

PROPOSED NEW BONSALL HIGH SCHOOL

SITE LEASE

Dated as of March 9, 2017

Between The

BONSALL UNIFIED SCHOOL DISTRICT

and

[LEASE-LEASEBACK ENTITY]



**BONSALL HIGH SCHOOL NEW CLASSROOM BUILDING(S) PROJECT, PHASE II**

**SITE LEASE**

This SITE LEASE is dated as of December 8, 2016 and is by and between the **BONSALL UNIFIED SCHOOL DISTRICT**, a school district duly organized and existing under the laws of the State of California (the "District") as lessor and [**LEASE-LEASEBACK ENTITY**], a corporation organized and operating under the laws of the State of California (the "Lessee").

**WHEREAS**, the District desires to provide for the construction of certain public improvements at the **PROPOSED NEW BONSALL HIGH SCHOOL** (the "Project"); and

**WHEREAS**, the District's governing board has determined that it is in the best interests of the District and for the common benefit of the citizens it serves to construct the Project by leasing to the Lessee land located in Fallbrook, California on Gird Road and referenced by the County of San Diego as Assessor's Parcel Number (APN) 124-340-34-00 at which the public improvements are to be constructed, as more specifically described in Exhibit "A,"(the "Site"), and subleasing from the Lessee the Site and the Project under a Sublease Agreement (the "Sublease") attached hereto as Exhibit "B" and by this reference incorporated herein; and

**WHEREAS**, the District and the Lessee have entered into a Construction Services Agreement ("Construction Services Agreement"), attached hereto as Exhibit "C" and by this reference incorporated herein, to ensure that the Project will meet the District's expectations; and

**WHEREAS**, the District is authorized under Section 17406 of the California Education Code to lease the Site and its governing body has duly authorized the execution this Site Lease; and

**WHEREAS**, the Lessee is authorized to lease the Site and to construct the Project on the Site, and has duly authorized the execution and delivery of the Sublease and this Site Lease.

**NOW THEREFORE**, in consideration of the covenants hereinafter set forth, District and Lessee agree as follows:

SECTION 1. **DEFINITIONS.** Unless the context otherwise requires, the terms defined in this Section shall, for all purposes of this lease, have the meanings as herein specified.

- A. **"Construction Services Agreement"** means the Construction Services Agreement for construction of improvements on the Site by and between the District and the Lessee dated as of even date herewith.
- B. **"Contract Documents"** means the Construction Services Agreement, the Sublease and this Site Lease.
- C. **"District"** means the Bonsall Unified School District, a school district duly organized and existing under the laws of the State of California.
- D. **"Effective Date"** shall mean the day on which the District issues a Notice to Proceed for the Project in accordance with Section 5 of the Construction Services Agreement.

- E. **"Lessee"** shall mean [LEASE-LEASEBACK ENTITY] and its successors and assigns.
- F. **"Project"** means the improvements and equipment to be constructed and installed by the Lessee, as more particularly described in Exhibit "A" of the Sublease hereto.
- G. **"Site"** means that certain parcel of real property and improvements thereon (if any) more particularly described in Exhibit "A" attached hereto.
- H. **"Site Lease"** means this Site Lease together with any duly authorized and executed amendment hereto under which the District leases the Site to the Lessee.
- I. **"Sublease"** means the Sublease of even date herewith, by and between the District and the Lessee together with any duly authorized and executed amendment thereto.
- J. **"Sublease Payment"** means any payment required to be made by the District pursuant to Section 7 of the Sublease.
- K. **"Sublease Prepayment"** means any payment required to be made by the District pursuant to Section 26 of the Sublease.
- L. **"Term of this Lease" or "Term"** means the time during which this Lease is in effect, as provided for in Section 3 of this Lease .

SECTION 2. **SITE LEASE.**

The District leases to the Lessee, and the Lessee leases from the District, on the terms and conditions set forth herein, the Site situated in the San Diego County, State of California, more specifically described in Exhibit "A" attached hereto, including any real property improvements now or hereafter affixed thereto.

SECTION 3. **TERM.**

The term of this Site Lease shall become effective upon the Effective Date. The term of this Site Lease commences on the Effective Date and terminates **One hundred forty-eight (148)** months following the Effective Date unless sooner terminated as hereinafter provided. If on the scheduled date of termination of this Site Lease, Sublease Payments shall have therefore been abated at any time and for any reason, then the term of this Site Lease shall be extended until the date upon which all such Sublease Payments shall be fully paid. At the termination of this Lease, natural or otherwise, title to the Site, and any improvements constructed thereon by the Lessee, shall vest in the District in accordance with Education Code section 17406.

SECTION 4. **REPRESENTATIONS, COVENANTS, AND WARRANTIES OF THE DISTRICT.** The District represents, covenants and warrants to the Lessee that:

- A. The District has good and merchantable fee title to the Site and has authority to enter into and perform its obligations under this Site Lease;
- B. There are no liens on the Site other than Permitted Encumbrances;

- C. All taxes, assessments or impositions of any kind with respect to the Site, if applicable, except current taxes, have been paid in full;
- D. The Site is properly zoned for the intended purpose and utilization of the Site or the District intends to render zoning inapplicable pursuant to Government Code section 53094;
- E. The District is in compliance with all laws, regulations, ordinances and orders of public authorities applicable to the Site;
- F. There is no litigation of any kind currently pending or threatened regarding the Site or the District's use of the Site for the purposes contemplated by this Site Lease;
- G. To the best of the District's knowledge, after actual inquiry:
  - (1) no dangerous, toxic or hazardous pollutants, contaminants, chemicals, waste, materials or substances, as defined in or governed by the provisions of any State or Federal Law relating thereto (hereinafter collectively called "Environmental Regulations"), and also including, but not limited to, urea-formaldehyde, polychlorinated biphenyls, asbestos, asbestos containing materials, nuclear fuel or waste, radioactive materials, explosives, carcinogens and petroleum products, or any other waste, material, substance, pollutant or contaminant which would subject the owner of the Site or the Lessee or the Lessee's subcontractors to any damages, penalties or liabilities under any applicable Environmental Regulation (hereinafter collectively called "Hazardous Substances", are now or have been stored, located, generated, produced, processed, treated, transported, incorporated, discharged, emitted, released, deposited or disposed of in, upon, under, over or from the Site;
  - (2) no threat exists of a discharge, release or emission of a Hazardous Substance upon or from the Site into the environment;
  - (3) the Site has not been used as or for a mine, a landfill, a dump or other disposal facility, industrial or manufacturing facility, or a gasoline service station;
  - (4) no underground storage tank is now located in the Site or has previously been located therein;
  - (5) no violation of any Environmental Regulation now exists relating to the Site, no notice of any such violation or any alleged violation thereof has been issued or given by any governmental entity or agency, and there is not now any investigation or report involving the Site by any governmental entity or agency which in any way relates to Hazardous Substances;
  - (6) no person, party or private or governmental agency or entity has given any notice of or asserted any claim, cause of action, penalty, cost or demand for payment or compensation, whether or not involving any injury or threatened

injury to human health, the environment or natural resources, resulting or allegedly resulting from any activity or event described in (1) above;

- (7) there are not now any actions, suits, proceedings or damage settlements relating in any way to Hazardous Substances, in, upon, under over or from the Site;
  - (8) the Site is not listed in the United States Environmental Protection Agency's National Priorities List of Hazardous Waste Sites or any other list of Hazardous Substance sites maintained by any federal, state or local governmental agency; and
  - (9) the Site is not subject to any lien or claim for lien or threat of a lien in favor of any governmental entity or agency as a result of any release or threatened release-of any Hazardous Substance.
- H. To the extent permitted by law, the District shall not abandon the Site for the use for which it is currently required by the District and further, shall not seek to substitute or acquire property to be used as a substitute for the uses for which the Site and Project are to be maintained under the Site Lease.
- I. The term "Permitted Encumbrances" as used herein shall mean, as of any particular time:
- (1) liens for general ad valorem taxes and assessments, if any, not then delinquent;
  - (2) this Site Lease; the Sublease; any right or claim of any mechanic, laborer, materialmen, supplier, or vendor, if applicable, not filed or perfected in the manner prescribed by law; easements, rights of way, mineral rights, drilling rights, and other rights, reservations, covenants, conditions, or restrictions which exist of record as of the date of this Site Lease and which will not materially impair the use of the Site;
  - (3) easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions, or restrictions established following the date of recordation of this Site Lease and to which the Lessee and the District consent in writing which will not impair or impede the operation of the Site.

SECTION 5. **REPRESENTATIONS AND WARRANTIES OF THE LESSEE.** The Lessee represents and warrants to the District that:

- A. The Lessee is duly organized, validly existing and in good standing under the laws of the State of California, with full corporate power and authority to lease and own real and personal property;
- B. The Lessee has full power, authority and legal right to enter into and perform its obligations under this Site Lease, and the execution, delivery and performance of this Site Lease has been duly authorized by all necessary corporate actions on the part of the Lessee and does not require any further approvals or consents;

- C. Execution, delivery and performance of this Site Lease does not and will not result in any breach of or constitute a default under any indenture, mortgage, contract, agreement or instrument to which the Lessee is a party or by which it or its property is bound;
- D. There is no pending or, to the best knowledge of the Lessee, threatened action or proceeding before any court or administrative agency which will materially adversely affect the ability of the Lessee to perform its obligations under this Site Lease; and

SECTION 6. **RENTAL.**

The Lessee shall pay to the District as and for advance rental hereunder \$1.00 per year or part thereof, or the aggregate sum of **Thirteen Dollars [\$1.00 x number of years of lease or part thereof] (\$13.00)**, on or before the date of commencement of the term of this Site Lease. The Lessee shall have no obligation to make rental payments hereunder in the event the Effective Date of this Site Lease does not occur as a result of the District's inability to issue a Notice to Proceed for the Project pursuant to the provisions of Section 5 of the Construction Services Agreement.

SECTION 7. **PURPOSE.**

The Lessee shall use the Site solely for the purpose of constructing the Project thereon and for subleasing the Site and the Project to the District; provided, that upon the occurrence of an Event of Default by the District under the Sublease, the Lessee may exercise the remedies provided for in the Construction Services Agreement or the Sublease.

SECTION 8. **TERMINATION.** The Lessee agrees, upon termination of this Site Lease:

- A. To quit and surrender the Site in the same good order and condition as it was in at the time of commencement of the term hereunder, reasonable wear and tear excepted;
- B. To release and reconvey to the District any liens and encumbrances created or caused by the Lessee; and
- C. That any permanent improvements and structures existing upon the Site at the time of the termination of this Site Lease shall remain thereon and title thereto shall vest in the District.

Notwithstanding the District's foregoing rights in the event of termination, the Lessee shall retain the right to full compensation for all services rendered prior to the termination, including all rights they have under the Construction Services Agreement and the Sublease as well as all recourse provided by California law including common law, for the value of the work performed on the Site and/or the Project.

In the event the Construction Services Agreement is terminated pursuant to the provisions therein, this Site Lease shall immediately terminate.

SECTION 9. **QUIET ENJOYMENT.**

The District covenants and agrees that it will not take any action to prevent the Lessee's quiet enjoyment of the Site during the term hereof; and, that in the event District's fee title to the Site is ever challenged so as to interfere with the Lessee's right to occupy, use and enjoy the Site, the District will use all governmental powers at its disposal, including the power of eminent domain, to obtain unencumbered fee title to the Site and to defend the Lessee's right to occupy, use, and enjoy the Site. The District, however, retains the right, throughout the Site Lease Term, to use the Site for District purposes, pursuant to the terms of the Sublease.

SECTION 10. **NO LIENS.**

The District shall not mortgage, sell, assign, transfer or convey the Site or any part thereof to any person during the term of this Site Lease, without the written consent of the Lessee. Nothing herein shall preclude the District from granting utility easements across the Site to facilitate the use and operation of the Project for which it is intended.

SECTION 11. **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 or to make any repairs, improvements or changes necessary for the preservation thereof, but in doing so shall not interfere with the Lessee's operations on the Project.

SECTION 12. **ASSIGNMENT AND SUBLEASING.**

The Lessee will not assign or otherwise dispose of or encumber the Site or this Site Lease without the written consent of the District.

SECTION 13. **NO WASTE.**

The Lessee 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 it will not willfully or knowingly use or permit the use of the Site for any illegal act or purpose.

SECTION 14. **DEFAULT.**

In the event the Lessee shall be in default in the performance of any obligation on its part to be performed under the terms of the Construction Services Agreement and this Site Lease, which default continues for thirty (30) days following notice and demand for correction thereof to the Lessee, the District may exercise any and all remedies granted by law, except that no merger of this Site Lease and of the Sublease shall be deemed to occur as a result thereof.

SECTION 15. **EMINENT DOMAIN.**

In the event the whole or any part of the Site or the improvements thereon, including but not limited to the Project, is taken by eminent domain, the financial interest of the Lessee shall be recognized and is hereby determined to be the amount of all Sublease Payments then due or past due, the next succeeding Sublease Payment and the



purchase option price as set forth in Section 26 of the Sublease less any unearned interest as of the date the Lessee receives payment in full. The balance of the award in such eminent domain action, if any, shall be paid to the District.

SECTION 16. **TAXES.**

The terms of this Lease may result in the creation of a possessory interest. If such a possessory interest is vested in a private party to this document, the private party may be subjected to the payment of personal property taxes levied on such interest.

SECTION 17. **INDEMNIFICATION.**

The District covenants and agrees to indemnify, defend and hold the Lessee harmless from and against any and all losses, claims, suits, damages and expenses (including reasonable attorney's fees) arising out of the condition of the Site, including but not limited to, all costs required to be incurred by the Lessee as a result of any condition described in Section 4, paragraph G hereof, unless the condition is caused or created by Lessee, whether or not known to the District on the date of execution of this Site Lease, or unless such cost is contemplated to be paid by the Lessee pursuant to the provisions of the Construction Services Agreement. All other indemnification issues related to this Site Lease, the Site or the progress and prosecution of the Project shall be governed by the Construction Services Agreement and Sublease.

SECTION 18. **PARTIAL INVALIDITY.**

If any one or more of the terms, covenants or conditions or this Site Lease shall to any extent be declared invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, the finding or order or decree of which becomes final, none of the remaining terms, provisions, covenants and conditions of this Site Lease shall be affected thereby, and each provision of this Site Lease shall be valid and enforceable to the fullest extent permitted by law.

SECTION 19. **NOTICES.**

Any notices or filings required to be given or made under this Site Lease shall be served, given or made in writing upon the District or the Lessee, as the case may be, by personal delivery or registered mail to the respective addresses given below. Any change in the addresses noted shall not be binding upon the other party unless preceded by no less than thirty (30) days prior written notice. Any such notices shall be deemed to have been received by the addressee if delivered to the person for whom they are intended or if sent by registered mail, return receipt requested, or by telex, telegram, or fax followed by regular mail, addressed as follows:

If to Lessee: ERICKSON-HALL CONSTRUCTION  
500 Corporate Drive  
Escondido, CA 92029  
Attn: [LLB CONTACT]

If to District: BONSALL UNIFIED SCHOOL DISTRICT  
31555 Old River Road

Bonsall, CA 92003  
Attn.: Superintendent

SECTION 20. **BINDING EFFECT.**

This Site Lease shall inure to the benefit of and shall be binding upon the District, the Lessee and its respective successors in interest and assigns.

SECTION 21. **AMENDMENTS AND MODIFICATIONS.**

This Site Lease shall not be effectively amended, changed, modified, altered or terminated without the written agreement of the District and the Lessee.

SECTION 22. **EXECUTION IN COUNTERPARTS.**

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

SECTION 23. **LAWS, VENUE AND ATTORNEYS' FEES.**

The terms and provisions of this Site Lease shall be construed in accordance with the laws of the State of California. If any action is brought in a court of law to enforce any term of this Site Lease, the action shall be brought in a state court situated in the County of San Diego, State of California, unless a court finds jurisdiction or venue is only proper in a federal court, or a court outside this County. In the event of any such litigation between the parties, the prevailing party shall be entitled to recover all reasonable costs incurred, including reasonable attorneys' fees, as determined by the courts or arbitrator(s).

SECTION 24. **INTEGRATION/MODIFICATION.**

This Site Lease represents the entire understanding of the District and Lessee as to those matters contained herein, and supersedes and cancels any prior oral or written understanding, promises or representations with respect to those matters covered herein and shall not be amended, altered, or changed except by a written agreement signed by the parties hereto.

SECTION 25. **HEADINGS.**

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.

SECTION 26. **TIME.**

Time is of the essence in this Site Lease and each and all of its provisions.

**IN WITNESS WHEREOF**, the parties hereto have executed this Site Lease by their authorized officers as of the day and year first written above.

BONSALL UNIFIED SCHOOL DISTRICT  
"DISTRICT"

[LEASE-LEASEBACK ENTITY]  
"LESSEE"

BY: \_\_\_\_\_

BY: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT "A"**  
**DESCRIPTION OF SITE**

**Site Map/Diagram**

Google Maps

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Google Maps



Imagery ©2015 DigitalGlobe, U.S. Geological Survey, USDA Farm Service Agency, Map data ©2015 Google 200 ft

<https://www.google.com/maps/@33.3213952,-117.1962811,803m/data=!3m1!1e3>

12/1/2015

**EXHIBIT "B"**  
**SUBLEASE**

**EXHIBIT "C"**  
**CONSTRUCTION SERVICES AGREEMENT**