

GROUND LEASE AGREEMENT
BETWEEN
SAN BERNARDINO CITY UNIFIED SCHOOL DISTRICT
AND
SAN BERNARDINO COUNTY FIRE PROTECTION DISTRICT

THIS GROUND LEASE AGREEMENT (“Lease”) is made on this 1st day of June, 2024 (“Effective Date”), by and between the SAN BERNARDINO CITY UNIFIED SCHOOL DISTRICT, a California public school district (“District”), and SAN BERNARDINO COUNTY FIRE PROTECTION DISTRICT, a California fire protection district (“Tenant”). District and Tenant may be referred to herein individually as a “Party” or collectively as the “Parties.”

RECITALS

WHEREAS, the District is the fee owner of approximately 1 acre of real property located at 3825 North Mountain View Ave. in the City of San Bernardino, State of California, which is on the southerly portion of the Arrowhead Elementary School Site (“School Site”), which School Site consists of Assessor’s Parcel Number (“APN”) 0154-281-01; and

WHEREAS, the 1 acre of real property (the “Premises”) is depicted in Exhibit “A” attached hereto; and

WHEREAS, the Board of Directors of the San Bernardino County Fire Protection District has identified the Premises as a preferred site for consideration for the potential future use and development of a fire station, the details and scope of which are unknown at this time, subject to environmental review and other financing and market factors; and

WHEREAS, all future uses and development of the Premises for a fire station or other public project shall be conditioned upon CEQA compliance; and

WHEREAS, the lease of the Premises shall not constitute a commitment of the Tenant to a fire station or other public project as a whole or to any particular features. Instead, the Premises has been designated as a preferred site for consideration for a potential future use and development of a fire station at the Premises, subject to CEQA compliance; and

WHEREAS, Tenant is a California fire protection district engaged in the provision of public fire protection services, and desires to lease the Premises for its construction and use of a fire station; and

WHEREAS, the “Premises” are not needed by District for school purposes; and

WHEREAS, the District’s Governing Board (“Board”) is empowered by California Education Code section 35160 and former section 39500 to lease real property owned by the District upon such terms and conditions as the parties may agree; and

WHEREAS, District desires to lease the Premises to Tenant upon the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the covenants and agreements hereinafter set forth, District and Tenant agree as follows:

1. **LEASE OF PREMISES.** District does hereby lease to Tenant the exclusive use of the Premises.
2. **TERM.** The term of the Lease shall be for Fifty (50) years, commencing on the Commencement Date, as defined in subsection A, below, and expiring fifty (50) years from the Commencement Date ("Term"). The District and Tenant have the option to renew the lease for an additional Forty-Nine (49) year period (“Extended Term”), which renewal shall require an amendment to this Agreement approved by authorized representatives of both District and Tenant.
 - A. **Commencement Date.** The commencement of the Lease of the Premises (“Commencement”) shall take place on the date that is ten (10) business days after all Entitlements and/or Agency Approvals (as defined in **Section 6** below) has been obtained, which date, for purposes of clarity, shall be confirmed in writing by District, through District’s authorized representative, and Tenant, through Tenant’s Director of Real Estate Services (“**Commencement Date**”); provided, however, that (a) if the Official Records of the County, other government offices, or any bank of District or Tenant used for the transfer of funds in connection with the transaction contemplated under this Lease are not open for business, or other events beyond the reasonable control of either Party affect the ability to proceed with the Commencement, then the Commencement Date shall be extended to the date that is two (2) business days after such offices or bank reopen for business or such events no longer affect the ability to proceed with the Commencement and (b) if the period to initiate a Challenge (as defined in **Section 6** below) is extended due to court closures or otherwise, then the Commencement Date shall be extended for the same period as such extension.
3. **PURPOSE OF LEASE.** The purpose of this Lease is for District to provide Tenant the use of the Premises for Tenant’s construction and operation of a fire station.
4. **RENT.** For and in consideration of the use of the Premises, Tenant shall pay One Dollar (\$1.00) as an initial payment, within five (5) business days of the Effective Date, which is to be followed by a lump-sum payment of Three-Hundred Five Thousand Dollars (\$305,000.00) due within five (5) business days of the Commencement Date of this Lease and an annual payment of One Dollar (\$1.00) per year thereafter (collectively the “Rent”) throughout the Initial Term. If the Parties mutually exercise the option to renew the lease for an Extended Term, Rent for the Extended Term shall be set in accordance with Subsection B, below. The Tenant shall pay for regular charges for electricity, water, sewer, and gas (“Utilities”), as well as maintenance as specified in Section 15, as required for the Premises. The Tenant is responsible for payment of any other

services not included in Utilities or Section 15, as described above, including but not limited to telephone, data and cable access, as well as janitorial services and possessory interest taxes ("PIT"), if any, for the Premises. The amount for PIT, if any, shall be determined by the San Bernardino County Assessor, payment of which shall be the sole obligation of Tenant. Tenant shall have the right to contest the amount of PIT, if any, at its sole cost and expense.

- A. Initial payment of One Dollar (\$1.00) shall be due within five (5) business days of the Effective Date. Thereafter, a lump-sum payment of Three-Hundred Five Thousand Dollars (\$305,000.00) shall be due in arrears within five (5) business days of the Commencement Date of this Lease, and an annual payment of One Dollar (\$1.00) per year thereafter shall be due in arrears on each anniversary of the Commencement Date each year until the expiration or termination of this Lease. Tenant shall promptly pay Rent during the Initial Term or any Extended Term of the Lease, without deduction, setoff, prior notice or demand. The Parties agree to exchange necessary information prior to the first payment due in order to provide for the transfer of funds.

- B. The Rent for the Premises during the Extended Term shall be adjusted by good faith negotiation of the Parties to the fair market rental rate then prevailing based on the rental rate ("FMV Rent") of comparable leased premises in the County of San Bernardino. If the Parties have been unable to agree on the FMV Rent for the Premises within five (5) months of the exercise of the option to extend, the Parties shall agree to mutually terminate the Lease, or otherwise mutually negotiate another method to determine the applicable Rent for the Extended Term. During the period between the expiration of the then current Lease Term and the determination of the FMV Rent for the Premises by arbitration, Tenant shall continue to pay the annual payment of One Dollar (\$1.00) for the Premises under the rates of the Initial Term. Upon mutual agreement of the FMV Rent by way of an amendment to this Agreement, Tenant shall commence paying the FMV Rent for the duration of the subject Extended Term.-

- C. Tenant shall pay before delinquency any and all taxes, assessments, levies, possessory interest taxes, and other charges and governmental fees, general and special, ordinary and extraordinary, unforeseen, as well as foreseen, of any kind or nature whatsoever, including, but not limited to assessments for public improvements or benefits, which prior to or during the Term of this Lease are laid, assessed, levied, or imposed upon or become due and payable and a lien upon ("Taxes and Assessments"). Taxes and Assessments, late charges, costs and expenses which Tenant is required to pay hereunder, together with all interest and penalties that may accrue thereon in the event of Tenant's failure to pay such amounts, and all reasonable damages, costs, and attorneys' fees and expenses which District may incur by reason of any default of Tenant or failure on Tenant's part to comply with the terms of this Lease, shall be deemed to be additional rent ("Additional Rent") and, in the event of nonpayment by Tenant, District shall have all of the rights and remedies with respect thereto as District has for the nonpayment of the Rent. Tenant shall have the right, after payment of Taxes and Assessments, to challenge the amount of the Taxes and Assessments as determined by the taxing authority, at its sole cost and expense. Nothing in this Section shall limit District's right to recover, as Additional Rent, Taxes

and Assessments payable after termination of this Lease pursuant to the terms of this Lease.

5. **SECURITY DEPOSIT.** No security **deposit** will be paid pursuant to this Lease.

6. **DEVELOPMENT MATTERS.**

A. **Entitlements.** During the Contingency Period, Tenant shall have the right to process all applications, plans, maps, agreements, documents, and other instruments or entitlements (collectively, the “**Entitlements**”) necessary or appropriate for the development and/or use of the Premises as contemplated by Tenant. The term “**Contingency Period**” refers to the period of time beginning on the Effective Date of the Lease and ending on the Commencement Date of the Lease, as identified above. Using commercially reasonable, diligent efforts and at Tenant’s sole cost and expense, Tenant will proceed with reasonable diligence with processing Entitlements, including, to the extent required by any Governmental Agency or desired by Tenant, CEQA certifications, site approval, and any permits required from any Governmental Agency having jurisdiction over the Property. The term “**Governmental Agency**” means the United States, the State of California, the County and City (if any) in which the Property is located, and any agency, department, commission, board, or bureau of instrumentality of any of them, if applicable. Upon reasonable written request from District, Tenant will promptly advise District of the status of any Entitlement processing it performs. Notwithstanding the foregoing, District shall not be obligated to incur any cost or expense other than District’s own general overhead costs and expenses in relation to Tenant’s pursuit of the Entitlements. Commencing on the Effective Date, Tenant shall have the right to process all Entitlements necessary or appropriate for the development and/or use of the Premises as contemplated by Tenant in its sole discretion. Notwithstanding anything to the contrary contained herein, nothing in this Lease shall require the continued efforts of Tenant to process or pursue the Entitlements, and Tenant will have no liability to District in connection with the processing of the Entitlements, if this Lease is terminated for any reason.

B. **Agency Approval.** The term “**Agency Approval**” means final approval of all approvals, including, but not limited to, those related to CEQA, by all Governmental Agencies or quasi-governmental or other regulatory bodies, agencies, authorities or utilities having jurisdiction over the Premises with all time periods for initiating or filing a legal challenge (by administrative or legal appeal, writ, referendum, initiative, request for reconsideration or otherwise, including, without limitation, expiration of the time period for filing under Gov. Code Section 66499.37) (a “**Challenge**”) of the Agency Approval expired without any Challenge being initiated, or, if a Challenge has been initiated, including subsequent Challenges that may be initiated, the Challenge has been finally resolved in a manner that upholds the Agency Approval and the other Entitlements.

7. **DELIVERY AND CONDITION OF PREMISES.**

- A. District shall deliver to Tenant on the Commencement Date the actual and exclusive possession of the Premises, clear of all tenancies and occupancies (whether authorized, unauthorized, or trespassing). If for any reason District cannot deliver possession of the Premises to Tenant on the Commencement Date, District shall not be subject to any liability therefore except as described in this section, nor shall District's failure to deliver the Premises affect the validity of this Lease or the obligations of Tenant hereunder or extend the term hereof, but in such case, the Commencement Date shall be extended until the day possession of the Premises is tendered to Tenant, and Tenant shall not be obligated to pay any rent hereunder until possession of the Premises is tendered to Tenant.
- B. During the Contingency Period between the Effective Date and the Commencement Date, after Tenant delivers to the District insurance certificates and endorsements acceptable to the District, District shall allow Tenant to enter the Premises, install Tenant improvements, move in furniture and equipment, and prepare for operation of the fire station, but shall not allow visitors to enter the Premises nor shall Tenant operate the fire station until the Commencement Date.
- C. Tenant acknowledges that neither the District nor District's agents have made any representation or warranty as to the suitability of the Premises to the conduct of Tenant's operations beyond any warranty or representation expressly made in this Lease. Any agreements, warranties or representations not expressly contained herein shall in no way bind either District or Tenant, and District and Tenant expressly waive all claims for damages by reason of any statement, representation, warranty, promise or agreement, if any, not contained in this Lease.

8. TENANT CONSTRUCTED FIRE STATION PROJECT IMPROVEMENTS.

- A. Tenant shall construct tenant improvements and make installations in the Premises associated with the initial construction of the fire station (collectively, the "Fire Station Project Improvements") in accordance with the plans and specifications to be reviewed and approved by Tenant and District, which shall not be unreasonably delayed or withheld by District. Approval of District shall be obtained prior to the commencement of the Fire Station Project Improvements. A preliminary description of the proposed Fire Station Project Improvements is depicted in Exhibit "B" for reference only, attached hereto. All Fire Station Project Improvements shall be subject to any and all applicable laws, and agency approvals, including but not limited to the Division of the State Architect, if applicable.
- B. Tenant warrants to District that all materials and equipment furnished by Tenant in its improvement of the Premises shall be new unless otherwise specified, and that all of Tenant's work to be performed shall be of good and workmanlike quality, free from faults and defects, and in accordance with the final Plans and Specifications as approved by Tenant and District. Any of Tenant's work not conforming to the above standards shall be considered defective, and Tenant shall bear all cost associated with repairing and replacing improvements in order to bring improvements up to approved standards.

- C. Tenant shall erect a fence between the Premises and the remainder of the School Site of a design suitable for the safe operation of the adjoining School Site, and which design shall be subject to prior approval by District. If said fence has not been erected prior to the commencement of the Fire Station Project Improvements, Tenant shall erect temporary construction fencing between the Premises on the remainder of the Property, which shall be replaced by the permanent fencing immediately upon removal of the construction fencing. The construction fencing shall be removed within thirty (30) days of completion of the Tenant improvements.
- D. Upon the expiration or sooner termination of the Lease, Tenant shall, at its sole cost and expense, and with all due diligence, return the Premises to its original conditions or to another condition as mutually agreed by the Tenant and District, in accordance with Section 30 of this Lease.

9. USE OF PREMISES.

- A. Tenant shall use the Premises solely for the purpose of operating a fire station, (the “Fire Protection Operations”). Tenant shall not use the Premises for any use other than that specified in this section without the prior written consent of the District. Tenant agrees to maintain the Premises and to conduct the Fire Protection Operations in a manner that meets all federal, state and local regulations relating to the Premises and to the Fire Protection Operations, and to comply with all federal, state and local laws, regulations and ordinances, now or hereafter enacted concerning the Premises, the use of the Premises, and/or the Fire Protection Operations. The execution of this Lease shall be subject to the Tenant obtaining any and all permits or approvals which may be required in order for the Tenant to operate on the Premises. Tenant shall not use or permit the Premises to be used in whole or in part during the Term of this Lease for any purpose or use in violation of the laws or ordinances applicable thereto. Tenant shall indemnify, defend, and hold District harmless against any loss, expense, damage, attorneys' fees or liability arising out of failure of Tenant to comply with any applicable law, regulation, rule or ordinance.
- B. Tenant shall not commit or suffer to be committed any waste upon the Premises, or allow any sale by auction upon the Premises, or allow the Premises to be used for any unlawful purpose, or place any loads upon the floor, walls or ceiling which endanger the structure, or place any harmful liquids in the plumbing, sewer or storm water drainage system of the Premises. No waste materials or refuse shall be dumped upon or permitted to remain upon any part of the Premises except in trash containers designated for that purpose. Any uses that involve the serving and/or sale of alcoholic beverages and the conducting of games of chance are prohibited on the Premises. Tenant shall comply with the District-wide policy prohibiting the use of tobacco products on the Premises at all times. Tenant shall not use or permit the use of the Premises or any part thereof for any purpose that is inimical to public morals and welfare or morally objectionable as unsuitable for a public educational facility. Tenant agrees to promptly respond to concerns expressed by neighbors or District relating to the operation of the Premises.

- C. Tenant shall not have any subtenants without prior approval from the District. Tenant shall require all subtenants, licensees, and invitees, to use the Premises only in conformance with the permitted use and with applicable governmental laws, regulations, rules and ordinances.
10. **ACCESS TO PREMISES.** Tenant shall have access to the Premises twenty-four (24) hours per day, seven (7) days per week beginning on the Effective Date.
11. **TERMINATION.**
- A. **Tenant Early Termination Option.** Tenant shall have the Early Termination Option at any time whenever Tenant, in its sole discretion, determines it would be in Tenant's best interest providing a not less than ninety (90) day prior written notice to District. Tenant's Real Estate Services Director shall have the authority on behalf of Tenant to provide District with notice of any termination pursuant to this paragraph. In the event Tenant terminates the Lease as to the Premises or any portion thereof pursuant to this paragraph, Tenant shall not be entitled to a refund of the (1) One Dollar (\$1.00) initial payment, (2) Three-Hundred Five Thousand Dollars (\$305,000.00) lump-sum payment, or (3) any One Dollar (\$1.00) annual payments paid through the effective date of Early Termination.
- B. **Termination for Unduly Disruptive Activities.** District shall have the right to terminate the Lease at any time if Tenant's use of the Premises is reasonably deemed by District to be unduly disruptive to school site operations, interferes with the educational program or activities of the District, or jeopardizes the safety of District students and staff ("Unduly Disruptive Activity"). Normal or emergency Fire Protection Operations shall not constitute Unduly Disruptive Activity. Prior to such termination, District shall provide Tenant with written notice of the Unduly Disruptive Activity and thereafter shall meet and confer with Tenant regarding the reported incident or activity to determine whether the incident is an Unduly Disruptive Activities and any required cure or corrective measures. If District determines in good faith that Tenant, its employees, agents or invitees engaged in Unduly Disruptive Activities and such activities are not cured and corrected to District's reasonable satisfaction, then District shall have the right to terminate the Lease by giving the Tenant no less than ninety (90) days advance written notice of the termination of the Lease. In the event District terminates the Lease as to the Premises or any portion thereof pursuant to this paragraph, Tenant shall not be entitled to a refund of the (1) One Dollar (\$1.00) initial payment, (2) Three-Hundred Five Thousand Dollars (\$305,000.00) lump-sum payment, or (3) any One Dollar (\$1.00) annual payments paid through the effective date of Early Termination.
- (i) District understands that Tenant requires siren use in its operation of a fire station. However, siren use that falls outside of necessity of fire station operations will qualify as Unduly Disruptive Activity. When feasible, Tenant's vehicle sirens will not activate until vehicle has exited the Premises. This subdivision shall not apply in cases of emergency or disaster.

- C. **Termination Upon an Event of Default.** District shall have the right to terminate this Lease upon a material breach of the Lease for an uncured Event of Default as set forth in the Section 18 of the Lease. In the event District terminates the Lease as to the Premises or any portion thereof pursuant to this paragraph, District shall be entitled to all remedies as set forth in Section 18.
- D. Upon District's delivery of a notice of termination, Tenant shall surrender and vacate the Premises in the condition required under Section 30 of this Lease, and District may re-enter and take possession of the Premises and all the remaining improvements, and eject Tenant or any of Tenant's subtenants, assignees or other person or persons claiming any right under or through Tenant or eject some and not others or eject none, through legal process. This Lease may also be terminated by a judgment specifically providing for termination. Any termination under this section shall not release Tenant from the payment of any sum then due District or from any claim for damages or rent previously accrued or then accruing against Tenant. In no event shall any one or more of the following actions by District constitute a termination of this Lease:
- (i) maintenance and preservation of the Premises;
 - (ii) efforts to relet the Premises;
 - (iii) consent to any subletting of the Premises or assignment of this Lease by Tenant, whether pursuant to provisions hereof concerning subletting and assignment or otherwise; or,
 - (iv) any other action by District or District's agents intended to mitigate the adverse effects from any breach of this Lease by Tenant.
- E. **Damages.** In the event this Lease is terminated, District shall be entitled to damages in the following sums: any amount necessary to compensate District for all detriment proximately caused by Tenant's failure to perform Tenant's obligation under this Lease, or which in the ordinary course of business would be likely to result therefrom including, without limitation, the following: (i) expenses for cleaning, repairing or restoring the Premises; (ii) costs of carrying the Premises and insurance premiums thereon, utilities and security precautions; and (iii) expenses in retaking possession of the Premises.

12. **INDEMNIFICATION.**

- A. **Tenant Indemnification.** Tenant agrees to indemnify, reimburse, hold harmless, and defend District, its trustees, officers, employees and agents against any and all claims, causes of action, judgments, obligations or liabilities, and all reasonable expenses incurred in investigating or resisting the same (including reasonable attorneys' fees), on account of, or arising out of, the operation, condition, use or occupancy of the Premises or from any activity, work, or other things done, permitted or suffered by Tenant on or about the Premises. This further extends to the performance of any obligation on Tenant's part to be performed under the terms of this Lease, or arising from any act, omission or negligence

of the Tenant or any officer, agent, employee, guest, or invitee of Tenant. This Lease is made on the express condition that District shall not be liable for, or suffer loss by reason of, injury to person or property, from whatever cause in any way connected with the condition, use or occupancy of the Premises specifically including, without limitation, any liability for injury to the person or property of the Tenant, its agents, officers, employees, licensees and invitees.

- B. **District Indemnification.** District agrees to indemnify, reimburse, hold harmless, and defend Tenant, its trustees, officers, employees and agents against any and all claims, causes of action, judgments, obligations or liabilities, and all reasonable expenses incurred in investigating or resisting the same (including reasonable attorneys' fees), on account of, or arising out of, District's obligations under this Lease or from any activity, work, or other things done, permitted or suffered by District on or about the Premises, including District's compliance with all applicable laws regarding the leasing of District property. This further extends to the performance of any obligation on District's part to be performed under the terms of this Lease, or arising from any act, omission or negligence of District or any officer, agent, employee, guest, or invitee of District.

13. TENANT INSURANCE.

- A. Tenant is a self-insured public entity for purposes of professional liability, automobile liability, general liability and workers' compensation, and warrants that through its program of self-insurance it has adequate coverage or resources to protect against any claim, demand, liability, damage, cost and expense, including reasonable attorney's fees and costs (including any claims based on Tenant's indemnity obligation to District) arising out of District's and Tenant's performance of the terms, conditions or obligations of this Lease.
- B. **Additional Insured.** All policies, except for the Workers' Compensation, shall contain endorsements naming District and its officers, employees, agents and volunteers as additional insureds with respect to liabilities arising out of the Lease. Such additional insured coverage shall be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 2010.11 85.
- C. **Waiver of Subrogation Rights.** Tenant shall require the carriers of required coverages to waive all rights of subrogation against District, its officers, employees, agents, volunteers, contractors and subcontractors. All general or auto liability insurance coverage provided shall not prohibit Tenant and Tenant's employees or agents from waiving the right of subrogation prior to a loss or claim. Tenant hereby waives all rights of subrogation against District.
- D. **Policies Primary and Non-Contributory.** All policies required herein are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by District.

- E. Tenant agrees to require all parties, subcontractors, or others, including, but not limited to, architects, it hires or contracts with in relation to the Lease to provide insurance covering the contracted operations with the requirements in this Section 13, (including, but not limited to, waiver of subrogation rights) and naming District as an additional insured. Tenant agrees to monitor and review all such coverage and assumes all responsibility ensuring that such coverage is provided as required here.

14. DISTRICT INSURANCE.

- A. District shall secure and maintain Professional Liability, Automobile Liability, General Liability and Worker's Compensation, and warrants that it has adequate coverage or resources to protect against any claim, demand, liability, damage, cost and expense, including reasonable attorney's fees and costs (including any claims based on District's indemnity obligation to Tenant) arising out of District's and Tenant's performance of the terms, conditions or obligations of this Lease. Without in anyway affecting the indemnity herein provided and in addition thereto, the District may use its insurance for, or shall secure and maintain throughout the contract term, the following types of insurance with limits as shown:

(1) Workers' Compensation/Employers Liability – A program of Workers' Compensation insurance or a state-approved, self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with \$250,000 limits covering all persons including volunteers providing services on behalf of District and all risks to such persons under the Lease.

(2) Commercial/General Liability Insurance – District shall carry General Liability Insurance covering all operations performed by or on behalf of District providing coverage for bodily injury and property damage with a combined single limit of not less than one million dollars (\$1,000,000), per occurrence. The policy coverage shall include:

- (a) Premises operations.
- (b) Broad form property damage (including completed operations).
- (c) Explosion, collapse and underground hazards.
- (d) Personal injury
- (e) Contractual liability.
- (f) \$2,000,000 general aggregate limit.

(3) Commercial Property Insurance providing all risk coverage for the Premises, building, fixtures, equipment and all property constituting a part of the Premises, upon return of the Premises to the District following the end of the Term or Termination of the Lease. Coverage shall be sufficient to insure One Hundred percent (100%) of the replacement cost.

(4) Automobile Liability Insurance – Primary insurance coverage shall be written on ISO Business Auto coverage form for all owned, hired and non-owned automobiles or symbol 1 (any auto). The policy shall have a combined single limit of not less than one million dollars (\$1,000,000) for bodily injury and property damage, per occurrence. This coverage applies only for automobiles owned, hired and non-owned automobiles or symbol 1 (any auto) of the District.

(5) Umbrella Liability Insurance - An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements. When used, the umbrella policy shall apply to bodily injury/property damage, personal injury/advertising injury. The coverage shall also apply to automobile liability.

- B. **Additional Insured.** All policies, except for the Workers' Compensation, shall contain endorsements naming Tenant and its officers, employees, agents and volunteers as additional insureds with respect to liabilities arising out of the Lease. Such additional insured coverage shall be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 2010.11 85.
- C. **Waiver of Subrogation Rights.** District shall require the carriers of required coverages to waive all rights of subrogation against Tenant, its officers, employees, agents, volunteers, contractors and subcontractors. All general or auto liability insurance coverage provided shall not prohibit District and District's employees or agents from waiving the right of subrogation prior to a loss or claim. District hereby waives all rights of subrogation against Tenant.
- D. **Severability of Interests.** District agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross liability exclusions that preclude coverage for suits between District and Tenant or between Tenant and any other insured or additional insured under the policy.
- E. **Proof of Coverage.** District shall furnish Certificates of Insurance to Tenant's Real Estate Services Department ("RESD") administering the Lease evidencing the insurance coverage at the time the Lease is executed. Additional endorsements, as required, shall be provided prior to the commencement of performance of services hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to Tenant RESD, and District shall maintain such insurance from the time the Lease is executed until the expiration or earlier termination of the Lease. Within fifteen (15) days of the Commencement Date, District shall furnish a copy of the declaration page for all applicable policies and will provide complete certified copies of the policies and endorsements immediately upon request.
- F. **Acceptability of Insurance Carrier.** Unless otherwise approved by Tenant's Director of Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum "Best" Insurance Guide rating of "A- VII".

- G. **Deductibles.** Any and all deductibles in excess of \$10,000 shall be declared to and approved by Tenant's Director of Risk Management.
- H. **Failure to Procure Coverage.** All insurance required must be maintained in force at all times by District. In the event that any policy of insurance required under the Lease does not comply with the requirements, is not procured, or is canceled and not replaced, Tenant has the right but not the obligation or duty to cancel the Lease or obtain insurance if it deems necessary and any premiums paid by Tenant will be promptly reimbursed by District or Tenant payments to District will be reduced to pay for Tenant purchased insurance.
- I. **Insurance Review.** Insurance requirements are subject to periodic review by Tenant. Tenant's Director of Risk Management or designee is authorized, but not required, to reduce, waive or suspend any insurance requirements whenever Tenant's Director of Risk Management determines that any of the required insurance is not available, is unreasonably priced, or is not needed to protect the interests of Tenant. In addition, if Tenant's Director of Risk Management determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, Tenant's Director of Risk Management or designee is authorized, but not required, to change the above insurance requirements to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against Tenant, inflation, or any other item reasonably related to Tenant's risk.

Any change requiring additional types of insurance coverage or higher coverage limits must be made by an amendment to the Lease. District agrees to execute any such amendment within thirty (30) days of receipt.

Any failure, actual or alleged, on the part of Tenant RESD or Tenant to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of Tenant RESD or Tenant.

- J. Tenant shall have no liability for any premiums charged for such coverage in this Section 14. The inclusion of Tenant as additional named insured is not intended to and shall not make a partner or joint venturer with District in District's operations.
- K. District agrees to require all parties, subcontractors, or others it hires or contracts with in relation to the Lease to provide insurance covering the contracted operation with the requirements in this Section 14, (including, but not limited to, waiver of subrogation rights) and naming Tenant as an additional insured.

15. MAINTENANCE AND REPAIRS.

- A. Tenant, at its cost, shall maintain the Premises and the interior of the facilities located thereon in a good, safe, and well-maintained condition consistent with the condition of the school site existing at the time of delivery in accordance with applicable provisions of the

Education Code and the District's policies and/or practices regarding District owned properties.

The District shall send Tenant a copy of District's policies and/or practices regarding District owned properties within five (5) business days of the Effective Date of this Agreement and within five (5) business days of any changes to District's policies and/or practices regarding District owned properties.

- B. District makes no representations or warranties regarding the state of the Premises to be leased for the Fire Station Project Improvements or the Tenant Improvements. Tenant has inspected the Property and Premises and has confirmed that it is fit for Tenant's purpose of constructing and operating a fire station.
- C. District shall have no maintenance or repair obligations with respect to the Premises except as expressly provided in this section. District shall not be required to maintain or repair the Premises, the Fire Station Project Improvements or the Tenant improvements thereon. If District is required to perform maintenance that is not District's obligation, Tenant shall reimburse District, as Additional Rent, within fifteen (15) days after receipt of billing, for the cost of such maintenance and repairs which are the obligation of Tenant hereunder.

16. ALTERATIONS AND IMPROVEMENTS. With prior written approval of District, Tenant may, at its sole cost and expense, construct or cause to be constructed the Fire Station Project Improvements and the Tenant Improvements on the Premises, provided such improvements are subject to local site, zoning, and design review and other required approvals and provided District has approved all such improvements.

- A. **Approval Process for Plans and Specifications.** In regard to any improvements constructed on the Premises not already approved by District and Tenant in Section 8.A. of this Agreement as part of the Fire Station Project Improvements, Tenant shall, prior to construction, major repair, renovation or demolition of any improvements on the Premises, obtain the prior written consent of District thereto and to the final plans, specifications, and schedule for completion thereof. Tenant shall also, prior to construction of any improvements, obtain written approval from District and the Division of the State Architect (DSA), if applicable, for the improvements and their related costs. Said approval or disapproval must be expressly made by District in writing. Tenant shall not proceed with any construction of improvements until Tenant has obtained any required written approvals. District approval shall be required for any material changes to the Premises. Tenant is required to follow all local and state building codes and obtain approvals from the local governing authority to construct a fire station for Tenant's use.
- B. Tenant shall give District fifteen (15) days prior written notice before commencing any work on the Premises so that District may post such notices of non-responsibility with respect thereto as District may deem appropriate.
- C. Not less than fifteen (15) days prior to the construction, major repair, renovation or demolition of any improvements on the Premises, Tenant shall provide District with

sufficient evidence that it has obtained all required approvals and permits for the work and that Tenant or Tenant's contractor(s) has in effect, with premiums paid, adequate casualty and liability insurance (including builder's risk) as described in Section 13 of this Lease.

- D. Upon commencement of construction of any improvements, Tenant shall cause the work to be diligently pursued to completion in accordance with the schedule for completion approved by District, subject to unavoidable delays caused by weather, supply shortages, strikes or acts of nature.
- E. All work or improvements shall be performed in a sound and workmanlike manner, in compliance with all applicable laws and building codes, in conformance with the plans and specifications approved by District and DSA, if applicable, or any modifications thereto which have been approved in writing by District. If an improvement project requires the use of DSA-approved Inspector services, Tenant shall bear sole responsibility for the costs related to said services.
- F. Upon providing not less than 24 hours prior written notice to the Tenant, District or District's agent shall have a continuing right at all times during the period that Fire Station Project Improvements or Tenant Improvements are being constructed on the Premises to enter the Premises and to inspect the work provided that such entries and inspections do not unreasonably interfere with the progress of the construction or the Fire Protection Operations and provided that such entry is at a date and time mutually agreed between District and the Tenant, and that District is at all times escorted by Tenant for the duration of such entry. Tenant shall require its contractors who construct improvements on the Premises to reasonably cooperate with District or its agent in such inspections.
- G. For the Fire Station Project Improvements or Tenant shall obtain and secure in place payment bonds for the full value of said improvements, as well as performance bonds to secure the full and complete performance of any and all work undertaken.
- H. Within ninety (90) days after completion of construction of any work of improvement on the Premises, Tenant shall deliver to District two (2) full and complete sets of as-built plans for the work so completed.
- I. Upon the expiration or sooner termination of the Lease, Tenant shall, at its sole cost and expense, and with all due diligence, return the Premises to its original conditions or to another condition as mutually agreed by the Tenant and District, in accordance with Section 30 of this Lease.

17. CASUALTY DAMAGE.

- A. In the event that any portion of the Premises are destroyed or damaged by an uninsured peril, Tenant may, upon written notice to the District, given within thirty (30) days after the occurrence of the damage or destruction, elect to terminate this Lease; provided, however, that Tenant may elect to make the required repairs and/or restoration at Tenant's sole cost and expense, in which event this Lease shall remain in full force and effect, and

Tenant shall thereafter diligently proceed with the repairs and/or restoration. Any work to be performed shall be subject to prior District approval, and further subject to the terms of this Lease related to Tenant Improvements.

18. DEFAULT.

A. **Events of Default.** A breach of this Lease shall exist if any of the following events (hereinafter referred to as "Event of Default") shall occur:

(i) Default in the payment when due of any installment of Rent or other payment required to be made by Tenant hereunder, and the default shall not have been cured within ten (10) days after written notice from District;

(ii) Tenant's failure to perform any other material term, covenant or condition contained in this Lease and the failure shall have continued for thirty (30) days after written notice of such failure is given to Tenant; however, should Tenant's default involve a serious risk to the safety of the students or an illegal use of the Premises, such cure must occur immediately. In the event the District and staff at the School Site has notified Tenant of an Event of Default on the same basis on two prior occasions, the period to cure shall be reduced to five (5) business days.

(iii) The vacating or abandonment of the Premises by Tenant before the expiration or sooner termination of the Lease Term.

(iv) The failure by Tenant to utilize the Premises for the sole purpose of operating a fire station as authorized by this Lease and the terms and conditions set forth herein.

(v) Revocation or non-renewal of Tenant's license permits or other authorizations to conduct Fire Protection Operations.

(vi) Failure to keep in effect insurance as required herein.

(vii) The Tenant or any guarantor of Tenant's obligations hereunder fails to pay its debts as they become due or admits in writing its inability to pay its debts;

(viii) Any case, proceeding or other action against the Tenant or any guarantor of the Tenant's obligations hereunder is commenced seeking to have an order for relief entered against it as debtor, or seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of it or its debts under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, or seeking appointment of a receiver, trustee, custodian or other similar official for it or for all or any substantial part of its property, and the case, proceeding or other action (i) results in the entry of an order for relief against it which is not fully stayed within seven (7) business days after the entry thereof or (ii) remains un-dismissed for a period of forty-five calendar (45) days.

B. **Remedies.** Upon any Event of Default, District shall have the following remedies, in addition to all other rights and remedies provided for in this Lease, and/or provided by law, to which District may resort cumulatively, or in the alternative:

(i) District shall be entitled to keep this Lease in full force and effect (whether or not Tenant shall have abandoned the Premises) and to enforce all of its rights and remedies under this Lease. In the event District terminates the Lease as to the Premises or any portion thereof due to an uncured Event of Default pursuant to Section 11.C of this Lease, Tenant shall not be entitled to a refund of the (1) One Dollar (\$1.00) initial payment, (2) Three-Hundred Five Thousand Dollars (\$305,000.00) lump-sum payment, or (3) any One Dollar (\$1.00) annual payments paid through the effective date of Early Termination.

19. **MECHANICS LIEN.** Tenant shall: (i) pay for all labor and services performed for, materials used by or furnished to Tenant or any contractor employed by Tenant with respect to the Premises; (ii) indemnify, defend and hold District and the Premises harmless and free from the perfection of any liens, claims, demands, encumbrances or judgments created or suffered by reason of any labor or services performed for, or materials used by or furnished to, Tenant or any contractor employed by Tenant with respect to the Premises; (iii) give notice to District in writing fifteen (15) days prior to employing any laborer or contractor to perform services related to, or receiving materials for use upon, the Premises; and, (iv) permit District to post a notice of non-responsibility in accordance with the statutory requirements of California Civil Code Section 3094 or any amendment thereof. In the event Tenant is required to post an improvement bond with a public agency in connection with the above, Tenant agrees to include District as an additional obligee.
20. **INSPECTION OF PREMISES.** Tenant shall permit District and its agents to enter the Premises upon forty-eight (48) hour notice for the purpose of inspecting the Premises or posting a notice of non-responsibility for alterations, additions, or repairs.
21. **HOLDING OVER.** Should Tenant hold over in possession after the expiration of the Term or any Extended Term of this Lease, the holding over shall not be deemed to extend the term or renew the Lease, but the tenancy thereafter shall continue upon the covenants and conditions herein under Section 4 and other applicable sections herein, including the rent (Holding Over Rent) unless Tenant and District mutually agree to a different rental amount.
22. **NOTICES.** Any notices which either of Party is required or may desire to send or deliver to give to the other Party, shall be mailed, certified mail, return receipt requested, postage prepaid, or delivered, with all charges prepaid, to the other Party at the address listed below, or to such address as either Party may designate to the other from time to time in writing.

District: Attn: Director of Facilities Planning & Development,
San Bernardino City Unified School District
601 N. E. St.
San Bernardino, California 92415

Tenant: San Bernardino County

Attn: Real Estate Services Department
385 N. Arrowhead Avenue, Third Floor
San Bernardino, CA 92415

The date of service of any notice mailed as aforesaid, shall be deemed to be five (5) days after the date of such mailing, and the date of service of any notice hand delivered, as aforesaid, shall be deemed to be one (1) day after delivery thereof to the delivery service office.

23. **ATTORNEYS' FEES.** If any legal action is instituted to enforce or declare any Party's rights hereunder, each Party, including the prevailing party, must bear its own costs and attorneys' fees. This paragraph shall not apply to those costs and attorneys' fees directly arising from any third party legal action against each Party, including such costs and attorneys' fees payable under Section 12, INDEMNIFICATION, and Section 32, HAZARDOUS MATERIALS.
24. **ASSIGNMENT.** The Tenant may not assign this Lease without District's consent and written approval. Any assignment of this Lease must be in writing and signed by District and Tenant. This Lease cannot be assigned during the first five years of the Lease Term. No assignment or transfer shall be effective until there shall have been delivered to District an agreement, or a duplicate original of such assignment containing an agreement, in recordable form, executed by the assignor and the proposed assignee whereby such assignee agrees, expressly for the benefit of District, to assume, keep and perform, and be bound by each and all of the covenants, conditions, restrictions and provisions herein contained on the part of Tenant, and any such assignment or transfer shall be subject to each and all of the covenants, conditions, restrictions and provisions hereof. Any assignment in violation of this Section shall be void and of no effect. Tenant agrees that the District may assign any interest in this Lease, as required or desired at any time, provided that the assignment will not disturb the Tenant's possession and quiet enjoyment of the Premises.
25. **SUCCESSORS.** This Lease contains all of the covenants, agreements, representations and provisions thereof and shall inure to the benefit of and be binding upon the respective heirs, legal representatives, executors, administrators, successors and assigns of the parties hereto, except as provided in the preceding Section.
26. **SURRENDER OF LEASE NOT MERGER.** The voluntary or other surrender of this Lease by Tenant, or a mutual cancellation thereof, shall not work a merger and shall, at the option of District, terminate all or any existing subleases or sub-tenancies, or operate as an assignment to District of any or all subleases or sub-tenancy.
27. **WAIVER.** The waiver by District or Tenant of any breach of any term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition herein contained shall not be deemed to be a waiver of the term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition herein contained.
28. **GENERAL.**

- A. The captions and section headings used in this Lease are for the purposes of convenience only. They shall not be construed to limit or extend the meaning of any part of this Lease.
- B. Time is of the essence for the performance of each term, covenant and condition of this Lease.
- C. In case any one or more of the provisions contained herein, except for the payment of Rent, shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Lease, but this Lease shall be construed as if such invalid, illegal or unenforceable provision had not been contained herein. This Lease shall be construed and enforced in accordance with the laws of the State of California.
- D. If Tenant is more than one person or entity, each such person or entity shall be jointly and severally liable for the obligations of Tenant hereunder.

29. SIGNS.

- A. Tenant shall be permitted to install signage on the Premises, with all such signage subject to prior approval by the District, unless required by law, in writing prior to fabrication and construction of any signage. District's approval and written consent for the signage included herein shall not be unreasonably withheld, delayed or denied.
- B. In connection with the placement of such signs, District agrees to cooperate with Tenant in obtaining any governmental permits which may be necessary. Throughout the Term of this Lease Tenant shall, at its sole cost and expense, maintain the signage and all appurtenances in good condition and repair. At the expiration of early termination of this Lease, Tenant shall remove any signs that it has placed on the Premises, and shall repair any damage caused by the installation or removal of those signs.

30. SURRENDER OF THE PREMISES. On the last day of the Term or Extended Term hereof, or on sooner termination of this Lease, Tenant shall surrender to District the Premises in good order, condition and repair, reasonable wear and tear excepted, free and clear of all liens, claims and encumbrances. This condition shall be similar to the original condition of the Premises existing as of the Commencement Date, excepting normal ordinary wear and tear. Tenant shall, at its sole cost and expense, and with all due diligence, remove any Fire Station Project Improvements or Tenant Improvements to Premises made pursuant to Section 7 or 8, any Alterations or Improvements to Premises made pursuant to Section 16, and any Hazardous Materials used on the Premises pursuant to Section 32, and return the Premises to its original condition existing as of the Commencement Date, unless the Parties mutually agree to allow Tenant to surrender the Premises in another condition, which may include non-removal of the Fire Station Project Improvements or certain Tenant Improvements to Premises and/or certain Alterations or Improvements to Premises. This Lease shall operate as a conveyance and assignment to the District of the Fire Station Project Improvements or Tenant Improvements or Alterations or Improvements to the Premises identified by the District to remain on the Premises. Tenant shall remove from the Premises all of Tenant's personal property, trade fixtures, and any

alterations or improvements made by Tenant which District agrees will be removed by Tenant. All property not so removed shall be deemed abandoned by Tenant after District gives written notice of abandonment to Tenant. If the Premises are not so surrendered at the termination of this Lease, Tenant shall indemnify District against loss or liability resulting from delay by Tenant in so surrendering the Premises including, without limitation, any claims made by any succeeding Tenant or losses to District due to lost opportunities to Lease to succeeding tenants.

31. **DISTRICT'S COVENANTS.** The District covenants, warrants and represents that it has full right, power and legal authority to execute and perform this Lease, and to grant the estate demised herein, and covenants that Tenant on paying Rent as herein provided and performing the covenants hereof shall peaceably and quietly have, hold and enjoy the demised Premises and all right, easements, appurtenances and privileges belonging or in any way appertaining thereto, during the term of this Lease and any extension or renewal thereof.

32. **HAZARDOUS MATERIALS.** District and Tenant agree as follows with respect to the existence or use of Hazardous Materials on the Premises including any improvements made by Tenant.
 - A. **Definition.** As used herein, the term "Hazardous Materials" means any hazardous or toxic substance, material or waste that is or becomes regulated by any local governmental authority, the State of California or the United States Government. The term "Hazardous Materials" includes, without limitation, petroleum products, asbestos, PCB's, and any material or substance which is (i) defined as hazardous or extremely hazardous pursuant to Title 22 of the California Code of Regulations, Division 4.5, Chapter 11, Article 4, Section 66261.30 et seq. (ii) defined as a "hazardous waste" pursuant to Section (14) of the federal Resource Conservation and Recovery Act, 42 U.S.C. 6901 et. seq. (42 U.S.C. 6903), or (iii) defined as a "hazardous substance" pursuant to Section 10 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 et. seq. (42 U.S.C. 9601). As used herein, the term "Hazardous Materials Law" shall mean any statute, law, ordinance, or regulation of any governmental body or agency (including the U.S. Environmental Protection Agency, the California Regional Water Quality Control Board, and the California Department of Health Services) which regulates the use, storage, release or disposal of any Hazardous Material.

 - B. **Hazardous Materials.** Tenant shall not cause or permit any Hazardous Material to be generated, brought onto, used, stored, or disposed of in or about the Premises and any improvements by Tenant or its agents, employees, contractors, subtenants, or invitees, except for limited quantities of standard office, classroom, and janitorial supplies, and substances and materials that are necessary to the standard operation of a fire station (which shall be used and stored in strict compliance with state and federal environmental laws). Tenant shall make all reasonable efforts to ensure that any Hazardous Materials used on the Premises do not contaminate other District property. Upon expiration or sooner termination of this Lease, Tenant shall be solely responsible for safely disposing of any Hazardous Materials meeting the minimum District requirements for California Department of Toxic Substances Control remaining on the Premises, and for cleaning and

restoring the Premises to ensure it is free of any Hazardous Materials used on the Premises by Tenant. Tenant shall comply with all state and federal environmental laws.

- C. **Responsibility of Tenant.** From and after the Commencement Date, Tenant shall be solely responsible for all environmental matters affecting the Premises and any improvements. Without limiting the preceding sentence:
- (i) Any handling, transportation, storage, treatment, disposal or use of Hazardous Materials in or about the Premises and any improvements by any person or entity shall be the responsibility of Tenant and shall strictly comply with all applicable Hazardous Materials Laws and the provisions of this Lease.
 - (ii) Tenant shall insure that the Premises and any improvements are at all times in strict compliance with all Hazardous Materials Laws and that all activities conducted in or about the Premises and improvements comply in every respect with all applicable Hazardous Materials Laws including, but not limited to, all notification, record keeping, and maintenance requirements of such Laws.
 - (iii) Tenant shall have and discharge all of the duties and obligations of the owner of the Premises and improvements under applicable Hazardous Materials Laws, including, but not limited to, response and remediation; and
 - (iv) Tenant shall be responsible for all liability to third parties who may be harmed or claim harm resulting from an environmental condition on or about the Premises and any improvements.
- D. **Indemnification.** Tenant shall indemnify, defend upon demand with counsel reasonably acceptable to District, and hold harmless District and its trustees, agents and employees from and against any liabilities, losses, claims, damages, lost profits, consequential damages, interest, penalties, fines, monetary sanctions, attorneys' fees, experts' fees, court costs, remediation costs, investigation costs, and other expenses which result from or arise in any manner whatsoever out of the use, storage, treatment, transportation, release, disposal, or presence from any cause or source whatsoever of Hazardous Materials on or about the Premises and any improvements.
- E. **Tenant Action.** If the presence of Hazardous Materials on the Premises and any improvements (from any source whatsoever) results in contamination of the Premises, or School Site, or deterioration of water or soil resulting in a level of contamination greater than the levels established as acceptable by any governmental agency having jurisdiction over such contamination, and if the Tenant is responsible therefore under applicable law, then Tenant shall, at its sole cost and expense, promptly take any and all action necessary to investigate and remediate such contamination if required by law or as a condition to the issuance or continuing effectiveness of any governmental approval which relates to the use of the Premises and any improvements or any part thereof. Tenant shall further be solely responsible for, and shall defend, indemnify and hold District and its agents harmless from and against, all claims, costs and liabilities, including attorneys' fees and costs, arising out

of or in connection with any investigation and remediation required hereunder to return the Premises and any improvements to full compliance with all Hazardous Materials Laws.

- F. **Survival.** The obligations of Tenant and District, including each Party's indemnity obligations, under this Section 32 shall survive the expiration or earlier termination of this Lease. The rights and obligations of District and Tenant with respect to issues relating to Hazardous Materials are exclusively established by this Section. In the event of any inconsistency between any part of this Lease and this Section 32, the terms of this Section shall control.
- G. In the event that Tenant causes any Hazardous Materials to be released, spilled or otherwise exposed through its use and occupancy of the Premises, such as, but not limited to remodeling or other construction, Tenant shall be solely responsible for all costs associated with the proper handling, mitigation, remediation and disposal of the Hazardous Materials and all related cleanup.
- H. District hereby represents and warrants to Tenant that, to the best of District's knowledge, as of the Commencement Date: (i) the Premises have not been exposed to Hazardous Materials and are free of all Hazardous Materials; (ii) neither District nor any existing or former tenants or occupants at the Premises were or are in violation of or subject to an existing, pending or threatened investigation by any governmental authority under any applicable local, state, and federal law, regulation, ordinance or other legislation pertaining to air, water, or soil quality or the handling, transportation, storage, treatment, usage or disposal of Hazardous Materials; (iii) any handling, transportation, storage, treatment, usage, or disposal of Hazardous Materials at the Premises has been or are in compliance with applicable laws; and (iv) no reportable use has occurred on the Premises, and the vapor, groundwater and soil on or under the Premises is free of Hazardous Materials. For purposes of this section, the "best of District's knowledge" means the actual or constructive knowledge of the District Superintendent, at the time of the Commencement Date.

33. NO SUBORDINATION.

- A. Tenant agrees that District's fee interest shall at all times be and remain unsubordinated to any leasehold mortgage which may be imposed upon Tenant's leasehold interest hereunder or upon any Fire Station Project Improvements or Tenant Improvements, and that nothing contained in this Lease shall be construed as an agreement by District to subject its fee interest to any lien. Nothing in this Section or in any other provision of this Lease shall be construed as an agreement by District to subordinate its fee interest in the Premises to any leasehold mortgage or other lien or right. No leasehold mortgage shall impair District from enforcing its rights and remedies herein or by law provided.
- B. If, after execution of the Lease, a subsequent lienor requires that the Lease be subordinate to any such encumbrance, the Lease shall be subordinate to that encumbrance if, and only if, District first obtains from the subsequent lienor an executed subordination, nondisturbance and attornment agreement ("SNDA"), in a form mutually agreed upon by the Parties.

C. County's RESD Director shall have the authority on behalf of Tenant to execute a SNDA, if applicable.

34. **ENTIRE AGREEMENT.** This Lease constitutes the entire understanding between the Parties hereto and no addition to or modification of any term or provision of this Lease shall be effective until set forth in writing signed by both District and Tenant.

35. **NON-INTEREFENCE WITH SCHOOL SITE.** It is understood and recognized by Tenant that the remainder of the School Site will be used by other parties, including District, and Tenant shall not directly or indirectly for its own account or for the account of any other individual or entity, interfere with other parties using the School Site, and cooperate with the other parties.

Normal or emergency Fire Protection Operations shall not constitute interference with use of School Site by parties, including District.

36. **SEVERABILITY.** The provisions of this Lease are declared to be severable, and if any provision herein is invalidated by any court, the remaining provisions shall not be affected thereby and shall be fully enforceable, unless such enforcement would be unreasonable or inequitable under all the circumstances or would frustrate the purposes of this Lease.

37. **JURISDICTION AND VENUE.** This Lease has been executed and delivered in the State of California and the validity, enforceability and interpretation of any of the clauses of this Lease shall be determined and governed by the laws of the State of California. To the fullest extent permitted by California law, the county in which the school site is located shall be the venue for any action or proceeding that may be brought or arise out of, in connection with or by reason of this Lease.

38. **COUNTERPART EXECUTION.** This Lease may be executed in any number of counterparts all of which when taken together shall constitute one and the same document. For purposes of this Lease only, the Parties shall be entitled to sign and transmit an electronic signature of this Lease (whether by facsimile, PDF or other email transmission), which signature shall be binding on the Party whose name is contained therein. Each Party providing an electronic signature agrees to execute and deliver to the other Party an original signed Lease upon request. Unless expressly otherwise set forth in an amendment, any subsequent amendments to the Lease shall be executed by original signatures only.

39. **AUTHORIZED SIGNATORIES.** The Parties to the Lease represent that the signatories executing this document are fully authorized to enter into this Lease.

IN WITNESS WHEREOF, District and Tenant have executed this Lease, through their respective officers or representatives, duly authorized, as of the day and year shown below.

**TENANT:
SAN BERNARDINO COUNTY
FIRE PROTECTION DISTRICT**

**DISTRICT:
SAN BERNARDINO CITY UNIFIED
SCHOOL DISTRICT**

By: _____
Dawn Rowe, Chair
Board of Directors

By: _____
Terry Comnick
Chief Business Officer

Date: _____

Date: _____

SIGNED AND CERTIFIED THAT
A COPY OF THIS DOCUMENT
HAS BEEN DELIVERED TO THE
CHAIR OF THE BOARD

LYNNA MONELL, Secretary of the Board of
Directors

By: _____
Deputy

Date: _____

Approved as to Legal Form:

Tom Bunton, County Counsel
San Bernardino County, California

By: _____
John Tubbs II, Deputy County Counsel

Date: _____

**Exhibit A
Depiction of Premises**



¹ The School Site is designated by the blue box.

² The Premises are designated by the red box.

Exhibit B Preliminary Description of Proposed Fire Station Project Improvements

