

FACILITY USE AGREEMENT
between Evergreen School District

and _____

This is a Facility Use Agreement by and between the Evergreen School District ("District") and _____, ("Facility User") (collectively "Parties"), for the use of specified location(s) of the _____, on the terms and conditions set forth hereafter.

RECITALS

WHEREAS, District owns that real property located at _____, in the City of San Jose, Santa Clara County, California, commonly referred to as _____ School ("Premises"); and

WHEREAS, Facility User desires to use the Premises for the purpose of a _____ ("Activities") and District agrees for such premises to be so used by Facility User upon the terms and conditions set forth herein; and

WHEREAS, District is empowered by various statutory schemes, including the Civic Center Act (Education Code section 38130 *et seq.*) and the District policies and procedures adopted in further thereof, to permit other persons or organizations to use its facilities and District has determined in accordance therewith to provide for shared use and access to the Premises as outlined further herein; and

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

AGREEMENT

1. **USE OF PROPERTY.**

Upon commencement of this Agreement, District does hereby permit the Facility User to use the Premises as shown in Exhibit "A" attached hereto and hereinafter referred to as "Premises," to perform Facility User's Activities as more fully described in Exhibit "B" attached hereto. Facility User shall have use of the Premises at times specified in Exhibit "A" to perform Facility User's Activities only, subject to mutually agreed upon modification by the Parties in writing, until the expiration date of this Agreement unless terminated sooner in accordance with the provisions in this Agreement.

2. **CONDITION OF PREMISES.**

The Premises are provided to Facility User on an "AS IS" basis. District shall not be required to make or construct any alterations including structural changes, additions or improvements to the Premises. By entry and taking possession of the Premises pursuant to this Agreement, Facility User accepts the Premises in "AS IS" condition. Facility User acknowledges that neither the District nor District's agents have made

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any representation or warranty as to the suitability of the Premises to the conduct of the Facility User's business. Any agreements, warranties or representations not expressly contained herein shall in no way bind either District or Facility User, and District and Facility User expressly waive all claims for damages by reason of any statement, representation, warranty, promise or agreement, if any, not contained in this Agreement. Upon surrender of the Premises, Facility User shall deliver the Premises in the same condition as upon entry, normal wear and tear and approved alterations and improvements excepted.

3. TITLE TO PREMISES.

The Parties acknowledge that title to the Premises is held by District. Facility User shall made no structural modifications to the Premises or other District property or make any improvements to the Premises or other District property without prior written consent from the District.

4. TERM.

A. The term of this Agreement ("Term") shall be for approximately _____ (__) weeks. The commencement date shall be _____, 20__, and, unless sooner terminated under any provision hereof, this Agreement shall end on _____, 20__.

B. Termination. The District shall have the right, at any time during the Term, to terminate this Agreement immediately by written notice to Facility User upon a breach of the Agreement by Facility User or upon any violation by Facility User or any of its employees or agents of any law, rule, regulation or ordinance, including without limitation, District rules and regulations. The District reserves the right to terminate any activity that may not be in the best interest of the community or District. Any early termination under this Section shall not release Facility User from the payment of any sum then due District or from any claim for damages or rent previously accrued or then accruing against Facility User.

C. Upon termination or expiration of this Agreement, Facility User shall surrender use of the Premises, remove all personal property, and leave the Premises, including any District-owned fixtures, in a neat and clean condition prior to Facility User's occupancy of the Premises with no damage thereto, excepting only reasonable wear and tear.

D. Extension of Term. Facility User may request the right to use Premises at a later date, which shall be mutually agreed upon by District and Facility User. District's decision for extension of use by Facility User shall be in District's sole discretion.

5. CHARGE

The payment for Facility User's right to occupy the Premises during the Term shall be as specified in Exhibit "A".

6. USE OF PREMISES.

A. Facility User shall use the Premises solely for its Activities during the dates and times as shown on Exhibit "A" (subject to District's rights of entry described herein or as otherwise mutually agreed by the Parties). Facility User shall be responsible for obtaining any use permits, licenses or other permission for its Activities from the City or other governmental agencies having jurisdiction. Facility User represents that it is qualified to administer and operate its Activities. Facility User shall be solely responsible for the administration and operation of its Activities, including the hiring of all employees. Facility User shall be responsible for verifying the qualifications, credentials, certificates, and licenses of its staff, agents, consultants and/or subcontractors who may provide services in conjunction with Facility User's Activities on the Premises.

B. Fingerprinting and Criminal Background Investigation. Unless District determines that Facility User, its employees, and all involved participants, will have only limited contact, if any, with District pupils, Facility User shall be responsible for ensuring compliance with all applicable fingerprinting and criminal background investigation requirements described in Education Code section 45125.1, which may be met under the fingerprinting provisions of Title 22 of the California Code of Regulations and applicable provisions of the California Health and Safety Code relevant to community care facility licensing (Health & Safety Code, § 1500 et seq.). If required, Facility User shall complete Exhibit "D" and verification of compliance with the aforementioned fingerprinting and criminal background investigation requirements to District prior to each individual's commencement of employment or participation in any Facility User activity and prior to permitting contact with any pupils.

C. Any unusual use of the Premises, i.e., fairs, carnivals, etc., shall be conducted only with the prior written approval of District. For purposes of this section, "unusual use" means any events not consistent with normal operations of Facility User's Activities. Request for approval for unusual use shall be submitted in writing at least ten (10) days prior to the event's occurrence.

D. The use or consumption of alcoholic beverages, illegal drugs, and tobacco products shall not be permitted on the Premises at any time.

E. Facility User shall not permit anything to be done in or about the Premises, which will increase the existing rate of insurance upon the Premises or cause the cancellation of any insurance policy covering said Premises.

F. Access to Facilities. Facility User, its agents, employees, licensees and invitees, shall have all rights of ingress and egress to and from the Premises over such other portions of District's property at the school as may reasonably be necessary for the use of the facilities. Facility User acknowledges that the Premises is a public school site. Use of the Premises under this Agreement shall not interfere with the operation of school activities.

G. Civic Center Act Statement of Information. Pursuant to Section 38136 of the Education Code, Facility User shall prior to commencement of the Term provide to District a Statement of Information, attached as Exhibit C, executed under penalty of perjury.

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7. PERMITS AND LICENSES.

Facility User shall be solely responsible for obtaining all necessary permits or licenses for Facility User's Activities.

8. SECURITY AND SUPERVISION.

The school building administrator or District Director/Operations Support Services is authorized to require appropriate security and supervision of all activities held in District facilities. District will retain the security alarm system at the Premises. Facility User agrees to cooperate with District in maintaining and responding to said security system.

9. CUSTODIAL SERVICES.

District shall provide custodial services to the Premises in the same manner as to other District property. The custodial services costs billable to Facility User shall include labor and custodial supplies for classrooms, multi-use room, and restrooms. Facility User shall pay for District's direct custodial services costs for Premises within 30 days of receipt of invoice.

10. MAINTENANCE AND REPAIR.

A. Subject to the express maintenance and custodial obligations of District set forth herein, Facility User shall maintain, at its cost, the Premises in a good condition consistent with the condition existing at the time of delivery. Facility User acknowledges and accepts that the Premises are provided in "AS IS" condition. District shall keep and maintain the structural elements of the buildings, as hereinafter defined, on the Premises in reasonably good condition and repair and in any event at least in a condition substantially similar to that existing at the time Facility User takes possession of the Premises excepting normal wear, tear, and damage by casualty unless a state of disrepair is due to willful or negligent actions of Facility User, its agents or clients, in which case necessary repairs or replacement shall be charged to Facility User. District and Facility User shall cooperate to document "AS IS" condition within thirty (30) days of executing this Agreement.

B. District makes no representations or warranties for the structure of the building(s) as they exist.

C. District shall not be required to maintain, repair or replace the interior spaces including the interior surface of exterior walls. If District is required to perform maintenance that is not District's obligation, Facility User shall reimburse District, as Additional Payment within thirty (30) days after receipt of billing, for the cost of such maintenance and repairs which are the obligation of Facility User hereunder; provided, however, that Facility User shall not be required to reimburse District for the cost of repairs of the structural elements of a building unless such repair is required because of the negligence or willful misconduct of Facility User or its employees, agents, or invitees in which event necessary repairs or replacements shall be charged to Facility User, its agents or clients as Additional Payment.

D. As used in this Agreement, the term "structural elements of a building" is defined as and shall be limited to the foundation, footings, floor slab but not

flooring, structural walls excluding glass and doors, and the roof including roof membrane, including skylights. Plumbing, electrical, air conditioning, and heating systems shall be considered "structural elements of the building" excluding, however, those repairs and maintenance items which can be completed without wall or floor removal in which case these repairs shall be the responsibility of the Facility User.

E. District shall have no maintenance or repair obligations with respect to the Premises except as expressly provided in this section. Facility User hereby expressly waives the provisions of Sections 1941 and 1942 of the Civil Code of California and all rights to make repairs at the expense of District as provided in Section 1942 of said Civil Code.

11. FACILITY USER'S PROPERTY and RIGHTS.

A. District shall have no duty or responsibility for the protection, safeguarding, care, or storage of any personal property, nor shall District be liable for any damage to personal property used or left on the Premises or any surrounding District property by Facility User or its employees, agents, contractors, customers, guests, or invitees, including but not limited to damage caused by fire, earthquake, acts of nature, vandalism, or burglary.

12. RIGHT OF INSPECTION.

District and/or its agents or employees shall have the right to enter upon the Premises at all reasonable times to inspect the same or to access the Premises for maintenance purposes and to post reasonable signs or notices to protect the right of the District.

13. INDEMNIFICATION.

To the fullest extent permitted by California law, Facility User shall indemnify, defend and hold harmless District, its trustees, employees, consultants, volunteers, and agents ("indemnified parties") from and against any and all claims, damages, losses, suits, verdicts, judgments, costs and liability of any nature or kind, including attorneys' fees, arising from or in any way connected with the conduct of Facility User's business or operations or from any activity, work or things done, permitted or suffered by Facility User ("Claims") unless such Claims are caused solely by the negligence or willful misconduct of indemnified parties. If any Claims be brought against indemnified parties, Facility User shall defend indemnified parties at Facility User's expense, provided that indemnified parties promptly notify Facility User of any such claim, judgment or proceeding in writing and tenders its defense to Facility User. District shall have the right to accept or reject any legal representation Facility User proposes to defend the indemnified parties. District agrees to cooperate with Facility User as may be reasonably necessary in settlement or defense of any such claim, judgment or proceeding.

14. INSURANCE.

A. Insurance is to be placed by Facility User with insurers subject to the approval of District, such approval not to be unreasonably withheld. Facility User

shall furnish District with the original certificates and amendatory endorsements effecting coverage required.

B. Facility User shall, at Facility User's expense, obtain and keep in force at all times during the term of this Agreement a policy of Commercial General Liability insurance and an Auto Liability policy insuring against claims and liabilities arising out of the operation, condition, use, or occupancy of the Premises and all areas appurtenant thereto, including parking areas. Facility User's Auto Liability policy shall insure all vehicle(s), whether hired, owned or non-owned. Facility User's Commercial General Liability insurance shall be at least as broad as the Insurance Service Office (ISO) CG 00 01 form on an occurrence basis including property, damage, bodily injury, products-completed operations and personal & advertising injury with limits no less than Two Million (\$2,000,000) per occurrence. If a general aggregate limit applies, the general aggregate limit shall be twice the required per occurrence limit. The Commercial General Liability policy is to contain, or be endorsed to contain, the following provisions:

1. Include a separate endorsement naming the District as an additional insured with respect to liability arising out of the operation, condition, use or occupancy of the Premises and all areas appurtenant thereto including parking areas.
2. State the coverage is primary and any coverage maintained by the District shall be excess of the Facility User's insurance and shall not contribute with it.
3. Cross liability or severability of interests clause.

Any available insurance proceeds in excess of the specified minimum limits and coverage shall be available to Evergreen School District as additional insured.

The insurance carrier, deductibles and/or self-insured retentions shall be approved by the District, which approval shall not be unreasonably withheld. Prior to occupancy by Facility Use, Facility User shall deliver to the District a certificate of insurance evidencing the existence of the policies.

C. The procuring of such required policy or policies of insurance shall not be construed to limit Facility User's liability hereunder or to fulfill the indemnification provision and requirements of this Agreement. Notwithstanding said policy or policies of insurance, Facility User shall be obligated for the full and total amount of damage, injury, or loss caused by negligence or neglect connected with this Agreement or with use or occupancy of the Premises.

D. During the term of this Agreement, District shall maintain at its cost a policy of standard fire insurance limited to the value of the buildings and improvements located on the Premises as of the date of delivery of Premises. In the event of loss or damage to the Premises, the buildings, the Premises or any contents, each of the parties hereto, and all persons claiming under each of the parties, shall look first to any insurance in its favor before making any claim against the other party, and to the extent possible without adding additional costs, each party shall obtain for each policy of insurance provisions permitting waiver of any claim against the other party for loss or damage within the scope of the insurance and each party, to the extent permitted, for itself and its insurers, waives all such insurance claims against the other party.

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E. District's insurance for contents (personal property) shall be to the extent of the District's interest. Facility User shall be responsible for procuring insurance for contents (personal property) belonging to it. Facility User acknowledges that the insurance to be maintained by District on the Premises will not insure any of Facility User's property.

F. During the term of this Agreement, Facility User shall comply with all provisions of law applicable to Facility User with respect to obtaining and maintaining workers' compensation insurance. Prior to the commencement and any renewal of this Agreement and Facility User's occupancy of the Premises, Facility User shall provide District, as evidence of this required coverage, a certificate in a form satisfactory to District on or before the commencement or renewal date, providing that insurance coverage shall not be canceled or reduced without thirty (30) days prior written notice to District.

15. ASSIGNMENT, SUBLETTING AND SUBCONTRACTING.

Facility User shall not voluntarily or by operation of law assign, license, transfer, mortgage, sublet or otherwise encumber all or any part of Facility User's interest, rights, duties, or privileges in this Agreement or in the Premises without obtaining the prior written consent of District in each instance, and any attempt to do so without such consent being first had and obtained shall be wholly void and, at the option of District, shall immediately terminate this Agreement; provided, however, that District shall not unreasonably withhold, condition or delay its consent. Notwithstanding the foregoing, no assignment which violates the use provisions of this Agreement will be approved. No subcontracting, subletting or assignment, even with consent of District, shall relieve Facility User of its obligation to make payments and to perform all of the other obligations to be performed by Facility User hereunder. The acceptance of payment by District from any other person shall not be deemed to be a waiver by District of any provisions of this Agreement or consent of any assignment, subletting, subcontracting or other transfer. Consent to one assignment, subletting, subcontracting, or other transfer shall not be deemed to constitute consent to any subsequent assignment, subletting, subcontracting or other transfer.

16. TAXES AND ASSESSMENTS.

Should any possessory interest tax, other personal property or real property tax, or assessment whatsoever be assessed against the District as a result of this Agreement, the Facility User agrees to and shall pay all such foregoing taxes and assessments and charges not less than twenty (20) days prior to the date of delinquency thereof and give written notice of such payment to the District within five (5) days after such payment is made.

17. SIGNS.

Any sign or label placed on the Premises shall be approved by the site administrator or Chief Business Officer/Business Services prior to placement. Fixtures or equipment shall be removed by Facility User at the expiration of this Agreement and any damages to the Premises caused by the removal or installation shall be paid by Facility User.

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_____ Date

18. NOTICES.

All notices or demands of any kind required or desired to be given by District or Facility User hereunder shall be in writing and shall be deemed delivered five (5) days after depositing the notice or demand in the United States mail, certified or registered, postage prepaid, addressed to the District or Facility User, respectively, at the address set forth after their signatures at the end of this Agreement.

19. JOINT AND SEVERAL LIABILITY.

If Facility User is more than one person or entity, each such person or entity shall be jointly and severally liable for the obligations of Facility User hereunder.

20. INDEPENDENT CONTRACTOR STATUS.

This Agreement is by and between two independent entities and is not intended to and shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture, or association.

21. ENTIRE AGREEMENT OF PARTIES.

This Agreement constitutes the entire agreement between the Parties and supersedes all prior discussions, negotiations and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by both Parties.

22. CALIFORNIA LAW.

This Agreement shall be governed by and the rights, duties and obligations of the Parties shall be determined and enforced in accordance with the laws of the State of California. The Parties further agree that any action or proceeding brought to enforce the terms and conditions of this Agreement shall be maintained in Santa Clara County, California.

23. COMPLIANCE WITH ALL LAWS AND DISTRICT POLICIES.

A. Facility User shall at Facility User's expense comply with all requirements of all governmental authorities, in force either now or in the future, affecting the Premises, including but not limited to District Board Policy 1330 on Use of School Facilities, and shall faithfully observe in Facility User's use of the Premises all laws, regulations and ordinances of these authorities, in force either now or in the future including, without limitation, all applicable federal, state and local laws, regulations, and ordinances pertaining to air and water quality, hazardous material, waste disposal, air emission and other environmental matters.

B. The judgment of a court of competent jurisdiction, or Facility User's admission in an action or a proceeding against Facility User, whether the District be a party to it or not, that Facility User has violated any law or regulation or ordinance in Facility User's use of the Premises shall be considered conclusive evidence of that fact as between the District and Facility User. If Facility User fails to comply with any such law, regulation or ordinance, the District reserves the right to take necessary

remedial measures at Facility User' expense, for which Facility User agrees to reimburse the District on demand.

C. Facility User 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 Facility User or its agents, employees, contractors, subtenants, or invitees, except for limited quantities of standard office, classroom and janitorial supplies (which shall be used and stored in strict compliance with Environmental Laws). Facility User shall comply with all Environmental Laws. 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.

24. COOPERATION WITH OTHER OCCUPANTS OF THE PROPERTY.

It is understood and recognized by Facility User that the Premises, of which the Premises is a part, will be used by other parties, including District and Facility User shall cooperate with the other parties in reaching amicable arrangements concerning such matters as use of the parking areas, playgrounds, policing of common areas, custodial services, and security measures. Facility User agrees to promptly respond to concerns relating to use of the Premises expressed by District, City, or neighbors of the Premises.

25. DISCRIMINATION.

Facility User agrees not to discriminate against anyone on any basis protected under California and/or Federal law.

26. WAIVER.

The waiver by either party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.

27. SUCCESSORS AND ASSIGNS.

This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, legal representatives, successors, and assigns.

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28. COUNTERPARTS.

This Agreement and all amendments and supplements to it may be executed by the parties in counterparts, and all counterparts together shall be construed as one document and an original copy.

29. CAPTIONS.

The captions contained in this Agreement are for convenience only and shall not in any way affect the meaning or interpretation hereof nor serve as evidence of the interpretation hereof, or of the intention of the Parties hereto.

30. SEVERABILITY.

Should any provision of this Agreement be determined to be invalid, illegal or unenforceable in any respect, such provision shall be severed and the remaining provisions shall continue as valid, legal and enforceable.

31. INCORPORATION OF RECITALS AND EXHIBITS.

The Recitals and each Exhibit attached hereto are hereby incorporated herein by reference.

34. BOARD APPROVAL.

This Agreement is subject to the approval and/or ratification of the District's Board of Trustees.

IN WITNESS WHEREOF, the District and Facility User have executed this Agreement on this _____ day of _____, 20__.

DISTRICT:

FACILITY USER:

Billing (Nelly) Yang
Chief Business Officer
Evergreen School District

Signature/Printed Name

Address for notices:

Facility User's Name & Address:

Evergreen School District
3188 Quimby Road
San Jose, CA 95148
Phone: 408.270.6800

Exhibits

- Exhibit A Description of Premises to Be Used, Projected Usage and Fee's
- Exhibit B Description of Activities
- Exhibit C Statement of Information
- Exhibit D Criminal Background Investigation/Fingerprinting Certification

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_____ Date

EXHIBIT "A"

Description of Premises to Be Used, Projected Usage and Fee's

Refer to attached form D-146

EXHIBIT "B"

Description of Facility User's Activities

The "Activities" for which Facility User is permitted to use the Premises are limited to the following activities only and subject to all described conditions and limitations. Any additional activities shall only be permitted with the prior express written approval and consent of the District.

Facility User recognizes that Facility User's Activities must at all times comply with Board Policy 1330 on the Use of School Facilities, available at request, including but not limited to its prohibitions on the following uses of school facilities:

- A. Any use by any individual or group for the commission of any act intended to further any program or movement dedicated to overthrowing the United State or State of California governments by force, violence or other unlawful means.
- B. Any use of school facilities or grounds which is inconsistent with their use for school purposes or which interferes with the regular conduct of school or school work.
- C. Any use which is discriminatory against any group protected under state or federal anti-discrimination laws.
- D. Any use which involves the possession, consumption, or sale of alcoholic beverages or any restricted substances, including tobacco products, on school property.
- E. Any use that includes fighting, quarreling, abusive language or noise which may be offensive to other activities or the neighborhood.

Violation of any of the conditions described above shall be grounds for immediate revocation of the permit for Facility User's Activities on the Premises. In the event of such revocation, all persons shall immediately vacate the Premises.

EXHIBIT "C"

Statement of Information

The undersigned states that, to be best of his or her knowledge, the school property for use of which application is hereby made will not be sued for the commission of any act intended to further any program or movement the purpose of which is to accomplish the overthrow of the government of the United States by force, violence or other unlawful means;

That **Facility User**, the organization on whose behalf he or she is making application for use of school property, does not, to the best of his or her knowledge, advocate the overthrow of the government of the United States or of the State of California by force, violence, or other unlawful means, and that, to the best of his or her knowledge, it is not a Communist action organization or Communist front organization required by law to be registered with the Attorney General of the United States. This statement is made under penalty of perjury.

Signature

(Print Name)

Exhibit "D"

**CRIMINAL BACKGROUND
INVESTIGATION/ FINGERPRINTING CERTIFICATION**

The undersigned does hereby certify to the governing board of the District as follows:

That I am a representative of the Facility User currently under contract with the District; that I am familiar with the facts herein certified; and that I am authorized and qualified to execute this certificate on behalf of the Facility User.

_____ (Initial) The Facility User has complied with the fingerprinting requirements of Education Code section 45125.1 with respect to all Facility User's employees and all of its Subcontractors' employees who may have contact with District pupils in the course of providing services pursuant to the Facility Use Agreement, and the California Department of Justice has determined that none of those employees have been convicted of a felony, as that term is defined in Education Code section 45122.1. A complete and accurate list of Facility User's employees and of all of its subcontractors' employees who may come in contact with District pupils during the course and scope of the Facility Use Agreement is attached hereto.

Name: _____

Title: _____

Facility User's responsibility for background clearance extends to all of its employees, Subcontractors, and employees of Subcontractors coming into contact with District pupils regardless of whether they are designated as employees or acting as independent contractors of the Facility User.

Facility User is responsible for providing all of its employees, Subcontractors, and employees of Subcontractors who will be coming into contact with District pupils, name badges that are to be worn and visible at all times. The name badge shall display the Facility User's name, the employee's first and last name and a color photograph of the employee.

Date: _____

Proper Name of Facility User: _____

Signature: _____

Print Name: _____

Title: _____

END OF DOCUMENT