

## LEASE AGREEMENT

THIS LEASE AGREEMENT ("Agreement") for lease of real and personal property is entered into by and between the EMERY UNIFIED SCHOOL DISTRICT (hereinafter referred to as "Emery") and the PIEDMONT UNIFIED SCHOOL DISTRICT (hereinafter referred to as "Piedmont"), effective March 1, 2009.

### RECITALS

**WHEREAS**, Emery owns, and has available for use, the Ralph Hawley Elementary School Site; and

**WHEREAS**, Piedmont needs the Ralph Hawley Elementary School Site to house students during modernization of its existing school sites.

**NOW, THEREFORE**, the parties hereto agree as follows:

#### 1. PROPERTY

Emery is the owner of the Ralph Hawley Elementary School Site, located at 1275-61<sup>st</sup> Street, Emeryville, California, 94608 (the "Property"), which Piedmont desires to use. A description of the Property is attached hereto as Exhibit "A".

#### 2. TERM OF AGREEMENT

##### A. Original Lease Term

The original term of this Agreement shall commence on March 1, 2009 and conclude on June 30, 2010 (the "Original Lease Term").

##### B. Additional Lease Terms

No later than December 31, 2009, the parties will meet to determine if Piedmont wishes to exercise its option, granted hereby, to lease the Property for the 2010/2011 school year, which is the period of time between July 1, 2010 and June 30, 2011 (the "First Additional Lease Term"). In the event that Piedmont exercises this option, this Agreement shall be extended for that period, pursuant to the terms and conditions set forth herein.

No later than December 31, 2010, the parties will meet to determine if Piedmont wishes to exercise its option, granted hereby, to lease the Property for the 2011/2012 school year, which is the period of time between July 1, 2011 and June 30, 2012 (the "Second Additional Lease Term"). In the event that Piedmont exercises this option, then this

Agreement shall be extended for that period, or revived, pursuant to the terms and conditions set forth herein.

C. Fourth Year

Not later than December 31, 2010, the parties shall mutually determine whether the property will be available, and whether to extend this Agreement, upon terms and conditions to be agreed upon at that time, for the 2012/2013 school year (July 1, 2012 through June 30, 2013) or a portion thereof.

**3. LEASE RENTAL PAYMENTS**

A. Original Lease Term

The annual Lease Rental Payment for the Original Lease Term shall be Seven Hundred Fifty Thousand Dollars (\$750,000.00). Twenty-five percent (25%) of that amount (One Hundred Eighty-Seven Thousand Five Hundred Dollars [\$187,500.00]) shall be due by April 1, 2009; \$187,500.00 shall be due by July 1, 2009; \$187,500.00 shall be due by November 1, 2009; and \$187,500.00 shall be due by March 1, 2010.

B. First Additional Lease Term

The annual Lease Rental Payment for the First Additional Lease Term (in the event that it is exercised) shall be Five Hundred Thousand Dollars (\$500,000.00) for the period between July 1, 2010 through June 30, 2011.

Twenty-five percent (25%) of the total Lease Rental Payment for the 2010/2011 school year (One Hundred Twenty-Five Thousand Dollars [\$125,000.00]) shall be due by July 1, 2010; \$125,000.00 shall be due by November 1, 2010; \$125,000.00 shall be due by March 1, 2011; and \$125,000.00 shall be due by June 1, 2011.

C. Second Additional Lease Term

The annual Lease Rental Payments for the Second Additional Lease Term (in the event that it is exercised) shall be Six Hundred Thousand Dollars (\$600,000.00) for the period between July 1, 2011 through June 30, 2012. However, if Emery has a demonstrated need for the Property during the Second Additional Lease Term, then the annual Lease Rental Payment shall be Eight Hundred Thousand Dollars (\$800,000.00).

Twenty-five percent (25%) of the total Lease Rental Payment for the 2011/2012 school year shall be due no later than July 1, 2011; November 1, 2011; March 1, 2012; and June 1, 2012.

C. Late Penalties

Late Lease Rental Payments shall be subject to interest at the "LAIF" rate for funds deposited with the County Treasury, compounded daily commencing the day after the date upon which a specific Lease Rental payment was due.

**4. USE OF PROPERTY**

A. General Use

Piedmont hereby acknowledges and agrees that the Property shall be used only for purposes consistent with the operation of a public school, including both elementary school and adult school education.

B. Public Use

Piedmont agrees to keep the Property open for community recreational use, consistent with school activities, as required by the California Education Code (including the "Civic Center Act"), and use as a polling place, if requested by the Alameda County Registrar, as required by the California Elections Code.

C. Adult Education

Piedmont acknowledges that it hopes to, and will make good faith efforts to, offer adult education classes on the Property.

**5. UTILITIES AND SERVICES**

Emery shall maintain electrical, gas, water, sewer and garbage services on the Property. Emery shall invoice Piedmont on a monthly basis for the costs of these services, and Piedmont shall pay those invoiced amounts within seven (7) calendar days of receipt. Upon request of Piedmont, Emery shall provide documentation of the amounts set forth in the invoice within two (2) business days. Phone equipment and service shall be the responsibility of Piedmont. An interruption of services due to circumstances outside Emery's control will not invalidate this Agreement, reduce the Lease Rental Payments, or create any entitlement to a refund.

**6. MAINTENANCE**

Piedmont shall be responsible for and shall provide all custodial and routine maintenance and repair services for the Property, including maintenance of any

Emery equipment or supplies used by Piedmont. Piedmont will also provide normal maintenance services for the exterior portions of the Property, including but not limited to landscaping.

If Piedmont determines that major repairs (defined as costing in excess of \$3,000.00), or replacement is needed, Emery will assess the equipment or structures needing repair or replacement, and if Emery agrees that replacement or repair is required (at its sole discretion) shall do so at its own expense. Should Emery decline to promptly undertake any replacement or repair that substantially affects the ability of Piedmont to utilize the Property for public education, Piedmont may, in its discretion, either (a) terminate this Lease Agreement and vacate the Property without any obligation to make further Lease Rental Payments, in which case Emery also shall return all Lease Rental Payments made for that school year; or (b) undertake the repairs itself and deduct the cost of such repairs from any Lease Rental Payments not yet made. In no event, however, shall Emery be liable for major repairs in excess of Ten Thousand Dollars (\$10,000.00). The cost of repairs that are less than \$3,000.00 shall be borne by Piedmont.

## **7. IMPROVEMENTS AND CONDITION OF PROPERTY**

### **A. Improvements**

Emery will make, at its expense, up to One Hundred Fifty Thousand Dollars (\$150,000.00) in improvements to the Property (the "Improvements"). The Improvements shall be at the direction of Piedmont, and the method for effectuating such improvements shall be subsequently agreed upon, although it is acknowledged that any such process shall comply with the California Public Contract Code, Government Code and Education Code. Emery must approve all proposed improvements, but such approval cannot be unreasonably withheld. If Emery declines to make improvements that substantially affects the ability of Piedmont to utilize the Property for public education, Piedmont may, in its discretion, either (a) terminate this Lease Agreement and vacate the Property without any obligation to make further Lease Rental Payments, in which case Emery shall return all Lease Rental Payments made for that school year; or (b) undertake the improvements itself and deduct the cost of such repairs from any Lease Rental Payments not yet made. All Improvements shall be completed no later than June 30, 2009.

B. Inspection and Final Condition of Property

Emery and Piedmont shall inspect the Property prior to initial occupancy, and upon completion of the Improvements referenced in subsection 7.A above. Upon the conclusion of this Agreement, Piedmont shall return the overall Property in at least the same condition as it existed prior to occupancy, and shall deliver the Improvements in the same condition as when constructed, excepting ordinary wear and tear. Piedmont shall bear the costs for repairs necessary to return the Property and improvements to their original condition. If Piedmont has not done so within thirty (30) calendar days of the conclusion of this Agreement, Emery shall have the right to make such repairs and invoice Piedmont for same. Any dispute by Piedmont on Emery's determination if damage exceeds ordinary wear and tear will be resolved under Section 25 or as provided by law, if the process under Section 25 is not successful.

C. Ownership of Improvements

All improvements made pursuant to subsection 7.A above shall be considered fixtures, and as same, the property of Emery. However, the parties shall be able to mutually agree in writing regarding the disposition and ownership of any such improvements at the conclusion of this Agreement.

**8. INSURANCE AND INDEMNIFICATION**

A. Insurance

During the term of this Agreement, Piedmont shall, at its own expense, insure the Property against the same types of insurable risks of loss or damage as are currently insured against by Emery. Such insurance shall be for not less than the full replacement value of the property. Piedmont shall further carry public liability and property damage insurance on said Property, naming Emery as an additional insured. Piedmont shall furnish Emery with copies of the certificates of insurance for such insurance policies on an annual basis. Evidence of sufficient self-insurance shall be acceptable.

Each policy of insurance shall provide that such policy will not be terminated by the insurance carrier on less than thirty (30) days' written notice to Emery. Piedmont shall promptly advise, and have the insurance carrier advise, Emery of any changes in, additions to, or termination of any such policy. Upon any termination of such policy, Piedmont will forthwith provide a new policy upon the terms and conditions hereinabove set forth. Piedmont shall forthwith notify Emery, in writing, with a full description of the facts and the place, circumstances, nature and results, and names

and addresses involved about any occurrences on the Property which involve any injury to person or Property, and will provide Emery promptly with copies of any claims for damages of any sort, including complaints in any court actions involving such claims.

Any such insurance provided by Piedmont shall be considered primary.

**B. Indemnification**

Piedmont shall indemnify, defend and hold Emery and its owners, trustees, agents, officers, directors and employees harmless from and against any and all claims for personal injury, property damage, employment law claims or violations of the Americans with Disabilities Act, including, without limitation, reasonable attorneys' and experts' fees and costs ("Claims") arising out of the use or operation of the Property pursuant to this Agreement, except to the extent that such Claims result from the sole negligence or willful misconduct of Emery.

Emery shall indemnify, defend and hold Piedmont and its owners, trustees, agents, officers, directors and employees harmless from and against any and all claims, for personal injury, property damage, employment law claims or violations of the Americans with Disabilities Act, including, without limitation, reasonable attorneys' and experts' fees and costs ("Claims") (including, without limitation, personal injury claims) that are the result of the negligence, nonfeasance or willful misconduct of Emery, arising out of this Agreement, except to the extent that such Claims result from the sole negligence or willful misconduct of Piedmont.

**9. COMMUNICATION TO THE COMMUNITY**

Prior to occupancy, Piedmont shall, at its own expense, mail parties whose property is within three hundred (300) feet of the Property to inform them of their intended occupancy and to invite them to a public meeting to engage the parties and attempt, in good faith, to address neighborhood concerns.

**10. PARKING AND TRAFFIC**

Prior to occupancy, Piedmont will provide a parking plan which is satisfactory to the City of Emeryville, and which minimizes the effect on the community and provides that parking on local streets shall not be permitted. Piedmont will make available morning and afternoon/evening busing for the majority of students, and short-term passenger loading zones for students and parents, in an effort to reduce the impact on traffic in the area surrounding the Property.

**11. IMPACT MITIGATION AND RESOLUTION**

Piedmont shall exercise good faith efforts to address and resolve all complaints from the Emeryville community. Emery shall work reasonably and cooperatively with Piedmont in resolving such complaints.

**12. ASSIGNMENT OF AGREEMENT**

Piedmont shall not assign this Agreement.

**13. LEGAL TITLE**

Legal title to the Property shall remain vested in Emery, its successors or assigns.

**14. ENTRY AND INSPECTION**

Emery or its agents may, at any reasonable time, enter into and upon the Property for the purpose of inspecting the same.

**15. SUCCESSORS**

Emery and Piedmont, respectively, bind themselves, their partners, officers or successors to the other party to this Agreement with respect to the terms of this Agreement.

**16. WRITTEN NOTICE**

All notices to be given between the parties hereto shall be in writing and may be served by depositing the same in the United States mail, postage pre-paid, certified and addressed to:

Emery Unified School District  
Attention: Dr. John Sugiyama, Superintendent  
4727 San Pablo Avenue  
Emeryville, CA 94608  
(510) 601-4900

with copies to:

Kingsley Bogard Thompson LLP  
Attention: Paul G. Thompson  
50 Iron Point Circle, Suite 110  
Folsom, CA 95630  
(916) 932-2500

Piedmont Unified School District  
Attention: Superintendent Constance Hubbard  
760 Magnolia Avenue  
Piedmont, CA 94611  
(510) 594-2614

with copies to:

Miller Brown & Dannis  
Attention: Mark W. Kelley  
71 Stevenson Street, 19<sup>th</sup> Floor  
San Francisco, CA 94105  
(415) 543-4111

or such other address as either party may designate in writing.

**17. USES PROHIBITED**

The Property shall not be used except for the purposes specified in paragraph 3 hereof. Piedmont shall not do or permit anything to be done in or about the Property which shall in any way conflict with any law, ordinance, rule or regulation affecting the occupancy and use of the Property, or which are or may hereafter be enacted or promulgated by any public authority. If a change in law, ordinance, rule, regulation or order or judgment of a court of competent jurisdiction after the effective date of this Lease Agreement substantially affects Piedmont's ability to use the Property for public education, then Piedmont may terminate this Lease Agreement and vacate the Property without any obligation to make further Lease Rental Payments. Nor shall Emery use, or allow the Property to be used, for any improper, immoral, unlawful or objectionable purpose.

**18. WAIVER**

None of the provisions of this Agreement shall be considered waived by either party unless such waiver is specified in writing.

**19. LICENSES AND PERMITS**

Upon commencement of this Agreement, Piedmont will possess all current licenses and permits required by any applicable public agency to operate as a public school provider.

**20. TERMINATION**

It is mutually understood and agreed upon that in the event there is a breach of this Agreement or noncompliance by either party, the non-defaulting party can



terminate this Agreement with a thirty (30) calendar days' written notice. Prior to such termination, the parties shall engage in good faith attempts to cure the default.

**21. CONCURRENT REMEDIES**

No right or remedy herein conferred upon or reserved to either party is exclusive of any other right or remedy herein or by law or equity provided or permitted; but each shall be cumulative of every other right or remedy given hereunder or now or hereafter existing at law or in equity by statute or otherwise, and may be enforced concurrently therewith or from time to time.

**22. PROVISIONS REQUIRED BY LAW DEEMED INSERTED**

Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted and this Agreement shall be read and enforced as though it were included. If, through mistake or otherwise, any provision is not inserted or is not correctly inserted, then upon application of either party, the Agreement shall be amended to make the insertion or correction. All references to statutes and regulations shall include all amendments, replacements, and enactments in the subject which are in effect as of the date of this Agreement, and any later changes which do not materially and substantially alter the positions of the parties.

**23. SEVERABILITY**

Should any provision of this Agreement be declared or determined by any court of competent jurisdiction to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remaining parts, terms or provisions shall not be affected thereby, and said illegal, unenforceable or invalid part, term or provision shall be deemed not to be a part of this Agreement.

**24. DISPUTES**

Disputes arising under this Agreement shall be submitted to non-binding mediation as a condition precedent to litigation. The mediation process shall provide that both parties select a disinterested third person mediator mutually agreed to by the parties. The mediation shall be commenced within thirty (30) days of the selection of the mediator. If the parties fail to select a mediator within fifteen (15) days of a party submitting a written request for mediation, any party may petition a court of competent jurisdiction in Alameda County to appoint the mediator. The costs of mediation shall be borne equally by the parties.

**25. VENUE/GOVERNING LAWS**

This Agreement shall be governed by the laws of the State of California and venue shall be in Alameda County.

**26. ATTORNEY'S FEES**

If suit is brought by either party to the Agreement to enforce any of its terms, the prevailing party shall be entitled to recover their reasonable attorney's fees and costs.

**27. ENTIRE AGREEMENT**

This Agreement represents the entire agreement between Emery and Piedmont and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement (including any referenced dates or deadlines) may be amended or modified only by an agreement in writing, signed by both Piedmont and Emery.

Signatures on Page 10

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

EMERY UNIFIED SCHOOL DISTRICT

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

PIEDMONT UNIFIED SCHOOL DISTRICT

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

Name: Constance Hubbard

Title: Superintendent

Date: \_\_\_\_\_

EXHIBIT "A"

*Description of Property*