

SITE LEASE

RECITALS

WHEREAS Lessor, as defined below, on this _____ Day of _____, 20__ holds title to that certain real property known as Ethel Phillips Elementary School in the County of Sacramento, which includes the buildings and the land under and around the school facilities, a portion of which is more particularly shown as the shaded area on **Exhibit A** attached hereto and incorporated herein ("Site"), which Site is adequate to accommodate the Improvements referenced herein;

WHEREAS Lessor desires to begin the Ethel Phillips Elementary School Campus Renewal Project (the "Improvements") on the Site, as more particularly described in Exhibit A to the Facilities Lease, as referenced below;

WHEREAS Lessee, as defined below, desires to lease the Site from Lessor with the intent to perform preconstruction services and to construct the Improvements on the Site;

WHEREAS Lessor intends to lease the Site to Lessee to permit Lessee to perform necessary preconstruction services and to construct the Improvements on the Site at Lessee's sole cost, expense and risk; except as otherwise stated herein below and/or in the Facilities Lease;

WHEREAS Lessor is authorized under California Education Code section 17406 to lease the Site to Lessee, to require Lessee to construct the Improvements on the Site, and to lease from Lessee the Site and Improvements constructed thereon;

WHEREAS the Governing Board of Lessor ("Board") has determined that it is in the best interests of Lessor, and for the common benefit of the citizens residing in the school district, to construct the Improvements by leasing the Site to Lessee and by entering into the Facilities Lease of even date herewith, under which Lessor will sublease the Site and lease the Improvements from Lessee, and has duly authorized the lease of the Site and sublease of the Site and Improvements;

WHEREAS Lessee is duly authorized to lease the Site, to construct the Improvements thereon, and to sublease the Site and Improvements to Lessor, and has duly authorized the lease of the Site and sublease of the Site and Improvements;

WHEREAS Lessor and Lessee have each performed all acts, conditions, and things required by law to exist, to have happened, and to have been performed precedent to and in connection with the execution and entering into this Site Lease ("Lease"), and are now each duly authorized to execute and enter into this Lease;

WHEREAS the parties further acknowledge and agree that they have entered into this Lease and the Facilities Lease, as defined below, pursuant to Education Code section 17406 as the best available and most expeditious means for Lessor to satisfy its substantial need for the Improvements;

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

1. **BASIC TERMS**

This **Section 1** contains the Basic Terms of this Lease between the Lessor and Lessee named below. Other Sections of the Lease referred to in this **Section 1** explain and define the Basic Terms and are to be read in conjunction with the Basic Terms.

1.1. **Date of Lease:** _____

1.2. **Lessor:** Sacramento City Unified School District ("Lessor")

1.1. **Address of Lessor:** _____

Lessor shall be represented with respect to the obligations herein by the Superintendent of the District, or any other person authorized by the Board of Trustees of the District to act on its behalf with respect to this Lease. The person or persons so designated by Lessor shall be authorized in writing, and notice shall be served on Lessee at the address stated herein for notice. Lessor shall provide such notice designating its Authorized Representative within five (5) business days of the full and final execution of this Lease.

1.3 **Lessee:** TBD, a California Corporation ("Lessee")

Address of Lessee: TBD

Lessee shall be represented with respect to the obligations herein by the person or persons authorized by Lessee's governing board to act on its behalf with respect to this Lease. The person or persons so designated by Lessee shall be authorized in writing, and notice shall be served on Lessor at the address stated herein for notice. Lessee shall provide such notice designating its Authorized Representative within five (5) business days of the full and final execution of this Lease.

1.4 **Site:** That certain real property, including the buildings and the land under and around the buildings on a portion of the Ethel Phillips Elementary School, City of Sacramento, County of Sacramento, State of California and more particularly shown as the shaded area on **Exhibit A**, including any easements and other entitlements attached to the Site.

- 1.5 **Lease Term: Beginning on** the date this Lease is fully executed and **ending on** the last day of the term of the Facilities Lease provided that Lessor has paid to Lessee, or its assignee, all lease payments and other payments which may be due and owing under the Facilities lease, and provided that this Lease has not been earlier terminated. ("Lease Term").
- 1.6 **Permitted Uses:** (See **Section 5**) Any lawful use, subject to applicable zoning and governmental approvals.
- 1.7 **Brokers:** (If none, so state)
 Lessor's Broker: None
 Lessee's Broker: None
- 1.8 **Commission Payable to Lessor's Broker:** \$ Not applicable.
- 1.9 **Initial Security Deposit:** \$ None
- 1.10 **Vehicle Parking Spaces Allocated to Lessee:** As set forth in Facilities Lease, Exhibit D, General Requirements, Section 01 50 00, 1.04, Parking of Vehicles.
- 1.11 **Rent and Other Charges Payable by Lessee:**
- 1.11.1 **BASE RENT:** For the period as set forth in **Section 1.5** above, the annual base rent shall be **Ten Dollars (\$10.00)** payable as follows: upon execution of the lease and annually thereafter on January 1 of each year in the manner set forth in **Section 3.1** below.
- 1.11.2 **OTHER PERIODIC PAYMENTS:** (i) Taxes (See **Section 4.2**); (ii) Utilities (See **Section 4.3**); (iii) Insurance Premiums (See **Section 4.4**); and (iv) Condition of Property; Maintenance, Repairs and Alterations (See **Section 6**).
- 1.12 **Riders:** The following Riders are attached to and made a part of this Lease: Exhibit A.

2 LEASE TERM

- 2.1 **Lease of Site For Lease Term.** Lessor leases the Site to Lessee, and Lessee leases the Site from Lessor, for the Lease Term. The Lease Term is for the period stated in **Section 1.5** above and shall begin and end on the dates specified in **Section 2.2**,

unless the beginning or end of the Lease Term is changed under any provision of this Lease.

- 2.2 **Lease Term.** This Lease shall commence on the date that this Lease is fully and finally executed by all parties. However, if the Facilities Lease between Lessor and Lessee is not fully executed within three (3) business days after the full and final execution of this Lease, this Lease shall immediately terminate. This Lease shall expire, if not canceled, extended, or terminated earlier in accordance with its provisions and/or the provisions of the Facilities Lease, on the date upon which Lessor takes title to the Improvements pursuant to that certain Facilities Lease between the Lessor and Lessee, of even date herewith (“Facilities Lease”).
- 2.3 **Holding Over.** Lessee shall vacate the Site upon the expiration or earlier termination of this Lease. Lessee shall reimburse Lessor for, and indemnify Lessor against, all damages which Lessor incurs arising from or related to Lessee's delay in vacating the Site.
- 2.4 **No Merger.** The leasing of the Site by the Lessee to the Lessor pursuant to the Facilities Lease between Lessor and Lessee shall not affect or result in a merger of Lessor’s interest under the Facilities Lease and its fee estate in the Site, and Lessor shall continue to have and hold its fee interest in the Site throughout the term of this Lease and the Facilities Lease. Lessee shall continue to have and hold a leasehold estate in the Site pursuant to this Lease and throughout the term hereof. As to the Site Lease, the Facilities Lease shall be deemed to constitute a sublease.

3 RENT

- 3.1 **Time and Manner of Payment.** Subject to the provisions of this Lease, Lessee shall pay Lessor the Base Rent ("Rent"), in annual installments, without offset, deduction or prior demand on the first business day of each January of the Lease Term. Notwithstanding the above, the initial Rent payment for **2024** shall be due within five (5) business days following the full and final execution of this Lease.
- 3.2 The Rent shall be payable at Lessor’s address or at such other place as Lessor may designate in writing.

4 OTHER CHARGES PAYABLE BY LESSEE

- 4.1 **Additional Rent.** All charges payable by Lessee other than Rent are called "Additional Rent." Unless this Lease provides otherwise, Lessee shall pay all Additional Rent then due within fifteen (15) days of when the Additional Rent

becomes due and payable, but no later than the last business day on which the Additional Rent can be paid without incurring additional costs or penalties.

4.2 **Taxes.**

4.2.1 **Personal Property Taxes.**

4.2.1.1 Lessee shall pay all taxes charged against trade fixtures, furnishings, equipment or any other personal property belonging to Lessee. Lessee shall try to have personal property taxed separately from the Site.

4.2.1.2 If any of Lessee's personal property is taxed with the Site, Lessee shall pay Lessor the taxes for the personal property within fifteen (15) days after Lessee receives a written statement from Lessor for such personal property taxes.

4.2.2 **Real Property Taxes.** Except to the extent it is exempt from doing so, Lessor shall pay all real property taxes on the Site (including any fees, taxes or assessments against, or as a result of, any Lessee improvements installed on the Site and the term "Site" for the purposes of this **Section 4.2** shall mean and include all improvements of any nature, including buildings) during the Lease Term. "Real property tax" means: (i) any fee, levy, charge, assessment, penalty or tax imposed by any taxing authority against the Site; (ii) any tax or charge for fire protection, streets, sidewalks, road maintenance, refuse or other services provided to the Site by any governmental agency; (iii) any tax imposed upon this transaction or based upon a reassessment of the Site due to a change of ownership, as defined by applicable law, or other transfer of all or part of Lessor's interest in the Site; and (iv) any charge or fee replacing any tax previously included within the definition of real property tax.

4.3 **Utilities.** Lessee shall pay, directly to the appropriate supplier, the cost of all temporary heat, telephone, refuse disposal and other utilities and services supplied to the Site for the purpose of constructing the Improvements.

4.4 **Insurance Policies.** Lessee shall provide and maintain during the Lease Term all insurance coverages required by Exhibit E to the Facilities Lease, including:

4.4.1 **Worker's Compensation and Employer's Liability** insurance as required by any applicable law or regulation.

- 4.4.2 **General Liability Insurance** Lessee shall carry Commercial General Liability insurance coverage at least as broad as the ISO CG 00 01 on all operations by or on behalf of the **Lessee** as provided in greater detail in Exhibit E to the Facilities Lease.

The Lessor, the Architect, the Construction Manager, and any other additional insureds required in Exhibit E to the Facilities Lease, and each of their officers, officials, directors, trustees, agents, employees and volunteers (hereinafter collective “Additional Insureds”) shall be named as Additional Insureds. The policy shall stipulate that the insurance afforded the Additional Insureds shall apply as primary insurance and that any other insurance carried by the Additional Insureds will be excess only and will not contribute with this insurance.

- 4.4.3 **Commercial Automobile Liability** insurance as required in Exhibit E to the Facilities Lease.

- 4.4.4 The above policies shall be endorsed or provide through policy provisions 30 days’ notice of cancellation to the Lessor (Ten [10] days’ notice for non-payment of premium). In addition, all policies shall by endorsement or policy provision waive subrogation against the **Lessor**, the Architect, Consultants, their Officers, Officials, Directors, Trustees, Agents and Employees.

- 4.4.5 Contractors’ and Subcontractors’ Insurance Requirements. If Lessee will be employing contractors at the site, the **Lessee** shall require the contractors and all subcontractors and material suppliers of every tier to carry insurance coverages as outlined in Exhibit E to the Facilities Lease (although lower limits as specified in Exhibit E to the Facilities Lease shall be acceptable). These contractors shall be required to name the Lessor, the Architect, the Construction Manager, and any other Consultants of the Lessor, and each of their officers, officials, directors, trustees, agents, employees and as Additional Insureds using (GC 2010 11 85 Form B or equivalent). The policy or endorsement shall stipulate that the insurance afforded the Additional Insureds shall apply as primary insurance and that any other insurance carried by the Lessor, the Architect, the Construction Manager, and any other Consultants of the Lessor, and each of their officers, officials, directors, trustees, agents, employees and volunteers will be excess only and will not contribute with this insurance. In addition all policies shall by endorsement or policy provision waive subrogation against the Lessor. It is condition precedent that this insurance shall be in place before the Lessee allows any contractor or material supplier on the site.

4.4.6 **Property Insurance.** For existing improvements, Lessor shall maintain property insurance covering loss or damage to the Site in the full amount of its replacement value.

4.4.7 **Payment of Premiums.** Lessee and Lessor shall pay all premiums for the insurance policies described in **Section 4.4** no later than the due date. Lessee shall deliver to Lessor a certificate of insurance, including any required Additional Insured Endorsements and Waivers of Subrogation, executed by an authorized officer of the insurance company, showing that the insurance which Lessee is required to maintain under this Section is in full force and effect and containing such other information which Lessor reasonably requires.

4.4.8 General Insurance Provisions.

4.4.8.1 If, without Lessor's consent, Lessee fails to deliver any policy, certificate or renewal to Lessor required under this Lease within the prescribed time period or if any such policy is canceled or coverage does not meet the requirements of this Lease during the Lease Term, Lessor may, after providing Lessee written notice and a reasonable opportunity to cure, obtain such insurance, in which case Lessee shall reimburse Lessor for the cost of such insurance within fifteen (15) days after receipt of a statement that indicates the cost of such insurance.

4.4.8.2 Lessee shall maintain all insurance required under this Lease with companies holding a Bests' rating of no less than A-VII.

4.4.8.3 Any deductibles or self-insured retentions must be declared to and approved by the Lessor which amounts shall be no greater than \$50,000. Any and all deductibles or self-insurance retentions in the above described liability insurance policies shall be assumed by and be for the account of, and at the sole risk of the Lessee.

5 USE OF PROPERTY

5.1 **Use of Premises.** Lessee shall have the right, subject to limitations in **Section 5.2**, to enter upon the Site to perform necessary investigation, preparation and other work in connection with preconstruction services and to construct the Improvements on the Site, pursuant to the Facilities Lease. Lessee shall have the right to lease the Site and Improvements to Lessor under a Facilities Lease and accept rental payments from Lessor under such Facilities Lease.

- 5.2 **Manner of Use.** Lessee shall not cause or permit the Site to be used in any way which constitutes a violation of any law, ordinance, or governmental regulation or order, or which constitutes a nuisance or waste. Lessee shall obtain and pay for all permits required for Lessee's occupancy of the Site and shall promptly take all actions necessary to comply with all applicable statutes, ordinances, rules, regulations, orders and requirements regulating the use by Lessee of the Site.
- 5.3 **Right of Entry.** Lessor reserves the right for any of its duly authorized representatives to enter upon the Site at any reasonable time to inspect the same and/or the Improvements, and for insurance-related purposes as stated in Exhibit E to the Facilities Lease, provided that, during construction, Lessor follows all safety precautions required by Lessee.
- 5.4 **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 equipment used or furnished for or in connection with the Site or the Improvements, provided that all payments that are due to Lessee under the Facilities Lease are current, subject to Lessor's rights to withholding thereunder. Lessee further agrees to pay promptly and fully and discharge any and all claims on which any such lien may or could be based, and to save and hold Lessor free and harmless from any and all such liens or claims, and any lawsuits or other legal proceedings pertaining thereto.
- 5.5 **Hazardous Materials.** As used in this Lease, the term "Hazardous Material" means any flammable items, explosives, radioactive materials, hazardous or toxic substances, material or waste or related materials, including any substances defined as or included in the definition of "hazardous substances", "hazardous wastes", "hazardous materials" or "toxic substances" now or subsequently regulated under any applicable federal, state or local laws or regulations, including without limitation petroleum based products, paints, solvents, lead, cyanide, DDT, printing inks, acids, pesticides, ammonia compounds and other chemical products, asbestos, PCBs and similar compounds, and including any different products and materials which are subsequently found to have adverse effects on the environment or the health and safety of persons. Lessor has disclosed any contamination of the Site by Hazardous Materials of which it is aware. If Lessor becomes aware of any circumstance which would change or render this representation incorrect, in whole or in part, Lessor will give immediate written notice to Lessee. Lessee is entitled to rely on Lessor's disclosures. Lessee shall not knowingly violate any law or regulation of any federal, state or local governmental authority having jurisdiction over hazardous substances. If Lessee becomes aware of any contamination or potential contamination of the Site by Hazardous Materials, Lessee will give immediate written notice to Lessor and shall cooperate in any investigation of potential contamination of the Site by

Hazardous Materials. Lessee shall have no responsibility or liability for Hazardous Materials that are pre-existing on the Site or that are brought to the Site by others for whom Lessee is not liable.

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

- 5.6 **Quiet Possession.** Subject to any rights that Lessor may obtain under the Facilities Lease to possession and enjoyment of the Site and Improvements and subject to the terms of this Lease, Lessee may occupy and enjoy the Site during the full term hereof, so long as Lessee pays the rent and complies with all other terms of this Lease. Lessor will, at the request of Lessee, and to the extent that it may lawfully do so, join in any legal action in which Lessee asserts its right to such possession and enjoyment.

6 CONDITION OF PROPERTY; MAINTENANCE, REPAIRS AND ALTERATIONS

- 6.1 **Existing Conditions.** Except as provided herein, Lessee acknowledges that neither Lessor nor any agent of Lessor has made any representation as to the condition of the Site or the suitability of the Site for Lessee's intended use. Lessee acknowledges that it has investigated the Site and familiarized itself with relevant site conditions, and will perform further Site investigation during preconstruction services to the extent necessary to complete the Improvements and as set forth in the Facilities Lease. Lessor represents that it is not aware of any concealed conditions on or relating to the Site, including such things as physical obstructions, unusual soil conditions, hazardous materials contamination, encroachments, overlaps, boundary line disputes, laws, ordinances, governmental regulations, orders, or any other matters that would interfere with Lessee's intended use of the Site.

- 6.2 **Exemption of Lessor from Liability.** Not Used.

- 6.3 **Lessee's Obligations.**

6.3.1 Except as provided in **Section 6.5** (Damage and/or Destruction to Site) and **Section 6.7** (Eminent Domain), Lessee shall keep all portions of the Site (including structural, nonstructural, interior, exterior, and landscaped areas, portions, systems and equipment) in good order, condition and repair (including interior repainting and refinishing, as

needed). If any portion of the Site or any system or equipment in the Site, which Lessee is obligated to repair cannot be fully repaired or restored, Lessee shall promptly replace such portion of the Site or system or equipment in the Site, regardless of whether the benefit of such replacement extends beyond the Lease Term. If any part of the Site is damaged by any act or omission of Lessee, Lessee shall pay the cost of repairing or replacing such damaged property, except to the extent such damage is covered by any insurance required under this Lease and Lessee shall pay the deductible for any such insurance coverage. It is the intention of Lessor and Lessee that at all times Lessee shall maintain the portions of the Site in accordance with industry standards for construction sites.

6.3.2 Except as set forth in **Section 6.3.1**, Lessee shall fulfill all of Lessee's obligations under this **Section 6.3** at Lessee's sole expense. If Lessee fails to maintain, repair or replace the Site as required by this **Section 6.3**, Lessor may, upon thirty (30) days' prior notice to Lessee (except that no notice shall be required in the case of an emergency), enter the Site and perform such maintenance or repair (including replacement, as needed) on behalf of Lessee. In such case, Lessee shall reimburse Lessor for all costs incurred in performing such maintenance or repair immediately upon demand.

6.4 **Alterations, Additions, and Improvements.**

6.4.1 All alterations, additions, and improvements to the property shall be done in a good and workmanlike manner, in conformity with all applicable laws and regulations.

6.4.2 Lessee shall pay when due all claims for labor and material furnished to the Site.

6.5 **Damage and/or Destruction to Site.** Lessee shall notify Lessor in writing immediately upon the occurrence of any damage and/or destruction to the Site. In the event of such damage and/or destruction, the terms of the Facilities Lease, Article 6, Section 6.2 and/or 6.2.2 shall govern the rights and obligations of the parties except that, if Lessor does not elect to terminate this Lease, then, regardless of the cause or extent of the damage or destruction, or the amount of insurance available, this Lease and the payments due hereunder shall remain in effect.

6.6 **Condition upon Termination.** Upon the termination of the Lease, Lessee shall surrender the Site to Lessor in accordance with the provisions of Article 19 of Exhibit D to the Facilities Lease. All alterations, additions and improvements which

Lessor has not required Lessee to remove shall become Lessor's property and shall be surrendered to Lessor upon the expiration or earlier termination of the Lease, except that Lessee may remove any of Lessee's machinery or equipment which can be removed without material damage to the Site. Lessee shall repair, at Lessee's expense, any damage to the Site caused by the removal of any such machinery or equipment.

6.7 **EMINENT DOMAIN** If all of the Site shall be taken permanently under the power of eminent domain, the term of this Lease shall cease as of the day possession shall be so taken. If less than all of the Site shall be taken permanently, or if all of the Site or any part thereof shall be taken temporarily, under the power of eminent domain: (1) this 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 (2) there shall be a partial abatement of Lease payments due hereunder as a result of the application of the net proceeds of any eminent domain award to the prepayment of the Lease payments hereunder. The net proceeds of any eminent domain or condemnation shall be payable to Lessor.

6.8 Lessor hereby covenants and agrees, to the extent that it may lawfully do so, that as long as the Facilities Lease and this Lease remain in effect, Lessor will not voluntarily suffer or exercise the power of condemnation or eminent domain with respect to the Site and/or Improvements. Lessor further covenants and agrees, to the extent it may lawfully do so, that, if for any reason, the foregoing covenant is determined to be unenforceable or if Lessor should fail or refuse to abide by such covenant and condemns or takes the Site or Improvements by eminent domain, then Lessor agrees that the appraised value of the Improvements shall not be less than the aggregate total of all Lease Payments provided for under this Lease, less any Lease Payments previously made; provided, however, that if the taking occurs prior to the completion of the Improvements, Lessee shall be entitled to the value of construction completed, less the value of any Lease Payments made by the Lessor under the Facilities Lease.

7 ASSIGNMENT AND SUBLETTING

7.1 **Lessee Assignment and Subleasing.** Except as provided in this **Section 7.1 and Section 2.4**, Lessee shall not assign the Lease or its duties and obligations hereunder, or enter into any sublease of the Site or Improvements, with any other person, firm, without the prior written consent of Lessor. Lessor's acceptance of rent from any other person is not a waiver of any provision of this **Section 7**. Consent to one transfer is not a consent to any subsequent transfer. This Lease may be assigned to an affiliate of Lessee provided that the representations, covenants, and warranties in

this Lease are not impaired or violated. Contracting or subcontracting with licensed contractors is not considered an assignment or sublease.

7.2 **Restrictions on Lessor.** Except to the extent that the Site may be subject to condemnation proceedings or other proceedings pursuant to which Lessor may be legally obligated to transfer an interest in the Site, Lessor agrees that it will not mortgage, sell, encumber, assign, transfer or convey the Site or any portion thereof during the term of this Lease without Lessee's written authorization, which shall not be unreasonably withheld. Lessor is obligated to perform its obligations under this Lease only during the time that Lessor owns such interest or title in the Site. Lessor shall be relieved of its obligations under this Lease to be performed on or after the date of transfer if Lessor transfers its right in or title to the Site either with Lessee's authorization or in response to a court order.

7.3 To the extent permitted by law, Lessor shall not abandon the Site for its intended use as stated in this Lease and the Facilities Lease, for the Lease Term, nor seek other property to substitute for this Site.

8 DEFAULTS; REMEDIES

8.1 **Covenants and Condition.** Time is of the essence in the performance of all covenants and conditions set forth in this Lease.

8.2 **Default by Lessee.** Lessee shall be in material default under this Lease:

8.2.1 If Lessee fails to pay rent or any other charge pursuant to **Section 4** of this Lease within thirty (30) days after written notice of delinquency, or fails to pay any other sum due under this Lease within thirty (30) days of written demand notifying Lessee that such payment is due;

8.2.2 If Lessee fails to observe and perform any covenant, condition, or agreement in this Lease on its part to be observed or performed, other than as referenced in **Section 9.2.1**, for a period of thirty (30) days after Lessor provides written notice specifying such failure and requesting that it be remedied; provided, however, if the failure stated in the notice cannot be corrected within thirty (30) days, Lessor shall not unreasonably withhold its consent to an extension of such time if corrective action is instituted by Lessee within thirty (30) days and diligently pursued until the default is corrected. The notice required by this Section is intended to satisfy any and all notice requirements imposed by law on Lessor and is not in addition to any such requirement.

- 8.2.3 If Lessee abandons the Site.
- 8.2.4 If Lessee unreasonably refuses or fails to prosecute the work under the Facilities Lease with such reasonable diligence as will accomplish its completion within the time specified or any extension thereof, or unreasonably fails to complete said work within such time.
- 8.2.5 If Lessee should be adjudged a bankrupt, or file for bankruptcy, or if Lessee should make a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of its insolvency, provided that such condition described in this subsection is not corrected or cured within thirty (30) days.
- 8.2.6 If Lessee persistently disregards any applicable law or regulation related to the Site or related to its lease or occupancy of the Site.

8.3 **Default by Lessor.** Lessor shall be in material default under this Lease if Lessor fails to observe and perform any covenant, condition, or agreement in this Lease on its part to be observed or performed for a period of thirty (30) days after Lessee provides written notice specifying such failure and requesting that it be remedied; provided, however, if the failure stated in the notice cannot be corrected within thirty (30) days, Lessee shall not unreasonably withhold its consent to an extension of such time if corrective action is instituted by Lessor within thirty (30) days and diligently pursued until the default is corrected. The notice required by this Section is intended to satisfy any and all notice requirements imposed by law on Lessee and is not in addition to any such requirement.

8.4 **Remedies for Default.**

8.4.1 **Lessor's Remedies.** In the event of Lessee's default that also constitutes an event of default under the Facilities Lease, Lessor shall have the right to terminate this Lease if such event of default has continued uncured for a period of thirty (30) days following Lessor providing Lessee with written notice of the default or to assign this Lease in accordance with Section 9.4.2 of the Facilities Lease. If the default does not constitute an event of default under the Facilities Lease, Lessor shall not have the right to terminate or assign, but Lessor shall have all other rights to compel Lessee to perform and to collect any and all sums owed to Lessor under the Lease. Subject to the terms of this **Section 8.4**, Lessor shall be entitled to enforce all of Lessor's rights and remedies now or hereafter available in equity and at law for

Lessee's default under this Lease. Lessor's remedies shall be cumulative, and the exercise of any one or more shall not prevent it from exercising any other right or remedy for Lessee's default.

8.4.2 **Lessee's Remedies.** Whenever any event of default by Lessor shall have occurred and be continuing uncured for a period of thirty (30) days following Lessee providing Lessor with written notice of the default, it shall be lawful for Lessee to exercise any and all remedies available pursuant to law or granted pursuant to this Lease or the Facilities Lease, subject to the limitations set forth in **Section 9.2** of the Facilities Lease. In the event of a default, and notwithstanding any re-entry by Lessee, Lessor shall continue to remain liable for lease payments under the Facilities Lease. Lessee's remedies shall be cumulative, and the exercise of any one or more shall not prevent it from exercising any other right or remedy for Lessor's default.

9 REPRESENTATIONS

9.1 Lessor's Representations.

9.1.1 Lessor is a school district, duly organized and existing under the laws of the State of California. Lessor has the full power and authority to enter, to execute, and to deliver this Lease, and to perform all of its duties and obligations hereunder.

9.1.2 Lessor has duly authorized the execution of this Lease. Lessor's representative executing this Lease is fully authorized to execute the same.

9.1.3 Neither the execution and delivery of this Lease, nor the fulfillment of or compliance with the terms and conditions of this lease, conflicts with or results in a breach or default (with due notice or the passage of time, or both) under the organizational instruments of Lessor or any applicable law or administrative rule or regulation, or any applicable court or administrative decree or order, or a breach of any of the terms, conditions or provisions of any restriction or any agreement or instrument to which Lessor is now a party or by which 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, except Permitted Encumbrances, as that term is defined in the Facilities Lease.

9.1.4 Lessor is aware of no action, suit, proceeding, inquiry, or investigation pending or threatened in any court or in any federal, state,

or municipal administrative body which, if determined adversely to Lessor or its interests, would have a material and adverse effect upon Lessor's ability to consummate or perform the transactions and obligations contemplated by, or validity of, this Lease or the Facilities Lease. Lessor is not in default with respect to any order or decree of any court or any order, regulation, or demand of any federal, state, or municipal administrative body which default might have consequences that would have a material and adverse effect upon Lessor's ability to consummate or perform the transactions and obligations contemplated by, or validity of, this Lease or the Facilities Lease.

- 9.1.5 The Lessor is in compliance with all laws, regulations, and ordinances for the purposes of construction of the facilities pursuant to the Facilities Lease, including without limitation, any local environmental ordinances or requirements under the California Environmental Quality Act (Public Resources Code, sections 21000 et seq.) ("CEQA").
- 9.1.6 To the best of Lessor's knowledge, there are no plans or contemplation by another agency to condemn the Site under the power of eminent domain.

9.2 **Lessee's Representations.**

- 9.2.1 **Authority.** The person signing this Lease on behalf of Lessee represents and warrants that Lessee 1) is a corporation duly organized and existing under the laws of the State of California, 2) is duly authorized and licensed to do business in the State of California, 3) has the power to enter into this Lease and the Facilities Lease and to perform all of its obligations thereunder, 4) is possessed of full power to own, rent, and hold real and personal property, and to lease and sell the same, and 5) is empowered and fully capable of undertaking and performing the obligations contained herein. The person signing this Lease represents (s)he has full authority to do so and to bind Lessee hereto. If requested by Lessor, within thirty (30) days after this Lease is signed, Lessee shall deliver to Lessor a certified copy of a resolution of Lessee's Board of Directors or Members authorizing the execution of this Lease or other evidence of such authority reasonably acceptable to Lessor.
- 9.2.2 Lessee has duly authorized the execution of this Lease.
- 9.2.3 Neither the execution and delivery of this Lease, nor the fulfillment of or compliance with the terms and conditions of this Lease or the Facilities Lease, conflicts with or results in a breach of the terms, conditions, or provisions of any restriction, agreement, or instrument to which Lessee is now a party or by which Lessee is bound, or constitutes a default under any of the foregoing.

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

9.2.5 Lessee shall not pledge the Site or other amounts derived from the Site or from any other of its rights under this Lease or the Facilities Lease, and shall not mortgage or otherwise encumber the Site.

9.2.6 For up to six months following the term of this Lease, Lessee shall not voluntarily commence any act intended to dissolve or terminate the legal existence of Lessee, provided Lessor is not in uncured default under this Lease or the Facilities Lease. Lessee shall give Lessor sixty (60) days written notice prior to dissolving or terminating the legal existence of Lessee within two years of the expiration of the term of this Lease.

10 INDEMNIFICATION

The provisions of **Section 5.5** including its subparagraphs, of the **Facilities Lease**, are incorporated herein by reference as though set forth in full.

11 MISCELLANEOUS PROVISIONS

11.1 **Disputes.** Any dispute between the parties to this Agreement will be resolved by the parties pursuant to the terms and conditions of the Facilities Lease between the parties hereto.

11.2 **Severability.** In the event any provision of this 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 Lease or the Facilities Lease.

11.3 **Interpretation.** The captions or headings in this Lease are for convenience only and

in no way define, limit, or describe the scope or intent of any provisions or Sections of this Lease. Whenever required by the context of this Lease, the singular shall include the plural and the plural shall include the singular. The masculine, feminine and neuter genders shall each include the other. In any provision relating to the conduct, acts or omissions of Lessee, the term "Lessee" shall include Lessee's agents, employees, contractors, invitees, successors or others using the Site with Lessee's expressed or implied permission. It is agreed and acknowledged by the parties hereto that the provisions of this Lease have been arrived at through negotiation, and that each of the parties has had a full and fair opportunity to revise portions of this Lease and to have such provisions reviewed by its legal counsel. Therefore, the normal rule of construction that any ambiguities are to be resolved against the drafting party shall not apply in construing or interpreting this Lease.

11.4 **Incorporation of Prior Agreements; Amendments.** This Lease and the related Facilities Lease collectively contain all of the agreements of the parties hereto with respect to any matter covered by or mentioned in this Lease, and no prior agreements or understandings pertaining to any such matter shall be effective for any purpose. All amendments to this Lease shall be in writing and signed by all parties. Any other attempted amendment shall be void.

11.5 **Legal Proceedings.** In the event that either party is required to institute legal proceedings to enforce this Lease, in whole or in part, the prevailing party shall be entitled to recover its reasonable attorneys' fees, costs and expenses.

11.5.1 Lessee shall also indemnify Lessor against and hold Lessor harmless from all costs, expenses, demands and liability Lessor may incur if Lessor becomes or is made a party to any claim or action (a) instituted by Lessee against any third party, or by any third party against Lessee, or by or against any person holding any interest under or using the Site by license of or agreement with Lessee; (b) for foreclosure of any lien for labor or material furnished to or for Lessee or such other person; (c) otherwise arising out of or resulting from any act or transaction of Lessee or such other person; or (d) necessary to protect Lessor's interest under this Lease in a bankruptcy proceeding, or other proceeding under Title 11 of the United States Code, as amended. Lessee shall defend Lessor against any such claim or action at Lessee's expense with counsel reasonably acceptable to Lessor.

11.5.2 Lessor shall also indemnify Lessee against and hold Lessee harmless from all costs, expenses, demands and liability Lessee may incur if Lessee becomes or is made a party to any claim or action (a) instituted by Lessor against any third party, or by any third party against Lessor, or by or against any person holding any interest under or using the Site by license of or agreement with Lessor; (b) otherwise arising out of or resulting from any

act or transaction of Lessor or such other person; or (c) necessary to protect Lessee's interest under this Lease in a bankruptcy proceeding, or other proceeding under Title 11 of the United States Code, as amended. Lessor shall defend Lessee against any such claim or action at Lessor's expense with counsel reasonably acceptable to Lessee.

- 11.6 **Notices.** All notices, requests, demands and other communications required or permitted under this Agreement shall be in writing and shall be sent by third party commercial courier service which provides evidence of delivery, or mailed by United States mail (postage prepaid), registered or certified, return receipt requested. Each notice shall be deemed delivered (1) on the date delivered if by courier delivery, (2) on the date delivered by U.S. Mail as evidenced by the return receipt, or (3) on the date acceptance of delivery is refused by the addressee. Provided notice is also sent by courier or U.S. Mail as aforesaid, it may also be delivered by facsimile, and delivery shall be deemed to have occurred on the date of transmission (unless the same is after 5:00 p.m. or on a non-business day, in which event delivery shall be on the next business day). By giving written notice hereunder to the other parties at least five (5) days' in advance, a party to this Agreement may from time to time and at any time during the term of this Agreement change its address for notices under this Agreement. Notices shall be sent to the following addresses

Lessor: Chris Ralston
Assistant Superintendent – Facilities Support Services
5601 47th Ave,
Sacramento, CA 95824

Lessee: TBD

- 11.7 **Waivers.** All waivers must be in writing and signed by the waiving party. Lessor's failure to enforce any provision of this Lease or its acceptance of rent shall not be a waiver and shall not prevent Lessor from enforcing that provision or any other provision of this Lease in the future. No statement on a payment check from Lessee or in a letter accompanying a payment check shall be binding on Lessor. Lessor may, with or without notice to Lessee, negotiate such check without being bound to the conditions of such statement.

- 11.8 **No Recordation.** Lessee shall not record this Lease without prior written consent from Lessor. However, either Lessor or Lessee may require that a "Short Form" memorandum of this Lease executed by both parties be recorded. The party requiring such recording shall pay all transfer taxes and recording fees.

- 11.9 **Binding Effect; Choice of Law.** This Lease shall inure to the benefit of, and shall be binding upon, Lessor and Lessee, and their respective successors and assigns, to

the extent that such successors and assigns have acquired their interest in the Lease in accordance with the terms of this Lease. This Lease shall be governed by the laws of the State of California.

- 11.10 **Recitals Incorporated.** The Recitals set forth at the beginning of this Lease are hereby incorporated into its terms and provisions by this reference.
- 11.11 **Execution of Lease.** This 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.
- 11.12 **Further Assurances.** The parties hereto agree that they will, from time to time, execute, acknowledge, and deliver such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Site or the Improvements.
- 11.13 **Survival.** All representations and warranties of Lessor and Lessee shall survive for a period of two (2) years following the termination of this Lease.
- 11.14 **Lease to be Absolute "Net" Lease.** Except as otherwise provided herein, this Lease is intended to be absolutely "net" to Lessor, so that Lessor shall enjoy all rental and other sums due hereunder without deduction, set-off or any other reduction, and that Lessor shall have no expense in connection with the Property which is not paid or reimbursed by Lessee.

Signatures on next page

SIGNATURE PAGE

IN WITNESS WHEREOF, the parties have executed this Lease as of the date first above written.

LESSOR:

Sacramento City Unified School District
A school district organized and existing under the laws of the State of California

By: _____
Insert Name and Title

By: _____
Insert Name and Title

Date: _____

LESSEE:

TBD

By: _____
TBD, President

EXHIBIT A

Site Description

