

***SOLANA RANCH HVAC REPLACEMENT PROJECT***  
***SITE LEASE AGREEMENT***

By and Between

**SOLANA BEACH SCHOOL DISTRICT**

and

**[INSERT CONTRACTOR NAME]**

Dated and Effective as of:

**[Insert Board Approval Date]**

## **SOLANA RANCH HVAC REPLACEMENT PROJECT**

### **SITE LEASE AGREEMENT**

This Solana Ranch HVAC Replacement Project Site Lease Agreement ("SLA") is made effective as of **[insert Board approval date]** ("Effective Date") by and between: (i) the Solana Beach School District ("District"), a public entity organized and existing pursuant to the laws of the State of California, and lessor herein; and (ii) **[insert Contractor full legal name]** ("Contractor"), a **[insert type of business entity and state of formation]** designated as entity number **[insert entity number]** by the California Secretary of State, and lessee herein. The District and the Contractor may be referred to herein individually as a "Party" and collectively as the "Parties."

### **RECITALS**

A. The District desires to implement construction of the Project using the LLB construction delivery method and, therefore, the purpose of this SLA is to provide for lease of the Project Site to the Contractor for purposes associated with construction of the Project using the LLB construction delivery method.

B. The Parties intend and agree that: (i) the PSA, this SLA, the LBA, and the CSA shall be interpreted as an integrated and interrelated set of agreements that, collectively, are a single "instrument" as that term is used in Education Code Section 17406; (ii) although the LLB Agreements shall concurrently take effect, this SLA, the LBA, and the CSA shall become operative only as provided in this SLA; (iii) notwithstanding the expiration of the PSA Term or other termination of the PSA, the recitals set forth in the PSA shall be used for purposes of interpreting the LLB Agreements; and (iv) any capitalized terms used, but not defined, in this SLA shall have the meanings specified in other of the LLB Agreements.

**Now**, in consideration of the foregoing and of their respective rights and obligations pursuant to the LLB Agreements, the Parties hereby agree as follows:

### **AGREEMENT**

**Section 1. Lease to Contractor.** Subject to the provisions of this SLA, the District hereby leases the Project Site to the Contractor, and the Contractor hereby leases the Project Site from the District. During the SLA Term (defined in Section 3 herein), the Contractor shall have a leasehold interest in the Project Site, including, without limitation, any and all improvements thereto made in accordance with the LLB Agreements.

**Section 2. Operative Date.** Although the LLB Agreements shall take effect concurrently on the Effective Date, this SLA, the LBA, and the CSA shall become operative only as of the first date all of the following events have occurred ("Operative Date"):

- (i) Each Party has approved, signed, and delivered all of the LLB Agreements;
- (ii) The District has obtained any and all approvals required to commence the Work, which may include, but are not limited to, any approvals: (1) needed from the California Department of General Services, Division of State Architect ("DSA"), the State Allocation Board ("SAB"), the Office of Public School Construction ("OPSC"), the Division of Toxic Substances Control ("DTSC"), the City,

and/or the County; and (2) required in accordance with the California Environmental Quality Act or similar law;

- (iii) The period for filing legal challenges to the LLB Agreements and/or the District Board's approval of the LLB Agreements (i.e., 60 days following approval) has expired and an additional ten-day period has lapsed (to accommodate delayed posting of court-filed documents); or, if the District or any other party has timely filed a court action seeking to validate or invalidate the LLB Agreements or the District Board's approval of the LLB Agreements, a final and non-appealable decision has been issued and provides to the effect that the LLB Agreements are valid and were validly approved;
- (iv) In accordance with Education Code Section 17406(a)(3), the Parties have agreed on the amount of the Final GMP and, at a public meeting, the District Board has approved such Final GMP; and
- (v) The District has given written notice to the Contractor that all of the foregoing conditions precedent have been satisfied, and specifying the Operative Date; which notice the District shall give promptly following satisfaction of such conditions precedent.

**Section 3. Commencement of Work and SLA Term.** The term of this SLA ("SLA Term") shall commence on the Operative Date and, unless the SLA Term is extended or this SLA is earlier terminated as provided in any of the LLB Agreements, the SLA Term shall expire concurrently with expiration of the LBA Term.

**Section 4. Possession and Use by Contractor.** The Contractor may use the Project Site solely for: (i) purposes related to performance of the Work in accordance with the LLB Agreements; and (ii) leasing the Project Site and the Project back to the District. The Contractor and, to the extent reasonably necessary for such purposes, its officers, employees, subcontractors, consultants, agents and other representatives (collectively, "Contractor Representatives") shall have the right at all reasonable times during the SLA Term to enter in and upon the Project Site for purposes of performing the Work, examining and inspecting the Work, and undertaking any and all actions necessary and/or convenient in regard to the Work. Except for such authorized uses, and any uses by the District or others in accordance with the LLB Agreements, the Contractor shall not suffer or permit any use of the Project Site or facilities on the Project Site. Except as provided in the LLB Agreements, the Contractor, at its own expense, must obtain or otherwise have in effect all permits, licenses and similar authorizations for its activities on and in the Project Site and the facilities on the Project Site. The Contractor must not use, operate or maintain the Project Site or facilities on the Project Site improperly or carelessly, and, during the SLA Term, the Contractor must comply with all applicable laws and any applicable orders or rules of any governmental entity with competent jurisdiction over the Project Site and/or the Project. However, nothing shall be deemed to prohibit the Contractor from non-compliance with any such law, order or rule during any action or other proceeding undertaken in good faith by the Contractor to contest the validity or application of the law, order or rule; provided that, with respect to any such non-compliance, the Contractor shall indemnify, defend and hold-harmless the District as provided in the Part 21 of the General Provisions.

**Section 5. Performance of Work.** The Contractor shall: (i) perform the Work in strict accordance with the LLB Agreements and other documents incorporated therein or approved in accordance therewith; and (ii) complete the Work not later than the Required Construction Completion Date, as it may be modified from time to time in accordance with the LLB Agreements. The compensation payable to the Contractor for performance of the Work shall be determined as provided in the LBA and CSA.

**Section 6. Quiet Enjoyment.** Except as permitted pursuant to the LLB Agreements, the District shall not take any action during the SLA Term to prevent the Contractor's quiet enjoyment of the Project Site for the purposes authorized pursuant to this SLA. In the event any challenge to the District's fee title to the Project Site results in or is likely to result in interference with the Contractor's right to occupy or use the Project Site for such purposes, the District shall exercise its governmental powers (including, among any others if applicable, the power of eminent domain) as may be necessary to obtain unencumbered fee title to the Project Site and to defend the Contractor's right to occupy and use the Project Site for the purposes described in the LLB Agreements. No use of the Project Site or the facilities on the Project Site by the District that is contemplated in or by the LLB Agreements shall be deemed or construed to constitute interference with the Contractor's right to occupy and use the Project Site.

**Section 7. No Waste or Illegal Acts.** At all times that it occupies or otherwise has possession of the Project Site or any portion thereof, the Contractor shall not commit, suffer, or permit any waste of the Project Site or the facilities on the Project Site, and the Contractor shall not willfully or knowingly use or permit the use of the Project Site or the facilities on the Project Site for any illegal act or purpose.

**Section 8. Payment of Rent.** Within thirty days following the Operative Date, the Contractor shall pay to the District the total amount of \$1.00, which shall constitute rent for the lease of the Project Site by the Contractor for up to twelve months from the Operative Date. If the SLA Term for any reason exceeds twelve months, the Contractor must pay to the District the amount of \$1.00 for each year (or portion thereof) that the SLA remains in effect following the initial twelve-month period. If, for any reason, this SLA is terminated at any time after the Operative Date, the Contractor shall not be entitled to a refund of any rent or prepaid rent paid to the District pursuant to this Section.

**Section 9. Responsibility for Taxes.** The Contractor, at its expense, shall be responsible for payment of all taxes, assessments, fees and other charges as are attributable to actions by the Contractor or any of the Contractor Representatives in connection with the performance of the Work. In addition, the Contractor, at its own expense, shall be responsible for payment of any and all taxes on, measured by, or determined based on: (i) the Contractor's income in connection with the transaction(s) contemplated in the LLB Agreements; and (ii) the operation of the Contractor's business. If the terms of this SLA result in the creation in the Contractor of a taxable possessory interest, then, to the extent such possessory interest tax is levied on the Contractor, and notwithstanding the foregoing provisions of this Section, but subject to receipt by the District of sufficient documentary evidence of the obligation and amount, the District shall pay or otherwise satisfy such possessory interest tax.

**Section 10. Title to Property.** Notwithstanding anything to the contrary, the title to improvements constructed on the Project Site pursuant to the LLB Agreements shall progressively and proportionally vest in the District over the period(s) that the District pays to the Contractor the GMP pursuant to the CSA and the Leaseback Payments pursuant to the LBA. Except as otherwise provided in the LLB Agreements, upon expiration of the period specified in the LBA for payment of the Leaseback Payments by the District, title to the Project Site and all facilities on the Project Site, including, without limitation, any and all improvements constructed by the Contractor pursuant to the LLB Agreements, shall fully vest in the District, and the Contractor shall at that time no longer have any interest(s) in or to the Project Site or the facilities on the Project Site.

**Section 11. District Conveyance of Interests In Project Site.** During the SLA Term, the District shall not mortgage, sell, assign, transfer or otherwise convey the Project Site or any interest therein to any person or entity without first obtaining the written consent of the Contractor, if such action by the

District would unreasonably impair any of the Contractor's rights pursuant to the LLB Agreements. The foregoing shall not be deemed or construed to preclude the District from granting utility easements, rights-of-way, or similar interests in the Project Site to facilitate the use and operation of the Project or as required by any governmental or quasi-governmental agency.

**Section 12. District Right of Entry.** At any and all times during the SLA Term, the District and/or its employees and other representatives may enter in and upon the Project Site and the Project for inspection or other purposes related to the Work or arising in connection with the operation and management of the Project Site and/or the Project, provided that the District shall not unreasonably interfere with the Contractor's right to use and occupy the Project Site and the Project. The foregoing shall be deemed and construed to include the right of the District and its officers, employees, students, volunteers, and/or guests to occupy and use completed phases of the Project for administrative, operational, educational, and/or recreational purposes. The Contractor shall cooperate and coordinate with the District as necessary to facilitate such uses by the District.

**Section 13. District Representations and Warranties.** The District represents and warrants to the Contractor that, to the best of the District's knowledge:

- (i) The District has good and merchantable fee title to the Project Site and has authority to enter into, and perform its obligations pursuant to the LLB Agreements;
- (ii) The District is not aware of any tax, assessment or imposition of any kind applicable to the Project Site that has not been paid in full, excluding any current and future taxes, assessments or impositions that may be assessed in regard to the Project Site;
- (iii) The District is not aware of any pending or threatened litigation involving the Project Site or the facilities on the Project Site that might affect the ability to use them for the intended purposes of the LLB Agreements;
- (iv) The District is not aware of any dangerous, toxic or hazardous pollutants, contaminants, chemicals, waste, materials or substances regulated pursuant to applicable local, State or federal environmental laws, rules or regulations that are located in, on or about the Project Site and that would subject the Contractor or the District to any damages, penalties or liabilities under any applicable local, State or federal environmental laws, regulations, rules, or ordinances (collectively, "Environmental Laws"); and
- (v) With respect to the Project Site or the existing facilities on the Project Site, the District has received no notice, from any governmental entity with competent jurisdiction, of any currently existing or alleged violation of any applicable Environmental Laws.

**Section 14. Contractor Representations and Warranties.** The Contractor represents and warrants to the District that, to the best of the Contractor's knowledge:

- (i) The Contractor is duly organized, validly existing and in good standing in accordance with the laws of the state in which it was organized or formed, is authorized to conduct business in the State, and has full power, authority, and legal right to lease and otherwise acquire and convey interests in real and personal property;
- (ii) The Contractor is aware of the requirements of Education Code Section 17406 and Public Contract Code Section 20111.6 for prequalification of each prime contractor with a general

contractor license and each prime contractor and subcontractor with any of certain mechanical, electrical and plumbing ("MEP") contractor licenses, which is applicable to each public project that is projected to cost \$1,000,000 or more, and that is paid for, in whole or in part, using certain funds provided through the State ("Prequalification Requirement");

- (iii) To the extent the Prequalification Requirement is applicable to the Project, and to the extent not already done prior to the Competitive Selection Process, the Contractor shall ensure that, prior to commencing the Work, the Contractor (as the prime contractor) and each MEP subcontractor with one of the specialty licenses specified in Public Contract Code Section 20111.6 has been prequalified by the District;
- (iv) The Contractor has full power, authority and legal right to enter into and perform its obligations pursuant to the LLB Agreements, and the execution, delivery and performance thereof has been duly authorized by all necessary actions on the part of the Contractor and does not require any further approvals;
- (v) Execution, delivery and performance of the LLB Agreements has not and/or will not result in any breach by the Contractor of, or constitute a default in accordance with, any indenture, mortgage, contract, agreement, formation document, or other instrument to which the Contractor is a party or by which it is bound; and
- (vi) There are no pending or threatened actions or proceedings before any court or administrative agency that may materially and adversely affect the ability of the Contractor to perform its obligations pursuant to the LLB Agreements.

**Section 15. Termination.** Notwithstanding anything to the contrary, the District may terminate this SLA by giving written notice to the Contractor: (i) if the District determines in its reasonable discretion at any time prior to the Operative Date that the conditions precedent set forth in Section 2 herein will not be satisfied or will not be timely satisfied, in which event neither Party shall have any obligation to the other Party pursuant to the LLB Agreements except as provided in the PSA; or (ii) if any challenge to the validity of any of the LLB Agreements or the District Board's approval of the LLB Agreements based on non-compliance with Education Code Section 17406 or related statutes has been duly filed in any court of competent jurisdiction within sixty days after the Effective Date, in which event neither Party shall thereafter have any obligation to the other Party pursuant to the LLB Agreements. Upon expiration of the LBA Term or earlier termination of the LBA: (i) the Contractor shall quit and surrender the Project Site and the facilities on the Project Site, which must be in the condition required pursuant to the LLB Agreements and otherwise in good order and condition, no worse than when the Contractor took possession thereof; (ii) to the extent provided in the LLB Agreements, the District shall remain obligated to compensate the Contractor for the performance of the Work; and (iii) in accordance with the LLB Agreements, the Contractor shall release, remove or cure any stop notices, liens and/or other encumbrances arising from the Work.

**Section 16. Events of Default.** Notwithstanding anything to the contrary, any Claim within the scope of Part 22 of the General Provisions: (i) shall be subject to the requirements of such Part 22; and (ii) shall not be subject to this Section or Section 17 of this SLA. For all purposes of the LLB Agreements other than any such Claims, each of the following events with respect to a Party shall be deemed a default by such Party of its obligations pursuant to the LLB Agreements (each an "Event of Default"):

- (i) The Party fails, within the time required, to pay any undisputed or unexcused payment due or asserted to be due to the other Party, or any undisputed or unexcused portion of a payment due or asserted to be due to the other Party pursuant to any of the LLB Agreements; or
- (ii) The Party fails to perform or observe any covenant, condition or agreement to be performed or observed by such Party pursuant to any of the LLB Agreements, and such failure materially and adversely affects the other Party's rights; or
- (iii) Any statement, representation or warranty by the Party and set forth in any of the LLB Agreements is determined to be intentionally misleading or erroneous in any material respect and materially and adversely affects the other Party's rights; or
- (iv) The Party makes any general assignment for the benefit of creditors, any voluntary or involuntary petition for bankruptcy or for reorganization pursuant to federal bankruptcy law is filed and not withdrawn or dismissed within sixty days of filing, a court of competent jurisdiction appoints a trustee or receiver to manage or control all or substantially all of the Party's assets, all or substantially all of the Party's assets are subject to attachment, execution or other judicial seizure, or a court of competent jurisdiction determines that such Party has become insolvent or unable to pay its debts when due.

**Section 17. Notice and Opportunity to Cure.** If a Party is alleged to be responsible for an Event of Default ("Defaulting Party"), the other Party ("Non-Defaulting Party") may provide written notice thereof to the Defaulting Party, specifying in reasonable detail the nature and extent of the alleged default ("Notice of Default"). If the Defaulting Party has not cured the Event of Default within twenty days after receipt of the Notice of Default in the case of a monetary default (i.e., failure to pay money or secure the payment of money), or within forty-five days after receipt of the Notice of Default in the case of a non-monetary default, the Non-Defaulting Party in its discretion may initiate the dispute resolution provisions set forth in Section 18 of this SLA. The giving of a Notice of Default and allowing the period for cure of the Event of Default in accordance with this Section shall be a condition precedent to the Non-Defaulting Party exercising any available remedy in response to the Event of Default. Nothing shall be construed to prohibit the Defaulting Party from disputing that an Event of Default has occurred. Neither the giving of any Notice of Default, nor the initiation by the Non-Defaulting Party of any dispute resolution, legal or equitable action, or other proceeding in connection with an Event of Default, shall by itself operate to terminate this SLA.

**Section 18. Informal Attempts at Dispute Resolution.** Except for any Claims subject to Part 22 of the General Provisions, if a dispute arises out of or relates to any of the LLB Agreements ("Dispute"), the Parties shall attempt as provided in this Section to resolve the Dispute as quickly and as amicably as possible, including, without limitation, any Disputes as to the meaning of any provision of the LLB Agreements, the validity of any determination or calculation required pursuant to the LLB Agreements, or the rights or obligations of the Parties pursuant to the LLB Agreements. If the Dispute does not relate to an Event of Default or is not of such nature that a Party may give a Notice of Default, then the Party alleging the Dispute shall give to the other Party a written notice of the Dispute ("Notice of Dispute"). Within a reasonable time, not in excess of seven calendar days, after receipt of either a Notice of Default or a Notice of Dispute, the Parties shall commence attempts to informally resolve the Dispute as required pursuant to this Section. Such attempts shall include good-faith, reasonable and diligent efforts by both Parties to communicate and, if possible, to reconcile or compromise their respective positions. The participation by a Party in such attempts to informally resolve a Dispute shall be a condition precedent to such Party exercising any available remedy in response to the Dispute. If, after

diligently making the attempts required pursuant to this Section for at least thirty calendar days, the Parties cannot resolve a Dispute, either Party may give written notice to the other Party that the attempts have been unavailing and, therefore, have been terminated effective upon receipt of the notice.

**Section 19. Exercise of Available Remedies.** If attempts at informal resolution of a Dispute pursuant to Section 18 of this SLA are terminated without the Dispute having been resolved to the satisfaction of a Party, the Party may initiate any legal or equitable action or other proceeding in response to the Dispute that is available pursuant to applicable law and the LLB Agreements. In addition, however, if a Party fails to respond to, or participate in good faith in, any requests or requirements for attempts at informal resolution of the Dispute, the other Party, in its discretion, without needing to further comply with Section 18 of this SLA, may initiate any legal or equitable action or other proceeding in response to the Dispute that is available pursuant to applicable law and the LLB Agreements. However, in any case in which a Notice of Default has been provided pursuant to Section 17 of this SLA, no such legal or equitable action may be initiated until the applicable period for cure of the Event of Default pursuant to such Section 17 has expired without cure of the Event of Default.

**Section 20. Scope and Limitations of Available Remedies.** Except as provided in this Section or other applicable provisions of the LLB Agreements, each Party may exercise any or all available legal or equitable rights in response to an unresolved Dispute. However, at all times while any informal dispute-resolution attempts, legal or equitable actions, or other authorized proceedings relating to a Dispute are pending, each Party shall continue to perform its obligations pursuant to the LLB Agreements. Notwithstanding the foregoing, a Party shall not be responsible for continued performance of its obligations pursuant to the LLB Agreements if and to the extent an Event of Default by the other Party makes such performance impossible or impractical. Except as expressly provided in any of the LLB Agreements, a Party shall be entitled to terminate any of the LLB Agreements in response to an uncured Event of Default only if a court of competent jurisdiction determines that damages and/or specific performance are not sufficient, appropriate, or available remedies. Any remedies available to a Party shall not be deemed exclusive, and the Party may exercise any remedy individually or in combination with any other remedy it has available.

**Section 21. Indemnification by Contractor.** With respect to any and all claims, demands, actions, other proceedings, losses, damages, costs and expenses (including, without limitation, attorneys' fees), and other liabilities of any nature that arise in connection with the Contractor's use and occupancy of the Project Site pursuant to this SLA, the Contractor shall indemnify, defend and hold-harmless the District to the extent provided in Part 21 of the General Provisions. For purposes of the LLB Agreements, such liabilities include, without limitation, any and all matters arising out of any use, disposal, discharge or other release on or about the Project Site of any hazardous materials, substances, or waste.

**Section 22. Giving of Notice.** Any notice given by a Party pursuant to this SLA must be given in accordance with Section 23.10 of the General Provisions.

**Section 23. Governing Law and Venue.** Notwithstanding any choice-of-law, conflict-of-law, or other provision of any federal, state, or other law or governmental requirement, this SLA shall be governed by, and interpreted and enforced in accordance with, the laws of the State. Each and every arbitration, action, and other proceedings arising from this SLA must be initiated and conducted solely in the County.



**Section 24. Modifications.** This SLA may not be amended or otherwise modified except by written agreement duly-approved, signed, and delivered by the Parties.

**Section 25. Recitals and Exhibits.** The Recitals set forth on Page 1 herein, and Exhibit A referenced herein and attached hereto, are hereby incorporated as operative and effective provisions of this SLA.

**Section 26. Counterparts.** This SLA may be signed in one or more counterparts, which, taken together, shall constitute one and the same original instrument. Signature pages may be detached from counterpart originals and combined to physically form one or more original copies of this SLA bearing original signatures of both Parties.

**Section 27. Due Authority of Signatories.** Each Party hereby represents and warrants that it has all power and authority necessary to execute, deliver, and perform this SLA. Each person who has signed this SLA on behalf of a Party shall be deemed and construed to thereby represent and warrant that he, she, or they has been duly authorized by appropriate action of such Party to sign, and thereby bind such Party to, this SLA. Signatures transmitted by email in PDF or similar format shall be deemed and construed to be valid and binding for all purposes of this SLA.

**In Witness Whereof,** the Parties have executed this SLA as evidenced by the signatures of their respective duly-authorized representatives below.

**Solana Beach School District**

**[Insert Contractor Name]**

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

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

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

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

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

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

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

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

**Approved as to Form**

By: Atkinson, Andelson, Loya, Ruud & Romo,  
Attorneys for the Solana Beach School District

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

Brian W. Smith, Legal Counsel

**District Board Approved:** \_\_\_\_\_, 2022

**EXHIBIT A**  
**DESCRIPTION AND DEPICTION OF PROJECT SITE**

The Project Site consists of the highlighted portion(s) of the school grounds depicted below in this Exhibit A, plus, if any, other area(s) of the school grounds as specified from time to time by the District, in its reasonable discretion, as being necessary and appropriate for laydown, staging, and parking purposes.

[insert site locations/descriptions/depictions]

04-04-22 Version