



[INSERT PROJECT NAME]
LEASEBACK AGREEMENT

By and Between

SADDLEBACK VALLEY UNIFIED SCHOOL DISTRICT

and

Dated as of _____

**[INSERT] PROJECT
LEASEBACK AGREEMENT**

This [Insert Project] Leaseback Agreement (“Leaseback Agreement” or “LBA”), dated for reference purposes as of _____, is made by and between the Saddleback Valley Unified School District (“District”), a public school district organized and existing under the laws of the State of California and the lessee herein, and _____ (“Contractor”), a _____ designated as entity number _____ by the California Secretary of State and the lessor herein. The District and the Contractor may be referred to herein individually as a “Party” and collectively as the “Parties.”

RECITALS

A. Concurrently with entering into this Leaseback Agreement, the Parties also entered into those certain agreements entitled: (i) “[Insert Project] Site Lease” (“Site Lease”); and (ii) “Construction Services Agreement for [Insert Project]” (“Construction Services Agreement” or “CSA”). The Site Lease, this LBA and the CSA are defined in the Site Lease, collectively, as the “LLB Agreements.”

B. The purpose of the LLB Agreements is to facilitate completion of the Project using the lease-leaseback construction delivery method authorized by Education Code Section 17406 by: (i) leasing the Project Site to the Contractor under the Site Lease; (ii) leasing the Project and the Project Site back to the District under this LBA; and (iii) setting forth additional terms and conditions for construction of the Project in the CSA, to ensure that the Work will meet the District’s expectations. Therefore, the Parties intend that: (i) the LLB Agreements shall be interpreted as an integrated and interrelated set of agreements; (ii) the LLB Agreements shall concurrently take effect; and (iii) any capitalized terms used, but not defined, in this LBA shall have the meanings ascribed to such terms in the other LLB Agreements.

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

AGREEMENT

Section 1. Leaseback to the District. Subject to all provisions herein, the Contractor hereby leases to the District the Project Site and the Project, together with all improvements thereto, whether existing or made during the Site Lease Term, and the District hereby leases the Project Site and the Project from the Contractor. Notwithstanding anything to the contrary, such leaseback to the District shall not cause or result in a merger of the District’s leasehold estate under this LBA and its fee estate as lessor under the Site Lease, and the Contractor, subject to the provisions of the LLB Agreements, shall continue to have and hold a leasehold estate in the Project Site under the Site Lease.

Section 2. Effective Date and Leaseback Term. This Leaseback Agreement shall have the same Effective Date as the Site Lease. Subject to contrary dates in the Notice to Proceed, the term of this Leaseback Agreement (“Leaseback Term”) shall commence on the Required Commencement Date and, unless this LBA is terminated earlier as provided in any of the LLB Agreements, the Leaseback Term shall expire on the Required Completion Date, unless such time is extended by the Parties in writing.

Section 3. Possession and Use by District. During the Leaseback Term and subject to any limitations set forth in the LLB Agreements, the District may possess and use the Project Site and the Project: (i) to examine and inspect the Work; (ii) to inspect, maintain, and operate the Project Site and Project; (iii) for purposes of its educational, recreational, and other programs; and (iv) for other reasonable purposes of the District. The District, its officers, employees, contractors, consultants and agents (collectively, the “District Agents”), and others as necessary or convenient for District purposes, shall have the right at all reasonable times during the Leaseback Term to enter in and upon the Project Site in connection with such District uses. However, during the Leaseback Term, the District shall not permit any such use of the Project Site and/or the Project in a manner that unreasonably interferes with the Contractor’s rights under the Site Lease to possess and use the same. The Parties anticipate that the District may conduct educational, recreational or other activities on or in one or more portions of the Project Site at times when Work is not occurring, but no such activities shall be deemed or construed to constitute unreasonable interference with such rights of the Contractor. Except as may be provided in the LLB Agreements, the District, during the Leaseback Term and at its own expense, must obtain or otherwise have in effect all permits, licenses and similar authorizations for its activities on, in, and at the Project Site. During the Leaseback Term, the District shall hold fee title to the Project Site and will obtain from the Contractor the fee title to the improvements constructed under the LLB Agreements, which shall vest progressively as payments are made in accordance with the LLB Agreements, but shall not fully vest until the Required Completion Date, unless such time is extended by the Parties in writing. During the Leaseback Term, the Contractor shall have a leasehold interest in the Project Site as provided in the Site Lease.

Section 4. Leaseback Payments. The District shall pay to the Contractor such lease payments as are specified in the Schedule of Leaseback Payments attached as Exhibit “A” to this LBA (each a “Leaseback Payment”). Each Leaseback Payment shall be due and payable as specified in the Schedule of Leaseback Payments. The Contractor shall separately invoice the District for the Leaseback Payments and the Construction Progress Payments due under the General Provisions, and each Party shall maintain adequate records distinguishing between Leaseback Payments and Construction Progress Payments. The District shall pay the undisputed portions of each such Leaseback Payment invoice within thirty (30) days following receipt of the invoice. The District, in its sole discretion, and at any time and without penalty, may prepay any one or more of the Leaseback Payments.

Section 5. Adequate Consideration. The Parties hereby acknowledge that payment by the District of the Leaseback Payments shall be full and adequate consideration for the District’s right to use of the Project Site and the Project during the Leaseback Term. The Parties have determined and agreed that the Leaseback Payments are not in excess of the fair rental value of the Project Site and Project, and, in making such determination, the Parties have considered, among other matters: (1) the fair market value attributable to use of the improvements to be completed under the LLB Agreements; and (2) the District’s limited access and use of the Project Site during construction of the Project.

Section 6. Nature of Payment Obligation; No Acceleration. The obligation of the District to pay Leaseback Payments under this LBA shall constitute a current expense of the District. Nothing in this LBA shall be deemed or construed to constitute: (i) debt of the District in contravention of any applicable constitutional or statutory limitations; or (ii) a pledge of the general tax revenues, general funds or general monies of the District. Notwithstanding anything to the contrary, in no event shall the Contractor have the right to require accelerated payment of any Leaseback Payment that is not then due or in default, or to otherwise declare any such payment immediately due and payable.

Section 7. Abatement of Leaseback Payments. Notwithstanding any damage to or destruction of the Project Site or the Project, or any other substantial interference with the District's rights to possess and use the Project Site and the Project under this LBA, this LBA shall continue in full force and effect. However, in addition to any other conditions on the District's obligation to make Leaseback Payments, any Leaseback Payments due hereunder shall be subject to abatement at any time during the Leaseback Term in which, due to material damage to or destruction of the Project Site or the Project, or for any other reason not the fault of the District, there is substantial interference with the District's rights under this LBA to possess and use the Project Site and/or the Project, or any substantial portion thereof. For each occurrence of potentially-substantial interference with such rights, the District shall reasonably determine: (i) whether abatement shall apply; (ii) the date upon which abatement shall commence; (iii) the portion of the Leaseback Payments to be abated; and (iv) the date such abatement ends. The amount of abatement shall be such that the Leaseback Payments paid by the District during the abatement period do not exceed the fair rental value of the portions of the Project Site and/or the Project that the District reasonably may continue to use in accordance with this LBA.

Section 8. District Failure to Pay Leaseback Payments. Except as may be provided in the LLB Agreements, the District's obligation to timely pay the Leaseback Payments to the Contractor shall be absolute and unconditional, and not be subject to any set off. Subject to the foregoing, if the District fails within the time permitted by this LBA to pay the undisputed portion of any Leaseback Payment, then, notwithstanding any other right of the Contractor under this LBA, such unpaid amount shall accrue interest at two percent (2%) simple interest per annum until paid.

Section 9. District Responsibility for Encumbrances and Taxes. During the Leaseback Term, the District shall keep the Project Site and the Project free of all newly-imposed levies, liens, and encumbrances other than those that: (i) are normally or reasonably incident to the ownership of real property; (ii) are necessary in connection with the maintenance and operation of the Project Site and/or the Project; or (iii) arise from actions of the Contractor or any of the Contractor Representatives. During the Leaseback Term, the District shall timely pay all taxes, assessments, and similar charges that now or hereafter may duly be imposed upon the District's ownership, leasing, renting, possession, or use of the Project Site and/or the Project.

Section 10. Responsibility for Utility Services. Except as may be provided in the LLB Agreements, the District shall contract for and pay the expenses of all utility services required for its possession and use of the Project Site and the Project, including, but not limited to, all electricity, gas, water, and sewer.

Section 11. Maintenance and Security. The District, at its expense, shall be responsible for the maintenance and security of such portions of the Project Site and the Project of which it has sole possession and use during the Leaseback Term. Except for the foregoing, the Contractor, at its expense, shall have sole responsibility for the maintenance and security of the Project Site and the Project during the Leaseback Term. Notwithstanding the other provisions of this Section, after District Board acceptance of the Project in accordance with Section 16.8 of the General Provisions, and except for warranty and other obligations of the Contractor under the LLB Agreements, the District shall have sole responsibility for maintenance and security of the Project Site and the Project.

Section 12. Indemnification of Contractor.

- (i) With respect to any and all claims, demands, causes of action, other proceedings, losses, damages, costs, expenses, attorneys' fees, and other liabilities of any nature brought against the Contractor by any person or entity other than the District, and which arise in connection with, or are directly or indirectly related to, the District's occupancy and use of the Project Site and Project during the Leaseback Term, the District shall indemnify, defend, and hold-harmless the Contractor. The scope of the District's obligations under this Section is restricted to liabilities caused by third parties subject to the direct supervision and control of the District, including, without limitation, the District's other contractors, subcontractors, students, and other invitees. Any and all indemnification obligations arising in connection with the performance of the Work shall be governed by Part 21 of the CSA. Notwithstanding anything to the contrary, the District shall not be obligated under this Section to the extent any claim, demand, cause of action, other proceeding, loss, damage, cost, expense, attorneys' fees, and other liability within the scope of this Section is attributable to the negligence or willful misconduct of the Contractor or any of its subcontractors, employees, agents, assigns, or other representatives.
- (ii) Notwithstanding the above-referenced right to be indemnified for attorney's fees, no person, entity, or party, including but not limited to the District and the Contractor, shall be allowed to recover attorney's fees that are incurred to enforce or defend this Leaseback Agreement.

Section 13. District Insurance. At all times that the District is occupying any portion of the Project during the Leaseback Term, the District, at its expense, shall have in effect liability and property insurance providing coverage in such amounts, and subject to such terms, as the District determines will adequately protect the District's interests in the Project Site and the Project. The District may, in its sole discretion, obtain and maintain any such insurance through an Owner Controlled Insurance Program ("OCIP") and/or through a joint-powers self-insurance cooperative of which the District is a member. The District shall cause such insurance to be endorsed to name the Contractor as an additional insured during the period required by this Section, and the District shall provide to the Contractor, upon request in writing, one or more certificates of insurance and endorsements evidencing the insurance coverage required by this Section. With respect to matters for which the District is responsible under Section 12 herein, and during the period the insurance coverage is required under this Section to be in effect, the District's insurance shall be primary and any coverage provided by the Contractor shall be secondary and non-contributing.

Section 14. Events of Default. For purposes of Section 15 herein, the term "Event of Default" shall mean any of the following:

- (i) The District fails to pay to the Contractor the undisputed portion of any Leaseback Payment within thirty (30) days after notice from the Contractor that such amount is overdue;
- (ii) The District fails to perform or otherwise comply with any of its material obligations under this LBA within thirty (30) days following written notice from the Contractor specifying in detail such failure by the District; and
- (iii) The District becomes insolvent, is unable to pay its debts as they become due, makes an assignment to creditors, applies or consents to the appointment of a receiver, trustee, conservator or liquidator of the District or of all or a substantial part of its assets, or a petition for relief is filed by the District under federal bankruptcy, insolvency or similar laws, and the

District fails within sixty (60) days thereafter to cause such appointment or filing to be lifted or to otherwise make financial arrangements for payment of Leaseback Payments as are reasonably satisfactory to the Contractor.

Section 15. Termination. This LBA shall terminate automatically upon: (i) receipt by the Contractor of all Leaseback Payments due under this LBA; and (ii) expiration of the Leaseback Term. This LBA shall also terminate automatically upon earlier termination of this LBA, at which point no further Leaseback Pay shall be due. The Contractor may terminate this LBA, by giving written notice to the District, in the event the District fails to cure an Event of Default specified in clause (i) or clause (ii) of Section 14 within twenty (20) days. Subject to applicable bankruptcy or other law, the Contractor may terminate this LBA, by giving written notice to the District, in the event the District fails, within the applicable period of time permitted under Section 14 herein, to cure an Event of Default specified in clause (iii) of that Section. Nothing in this LBA shall be deemed or construed to preclude the District from seeking damages from the Contractor or other remedies for wrongful termination.

Section 16. Additional Representations and Warranties. In addition to the representations and warranties of the Parties set forth in the Site Lease, the Contractor further represents and warrants that:

- (i) To the best of its knowledge, and except to the extent of any asbestos, lead, or other hazardous materials that may be present in, or incorporated into, the existing improvements on the Project Site, if any such existing improvements exist, the Contractor is not aware of any hazardous materials, substances or wastes that are located in, on or about the Project Site that would subject the District to any damages, penalties or liabilities under any Environmental Laws;
- (ii) The Contractor has received no notice, from any governmental entity with competent jurisdiction, of any currently existing or alleged violation of any Environmental Laws with respect to the Project Site or any facilities on the Project Site; and
- (iii) Except to the extent permissibly incorporated into the Work in accordance with the LLB Agreements, the Contractor shall keep the Project Site and the facilities on the Project Site free of hazardous materials, substances, and wastes.

Section 17. Giving of Notice. Each notice from one Party to the other given under this LBA must be given in accordance with Section 23.10 of the General Provisions.

Section 18. Governing Law and Venue. The terms and provisions of this LBA shall be construed in accordance with the laws of the State, notwithstanding any choice-of-law, conflict-of-law, or other provision in any federal, state or other law. Any action, arbitration, mediation, or other proceeding arising from this LBA shall be initiated and conducted only in the County.

Section 19. Modifications. This LBA may not be amended or otherwise modified except by written agreement duly-approved by the District Board, signed, and delivered by the Parties.

Section 20. Recitals and Exhibit. The Recitals set forth herein, and Exhibit A referenced herein and attached hereto, are hereby incorporated as operative and effective provisions of this LBA.

Section 21. Counterparts. This LBA may be signed in one or more counterparts, which, taken together, shall constitute one and the same original instrument. Signature pages may be detached from counterpart originals and combined to physically form one or more original copies of this LBA bearing signatures of both Parties.

Section 22. Due Authority of Signatories. Each person signing this LBA represents and warrants that he or she has been duly authorized by appropriate action of the Party he or she represents to execute, and thereby bind such Party to, this LBA.

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

Saddleback Valley Unified School District



By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

EXHIBIT "A"
SCHEDULE OF LEASEBACK PAYMENTS

Project: [Insert Project]

Payment Month *	Beginning Balance	Payment	Ending Balance
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			
Total			

* The District's obligation to make Leaseback Payments commences within 10 business days following the Required Commencement Date. The Leaseback Payment shall be thereafter paid on the same day in each subsequent month. For example, if the District pays the first Leaseback Payment on the 23rd of a month, each Leaseback Payment shall be paid on or before the 23rd of the next month. The final Leaseback Payment shall be paid as above or on the Required Completion Date, whichever is earlier.