

Instructions for completing this Site Lease

1. Do not include these instructions as part of the solicitation for any RFP.
2. This Site Lease may be used for Lease-Leaseback Transactions involving one or multiple sites.
3. Proper completion of Exhibit A is critical. Exhibit A must encompass the area where work is being done. Exhibit A may describe more than one “Site.”
4. Although the Site Lease may be executed after Lessee selection, its provisions (the “Term”) will not become effective until a GMP is established for work at a particular Site.
5. Project specific information should be inserted where spaces are highlighted in this document.

SITE LEASE

By and Between

PITTSBURG UNIFIED SCHOOL DISTRICT
as Lessor

and


as Lessee

SITE LEASE

THIS SITE LEASE (the “Site Lease”) is dated as of [[Insert Execution Date]], for reference purposes only, and is made by and between the **Pittsburg Unified School District** (the “District”), a school district duly organized and validly existing under the laws of the State of California, as lessor, and [[Insert Lessee Name]] (“Lessee”), a California corporation, as lessee.

RECITALS

WHEREAS, the District currently owns a site, or sites, as more particularly described in Exhibit A attached hereto and incorporated herein by reference (each a “Site”), at which Site the District has determined to cause to be performed the work described in the Facilities Lease being executed concurrently herewith (the “Project”);

WHEREAS, District desires to lease the Site to Lessee in order for it to perform the work necessary for the Project on the Site and to lease it back, as more particularly described in the Facilities Lease, a copy of which is attached hereto and incorporated herein by reference as the "Facilities Lease;"

WHEREAS, the Board of Trustees of the District (the “Board”) 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 develop the Project by leasing the Site to Lessee and by simultaneously entering into the Facilities Lease (as defined below) under which the District will lease back the Site and improvements from Lessee;

WHEREAS, the District is authorized under Section 17406 of the Education Code of the State of California to (i) lease the Site to Lessee, (ii) have Lessee develop and cause the construction of the Project thereon, and (iii) lease the Site (with improvements thereon) back to the District by way of the Facilities Lease, and the Board has duly authorized the execution and delivery of this Site Lease in order to effectuate the foregoing, based upon a finding that it is in the best interest of the District to do so;

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

WHEREAS, 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 Site Lease, and those conditions precedent do exist, have happened and have been performed 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;

WHEREAS, District has a substantial need for the construction of the Project at the Site and has entered into this Site Lease and the Facilities Lease under the authority granted to District by Section 17406 of the Education Code of the State of California in order to fill that need; and

WHEREAS, the District and Lessee further acknowledge and agree that they have entered into this Site Lease pursuant to Education Code section 17406 as the best available and most expeditious means for the District to satisfy its substantial need for the work at the Site to accommodate and educate students served by the District.

NOW, THEREFORE, in consideration of the promises and of the mutual agreements and covenants contained herein, and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto do hereby agree as follows:

ARTICLE 1 – DEFINITIONS

1.1. Definitions. Unless the context clearly requires otherwise, all words and phrases defined in Section 1.1 of that certain Facilities Lease and Construction Provisions executed simultaneously herewith, by and between the District and Lessee (the “Facilities Lease”) shall have the same meanings when used in this Site Lease.

ARTICLE 2 – DEMISING CLAUSES

2.1. Lease of the Site. The District hereby leases to Lessee and Lessee hereby leases from the District, the Site, in accordance with the terms and provisions of this Site Lease, to have and to hold during the Term of this Site Lease. The effectiveness of this Site Lease depends upon the execution of the Facilities Lease. If the Facilities Lease is not executed by the District and Lessee within three (3) days after execution of this Site Lease, this Site Lease shall terminate and shall be of no further force or effect and neither party shall have any obligation to the other hereunder except for those obligations that expressly survive termination of this Site Lease.

2.2. Rental. In consideration for the leasing of the Site by the District to Lessee, and for other good and valuable consideration, Lessee shall pay the District rent of One Dollar (\$1.00) per year.

2.3. Merger. The leasing of the Project (and the Site thereon) by Lessee to the District pursuant to the Facilities Lease shall not affect or result in a merger of the estates of the District in the Site, and Lessee shall continue to have a leasehold estate in the Site pursuant to this Site Lease throughout the term, as described hereinafter below.

ARTICLE 3 – QUIET ENJOYMENT

3.1. Possession. The parties intend that the Site will be leased back to the District pursuant to the Facilities Lease for the term thereof.

3.2. Access to Site. Prior to the acceptance of the Project by District, the District shall have the right to enter upon the Site at reasonable times for the purposes of inspection of the progress of the Work on the Project, and to conduct activities which do not unreasonably interfere with Lessee's construction of the Project, and the District shall comply with all reasonable safety precautions required by Lessee and Lessee's Lessees.

ARTICLE 4 – SPECIAL COVENANTS AND PROVISIONS

4.1. Waste. Lessee agrees that at all times that it is in possession of the Site, it will not willfully or knowingly use or permit use of the Site for any illegal purpose or act.

4.2. Further Assurances and Corrective Instruments. The District and Lessee agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, any such further instruments as may be reasonably required for correcting any inadequate or incorrect description of the Site hereby leased or intended so to be leased or for carrying out the expressed intention of this Site Lease and the Facilities Lease.

4.3. Representations of the District. The District represents and warrants that the District is a school district, duly organized and existing under the Constitution and laws of the State of California, has the power to enter into this Site Lease; is possessed of full power to own, rent 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 agreement.

4.3.1 Authorization. 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.

4.3.2 No Litigation. There is no pending or, to the knowledge of District, threatened action or proceeding before any court or administrative agency which will materially adversely affect the ability of District to perform its obligations under this Site Lease.

ARTICLE 5 – ASSIGNMENT, SUBLEASING, MORTGAGING AND SELLING

5.1. Assignment and Subleasing. This Site Lease (and the Site or improvements thereon) may not be assigned, as a whole or in part, by Lessee without the prior written consent of the District to such assignment or sublease.

5.2. 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, materialmen liens, mechanic liens and other liens for or 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. Lessee further agrees to pay promptly and fully discharge any and all claims on which any such lien may or could be based, and to save and hold harmless the District from any and all such liens, mortgages, judgments and claims of liens and suits or other proceedings pertaining thereto. This section shall survive termination of this agreement.

ARTICLE 6 – IMPROVEMENTS

6.1. Improvements. Title to all improvements made by Lessee on the Site during the term of this Site Lease shall vest in Lessee until conveyance to the District at the end of the Facility Lease's Term.

ARTICLE 7 – TERM AND TERMINATION

7.1. Term. The term of this Site Lease shall commence, with respect to each Site identified in Exhibit A separately, upon the execution of an amendment to the Facilities Lease establishing a Guaranteed Maximum Price for the work to be completed upon that Site, and shall terminate with respect to a Site upon the expiration or earlier termination of the Facilities Lease with respect to that Site, whereupon title to all improvements made on the Site during the term of this Site Lease shall vest in District and Lessee's interest in this Site Lease shall expire and be of no further force and effect without the necessity for any further instrument or transfer, provided, however, that Lessee agrees to execute any instrument requested by District to memorialize such termination of this Site Lease. Notwithstanding the foregoing, if on the date scheduled for the expiration or termination of this Site Lease any earned Lease Payments (subject to District's right to offset) owing under the Facilities Lease have not been fully paid to Lessee by District, then the term of this Site Lease shall be extended until the date upon which all such Lease Payments shall be fully paid, and Lessee shall continue to have the right of possession of the Site during such time period.

7.2. Termination Upon Purchase of Project. If the District exercises its option to purchase the Project, pursuant to the Facilities Lease, then this Site Lease shall terminate concurrently with the District's purchase of the Project. Upon the District's request, Lessee shall execute a lease termination agreement.

7.3. Termination Due to Default. If either party defaults under this Site Lease or the Facilities Lease, and the default is not cured by the end of any applicable cure period, the non-defaulting party may terminate this Site Lease and the Facilities Lease upon ten (10) days' written notice to the defaulting party. Upon any such termination, (a) title to the Site and any

improvements built upon the Site shall vest in the District upon the date of termination, and (b) the parties shall be entitled to receive compensation and exercise the remedies set forth in the Facilities Lease and/or (c) the non-defaulting party may pursue legal action for the damages caused by the breach.

ARTICLE 8 –MISCELLANEOUS

8.1. Binding Effect. This Site Lease shall inure to the benefit of and shall be binding upon the District, Lessee and their respective successors, transferees and assigns.

8.2. Severability. In the event any provision of this Site Lease shall be held invalid or unenforceable 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 Site Lease or the Facilities Lease.

8.3. Amendments, Changes and Modifications. This Site Lease shall not be amended, changed, modified, or altered without the written agreement of both parties hereto. No provision of this Site Lease shall be considered waived unless such waiver is in writing.

8.4. Execution in Counterparts. This Site Lease may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

8.5. Applicable Law. This Site Lease shall be governed by and construed in accordance with the laws of the State of California. The parties further agree that any action or proceeding brought to enforce the terms and conditions of this Site Lease shall be maintained in Sacramento County, California.

8.6. Recitals. The recitals set forth at the beginning of this Site Lease are hereby incorporated herein by reference and each party stipulates and agrees that such recitals are true and correct.

8.7. Captions. The captions or headings in this Site Lease are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Site Lease.

8.8. Time of Essence. Time is of the essence of this Site Lease and each of its provisions.

8.9. Remedies. The parties shall have any and all legal and equitable remedies available under applicable California law, except that the District shall have no right to terminate this Site Lease as a remedy for default by Lessee or any assignee of Lessee separate and apart from a concurrent termination of the Facilities Lease due to a default by Lessee or its assignee. The

remedies of the parties under this Site Lease are cumulative and shall not exclude any other remedies to which either party may be lawfully entitled.

8.10. Notices. Any notice to either party shall be in writing and given by delivering the same to such party in person or by sending it by nationally recognized overnight delivery service for next business day delivery, such as Federal Express, or by mailing the same by certified mail, return receipt requested, with postage fully prepaid, to the following addresses:

If to District: Pittsburg Unified School District
 3200 Loveridge Road
 Pittsburg, CA 94565-5122
 Attn: [NAME]

With a copy to: Fagen Friedman & Fulfroest LLP
 621 Capitol Mall, Suite 1525
 Sacramento, CA 95814
 Attn: Jim Traber

If to Lessee: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Any party may change its mailing address at any time by giving written notice of such change to the other party in the manner provided herein for notices. All notices under this Site Lease shall be deemed given, received, made or communicated on the date personal delivery is effected, or if mailed or sent by overnight delivery service, on the delivery date or attempted delivery date shown on the return receipt or delivery record. No party shall evade or refuse delivery of any notice.

8.11. Eminent Domain. In the event the whole or any part of the Site or the improvements thereon is taken by eminent domain, the financial interest of Lessee shall be recognized and is hereby determined to be the amount of all Lease Payments and tenant improvement payments then due or past due. The balance of the award, if any, shall be paid to the District.

8.12. Indemnification by the District. The District covenants and agrees to indemnify, defend and hold Lessee harmless from and against any and all losses, claims, suits, damages and expenses (including reasonable attorneys' fees) asserted by third parties arising out of the condition of the Site existing prior to the commencement of this Site Lease and/or the Facilities Lease, whether or not known to District; provided, however, that the District shall not be required to indemnify Lessee in the event that such liability or damage is caused by the negligent or intentional wrongful act or omission of Lessee, or by conditions on the Site that could reasonably have been determined by Lessee prior to establishment of a GMP for a scope of work on a Site. All liabilities under this Site Lease on the part of District are solely liabilities of District, and Lessee hereby

releases each and every trustee, officer, employee, agent, representative, and volunteer of District from any personal liability or individual liability under this Site Lease. Except as otherwise provided in this section, no trustee, officer, employee, agent, representative, or volunteer of District shall at any time or under any circumstances be individually or personally liable for anything done or omitted to be done by District under this Site Lease.

8.13. Indemnification by Lessee. Lessee covenants and agrees to indemnify defend and hold District harmless from and against any and all losses, claims, suits, damages, and expenses (including reasonable attorneys' fees) asserted by third parties arising out of the condition of the Site if caused by Lessee, provided, however, that Lessee shall not be required to indemnify the District in the event such liability or damage is caused by the negligent or intentional wrongful act or omission of the District. All liabilities under this Site Lease on the part of Lessee are solely liabilities of Lessee, and District hereby release each and every member, director, shareholder and officer of Lessee from any personal liability or individual liability under this Site Lease, provided, however, that the District does not release any member, director, shareholder or officer of Lessee from any personal or individual liability arising from such person's intentional act or intentional omission. Except as otherwise provided in this section, no member, director, shareholder or officer of Lessee shall at any time or under any circumstances be individually or personally liable for anything done or omitted to be done by Lessee under this Site Lease.

8.14. Further Assurances and Corrective Instruments. To the extent permissible under California law and as long as there are no additional costs to the District, the District agrees that it will execute and deliver estoppel certificates, financing statements or other assurances as may be reasonably necessary or requested by Lessee to carry out assignments of this Site Lease and the Facilities Lease, including without limitation, to perfect and continue any security interests herein intended to be created or to correct any inadequate or incorrect description of the Site being leased or intended to be leased.

8.15. Interpretation. It is agreed and acknowledged by the parties hereto that the provisions of its Site Lease and its exhibits have been arrived at through negotiation, and that each of the parties has had a full and fair opportunity to revise portions of this Site Lease and its exhibits and to have such provisions reviewed by legal counsel. Therefore, the normal rule of construction of documents that any ambiguities are to be resolved against the drafting party shall not apply in construing or interpreting this Site Lease and its exhibits.

8.16. No Assignment. This Site Lease may not be assigned, pledged encumbered or amended without written consent of both parties.

8.17. No Partnership or Joint Venture. The parties acknowledge that they will not hold themselves out as an agent, partner or co-venturer of the other and that this Agreement is not intended and does not create an agency, partnership, joint venture or any other type of relationship except the contract relationships established hereby.

8.18. Dispute Resolution.

The Parties desire to quickly and cost-effectively resolve any disputes related to the interpretation or enforcement of this Agreement. Therefore, each Party shall make best efforts to resolve informally any such disputes.

8.18.1 Mandatory Mediation. All claims, disputes and other matters in controversy between the Inspection Firm and the District arising out of or pertaining to this Agreement shall be submitted for resolution by non-binding mediation. The Parties shall jointly select a mediator within thirty (30) days of a request of mediation by a Party, and complete mediation as soon thereafter as practically possible but in no event later than ninety (90) days after the original request for mediation, unless otherwise agreed to by the Parties.

8.18.2 Government Claim Requirements. The Lessee shall comply with all claims presentation requirements as provided in Chapter 1 (commencing with section 900) and Chapter 2 (commencing with section 910) of Part 3 of Division 3.6 of Title 1 of Government Code as a condition precedent to the Lessee's right to arbitrate against the District

8.18.3 Arbitration. In the event that mediation is unsuccessful, to the extent applicable law does not otherwise provide, any dispute, claim or controversy between or among the District and Inspection Firm arising out of or in any way relating to this Agreement shall be determined by confidential, binding arbitration in the county in which the District's administrative offices are located before a neutral arbitrator. The arbitration shall be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures in force at the time the arbitration is commenced. The arbitrator shall decide any issue of the breach, termination, enforcement, interpretation or validity of this entire agreement, including the determination of the scope or applicability of the agreement to arbitrate. The Parties adopt and agree to implement the JAMS Optional Arbitration Appeal Procedure (as it exists on the date of this Agreement) with respect to any final arbitration award pursuant to this Agreement. Any court proceedings related to the arbitration shall take place in the state court (or federal court, if jurisdiction exists) in the county in which the District's administrative offices is located. This clause shall not preclude Parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction.

By agreeing to this binding arbitration provision, the Parties understand that they are waiving certain important rights and protections that otherwise may have been available if a dispute were determined by a judicial action including, without limitation, the extent of available discovery, the right to a jury trial, the recovery of attorney fees and certain rights of appeal.

This agreement and the rights of the Parties hereunder shall be governed by and construed in accordance with the laws of California, exclusive of conflict or choice of law rules.

If this Agreement is related to a larger project for which there is more than one contract involved, and if more than one contractual dispute arises related to that project, then the District then may, at its option, consolidate arbitration proceedings arising from the Project into a single arbitration proceeding.

8.19. Attorney's Fees. To the extent either Party must seek enforcement or interpretation of this Agreement or otherwise defend against a claim arising from this Agreement, each Party

shall bear their own fees and costs, including, but not limited to, mediation fees, arbitration fees, attorneys' fees and collection expenses, regardless of whether legal proceedings are or have been commenced to enforce said terms.

8.20. Entire Agreement; Integration. This Agreement and the exhibits attached hereto contain the entire agreement of the parties with respect to the subject matter of this Agreement, and supersede all prior negotiations, agreements and understandings with respect thereto. This Agreement may only be amended by a written document duly executed by all parties.

SIGNATURE PAGE

IN WITNESS WHEREOF, the parties hereto have executed this Site Lease by their authorized officers as of the dates so indicated below.

DISTRICT:

PITTSBURG UNIFIED SCHOOL DISTRICT

a school district organized and existing under the laws
of the State of California

By: _____

Name: _____

Its: _____

Date: _____

LESSEE:

[[insert Lessee/Lessee name]],

By: _____

Name: _____

Its: _____

Date: _____

EXHIBIT A

[[Insert Legal Description or Other Document Pertaining to the area (or site as a whole) where work will be performed.]]