

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

Paradise Unified School District

Attention: Superintendent

Exempt from recording fee
per Government Code §6103

SITE LEASE

by and between

_____ Company

and

Paradise Unified School District

_____, 20__

SITE LEASE

Paradise Unified School District [REDACTED] Lease Leaseback Project

THIS SITE LEASE is made as of [REDACTED], 20__, between the:

Paradise Unified School District (“Lessor” or “District”), and [REDACTED] (“Lessee”).

WHEREAS, the District owns real property located as depicted on Attachment A hereto, incorporated herein by this reference (“Site”), at which the District desires to provide for the construction of the above described Project, as described in the Contract Documents.

WHEREAS, the District has determined that it is in the best interests of the District and for the common benefit of those people residing in the District to construct the Project by leasing a portion of the Site to the Lessee and by thereafter entering into the Facilities Lease under which the District will sublease the Site and lease the Project from the Lessee;

WHEREAS, the District is authorized under section 17406 of the Education Code of the State of California to lease the Site to the Lessee for Lessee to construct the Project on the Site and to leaseback to the District the Site and the Project, and has duly authorized the execution and delivery of this Site Lease;

WHEREAS, the Lessee is authorized to lease the Site as lessee and to construct the Project on the Site, and has duly authorized the execution and delivery of this Site Lease; and,

WHEREAS, the District has performed all acts, conditions and things required by law to exist, to have happened and to have been performed precedent to and in connection with the execution and entering into this Site Lease do exist in regular and due time, form and manner as required by law, and the parties hereto are now duly authorized to execute and enter into this Site Lease;

NOW THEREFORE, in consideration of the mutual covenants contained herein, the District and Lessee agree as follows:

1 DEFINITIONS.

- 1.1 Contract Documents: those Documents identified as such in Article II of the Lease Leaseback Agreement (“Agreement”).
- 1.2 Contractor: [REDACTED].
- 1.3 Lessee: [REDACTED].
- 1.4 Lessee Representative: any person authorized by Lessee to act on its behalf.
- 1.5 District: [REDACTED] School District.
- 1.6 District Representative: any person authorized by District to act on its behalf.
- 1.7 Facilities: the Project and the Site
- 1.8 Facilities Lease: the Facilities Lease dated [REDACTED], 20__, entered into by and between the District and Lessee, as originally executed and as it may from time to time be amended or supplemented pursuant to the provisions hereof.
- 1.9 Permitted Encumbrances: as defined in the Facilities Lease.
- 1.10 Project: the Work described in the Contract Documents.
- 1.11 Site: those certain parcels of real property and improvements thereon more particularly

- described in Attachment A.
- 1.12 Site Lease: this Site Lease as originally executed and as it may from time to time be amended or supplemented pursuant to the provisions hereof.
 - 1.13 Work: all labor, materials, equipment, utilities, services and transportation necessary to complete the Project in accordance with the Contract Documents.

2 **DEMISING CLAUSES.**

- 2.1 **Lease of the Site.** The District hereby leases to the Lessee, and the Lessee hereby leases from the District the Site, subject only to Permitted Encumbrances, in accordance with the provisions of this Site Lease, to have and to hold for the term of this Site Lease. This Site Lease shall only take effect if the Facilities Lease is executed by the District and Lessee within three (3) calendar days of execution of this Site Lease.
- 2.2 **Purpose.** The Lessee shall use the Site solely for the purpose of constructing and equipping the Project thereon and leasing the Facilities to the District pursuant to the Facilities Lease and for such purposes as may be incidental thereto.
- 2.3 **Rental.** In consideration for the lease of the Site by the District to the Lessee and for other good and valuable consideration, the Lessee shall pay One Dollar (\$1.00) per year to the District, payable in arrears on the last day of each year for the Term of this Site Lease without further notice or invoice from the District.
- 2.4 **No Merger.** The leasing of the Site by the Lessee to the District pursuant to the Facilities Lease shall not effect or result in a merger of the estates of the District in the Site, and the Lessee shall continue to have a leasehold estate in the Site pursuant to this Site Lease throughout the term hereof.

- 3 **QUIET ENJOYMENT.** The parties intend that the Site will be leased back to the District pursuant to the Facilities Lease for the term thereof. Subject to any rights the District may have under the Facilities Lease to possession and enjoyment of the Site, the District hereby covenants and agrees that it will not take any action to prevent the Lessee from having quiet and peaceable possession and enjoyment of the Site during the term hereof and prior to the filing of the Notice of Completion, and will, at the request of the Lessee, to the extent that it may lawfully do so, join in any legal action in which the Lessee asserts its right to such possession and enjoyment. The contractor's (Lessee's) quiet enjoyment is also subject to the District's (Lessor's) continued occupancy and use of existing school facilities located on parcels within the Site.

4 **SPECIAL COVENANTS AND PROVISIONS.**

- 4.1 **Waste.** The Lessee agrees that at all times that it is in possession of the Site, it will not commit, suffer or permit any waste on the Site, and that will not willfully or knowingly use or permit the use of the Site for any illegal purpose or act or to create or cause a nuisance.
- 4.2 **Further Assurance and Corrective Instruments.** The District and the Lessee agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Site hereby leased or intended so to be or for carrying out the expressed intention of this Site Lease and the Facilities Lease.
- 4.3 **Right of Entry.** The District and/or its duly authorized representatives shall have the right to enter upon the Site at any reasonable time to inspect the same and/or the improvements, provided that, during construction, the District follows all safety precautions Lessee requires.
- 4.4 **Representations of the District.** The District represents and warrants to the Lessee as follows:

- 4.4.1 The District is a school district, duly organized and existing under the Constitution and laws of the State of California;
- 4.4.2 The District has the full power and authority to enter into, to execute and to deliver this Site Lease, and to perform all of its duties and obligations hereunder, and has duly authorized the execution of this Site Lease;
- 4.4.3 Neither the execution and delivery of this Site Lease nor the Facilities Lease, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instruction to which the District is now a party or by which the District is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the District, or upon the Site, except Permitted Encumbrances.
- 4.4.4 The District is aware of no action, suit, proceeding, inquiry, or investigation pending or threatened in any court or in any federal, state, or municipal administrative body which, if determined adversely to the District or its interests, would have a material and adverse effect upon the District's ability to consummate or perform the transactions and obligations contemplated by, or validity of, this Lease or the Facilities Lease. The District is not in default with respect to any order or decree of any court or any order, regulation, or demand of any federal, state, or municipal administrative body which default might have consequences that would have a material and adverse effect upon the District's ability to consummate or perform the transactions and obligations contemplated by, or validity of, this Lease or the Facilities Lease.
- 4.4.5 The District is in compliance with all laws, regulations, and ordinances for the purposes of construction of the facilities pursuant to the Facilities Lease, including without limitation, any local environmental ordinances or requirements under the California Environmental Quality Act (Public Resources Code, section 21000 *et seq.*).
- 4.4.6 The District has disclosed any contamination of the Site by Hazardous Materials of which it is aware. If the District becomes aware of any circumstance which would change or render this representation incorrect, in whole or in part, the District will give immediate written notice to Lessee. Lessee is entitled to rely on the District's disclosures. Lessee shall not knowingly violate any law or regulation of any federal, state or local governmental authority having jurisdiction over hazardous substances. If Lessee becomes aware of any contamination or potential contamination of the Site by Hazardous Materials, Lessee will give immediate written notice to the District and shall cooperate in any investigation of potential contamination of the Site by Hazardous Materials. Lessee shall have no responsibility or liability for Hazardous Materials that are pre-existing on the Site or that are brought to the Site by others for whom Lessee is not liable.

As used in this Lease, the term "Hazardous Material" means any flammable items, explosives, radioactive materials, hazardous or toxic substances, material or waste or related materials, including any substances defined as or included in the definition of "hazardous substance," "hazardous wastes," "hazardous materials," or "toxic substances" now or subsequently regulated under any applicable federal, state or local laws or regulations, including without limitation petroleum based products, paints, solvents, lead, cyanide, DDT, printing inks, acids, pesticides, ammonia compounds and

other chemical products, asbestos, PCBs and similar compounds, and including any different products and materials which are subsequently found to have adverse effects on the environment or the health and safety of persons.

To the fullest extent permitted by law, the District shall defend, indemnify and hold harmless the Lessee, its subcontractors, sub-subcontractors, consultants, and their respective agents and employees, from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from the presence of Hazardous Materials or substances at the Site, except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.

4.4.7 To the best of the District's knowledge, there are no plans or contemplation by another agency to condemn the Site under the power of eminent domain.

4.5 **Representations of the Lessee.** The Lessee represents, covenants and warrants to the District as follows:

4.5.1 The Lessee is duly organized and existing under the laws of the State of California, with an active California contractor's license. It has full power and authority to enter into this Site Lease and the Facilities Lease; is possessed of full power to own and hold real and personal property, to lease and sell the same, and to perform all of its duties and obligations hereunder; and has duly authorized the execution and delivery of all of the aforesaid agreements;

4.5.2 Lessee is aware of no action, suit, proceeding, inquiry, or investigation pending or threatened in any court or in any federal, state, or municipal administrative body which, if determined adversely to Lessee or its interests, would have a material and adverse effect upon Lessee's ability to consummate or perform the transactions and obligations contemplated by, or validity of, this Lease or the Facilities Lease. Lessee is not in default with respect to any order or decree of any court or any order, regulation, or demand of any federal, state, or municipal administrative body which default might have consequences that would have a material and adverse effect upon Lessee's ability to consummate or perform the transactions and obligations contemplated by, or validity of, this Lease or the Facilities Lease;

4.5.3 Neither the execution and delivery of this Site Lease or the Facilities Lease, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the Lessee is now a party or by which the Lessee is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the Lessee, or upon the Site, except Permitted Encumbrances.

4.6 **Contractor.** The Lessee agrees that it will cause the applicable terms of the Contract Documents to be incorporated into any contracts or subcontracts Lessee enters into for the construction of the Project. The Lessee agrees to perform the Work and construct the Project in accordance with the Contract Documents. Lessee, as Contractor, shall provide the District on forms provided by the District the following: (1) Payment Bond; (2) Performance Bond; (3) Drug-Free Certification; (4) Fingerprint Certification; and (5) Workers' Compensation Certificate.

4.7 **Real Property Taxes.** Except to the extent it is exempt from doing so, the District shall pay all

real property taxes on the Site (including any fees, taxes or assessments against, or as a result of, any Lessee improvements installed on the Site) during the Lease Term. "Real property tax" means: (i) any fee, levy, charge, assessment, penalty or tax imposed by any taxing authority against the Site; (ii) any tax or charge for fire protection, streets, sidewalks, road maintenance, refuse or other services provided to the Site by any governmental agency; (iii) any tax imposed upon this transaction or based upon a reassessment of the Site due to a change of ownership, as defined by applicable law, or other transfer of all or part of the District's interest in the Site; and (iv) any charge or fee replacing any tax previously included within the definition of real property tax.

4.8 **Indemnification.** Each Party shall indemnify, defend and hold harmless the other Party and its successors, assigns, officers, directors, shareholders, partners, members, agents, employees, and volunteers from and against any claims, damages, costs, expenses (including reasonable attorneys' fees), judgments or liabilities arising from the negligent or intentional acts or omissions of the indemnifying Party or its officers, agents, employees, or volunteers with respect to that Party's use, operation, repair, alteration and occupancy of the Site and/or the Project and the performance of its obligations hereunder, except to the extent caused by the indemnitee's own negligence or willful misconduct.

5 **ASSIGNMENT**

5.1 **Assignment and Subleasing.** Lessee shall not assign this Site Lease or any of the rights, obligations or liabilities hereunder, or sublet the Site or improvements, without the District's prior written consent, in the District's sole and absolute discretion; provided, however, in such event Lessee shall not be relieved of its obligations or liabilities under the Lease or Contract Documents.

5.2 **Restrictions on the District.** The District agrees that it will not mortgage, sell, encumber, assign, transfer or convey the Site or any portion thereof during the term of this Site Lease. To the extent permitted by law, the District shall not abandon the Site for its intended use as stated in this Lease and the Facilities Lease, for the Lease Term, nor seek other property to substitute for this Site.

5.3 **Liens.** Lessee agrees to keep the Site and every part thereof free and clear of any and all liens, including without limitation, pledges, charges, encumbrances, claims, stop notices, liens of any type arising out of or in connection with work or labor done, services performed, or materials or appliances used or furnished for or in connection with the Site or the Project or otherwise. Lessee further agrees to pay promptly and fully and discharge any and all claims on which any such lien may or could be based, or otherwise extinguish liens (as for example by posting appropriate bonds) and in any event to hold District harmless from any and all such liens, mortgages, including without limitation, and claims of liens and suits or other proceedings pertaining thereto.

6 **Improvements.** Title to all improvements made on the Site during the term hereof shall vest in the Lessee or the District in accordance with the terms of the Facilities Lease.

7 **TERM AND TERMINATION**

7.1 **Expiration of Site Lease.** This Site Lease shall expire simultaneously with the expiration of the Facilities Lease as provided therein.

7.2 **Term of Site Lease.** The term of this Site Lease shall commence as of the date of the issuance of the Notice to Proceed from District to Lessee, and shall continue until the last day of the Term of the Facilities Lease.

7.3 **Termination.** The District and Lessee shall have the right to terminate the Lease Documents in accordance with the General Conditions. Notwithstanding any other provision of this Site Lease, upon termination of the Facilities Lease for any reason whatsoever, this Site Lease shall be deemed terminated simultaneously therewith.

8 **MISCELLANEOUS**

8.1 **Governing Law; Interpretation.** This Site Lease shall be governed and interpreted in accordance with the laws of the State of California in accordance with its fair meaning and not strictly for or against District or Lessee. Unless otherwise specified, where there is inconsistent language between the Facilities Lease, this Site Lease and/or the Contract Documents, the terms of the Lease Leaseback General Conditions 3 shall govern.

8.2 **Successors.** This Site Lease and all terms hereof are binding upon and inure to the benefit of the successors and assigns of the parties.

8.3 **Authority.** The individual executing this Site Lease on behalf of Lessee warrants and represents that he/she is authorized to execute this Site Lease and bind Lessee to all terms hereof. The individual executing this Site Lease on behalf of District warrants and represents that he/she has been authorized to execute this Site Lease by the District's Governing Board and to bind District to all terms hereof.

8.4 **Marginal Headings; Captions.** The titles of the various Paragraphs of the Site Lease are for convenience of reference only and are not intended to and in no way shall enlarge or diminish the rights or obligations of Lessee and District hereunder.

8.5 **Cumulative Rights; No Waiver.** Duties and obligations imposed by this Site Lease and rights and obligations hereunder are in addition to and not in lieu of any imposed by or available at law or in equity. No action or failure to act by District or Lessee hereunder shall be deemed a waiver of any right or remedy afforded hereunder or acquiesce or approval of any breach or default by Lessee or the District.

8.6 **Severability.** If any provision of this Site Lease is deemed unconscionable, herein defined to include illegal, invalid unenforceable or void by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof, unless elimination of such invalid provision materially alters the rights and obligations embodied in the Facilities Lease or this Site Lease.

8.7 **Counterparts and Facsimiles.** This Site Lease may be executed in counterparts, each of which shall be deemed an original, but such counterparts shall be deemed to constitute one and the same instrument; a facsimile signature by a party may be relied upon by the other parties as an original signature.

8.8 **Dispute Resolution.** Notwithstanding any other provision of the Contract Documents, any and all claims arising under this Site Lease shall be resolved in accordance with Article 50 of the General Conditions. Any claim not covered by that provision shall be pursued, if at all, pursuant to the California Government Claims Act.

8.9 **Notices.** Notices Lessee or District are required or desire to serve on the other shall be valid only if addressed to the other as set forth in the Site Lease or modified by notice hereunder from time to time. Notices shall be effective only if by personal delivery requiring signature acknowledging receipt or by United States Mail, Certified, Return Receipt Requested, First Class, postage fully pre-paid, addressed and delivered as follows:

If to District:
Superintendent

If to Lessor:



[Redacted]

[Redacted]

Attn:

8.10 **Entire Agreement.** This Site Lease and Attachment A hereto form the Site Lease. The Site Lease, including Attachment A hereto, the Contract Documents, and the Facilities Lease executed concurrently herewith, constitute the entire agreement and understanding between the District and Lessee concerning the subject matter hereof, replacing and superseding all prior agreements or discussions, whether written or oral. No term or condition of this Site Lease shall be modified or amended except by a writing executed by the District and Lessee.

8.11 **Triple Net Lease.** Except as otherwise provided herein, this Site Lease shall be deemed a “net-net-net” lease, and the Contractor agrees that the Lease Payments shall be an absolute net return to the Lessor, free and clear of any expenses, charges or setoffs, except as otherwise provided in the Contract Documents.

This Site Lease entered into as of the day and year first written above.

[Redacted] School District

[Redacted]

By: _____

By: _____

Title: Superintendent

Title: _____

STATE OF CALIFORNIA)
)ss.
COUNTY OF _____)

On _____, 2018 before me, the undersigned notary public, personally appeared _____, [personally known to me] OR
[proved to be on the basis of satisfactory evidence to be the person(s) whole name(s) is/are subscribed to the within instrument] and acknowledged by me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature of Notary

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____, 2018, before me, the undersigned notary public, personally appeared _____, [personally known to me]OR
[proved to be on the basis of satisfactory evidence to be the person(s) whole name(s) is/are subscribed to the within instrument] and acknowledged by me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature of Notary

ATTACHMENT A
DESCRIPTION OF SITE