

**MEMORANDUM OF UNDERSTANDING CONCERNING USE AND OPERATION OF REAL PROPERTY**

**THIS MEMORANDUM OF UNDERSTANDING CONCERNING USE AND OPERATION OF REAL PROPERTY** (this “**Memorandum**”) dated as of April 1, 2012 (the “**Effective Date**”), is entered into by and among the **ROCHESTER CITY SCHOOL DISTRICT**, (“**RCSD**”), the **ROCHESTER JOINT SCHOOLS CONSTRUCTION BOARD** (“**RJSCB**”), **GILBANE BUILDING COMPANY** (“**Gilbane**”), **CAREER COMPLIANCE PLACEMENT** (“**CCP**”), **LONDON & RIAN ENTERPRISES, INC.** (“**Landon & Rian**”), and **THE PIKE COMPANY** (“**Pike**”). RCSD, RJSCB, Gilbane, CCP, Landon & Rian, and Pike are sometimes collectively referred to herein as the “**Parties**” and each individually as a “**Party**.”

**WHEREAS**, the City of Rochester (the “**City**”) owns, in trust for RCSD, certain real property located at 1776 North Clinton Avenue, 1790 Clinton Avenue, and 21 Rau Street in the City of Rochester, Monroe County, New York, further identified as Tax Account Numbers 91.47-1-5, 91.47-1-2, and 91.47-1-3, respectively (collectively, the “**Property**”); and

**WHEREAS**, pursuant to the City of Rochester and the Board of Education of the City School District of the City of Rochester School Facilities Modernization Program Act, Chapter 416 of the Laws of 2007 of the State of New York (the “**Act**”) and a Cooperative Agreement dated February 22, 2010, by and among the City, the RCSD, and the RJSCB (the “**Cooperative Agreement**”), the RJSCB is the agent for the City and the RCSD to undertake certain Projects (as defined in the Act”) within the Rochester City School District (collectively, the “**FMP Projects**”); and

**WHEREAS**, pursuant to a Program Management Agreement dated July 1, 2010, by and between the RJSCB and Gilbane, Gilbane is acting as program manager for Phase I of the FMP Projects; and

**WHEREAS**, the RJSCB, Gilbane, CCP, Landon & Rian, and Pike desire to use the Property in connection with the FMP Projects; and

**WHEREAS**, in furtherance of the Act, the Cooperative Agreement and the FMP Projects, the RCSD hereby allows the Parties to occupy and use the Property upon the terms and conditions set forth in this Memorandum.

**NOW THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**1. USE OF THE PROPERTY.** RCSD hereby grants to the Parties the non-exclusive right to use the Property in common with each other and in accordance with the terms hereof, for general office and warehouse storage purposes and for any other purpose permitted under the Act. The Parties shall use best efforts to exercise the rights granted hereunder in a manner so as not to interfere with each other’s rights to use the Property. The Parties acknowledge and agree that Gilbane shall be responsible for coordinating the Parties’ use of the Property, including but not limited to, assigning office, meeting, and storage space to each Party as necessary. RCSD

acknowledges that the Property may also be used from time to time by contractors performing work on the facility known as School 50 located on property adjacent to the Property, of which RCSD is the beneficial owner, and hereby consents to such use of the Property; provided, however, that each contractor using the Property shall be provided with a copy of this Memorandum and shall sign the acknowledgement attached hereto as **EXHIBIT A**.

**2. TERM.** The term of this Memorandum (the “**Term**”) shall commence on the Effective Date and shall end on the fifth (5<sup>th</sup>) anniversary thereof (the “**Expiration Date**”). Unless terminated by written notice from Gilbane, after consultation with the RJSCB, to RCSD prior to the Expiration Date, the Term shall automatically renew for two (2) additional terms of five (5) years each. Notwithstanding the foregoing, in the event RCSD identifies an alternative location acceptable to Gilbane in consultation with the RJSCB (the “**Alternative Location**”), RCSD shall have the right to terminate this Memorandum at any time upon one hundred and twenty (120) days prior written notice to the Parties and any additional party who has signed the acknowledgement attached hereto as **EXHIBIT A**. In the event of such termination, the Parties will enter into a Memorandum of Understanding concerning the Alternative Location which shall contain substantially similar terms and conditions as this Memorandum.

**3. SERVICES.**

(a) Gilbane, in consultation with the RJSCB, shall promptly and in a workmanlike manner perform, or shall cause to be performed, all maintenance and shall make, or shall cause to be made, all repairs and replacements required to keep the Property in good order, condition and repair (such maintenance, repair and replacement, the “**Maintenance**”). The RJSCB will reimburse Gilbane for the costs of Maintenance in accordance with the Program Management Agreement.

(b) All utilities and water for the Property will be contracted for and initially paid for by Gilbane. The RJSCB expects to reimburse Gilbane for the costs of such utilities in accordance with the Program Management Agreement.

(c) Gilbane, in consultation with the RJSCB, shall be responsible for furnishing the Property and shall coordinate the delivery and installation of such furnishings. The RJSCB expects to reimburse Gilbane for the costs of such furnishing in accordance with the Program Management Agreement.

**4. ALTERATIONS.** Gilbane, in consultation with the RJSCB, may make such alterations, changes, modifications or other improvements to the Property reasonably necessary or convenient for the Parties’ use of the Property. The contractual arrangements for such work under this section and the costs to be incurred must be approved by the RJSCB.

**5. RESTORATION.** Following the completion of the Parties’ activities on the Property, all parties using the Property pursuant to this Memorandum shall, at their own cost and expense and if requested by RSCD, remove their respective personal property from the Property.

**6. INDEMNIFICATION:** The Parties hereby agree to indemnify, defend and hold each other harmless from and against any and all claims, demands, damages, expenses, losses and/or liabilities,

including without limitation damages arising from injuries, accidents or deaths resulting from their respective activities on the Property.

**7. INSURANCE.**

a. **Property Insurance.** The Parties agree that Gilbane shall procure and maintain direct damage property insurance for the replacement cost value of the building on the Property, specifically located at 1776 North Clinton Avenue, Rochester, New York. The property construction type and building characteristics used to establish the replacement cost was taken from the Self-Contained Appraisal Report dated August 3, 2011 performed by Kevin L. Bruckner. The Parties agree as to the accuracy of the contents of that report and that the replacement cost valuation of the building is **\$7,709,500**. This valuation assumes a total building size of 61,676 square feet (made up of offices and warehouse space) at an estimated replacement cost of \$125.00 per square foot. In addition, Gilbane shall also procure and obtain insurance for *certain* contents located within the building insured at the Property. The contents in the building which shall be insured by Gilbane at replacement cost include:

Building contents (represents base FFE, computers needed to allow the facility to be operational; any other property of a Party is required to be insured individually by the Party; any Parties not tenants as of the date of this Memorandum shall not be insured under the property insurance provided by Gilbane unless otherwise agreed by the Parties)

\$100,000	Furniture, Fixtures and Equipment
\$ 50,000	Computer Equipment and Printers for use by Parties who are tenants at time of this Memorandum

Warehouse Inventory

\$3,000,000	School Furniture, Fixtures and Other Inventory
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Any costs not covered due to property insurance deductibles shall be the responsibility of the RJSCB, so long as the deductible is not in excess of \$5,000. The property insurance provided by Gilbane shall not include coverage for any business or personal property of any party using the Property pursuant to this Memorandum, nor shall it include coverage for any indirect loss or damage to any property. Each Party shall procure and maintain insurance covering its own business and personal property located on the Property in amounts and coverage that would customarily be carried by a prudent tenant in Monroe County, New York.

b. **Waiver of Subrogation.** The Parties hereby waive on behalf of themselves and their respective insurers, any right of action that either may have against the other for loss or damage to property. It is understood that this waiver is intended to extend to all such direct and indirect loss or damage, whether or not the same is caused by the fault or neglect of any of the Parties and whether or not insurance is in force. If required by policy conditions, each Party

shall secure from its property insurer a waiver of subrogation endorsement to its policy, and deliver a copy of such endorsement to the other Parties to this Memorandum if requested.

c. **Liability Insurance.** Each Party shall keep and maintain liability insurance for the Term as follows:

(i) Commercial General Liability:

\$2,000,000 General Aggregate Limit  
\$2,000,000 Products-Completed Operations Aggregate Limit  
\$1,000,000 Personal and Advertising Liability  
\$1,000,000 Each Occurrence Limit  
\$1,000,000 Fire Legal Liability  
\$ 10,000 Medical Expense Limit (each person)

(ii) Business Automobile Liability \$1,000,000 Combined Single Limit

(iii) Workers Compensation Statutory Limits

(iv) Employers Liability Minimum \$100,000

(v) Excess/Umbrella (for general aggregate  
and auto liability only) Minimum \$3 million

(vi) Each Party shall cause (a) the commercial general liability and business automobile liability coverages required in above to include the other Parties as additional insureds on a primary, non-contributory basis and (b) a waiver of subrogation to be issued with respect to all Parties on the insurance required in (i) – (v) of this Liability Insurance section.

**8. SCHOOL 50 CONTRACTORS.** Any contractors performing work on the facility known as School 50 located on property adjacent to the Property and who may use the Property for any reason shall be required to meet the same insurance terms and conditions of the Parties are required to meet in Article 7 of this Memorandum.

**9. COMPLIANCE WITH LAWS:** The Parties shall comply at all times with all applicable laws, rules, regulations, orders, directives and requirements of any kind imposed by any federal, state or local government or any agency or instrumentality of any such government.

**10. ASSIGNMENT.** The rights granted hereunder are personal to the Parties and shall not be assigned, nor shall the Parties otherwise permit or suffer the use of the Property by any third party (other than contractors authorized by and in compliance with Section 1 of this Memorandum) whether directly or indirectly or otherwise or by operation of law, and any purported assignment in violation of this Paragraph shall be void.

**11. NOTICES.** All notices, demands, requests, consents or approvals (collectively, “**Notice**”) which may or are required to be given by any Party to any other Party shall be in writing and shall be deemed given if by personal delivery upon the party for whom it is intended on the day so delivered, if delivered by registered or certified mail, return receipt requested, on the third business day following such mailing, if delivered by a national courier service on the next business day following such mailing, any such Notice mailed or delivered to the following:

**12. GOVERNING LAW.** This Memorandum shall be governed by the laws of the State of New York.

**13. ENTIRE AGREEMENT.** This Memorandum, the Cooperative Agreement and the Program Management Agreement reflect the entire agreement between the Parties concerning the specific rights granted herein and may not be modified except in a writing signed by the Parties.

**14. COUNTERPARTS.** This Memorandum may be executed in any number of counterparts, each of which shall be deemed an original, but all shall together constitute one and the same instrument.

**15. COOPERATION.** Where possible, the Parties agree to cooperate and coordinate with one another to reduce operating expenses at the Property.

**16. CITY TITLE IN TRUST.** The City holds title to the Property in trust for RCSD pursuant to Education Law Section 2557 such that RCSD, and not the City, has the exclusive right to the possession and control of the Property, and the unconditional obligation to: bear the risk of loss if the Property is destroyed or damaged; keep the Property in good condition and repair; pay for all of the capital investment in the Property; pay for all maintenance and operating costs in connection with the Property; and lease and sublease the Property. RCSD is the beneficial and equitable owner of the Property for all purposes and has all rights related thereto. The City undertakes to execute, at the request of RCSD and/or its officers or agents, such documentation, agreements, instruments or similar items as may be requested by RCSD in connection the Property and the with the rights and obligations of RCSD in connection therewith. The City is executing this Memorandum of Understanding at the request of RCSD and RJSCB in order to assist such parties to fulfill their respective rights and obligations under this Memorandum.

[The remainder of this page is intentionally blank; signatures on following page]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date.

**ROCHESTER CITY SCHOOL DISTRICT**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**CAREER COMPLIANCE PLACEMENT**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ROCHESTER JOINT SCHOOLS CONSTRUCTION BOARD**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**LANDON & RIAN ENTERPRISES, INC.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**GILBANE BUILDING COMPANY**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**THE PIKE COMPANY**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

The undersigned is executing this Memorandum for the sole purpose of acknowledging and consenting to the terms and conditions set forth herein.

**THE CITY OF ROCHESTER**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

[Signature Page to Memorandum of Understanding]

**EXHIBIT A**

**Contractor Acknowledgement**

\_\_\_\_\_ hereby acknowledges receipt of a copy of the Memorandum of Understanding Concerning Use and Operation of Real Property dated April 1, 2012 by and among the Rochester City School District, the Rochester Joint Schools Construction Board, Gilbane Building Company, Career Counseling and Placement, Landon & Rian Enterprises, Inc. and the Pike Company (the "Memorandum") and by its signature on this acknowledgement agrees to be bound by the terms thereof with respect to its use of the Property (as defined in the Memorandum).

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Address for Notices:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_