



Paradise Unified School District

Paradise Unified School District [REDACTED] Lease Leaseback Project

**FACILITIES LEASE**

This **FACILITIES LEASE** is made as of the [REDACTED], 20\_\_, between the Paradise Unified School District (“District”) and the Lessor, [REDACTED] (license no. [REDACTED]) (“Lessor”).

**WHEREAS**, on the date hereof, the District has leased to the Lessor pursuant to a Site Lease certain real property, more particularly described in the Attachment A to the Site Lease (“Site”), for the construction of a [REDACTED] project, including site work, located at [REDACTED] (the “Project”).

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

**WHEREAS**, Lessor is authorized to lease the Site as lessee and to construct the Project on the Site and to lease the Project and the Site back to the District, and has duly authorized the execution and delivery of this Facilities Lease;

**WHEREAS**, the Board of Trustees of the District has determined that it is in the best interests of the District and for the common benefit of the citizens residing in the District to construct the Project by leasing the Site to Lessor and by simultaneously entering into this Facilities Lease under which the District will lease back the Site and the Project from Lessor and make Lease Payments on the dates and in the amounts set forth in the payment schedule attached as Attachment A hereto with a copy attached as Exhibit D to the Lease Leaseback Agreement (“Agreement”); 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 of this Facilities Lease 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 Facilities Lease.

**NOW THEREFORE**, in consideration of the mutual covenants contained herein, the District and Lessor 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 Lease Documents. This Facilities Lease, the Site Lease, and the Agreement (including all Exhibits thereto).
- 1.3 Lessor: [REDACTED]
- 1.4 Lessor Representative: any person authorized and designated by the Lessor to act on its behalf.
- 1.5 District: the [REDACTED] School District
- 1.6 District Representative: any person authorized and designated by District to act on its behalf.

- 1.7 Facilities: the Project and the Site.
- 1.8 Facilities Lease: this Facilities Lease as originally executed and as it may from time to time be amended or supplemented pursuant to the provisions hereof.
- 1.9 Lease Payment Schedule: the lease payment schedule set forth in Attachment A hereto.
- 1.10 Permitted Encumbrances: as of any particular time: (i) the Site Lease; (ii) this Facilities Lease; (iii) easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions or restrictions which exist of record as of the date of this Facilities Lease and which will not materially impair the use of the Site; and (iv) easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions or restrictions established following the date of recordation of this Facilities Lease and to which District consents in writing which will not impair or impede the operation of the Site.
- 1.11 Project: the Paradise Unified School District \_\_\_\_\_ Lease Leaseback Project.
- 1.12 Site: those certain parcels of real property and improvements thereon more particularly described in the Site Lease.
- 1.13 Site Lease: the Site Lease dated as of \_\_\_\_\_, 202\_\_\_\_\_, entered into by the District and \_\_\_\_\_, as originally executed and as it may from time to time be amended or supplemented pursuant to the provisions hereof.
- 1.14 Term: the time during which this Facilities Lease is in effect, as provided for herein.
- 1.15 Total Base Rent: The Total Base Rent shall be the total sum paid by the District for construction of the Project, including any financing costs, in the form of Lease Payments under the terms of this Facilities Lease. The Total Base Rent shall not be exceeded except in accordance with use of any approved contingency funds, allowances, or change to the Project, as provided for in the General Conditions.
- 1.16 Work: all labor, materials, equipment, utilities, services and transportation necessary to complete the Project in accordance with the Contract Documents.

2 **REPRESENTATIONS, COVENANTS, AND WARRANTIES.**

- 2.1 **District.** The District represents, covenants, and warrants as follows:
  - 2.1.1 The District is a California public school district, duly organized and existing under the laws of the State of California.
  - 2.1.2 The District has the full power and authority to enter into, to execute and to deliver this Facilities Lease, and to perform all of its duties and obligations hereunder, and has duly authorized the execution of this Facilities Lease.
  - 2.1.3 Neither the execution and delivery of this Facilities Lease nor the Site 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 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.
  - 2.1.4 There is no pending or, to the knowledge of the District, threatened action or proceeding before any court or administrative agency which will materially adversely affect the ability of the District to perform its obligations under this Facilities Lease.
- 2.2 **Lessor.** The Lessor represents, covenants, and warrants as follows:
  - 2.2.1 The Lessor is duly organized and existing under the laws of the State of California, has

the power to enter into this Facilities Lease and the Site Lease; holds a valid California contractor's license, is possessed of full power to own and hold real and personal property, and to lease and sell the same; and has duly authorized the execution and delivery of all of the aforesaid agreements.

- 2.2.2 Neither the execution and delivery of this Facilities Lease or the Site 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 Lessor is now a party or by which the Lessor 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 Lessor, or upon the Site, except Permitted Encumbrances.
- 2.2.3 Except as otherwise provided herein, the Lessor shall not assign this Facilities Lease, its right to receive Lease Payments and prepayments from the District, or its duties and obligations hereunder to any other person, firm or Lessor so as to impair or violate the representations, covenants and warranties contained in this Paragraph 2.2.
- 2.2.4 The Lessor has the full power and authority to enter into, to execute and to deliver this Facilities Lease, and to perform all of its duties and obligations hereunder, and has duly authorized the execution of this Facilities Lease.

3 **CONSTRUCTION OF PROJECT.** The Lessor shall perform the Work and construct the Project in accordance with the Contract Documents. Lessor, 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. The Performance Bond shall name the District as obligee. Lessor and any subcontractors shall be licensed by the Contractors' State License Board at all times during the Project.

4 **AGREEMENT TO LEASE**

- 4.1 **Purpose of Facilities Lease.** Lessor hereby leases the Facilities to the District and the District hereby rents said Facilities from the Lessor under the terms and conditions hereafter set forth and subject to all easements, encumbrances and restrictions, including without limitation the terms and conditions of the Site Lease. The District shall not utilize any of the Facilities until authorized to do so by the architect. Nothing in this Facilities Lease alters the duties of the Contractor to complete the Project in accordance with the Contract Documents. The District shall maintain Builder's Risk Insurance on the Project until final completion and acceptance by the District. The District shall, during the Term of this Facilities Lease, make Lease Payments to Lessor on the dates and in the amounts set forth in the Lease Payment Schedule attached as Attachment A hereto.
- 4.2 **No Merger.** The leasing of the Site by the Lessor to the District pursuant to this Facilities Lease shall not affect or result in a merger of the District's leasehold estate and its fee estate as lessor under the Site Lease throughout the term thereof and the Term of this Facilities Lease. As to the Site, this Facilities Lease shall be deemed and constitute a sublease.
- 4.3 **Expiration of Facilities Lease.** This Facilities Lease shall expire upon the earliest of any of the following events: (1) upon six (6) months after the Final Completion of the Project, as provided in the Contract Documents, Lease-Leaseback Agreement Exhibit D Schedule of Lease Payments, and payment of the final Lease Payment, as provided in the Exhibit D Schedule of

Lease Payments, provided, however, that if on the scheduled date for expiration of this Facilities Lease the Lease Payments shall not have been fully paid by District, then the Term of this Facilities Lease and the Site Lease shall be extended until the date upon which all such Lease Payments shall be fully paid, notwithstanding anything to the contrary in this Facilities Lease or the Site Lease.; (2) upon Termination by the District in accordance with Paragraph 4.5.1 below; or (3) upon Termination by the Lessor in accordance with Paragraph 4.5.2 below (“Expiration Date”). Notwithstanding any other provision of this Facilities Lease, upon expiration of this Facilities Lease for any reason whatsoever, the Site Lease shall be deemed expired simultaneously therewith.

4.4 **Term of Facilities Lease.** The term of this Facilities Lease shall commence as of the effective date stated above, and shall continue until the Expiration Date.

4.5 **Termination.**

4.5.1 **Termination by District.** The District shall have the right to terminate the Lease Documents, including this Facilities Lease, in accordance with the General Conditions.

4.5.2 **Termination by Lessor.** The Lessor shall have the right to terminate the Lease Documents, including this Facilities Lease, in the event that the District fails to timely disburse Lease Payments in accordance with Attachment A hereto, despite faithful performance of Lessor of all its obligations under the Contract Documents, and the District fails to cure same within thirty (30) days from receipt of written notice by Lessor of its intent to terminate the Contract Documents pursuant to this paragraph. Notwithstanding any other provision of this Facilities Lease, upon termination of this Facilities Lease for any reason whatsoever, the Site Lease and Agreement shall be deemed terminated simultaneously therewith.

4.6 **Possession.** The District shall take possession of the Project in accordance with the Contract Documents.

4.7 **Lease Payments.**

4.7.1 Subject to the provisions of Paragraphs 4 and 9 hereof, and in accordance with the General Conditions, the District agrees to pay to Lessor as rental for the use and occupancy of the Project and the Site Lease Payments during the Term in the amounts and on the dates specified in the Lease Payment Schedule, set forth in Attachment A hereto.

4.7.2 The District and the Lessor understand and intend that the obligation of the District to pay Lease Payments and other payments hereunder constitutes a current expense of the District and shall not in any way be construed to be a debt of the District in contravention of any applicable constitutional or statutory limitation or requirement concerning the creation of indebtedness by the District, nor shall anything contained herein constitute a pledge of the general tax revenues, funds or moneys of the District. Lease Payments due hereunder shall be payable only from current funds which are budgeted and appropriated, or otherwise legally available, for the purpose of paying Lease Payments or other payments due hereunder as consideration for use of the Site during the fiscal year of the District for which such funds were budgeted and appropriated or otherwise made legally available for such purpose. The District has appropriated the Total Base Rent from the District’s current fiscal year and/or State funds to be received during the District’s current fiscal year, and has segregated such funds in a separate account to be utilized solely for the Lease Payments. This Facilities Lease shall not create an immediate indebtedness for any aggregate payments that may become due hereunder. The District has not pledged the full faith and credit of the

District, the State of California or any agency or department thereof to the payment of the Lease Payments or any other payments due hereunder.

- 4.7.3 The Lease Payments coming due and payable during each month of the Term constitute the total rental for the Project and shall be paid by the District as set forth in the Lease Payment Schedule (Attachment A hereto) for and in consideration of the right to use and occupy the Project. The District and the Lessor have agreed and determined that the total Lease Payments do not exceed the fair rental value of the Project. In making such determination, consideration has been given to the obligations of the parties under the Agreement, the Facilities Lease, and the Site Lease, the uses and purposes which may be served by the Project, and the benefits there from which will accrue to the District and the general public.
- 4.7.4 The District may use the Owner's Contingency specified on Attachment A, as it may be amended, to cover any additional costs to the Project that entitle Lessor to a change order. If the Owner's Contingency is used, then the Lease Payment immediately following the date that the change order is issued by the District shall be increased by the amount of the contingency used.
- 4.8 **Quiet Enjoyment.** Excepting any interference resulting from the Lessor's performance of the Work of the Project, during the term of this Facilities Lease, the Lessor shall provide the District with quiet use and enjoyment of the Site, and the District shall during such Term peaceably and quietly have and hold and enjoy the Site, without suit, trouble or hindrance from the Lessor, except as expressly set forth in this Facilities Lease. The Lessor will, at the request of the District, join in any legal action in which the District asserts its right to such possession and enjoyment to the extent of the Lessor may lawfully do so. Notwithstanding the foregoing, the Lessor shall have access to the Site as provided in Paragraph 7 hereof.
- 4.9 **Title to the Site and Project.** During the Term of this Facilities Lease, the District shall hold title to the Site and the Lessor shall have a leasehold interest in the Site pursuant to the Site Lease. The title to the Project and any and all additions which comprise fixture, repairs, replacements or modifications thereof, as construction progresses shall remain in the Lessor until the final lease payment is made, at which time title shall vest in the District, unless Lessor or District terminates this Facilities Lease; if and when Lessor or District terminates this Facilities Lease, title to work in place, including stored materials for which payment is made by or on behalf of District, shall vest thereupon in District. Lessor shall not convey or transfer title to the Project or any portion thereof including any additions thereto to any third party.
- 4.10 **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 **TAXES AND ASSESSMENTS.** The District shall cause to be paid all taxes and assessments of any type or nature charged the District affecting the Project and the Site. Notwithstanding the foregoing, the Lessor shall pay all taxes charged against trade fixtures, furnishings, equipment or any other personal property belonging to the Lessor. The Lessor shall try to have personal property taxed separately from the Site.

6 **EMINENT DOMAIN.**

6.1 **Eminent Domain Takings.** If all of the Project and the Site shall be taken permanently under the power of eminent domain, the term of this Facilities Lease shall cease on the day possession shall be so taken, provided that if the taking occurs prior to full completion of the Project or any Phase thereof, the Lessor shall be entitled to compensation in accordance with Lease Leaseback Agreement section 23 c, Termination for Convenience. If less than all of the Project and the Site shall be taken permanently, or if all of the Project and the Site or any part thereof shall be taken temporarily, under the power of eminent domain:

6.1.1 This Facilities Lease shall continue in full force and effect and shall not be terminated by virtue of such taking and the parties waive the benefit of any law to the contrary; and,

6.1.2 There shall be a partial abatement of Lease Payments as a result of the application of the net proceeds of any eminent domain award to the prepayment of the Lease Payments hereunder, such that the remaining Lease Payments represent fair consideration for the use and occupancy of the portion of the Project and the Site which is not taken under the power of eminent domain.

6.2 **Eminent Domain Award.** The net proceeds of any eminent domain action relating to the Project and/or the Site shall be payable to the District. The term “net proceeds” as used herein shall mean the amount of the Eminent Domain Award less payments made to Lessor under this Facilities Lease.

7 **ACCESS.** Lessor shall have the right at all reasonable times to enter upon the Site to construct the Project pursuant to the Contract Documents. Following the acceptance of the Project by District, Lessor may enter the Project at reasonable times with advance notice and arrangement with District for purposes of making any repairs required to be made by Lessor. District and/or any of its authorized representatives shall have the right at all reasonable times to enter upon the Site for any purpose at its sole discretion, providing that, during construction, the District shall comply with all safety precautions required by the Lessor.

8 **ASSIGNMENT OR SUBLEASING.** Any sublease by the District of this Facilities Lease shall be upon thirty (30) days’ written notice to the Lessor and shall be subject to the following conditions: (1) this Facilities Lease and the obligation of the District to make Lease Payments hereunder shall remain obligations of the District; (2) the District shall, within thirty (30) days after the delivery thereof, furnish or cause to be furnished to the Lessor a true and complete copy of such sublease; and (3) no such sublease by the District shall cause the Project or the Site to be used for a purpose other than a governmental or proprietary function authorized under the provisions of the Constitution and laws of the State of California. This Facilities Lease may be assigned or subleased by the Lessor only to a successor entity or an affiliate of the Lessor, but the Lessor shall not be released from any liability under the terms of this Lease.

9 **MISCELLANEOUS**

9.1 **Triple Net Lease.** Except as otherwise provided herein , this Facilities Lease shall be deemed a “net-net-net” lease and the District 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.

9.2 **Governing Law; Interpretation.** This Facilities 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 Lessor. Unless otherwise specified, where there is inconsistent language between this Facilities Lease, the Site Lease and/or the Contract Documents, the terms of Lease Leaseback General Conditions 3 shall govern.
- 9.3 **Successors.** This Facilities Lease and all terms hereof shall be binding upon, and shall inure to the benefit of, the successors and assigns of the parties.
- 9.4 **Authority.** The individual executing this Facilities Lease on behalf of Lessor warrants and represents that he /she is authorized to execute this Facilities Lease and bind Lessor to all terms hereof. The individual executing this Facilities Lease on behalf of District warrants and represents that he/she has been authorized to execute this Facilities Lease by District's Governing Board and to bind District to all terms hereof.
- 9.5 **Marginal Headings; Captions.** The titles of the various Paragraphs of the Facilities 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 Lessor and District hereunder.
- 9.6 **Cumulative Rights; No Waiver.** Duties and obligations imposed by this Facilities 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 Lessor hereunder shall be deemed a waiver of any right or remedy afforded hereunder or acquiesce or approval of any breach or default by Lessor or the District.
- 9.7 **Dispute Resolution.** Notwithstanding any other provision of the Contract Documents, any and all claims arising under this Facilities 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.
- 9.8 **Severability.** If any provision of this Facilities 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 this Facilities Lease or the Site Lease.
- 9.9 **Counterparts and Facsimiles.** This Facilities 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.
- 9.10 **Notices.** Notices Lessor 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 Facilities 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 set forth in the Site Lease.
- 9.11 **Entire Agreement.** This Facilities Lease, including Attachment A hereto (Lease Payment Schedule), the Contract Documents, and the Site Lease executed concurrently herewith, is the entire agreement and understanding between the District and Lessor concerning the subject matter hereof, replacing and superseding all prior agreements or discussions, whether written or oral. No term or condition of this Facilities Lease or the Lease Payment Schedule shall be modified, amended or supplemented except by a writing executed by the District and the Lessor.
- 9.12 **Estoppel Certificates.** Each party, within twenty (20) days after written notice from the other party, shall execute, acknowledge and deliver to the other party in recordable form an estoppel certificate certifying that this Facilities Lease is: (i) unmodified and in full force and



effect, or if there have been modifications, that the same is in full force and effect as modified and stating the modifications; (ii) the amount of the Lease Payments then owing but currently unpaid; and (iii) stating whether or not the other party is in default in the performance of any provision of this Facilities Lease, and if so, specifying each such default of which the party may have knowledge. Each party shall only be required to certify the foregoing information to the extent that such information is truthful and accurate.

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

 School District



By:

By:

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

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

Attachment A  
Lease Payment Schedule

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