5.13 shall begin subsequent to the District filing a Notice of Completion for the Project.

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 cease as of the day possession shall be so taken. The Building Entity shall receive an amount from the eminent domain award equal to the present value of the total of all remaining Lease Payments,

Additional Payments for the remainder of the original Term of this Facilities Lease, and value of Work completed by the Building Entity as determined by the Architect, and the 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; and (2) there shall be a *pro rata* 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, and the Building Entity shall receive an amount from the proceeds equal to the value of the Work completed by the Building Entity as determined by the Architect. The Building Entity shall reconfigure the Project so that any buildings on the Project affected by the partial permanent taking are useable by the District.

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 Lease Payments shall abate during the time that the Site or a portion of the Site is unusable for the District's use as a school or school district facility. The Building Entity and the 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 the Building Entity and the District from property insurance policies shall be immediately deposited in an escrow (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") through no fault of the Building Entity, then the District, at the District's option, may elect to terminate this Facilities Lease and the Site Lease, and shall use the insurance proceeds to pay an amount to the Building Entity equal to the Lease Payments due as of the date of destruction and the value of all Work completed by the Building Entity pursuant to the provisions found in Exhibit D, with any remaining insurance proceeds to be retained by the District. In the alternative, District may elect to continue with the Facilities Lease in effect and have the Site rebuilt utilizing the insurance proceeds, which shall be exclusively used for that purpose. The Building Entity shall have no obligation to contribute funds for the rebuilding of the Site should the cost of rebuilding exceed the insurance proceeds. 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 through no fault of the Building Entity, the 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 the District.
- 6.2.5 Rent Abatement. If damage or destruction results in a loss of use of the Site, the Lease Payments shall abate to the extent such damage or destruction has resulted in a loss of use. The amount of abatement shall be a *pro rata* portion of the Lease Payment based upon the percentage of the square footage unavailable for occupancy in proportion to the total square footage of the Site. Notwithstanding the foregoing, to the extent that the proceeds of rental interruption insurance are available to pay the amount of any Lease Payments which would otherwise be due, it is hereby agreed that such proceeds constitute special funds for the payment of such Lease Payments.
- 6.2.6 Personal Property. Any insurance proceeds payable to the District for losses to personal property contents within the Site shall be for the exclusive use of the District, and may be utilized in whatever manner the District, in its sole discretion, may designate.

ARTICLE 7

ACCESS; WARRANTIES

- 7.1. By the Building Entity. The Building Entity shall have the right at all reasonable times to enter upon the Site to construct the Project pursuant to this Facilities Lease. Following the acceptance of the Project by the District, the Building Entity may enter the Project at reasonable times with advance notice and arrangement with the District for purposes of making any repairs required to be made by the Building Entity and for purposes of inspection to ascertain whether the District is satisfying its obligation to maintain and repair the Project as required by this Facilities Lease.
- 7.2. By the District. Prior to the acceptance of the Project by the District, the District shall have the right to enter upon the Site at all times for the purposes of inspection of the progress of the Work on the Project and the District shall comply with all safety precautions required by the Building Entity. Following the acceptance of the Project by the District, the District shall, thereafter, have the right at all times to enter upon the Site for the purposes of this Facilities Lease.
- 7.3. Warranties. The Building Entity agrees to provide an express warranty against defects in materials and workmanship for a one (1) year period as further provided in the General Construction Provisions, and shall assign all rights under all product warranties to the District upon expiration of the one (1) year period. In addition, the Building Entity agrees to use its best efforts to assist the District in enforcing any such product warranty. In the event that the assignment of the warranty is not effective or valid, or the Building Entity fails to honor the warranty, the Building Entity shall indemnify and hold the District harmless for all costs incurred in replacing such defective product.

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 the District shall be subject to all of the following conditions:
- 8.1.1 This Facilities Lease and the obligation of the District to make Lease 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 the Building Entity 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 the 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 Failure by the District to pay any Lease Payment required to be paid hereunder at the time specified herein (unless properly withheld pursuant to provisions found herein or in Exhibit D) when due and payable hereunder, and the continuation of such failure for a period of ten (10) days after the District’s receipt of written notice from the Building Entity.
- 9.1.2 Failure by the District to pay any Additional Payment or other payment (unless properly withheld pursuant to provisions found herein or in Exhibit D) when due and payable hereunder, and the continuation of such failure for a period of fifteen (15) days after the District’s receipt of written notice from the Building Entity.
- 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 the Building Entity; 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 thirty (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 the Building Entity 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. In the event of such default, 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 Building Entity at the time and in the manner as herein provided. Notwithstanding the foregoing, the Building Entity shall use commercially reasonable efforts to mitigate its damages.
- 9.3. 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.
- 9.4. Application of Proceeds. All amounts derived by the Building Entity as a result of an Event of Default hereunder, shall be applied to the Lease Payments, Additional Payments and Tenant Improvement Payments in order of payment date to be applied to the prepayment of the Lease Payments, Additional Payments and Tenant Improvement Payments.
- 9.5. Event of Default by the Building Entity. The following shall be considered an Event of Default by the Building Entity under the Facilities Lease: (1) the Building Entity or any member, officer, or representative of the Building Entity unreasonably refuses or fails to prosecute the Work on the Project pursuant to the terms and conditions found in Exhibit D with such reasonable diligence as will accomplish its completion within the time specified or any extension thereof, or unreasonably fails to complete said Work within such time; (2) prior to completion of the Project, the Building Entity 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; (3) the Building Entity or any member, officer or authorized representative of the Building Entity persistently disregards all law, or otherwise be in violation of the General Construction Provisions; and (4) the Building Entity defaults in any of its obligations under the Site Lease or the Facilities Lease. In the event of such a default after the District, in accordance with the terms and conditions found in the General Construction Provisions, has given written notice specifying the failure and requesting that it be remedied, the 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 General Construction Provisions found in Exhibit D pursuant to Section 7.2 of the Site Lease and the termination provisions found in the General Construction Provisions.

ARTICLE 10

PURCHASE OPTION

- 10.1. District's Option. If the District is not then in default hereunder, the District shall have the option to purchase not less than all of the Building Entity's interests under this Facilities Lease and terminate this Facilities Lease, and Site Lease, and shall pay the Building Entity a purchase price consisting of the Guaranteed Maximum Price (for Work performed) as that term is defined in the Exhibit D, less any Lease Payments paid and Tenant Improvement Payments paid or owed by the District. Upon payment as aforesaid and payment of all other amounts owed, the Building Entity shall deliver to the District all reasonably necessary documents in recordable form to terminate this Facilities Lease and the Site Lease, and transfer title to the District, and the Facilities Lease and Site Lease shall both terminate with no further action required.

Notwithstanding the above, the warranty and indemnification provisions found in Sections 5.9 and 7.3 shall survive the termination of the Facilities Lease under this Section.

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 District: Summerville Union High School District
 17555 Tuolumne Road
 Tuolumne, CA 95379
 Attn: **Robert N. Griffith**

With a copy to: Kronick, Moskovitz, Tiedemann & Girard
 400 Capitol Mall, 27th Floor
 Sacramento, CA 95814
 Attn: Constantine Baranoff

If to Building Entity: Robert E. Boyer Construction Inc.
 23059 Coffill Road
 Twain Harte, CA 95383
 Attn: Robert Boyer _____

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 on 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 the Building Entity 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 or the Site Lease.
- 11.4. Reserved.
- 11.5. Further Assurances and Corrective Instruments. The Building Entity 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.
- 11.6. 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.
- 11.7. 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 Tuolumne County, California.
- 11.8. Building Entity and District Representatives. Whenever under the provisions of this Facilities Lease the approval of the Building Entity or the District is required, or the Building Entity 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 Building Entity by Building Entity'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.
- 11.9. 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 Sections of this Facilities Lease.
- 11.10. Interpretation. It is agreed and acknowledged by the District and the Building Entity 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.

11.11. Time. Time is of the essence of each and all of the terms and provisions of this Facilities Lease and its exhibits.

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.

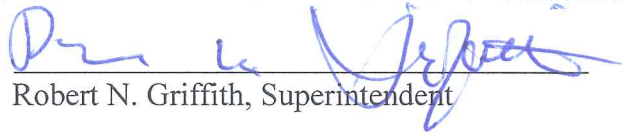
IN WITNESS WHEREOF, the parties hereto have caused this Facilities Lease to be executed by their respective duly authorized officers as of the day and year first written above.

DISTRICT:

Summerville Union High School District,

a school district duly organized and validly existing under the Constitution and the laws of the State of California

By:


Robert N. Griffith, Superintendent

BUILDING ENTITY:

Robert E. Boyer Construction Inc.,
a California corporation

By:

Name:

Title:

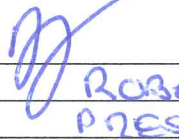

ROBERT BOYER
PRESIDENT

EXHIBIT A

(Description of the Project)

As set forth in the Plans and Specifications on file with the District for the modernization of **Summerville High School**.

EXHIBIT B

(Description of the Site)

The location of the Project at **Summerville High School**.

EXHIBIT C

(Lease Payment Schedule)

COMMENCEMENT DATE **May 5, 2014.**

Payment #

Month(s) \$ 1 (District's local contribution) per month

EXHIBIT D

(See Attached General Construction Provisions)