



[INSERT PROJECT NAME]
SITE LEASE

By and Between

SADDLEBACK VALLEY UNIFIED SCHOOL DISTRICT

and

Dated as of _____

[INSERT] PROJECT
SITE LEASE

This [Insert Project] Project Site Lease (“Site Lease”), 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 lessor herein, and _____ (“Contractor”), a _____ designated as entity number _____ by the California Secretary of State and the lessee herein. The District and the Contractor may be referred to herein individually as a “Party” and collectively as the “Parties.”

RECITALS

A. California Education Code Section 17406 permits the governing board of a school district to lease to any person, firm, or corporation any real property owned by the school district, if the instrument by which such property is leased requires the lessee to construct or provide for construction of improvements on the leased premises, for the use of the school district during the term of the lease, and provides that title to the improvements shall vest in the school district at the expiration of the lease. Such process of constructing school facilities is known as the lease-leaseback construction delivery method.

B. The District is analyzing the rebuilding of the [INSERT PROJECT] (the “Project”). Prior to considering the approval of the Project, the District will complete its environmental analysis of the proposed Project and undertake certain pre-construction activities to aid in the analysis of potential Project features and cost evaluation of the potential project. Once the District has completed its work under the California Environmental Quality Act (“CEQA”) and, if the District determines to move forward with a final recommended Project, the District will utilize the lease-leaseback construction delivery method. The [INSERT PROJECT] is located at _____ California _____, in the County of Orange (“County”), State of California (“State”). The site of the Project (“Project Site”) is further depicted and described in Exhibit “A” attached to this Site Lease.

C. Concurrently with entering into this Site Lease, the Parties have also entered into those certain agreements that are entitled: (i) “[INSERT PROJECT] Leaseback Agreement” (“Leaseback Agreement” or “LBA”); and (ii) “Construction Services Agreement for [INSERT PROJECT]” (“Construction Services Agreement” or “CSA”). With the exception of the Preconstruction Work to be provided per Exhibit A of the CSA, the remaining activities, including any construction of the Project, shall not occur, be authorized or an obligation of the District, unless the Project is approved and all approvals received following completion of CEQA. The purpose of this Site Lease, the Leaseback Agreement, and the Construction Services Agreement (collectively, the “LLB Agreements”) is to provide for the construction of the Project using the lease-leaseback construction delivery method authorized by Education Code Section 17406. Exhibit “A” to the Construction Services Agreement sets forth a general description of the Project, which may be modified prior to final Project approval.

D. The District’s Board of Education (“District Board”) has determined that, subject to the conditions precedent set forth in this Site Lease and the other LLB Agreements, it is in the best interests of the District to construct 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 this Site Lease; (ii) leasing the Project and the Project Site back from the Contractor under the LBA; and (iii)

establishing additional terms and conditions for construction of the Project under the CSA to ensure that the work and services required to be performed by the Contractor under the LLB Agreements (“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 Site Lease shall have the meanings ascribed to such terms in the other LLB Agreements.

E. The Contractor is duly licensed in the State as a general building contractor, is qualified and experienced in construction of the type of educational facilities included in the Project, and is willing to perform the Work.

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. Lease to Contractor. Subject to the provisions of this Site Lease upon final Project approval, the District hereby leases the Project Site to the Contractor, and the Contractor hereby leases the Project Site from the District. During the Site Lease Term (defined in Section 3 herein), the Contractor shall have a leasehold interest in the Project Site, including, without limitation, any and all improvements thereto made in accordance with the LLB Agreements.

Section 2. Effective Date. With the exception of the “Preconstruction Work” (defined in Exhibit A to the CSA), but otherwise notwithstanding anything to the contrary, the LLB Agreements shall have no force or effect until the date all of the following events have occurred (“Effective Date”): (i) each Party has approved, signed, and delivered all of the LLB Agreements; and (ii) the District has completed its analysis and approval under CEQA and obtained any and all other approvals required to commence the Work. Such required approvals may include, but are not limited to, any approvals by: (i) the California Department of Education (“CDE”); (ii) the Department of General Services, Division of State Architect (“DSA”); (iii) the State Allocation Board (“SAB”); (iv) the Office of Public School Construction (“OPSC”); and/or (v) the Department of Toxic Substances Control (“DTSC”).

Section 3. Construction Period and Site Lease Term. Upon satisfaction of the conditions precedent set forth in Section 2 herein, and if any and all other applicable conditions set forth in the LLB Agreements have been satisfied, the District, in accordance with Section 4 of the CSA, shall issue a notice to the Contractor to proceed with the Work (“Notice to Proceed”). Subject to contrary dates in the Notice to Proceed, the Work must commence on [REDACTED] (“Required Commencement Date”) and must be fully and satisfactorily completed no later than [REDACTED] (“Required Completion Date”). The Contractor must complete each portion of the Work that is subject to a milestone completion date not later than the applicable milestone completion date. The term of this Site Lease (“Site Lease Term”) shall commence on the Required Commencement Date and (unless the Site Lease Term is extended or this Site Lease is earlier terminated as provided in any of the LLB Agreements) shall expire concurrently with the Required Completion Date or any other earlier termination under the LLB Agreements.

Section 4. Possession and Use by Contractor. The Contractor may use the Project Site solely for: (i) purposes related to performance of the Work in accordance with the LLB Agreements; and (ii) leasing the Project Site and the Project back to the District. The Contractor and, to the extent

reasonably necessary for such purposes, its officers, employees, subcontractors, consultants, agents and other representatives (collectively, "Contractor Representatives") shall have the right at all reasonable times during the Site Lease Term to enter in and upon the Project Site for purposes of performing the Work, examining and inspecting the Work, and undertaking any and all actions necessary and/or convenient regarding the Work. Except for such authorized uses and any uses by the District in accordance with the LLB Agreements, the Contractor shall not allow any other use of the Project Site or facilities on the Project Site. Except as provided in the LLB Agreements, the Contractor, at its own expense, must obtain or otherwise have in effect all permits, licenses and similar authorizations for its activities on and in the Project Site and the facilities on the Project Site. The Contractor must not use, operate or maintain the Project Site or facilities on the Project Site improperly or carelessly, and, during the Site Lease Term, the Contractor must comply with all applicable laws and any applicable orders or rules of any governmental entity with competent jurisdiction over the Project Site and/or the Project. However, nothing shall be deemed to prohibit the Contractor from non-compliance with any such law, order or rule during any action or other proceeding undertaken in good faith by the Contractor to contest the validity or application of the law, order or rule, but the Contractor shall indemnify, defend, and hold-harmless the District Indemnitees as provided in the CSA with respect to any such non-compliance.

Section 5. Performance of Work. The Contractor shall: (i) perform the Work in strict accordance with the LLB Agreements and other documents incorporated therein or approved in accordance therewith; and (ii) complete the Work within the Site Lease Term, as it may be modified from time to time in accordance with the LLB Agreements. The compensation payable to the Contractor for performance of the Work shall be determined as provided in the LBA and CSA.

Section 6. Quiet Enjoyment. Except as permitted in the LLB Agreements, the District shall not take any action during the Site Lease Term to prevent the Contractor's quiet enjoyment of the Project Site for the purposes authorized under this Site Lease. In the event any challenge to the District's fee title to the Project Site results in or is likely to result in interference with the Contractor's right to occupy or use the Project Site for such purposes, the District shall use such of its governmental powers at its disposal, including the power of eminent domain, as necessary to obtain unencumbered fee title to the Project Site. The District shall defend the Contractor's right to so occupy and use the Project Site for the purposes set forth in the LLB Agreements. No use of the Project Site or the facilities on the Project Site by the District that is contemplated in or by the LLB Agreements shall be deemed or construed to constitute interference with the Contractor's right to occupy and use the Project Site.

Section 7. No Waste or Illegal Acts. At all times that it occupies or is otherwise in possession of the Project Site or any portion thereof, the Contractor shall not commit, suffer, or permit any waste of the Project Site or the facilities on the Project Site, and the Contractor shall not negligently, willfully, or knowingly use or permit the use of the Project Site or the facilities on the Project Site for any illegal act or purpose.

Section 8. Payment of Rent. The Contractor shall have no obligation to pay rent unless and until the conditions precedent set forth in Section 2 herein have been satisfied. Within sixty days following the Effective Date, the Contractor shall pay to the District the total amount of \$2.00, which shall constitute rent for the lease of the Project Site by the Contractor for up to 14 months from the Effective Date. If the Site Lease Term exceeds 14 months, for any reason, then, within thirty days following the end of the initial 14-month period, the Contractor must pay to the District the amount of \$1.00 for each year (or portion thereof) that the Site Lease remains in effect following the initial 14-

month period. If, for any reason, this Site Lease is terminated after the Effective Date, the Contractor shall not be entitled to a refund of any rent paid to the District under this Section.

Section 9. Responsibility for Taxes. The Contractor, at its sole expense, shall be responsible for payment of all taxes, assessments, fees, and other charges as are attributable to actions by the Contractor or any of the Contractor Representatives in connection with the performance of the Work. In addition, the Contractor, at its own expense, shall be solely responsible for payment of any and all taxes on or measured by: (i) the Contractor's income in connection with the transaction(s) contemplated in the LLB Agreements; and (ii) the operation of the Contractor's business. If the terms of this Site Lease result in the creation of a taxable possessory interest, then, to the extent such possessory interest tax is levied on the Contractor, and notwithstanding the foregoing provisions of this Section, but subject to receipt of sufficient documentary evidence of the obligation and amount, the District shall pay or otherwise satisfy such possessory interest tax.

Section 10. Title to Property. Notwithstanding anything to the contrary, upon expiration of the Site Lease Term or other termination of this Site Lease, title to the Project Site and all facilities on the Project Site, including, without limitation, any and all improvements constructed by the Contractor under the LLB Agreements, shall fully vest in the District. Title to improvements constructed on the Project Site under the LLB Agreements shall progressively and proportionally vest in the District as the Contractor is paid under the LLB Agreements, but title shall not fully vest in the District until the Required Completion Date, as such date may be extended.

Section 11. District Conveyance of Interests In Project Site. During the Site Lease Term, the District shall not mortgage, sell, assign, transfer or otherwise convey the Project Site or any interest therein to any person or entity without first obtaining the written consent of the Contractor, if such action by the District would unreasonably impair any of the Contractor's rights under the LLB Agreements. The foregoing shall not be deemed or construed to preclude the District from granting utility easements, rights-of-way, or similar interests in the Project Site to facilitate the use and operation of the Project or as required by any governmental or quasi-governmental agency.

Section 12. District Right of Entry. At any and all times during the Site Lease Term, the District and/or its officers, employees, and other agents or representatives may enter in and upon the Project Site and the Project for inspection or other purposes related to the Work, or arising in connection with the operation and management of the Project Site and/or the Project. The District shall not, however, unreasonably interfere with the Contractor's right to use and occupy the Project Site and the Project. The foregoing shall be deemed and construed to include the right of the District and its students to occupy and use completed phases of the Work for educational and related purposes. The Contractor shall cooperate and coordinate with the District as necessary to facilitate such uses by the District.

Section 13. District Representations and Warranties. The District represents and warrants to the Contractor that, to the best of the District's knowledge:

- (i) The District has good and merchantable fee title to the Project Site and has authority to enter into, and perform its obligations under the LLB Agreements;

- (ii) The District is unaware of any tax, assessment or imposition of any kind applicable to the Project Site that has not been paid in full, excluding any current and future taxes, assessments or impositions that may be assessed in regard to the Project Site;
- (iii) The District is unaware of any pending or threatened litigation involving the Project Site or the facilities on the Project Site that might affect the ability to use them for the intended purposes of the LLB Agreements;
- (iv) Except for asbestos, lead, or other hazardous materials that the District anticipates may be present in or incorporated into existing improvements on and to the Project Site and the facilities on the Project Site, if any such existing improvements/facilities exist, the District is not aware of any dangerous, toxic or hazardous pollutants, contaminants, chemicals, waste, materials or substances, regulated pursuant to applicable local, State or federal environmental laws, rules, or regulations, that are located in, on or about the Project Site and that would subject the Contractor to any damages, penalties or liabilities under any such applicable local, State or federal environmental laws, rules, or regulations (“Environmental Laws”); and
- (v) The District has received no notice, from any governmental entity with competent jurisdiction, of any currently existing or alleged violation of any of the Environmental Laws with respect to the Project Site or the facilities on the Project Site.

Section 14. Contractor Representations and Warranties. The Contractor represents and warrants to the District that, to the best of the Contractor’s knowledge:

- (i) The Contractor is duly organized, validly existing, and in good standing in accordance with the laws of the State, and has full power, authority, and legal right to lease and otherwise acquire and convey interests in real and personal property;
- (ii) The Contractor is aware of the requirements of Education Code section 17406, Education Code section 17407.5, Public Contract Code section 2600 *et seq.*, and Public Contract Code section 20111.6. Public Contract Code section 20111.6 requires that a person, firm, or corporation that constructs the building(s), including, but not limited to, the prime contractor and electrical, mechanical, and plumbing subcontractors be prequalified. Such prequalification is applicable to each public project projected to cost \$1,000,000 or more, regardless of the source of funds to pay for the project (this subdivision (ii) collectively referred to as the “Prequalification Requirement”);
- (iii) The Contractor, any person, firm, or corporation that constructs the building, including, but not limited to, the prime contractor, and each MEP subcontractor with one of the specialty licenses specified in Public Contract Code Section 20111.6 has been prequalified under procedures adopted by the District Board;
- (iv) The Contractor has full power, authority and legal right to enter into and perform its obligations under the LLB Agreements, and the execution, delivery and performance thereof has been duly authorized by all necessary actions on the part of the Contractor and does not require any further approvals;

- (v) Execution, delivery and performance of the LLB Agreements does not and/or will not result in any breach of or constitute a default under any indenture, mortgage, contract, agreement or instrument to which the Contractor is a party or by which it or its property is bound; and
- (vi) There are no pending or threatened actions or proceedings before any court or administrative agency that may materially and adversely affect the ability of the Contractor to perform its obligations under the LLB Agreements.

Section 15. Termination. Notwithstanding anything to the contrary, the District may unilaterally and immediately terminate the LLB Agreements by giving written notice to the Contractor, if any challenge to the validity of any of the LLB Agreements is filed in any court of competent jurisdiction, in which event neither Party shall thereafter have any obligation to the other Party under the LLB Agreements, except that, upon written request of the Contractor in such event, the District shall pay to the Contractor such amounts as would be payable under Public Contract Code Section 5110 if it were applicable. Upon expiration of the Site Lease Term or other termination of this Site Lease: (i) the Contractor shall quit and surrender the Project Site and the facilities on the Project Site, which must be delivered to the District in the condition as of the date of expiration or other term; (ii) to the extent provided in the LLB Agreements, the District shall remain obligated to compensate the Contractor for the performance of the Work completed as of the date of expiration or other termination; and (iii) in accordance with the LLB Agreements, the Contractor shall release, remove or cure any stop notices, liens and/or other encumbrances arising from the Work.

Section 16. Events of Default. Notwithstanding anything to the contrary, any Claim within the scope of Part 22 of the General Provisions: (i) shall be subject to the requirements of such Part 22; and (ii) shall not be subject to this Section or Section 17 of this Site Lease. For all purposes of the LLB Agreements other than any such Claims, each of the following events with respect to a Party shall be deemed a default by such Party of its obligations under the LLB Agreements (each an “Event of Default”):

- (i) The Party fails, within the time required, to pay any undisputed or unexcused payment due or asserted to be due to the other Party, or any undisputed or unexcused portion of a payment due or asserted to be due to the other Party under any of the LLB Agreements; or
- (ii) The Party fails to perform or observe any covenant, condition or agreement to be performed or observed by such Party under any of the LLB Agreements, and such failure materially and adversely affects the other Party’s rights; or
- (iii) Any statement, representation or warranty by the Party and set forth in any of the LLB Agreements is determined to be intentionally misleading or erroneous in any material respect and materially and adversely affects the other Party’s rights; or
- (iv) The Party makes any general assignment for the benefit of creditors, any voluntary or involuntary petition for bankruptcy or for reorganization pursuant to federal bankruptcy law is filed and not withdrawn or dismissed within sixty days of filing, a court of competent jurisdiction appoints a trustee or receiver to manage or control all or substantially all of the Party’s assets, all or substantially all of the Party’s assets are subject to attachment, execution or other judicial seizure, or a court of competent jurisdiction determines that such Party has become insolvent or unable to pay its debts when due.

Section 17. Notice and Opportunity to Cure. If a Party is alleged to be responsible for an Event of Default (“Defaulting Party”), the other Party (“Non-Defaulting Party”) may provide written notice thereof to the Defaulting Party, specifying in reasonable detail the nature and extent of the alleged default (“Notice of Default”). If the Defaulting Party has not cured the Event of Default within twenty days after receipt of the Notice of Default in the case of a monetary default (i.e., failure to pay money or secure the payment of money), or within thirty days after receipt of the Notice of Default in the case of a non-monetary default, the Non-Defaulting Party in its discretion may initiate the dispute resolution provisions set forth in Section 18 of this Site Lease. The giving of a Notice of Default and allowing the period for cure of the Event of Default in accordance with this Section shall be a condition precedent to the Non-Defaulting Party exercising any available remedy in response to the Event of Default. Nothing shall be construed to prohibit the Defaulting Party from disputing that an Event of Default has occurred. Neither the giving of any Notice of Default, nor the initiation by the Non-Defaulting Party of any dispute resolution, legal or equitable action, or other proceeding in connection with an Event of Default, shall by itself operate to terminate this Site Lease.

Section 18. Informal Attempts at Dispute Resolution. Except for any Claims subject to Part 22 of the General Provisions, if a dispute arises out of or directly or indirectly relates to any of the LLB Agreements (“Dispute”), the Parties shall attempt as provided in this Section to resolve the Dispute as quickly and as amicably as possible, including, without limitation, any Disputes as to the meaning of any provision of the LLB Agreements, the validity of any determination or calculation required under the LLB Agreements, or the rights or obligations of the Parties under the LLB Agreements. If the Dispute does not relate to an Event of Default or is not of such nature that a Party may give a Notice of Default, then the Party alleging the Dispute shall give to the other Party a written notice of the Dispute (“Notice of Dispute”). Within a reasonable time, not in excess of seven calendar days, after receipt of either a Notice of Default or a Notice of Dispute, the Parties shall commence attempts to informally resolve the Dispute as required under this Section. Such attempts shall include good-faith, reasonable, and diligent efforts by both Parties to communicate and, if possible, to reconcile or compromise their respective positions. The participation by a Party in such attempts to informally resolve a Dispute shall be a condition precedent to such Party exercising any available remedy in response to the Dispute. If, after diligently making the attempts required under this Section for at least thirty calendar days, the Parties cannot resolve a Dispute, either Party may give written notice to the other Party that the attempts have been unavailing and, therefore, such informal attempts have been terminated effective upon receipt of the notice.

Section 19. Exercise of Available Remedies. If attempts at informal resolution of a Dispute under Section 18 are terminated without the Dispute having been resolved to the satisfaction of a Party, the Party may initiate any legal or equitable action or other proceeding in response to the Dispute that is available under applicable law and the LLB Agreements. In addition, however, if a Party fails to respond to, or participate in good faith in, any requests or requirements for attempts at informal resolution of the Dispute, the other Party, in its discretion, without needing to further comply with Section 18 of this Site Lease, may initiate any legal or equitable action or other proceeding in response to the Dispute that is available under applicable law and the LLB Agreements. However, in any case in which a Notice of Default has been provided under Section 17 of this Site Lease, no such legal or equitable action may be initiated until the applicable period for cure of the Event of Default under such Section 17 has expired without cure of the Event of Default.

Section 20. Scope and Limitations of Available Remedies. Except as provided in this Section or other applicable provisions of the LLB Agreements, each Party may exercise any or all available legal or equitable rights in response to an unresolved Dispute. However, at all times while any informal dispute-resolution attempts, legal or equitable actions, or other authorized proceedings relating to a Dispute are pending, each Party, except to the extent provided in this Section, shall continue to perform its obligations under the LLB Agreements. Notwithstanding the foregoing, a Party shall not be responsible for continued performance of its obligations under the LLB Agreements to the extent an Event of Default by the other Party makes such performance impossible, impractical, or unreasonable. Except as expressly provided in any of the LLB Agreements, a Party shall be entitled to termination of any of the LLB Agreements in response to an uncured Event of Default only if a court of competent jurisdiction determines that damages and specific performance are not sufficient, appropriate, or available remedies. Any remedies available to a Party shall not be deemed exclusive, and the Party may exercise any remedy individually or in combination with any other remedy it has available.

Section 21. Indemnification by 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 District by any person or entity other than the Contractor, and which arise in connection with, or are directly or indirectly related to, the Contractor's use and occupancy of the Project Site under this Site Lease, the Contractor shall indemnify, defend, and hold-harmless the District as provided in the CSA. For purposes of the LLB Agreements, such liabilities include, but are not limited to, any and all matters arising out of any use, disposal, discharge or other release on or about the Project Site of any hazardous materials, substances, or waste. For purposes of this Section, the reference to the District shall be deemed and construed to be a reference also to the District Board and each member thereof, the District's other officers, employees, and agents, and each of them.
- (ii) Notwithstanding the District's 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 Site Lease.

Section 22. Giving of Notice. Any notice given by a Party under this Site Lease must be given in accordance with Section 23.10 of the General Provisions in the CSA.

Section 23. Governing Law and Venue. The terms and provisions of this Site Lease shall be construed in accordance with the laws of the State. Any action, arbitration, mediation or other proceeding arising from this Site Lease shall be initiated and conducted only in the County.

Section 24. Modifications. This Site Lease may not be amended or otherwise modified except by written agreement duly-approved by the District Board, signed, and delivered by the Parties.

Section 25. Recitals and Exhibits. The Recitals set forth herein, and all Exhibits referenced herein and attached hereto, are hereby incorporated as operative and effective provisions of this Site Lease.

Section 26. Counterparts. This Site Lease 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 Site Lease bearing original signatures of both Parties.

Section 27. Due Authority of Signatories. Each person signing this Site Lease 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 Site Lease.

In Witness Whereof, the Parties have executed this Site Lease 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
Description and Depiction of Project Site

The Project Site includes the [INSERT PROJECT], as is outlined, highlighted or otherwise designated in the description and depiction below.

The Project Site is located at _____ California _____.

[Insert picture]