

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

Pittsburg Unified School District
2000 Railroad Avenue
Pittsburg, California 94565
Attention: Enrique Palacios

This document is recorded for the benefit of the Pittsburg
Unified School District School District, and recording is fee
exempt under Section 6103 of the Government Code.

SITE LEASE

(MOT BUILDING ERECTION AND SITE WORK)

by and between

PITTSBURG UNIFIED SCHOOL DISTRICT
as Lessor

and

(CONTRACTOR)
as Lessee

Dated as of 12/11/2013

SITE LEASE

THIS SITE LEASE (this "Lease") dated as of **12/11/2013**, ("Effective Date"), is made and entered into by and between the Pittsburg Unified School District School District (the "District"), a school district duly organized and validly existing under the laws of the State of California, as lessor, and (CONTRACTOR) ("Corporation"), a California corporation duly organized doing business in the State of California, as lessee.

RECITALS

WHEREAS, the District currently owns a parcel of land located at the corner of Harbor Drive and School Street, Pittsburg, California, containing a parcel of land to be described herein as the "Site", as more particularly depicted and described in **Exhibit "A"**, attached hereto and incorporated herein by this reference; and

WHEREAS, the District desires to provide for the construction of improvements at the Site, as more particularly described in the Facilities Lease (defined below) and incorporated herein by this reference (the "Project"); and

WHEREAS, the Governing Board 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 construct the Project by leasing the Site to the Corporation and by immediately entering into the Facilities Lease (defined below) under which the District will sublease the Site and lease the Project from the Corporation; and

WHEREAS, the District is authorized under Section 17406 of the Education Code of the State of California to lease the Site to the Corporation, and to have the Corporation construct the Project on the Site and thereafter lease the Site and the Project to the District and the Board has duly authorized the execution and delivery of this Lease; and

WHEREAS, the Corporation is authorized to lease the Site as lessee and to construct the Project on the Site, and has duly authorized the execution and delivery of this Lease; and

WHEREAS, District has performed all acts, conditions and things required by law to have happened and to have been performed precedent to and in connection with the execution and creation of this Lease and all such acts, conditions and things, 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 Lease; and

NOW, THEREFORE, in consideration of the promises and mutual agreements and covenants contained herein, and payment of the sum of One Dollar (\$1.00) and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto do hereby agree as follows:

**ARTICLE I
DEFINITIONS**

Section 1.1 Unless the context clearly otherwise requires, all words and phrases defined in Section 1.1 of the Facilities Lease dated as of 12/11, 2013, by and between the District and the Corporation (the "Facilities Lease") shall have the same meaning in this Lease.

**ARTICLE II
DEMISING CLAUSES**

Section 2.1 Lease of the Site. The District hereby leases to the Corporation, and the Corporation hereby leases from the District the Site, subject only to Permitted Encumbrances, in accordance with the provisions of this Lease, to have and to hold for the term of this Lease. This Lease shall only take effect if the Facilities Lease is executed by the District and Corporation within three (3) days of execution of this Lease.

Section 2.2 Rental. In consideration for the lease of the Site by the District to the Corporation and for other good and valuable consideration, the Corporation shall pay One Dollar (\$1.00) to the District.

Section 2.3 No Merger. The leasing of the Site by the Corporation to the District pursuant to the Facilities Lease shall not effect or result in a merger of the estates of the District in the Site, and the Corporation shall continue to have a leasehold estate in the Site pursuant to this Lease throughout the term hereof.

**ARTICLE III
QUIET ENJOYMENT**

Section 3.1 General Right. The parties intend that the Site will be leased back to the District pursuant to the Facilities Lease for the term thereof. It is further intended that, to the extent provided herein and in the Facilities Lease, if an Event of Default occurs under the Facilities Lease, the Corporation, or its assignee, will have the right, for the then remaining term of this Lease, to: (a) take possession of the Site; (b) if it deems it appropriate, cause appraisal of the Site and a study of the then reasonable use thereof to be undertaken; and (c) relet the Site. Subject to any rights the District may have under the Facilities Lease (in the absence of an Event of Default) to possession and enjoyment of the Site, the District hereby covenants and agrees that it will not take any action to prevent the Corporation from having quiet and peaceable possession and enjoyment of the Site during the term hereof and will, at the request of the Corporation, to the extent that it may lawfully do so, join in any legal action in which the Corporation asserts its right to such possession and enjoyment.

SPECIAL COVENANTS AND PROVISIONS

Section 3.2 Waste. The Corporation agrees that at all times that it is in possession of the Site, it will not commit, suffer or permit any waste on the Site, and that it will not willfully or knowingly use or permit the use of the Site for any illegal purpose or act.

Section 3.3 Further Assurances and Corrective Instruments. The District and the Corporation agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Site hereby leased or intended so to be or for carrying out the expressed intention of this Lease and the Facilities Lease.

Section 3.4 Right of Entry. The District reserves the right for any of its duly authorized representatives to enter upon the Site at any reasonable time to inspect the same.

Section 3.5 Representations of the District. The District represents and warrants to the Corporation as follows:

(a) Due Organization and Existence. The District is a school district, duly organized and existing under the Constitution and laws of the State of California.

(b) Authorization. The District has the full power and authority to enter into, to execute and to deliver this Lease, and to perform all of its duties and obligations hereunder, and has duly authorized the execution of this Lease.

(c) No Violations. Neither the execution and delivery of this Lease nor the Facilities Lease, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the District is now a party or by which the District is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the District, or upon the Site, except Permitted Encumbrances.

Section 3.6 Representations of the Corporation. The Corporation represents, covenants and warrants to the District as follows:

(a) Due Organization and Existence. The Corporation is a California corporation, duly organized and existing under the laws of the State of California and doing business in the State of California, has power to enter into this Lease and the Facilities Lease; is possessed of full power to own and hold real and personal property, and to lease and sell the same; and has duly authorized the execution and delivery of all of the aforesaid agreements.

(b) Authorization. The Corporation has the full power and authority to enter into, to execute and to deliver this Lease, and to perform all of its duties and obligations hereunder, and has duly authorized the execution of this Lease.

(c) No Violations. Neither the execution and delivery of this Lease or the Facilities Lease, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of any

restriction or any agreement or instrument to which the Corporation is now a party or by which the Corporation 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 Corporation, or upon the Site, except Permitted Encumbrances.

**ARTICLE IV
ASSIGNMENT, SUBLEASING, MORTGAGING AND SELLING**

Section 4.1 Assignment and Subleasing. This Lease may be assigned and the Site subleased, as a whole or in part, by the Corporation only upon the prior written consent of the District to such sublease. District's consent may be withheld for any reason or no reason, in District's absolute discretion.

Section 4.2 Restrictions on District. The District agrees that it will not mortgage, sell, encumber, assign, transfer or convey the Site or any portion thereof during the term of this Lease.

Section 4.3 Liens. Corporation 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. Corporation 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 District harmless from any and all such claims, liens, mortgages, including without limitation, suits or other proceedings pertaining thereto, provided District adheres to the payment obligations created by the Facilities Lease and related construction agreements.

**ARTICLE V
IMPROVEMENTS**

Section 5.1 Title to all improvements made on the Site during the term hereof shall vest subject to the terms of the Facilities Lease.

**ARTICLE VI
TERM AND TERMINATION**

Section 6.1 Term. The term of this Lease shall commence as of 12/12/2013, and shall terminate on the last day of the Term of the Facilities Lease, provided the District has paid to the Corporation, or its assignee, all Lease Payments and other payments which may be due under the Facilities Lease, and provided this Lease has not terminated pursuant to Sections 4.3(a) or 4.3(b) of the Facilities Lease.

**ARTICLE VII
MISCELLANEOUS**

Section 7.1 Notices. All notices, certificates or other communications required hereunder shall be given by electronic mail (e-mail), facsimile transmission, or 'U.S. mail. E-

mail and facsimile transmissions shall be documented by the sending party with transmission receipts, and the transmissions will be deemed received on the date of transmission if sent during regular business hours to 5:00 p.m. If transmitted after 5:00 p.m., they will be deemed received on the next business day, Saturdays, Sundays and holidays excluded. Transmissions by U.S. mail shall be deemed to have been received forty-eight (48) hours after deposit in the United States mail in registered or certified form with postage fully prepaid:

If to the Corporation: (CONTRACTOR)

Address
State, City, Zip
Attn: Contact
Telephone: (000) 000-000
Facsimile: (000) 000-000
[EMail:](#)

If to the District: Pittsburg Unified School District
2000 Railroad Avenue
Pittsburg, CA 94565
Attn: Enrique Palacios
Telephone: (925) 473-2300
Facsimile: (925) 473-4273
[EMail: epalacios@pittsburg.k12.ca.us](mailto:epalacios@pittsburg.k12.ca.us)

With a Copy to: Fagen, Friedman & Fulfrost
70 Washington Street, Suite 205
Oakland, CA 94607
Attention: Mark S. Williams, Esq.
Telephone: (510) 550-8200
Facsimile: (510) 550-8211
mwilliams@fagenfriedman.com

The Corporation and the District, by notice given hereunder, may designate different addresses to which subsequent notices, certificates or other communications will be sent.

Section 7.2 Binding Effect. This Lease shall inure to the benefit of and shall be binding upon the Corporation and the District and their respective successors and assigns.

Section 7.3 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.

Section 7.4 Amendments, Changes and Modifications. This Lease may not be effectively amended, changed, modified or altered without the written agreement of both parties hereto.

Section 7.5 Obligations Absolute. The Corporation agrees that the obligations of the Corporation are absolute and unconditional and not subject to any charges or setoffs against the District whatsoever.

Section 7.6 Execution in Counterparts. This Lease may be executed in several counterparts, each of which shall be original and all of which shall constitute but one and the same instrument.

Section 7.7 Applicable Law. This Lease shall be governed by and construed in accordance with the laws of the State of California.

Section 7.8 Corporation and District Representatives. Whenever under the provisions of this Lease the approval of the Corporation or the District is required, or the Corporation or the District is required to take some action at the request of the other, such approval or such request shall be given for the Corporation by the Corporation Representative and for the District by the District Representative, and any party hereto shall be authorized to rely upon any such approval or request.

Section 7.9 Captions. 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.

Section 7.10 Prior Agreements. This Lease and the corresponding Facilities Lease collectively contain all of the agreements of the parties hereto with respect to any matter covered or mentioned in this Lease and no prior agreements or understanding pertaining to any such matter shall be effective for any purpose. No provision of this Lease may be amended or added to except by an agreement in writing signed by the parties hereto or their respective successors-in-interest.

Section 7.11 Attorneys Fees. If either party brings an action or proceeding involving the Property or to enforce the terms of this Lease or to declare rights hereunder, the prevailing party shall recover its attorneys' fees and costs.

IN WITNESS WHEREOF, the parties hereto have caused this Site Lease to be executed by their respective officers thereunto duly authorized, as of the Effective Date.

(CONTRACTOR)

By: _____
Its: _____

PITTSBURG UNIFIED SCHOOL DISTRICT

By: _____
Enrique E. Palacios
Deputy Superintendent

Attest: _____
Clerk of the Governing Board
Pittsburg Unified School District

Approved as to form
FAGEN , FRIEDMAN & FULFROST

By: _____
Mark S. Williams
Legal Counsel for Pittsburg Unified School District

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____, before me, the undersigned notary public, personally appeared _____, [] personally known to me OR [] proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature of Notary

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____, before me, the undersigned notary public, personally appeared _____, [] personally known to me OR [] proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature of Notary

EXHIBIT "A"
DESCRIPTION OF SITE