

**HUNTINGTON SEACLIFF ELEMENTARY SCHOOL
MODERNIZATION PROJECT**

SUBLEASE AGREEMENT

Dated as of October 16, 2019

Between

Huntington Beach City School District

And



**HUNTINGTON SEACLIFF ELEMENTARY SCHOOL
MODERNIZATION PROJECT**

SUBLEASE AGREEMENT

This Sublease Agreement ("Sublease") is dated as of October 16, 2019, and is by and between the Huntington Beach City School District, a school district duly organized and existing under the laws of the State of California ("District"), and [REDACTED] ("Lessor").

RECITALS

WHEREAS, pursuant to Section 17400 et seq. of the Education Code, District may enter into leases and agreements relating to real property and buildings to be used by District; and

WHEREAS, District deems it essential for its own governmental purpose, to finance the construction and installation of certain improvements at Huntington Seacliff Elementary School, as described in Exhibit "A" ("Project") attached hereto and incorporated herein by reference and situated at District's Huntington Seacliff Elementary School site, as shown on Exhibit "B" ("Site"), attached hereto and incorporated herein by reference; and

WHEREAS, pursuant to Section 17406 of the Education Code, District is leasing the Site to Lessor under a lease agreement dated as of October 16, 2019 ("Site Lease") attached hereto as Exhibit "C" and incorporated herein by reference, in consideration of Lessor leasing and subleasing the Project and the Site to District pursuant to the terms of this Sublease; and

WHEREAS, District owns the Site and pursuant to that certain Construction Services Agreement entered into by and between District and Lessor dated as of October 16, 2019 ("Construction Services Agreement"); and

WHEREAS, the plans and specifications for the Project will require approval by the Division of the State Architect ("DSA") and adoption by District for the completion of the Project; and

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 in the District to construct the Project by leasing the Site to Lessor and by simultaneously entering into this Sublease under which the District will lease back the Site and the Project from Lessor and if necessary, make Sublease Payments as indicated in Section 7 and Exhibit "C", attached hereto and incorporated herein by reference; and

WHEREAS, the District further acknowledges and agrees that it has entered into the Site Lease and Sublease pursuant to Education Code Section 17406 as the best available and most expeditious means for the District to satisfy its substantial need for the facilities to be provided by the Project and to accommodate and educate District students; and

WHEREAS, District and Lessor agree to mutually cooperate now or hereafter, to the extent possible, in order to sustain the intent of this Sublease and the bargain of both parties hereto, and to provide Sublease Payments to be made on the dates and in the amount set forth herein.

WITNESSETH

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

SECTION 1. DEFINITIONS.

Unless the context otherwise requires, the terms defined in this Section shall, for all purposes of this Sublease, have the meanings as herein specified.

A. **“Certificate of Acceptance and Notice of Completion”** mean those certificates signed by a District Representative to the effect that the Project has been substantially completed.

B. **“Construction Costs”** means any and all reasonable and necessary costs incurred by Lessor with respect to the construction and equipping, as the case may be, of the Project, including, without limitation, costs for the Site preparation, the construction of the Project and related facilities and improvements, and all other work in connection therewith; all costs of financing, including, without limitation, the cost of consultant, accounting and legal services, other expenses necessary or incident to determining the feasibility of the Project, contractors’ and developers’ overhead and supervisors’ fees, and costs directly allocable to the Project; and all costs and expenses including any taxes or insurance premiums paid by Lessor with respect to the Property, administrative and other expenses necessary or incident to the Project and the financing thereof (including reimbursement to any municipality, District, or other entity for expenditures made, with the prior approval of District, for the Project).

C. **“Construction Services Agreement”** means the Construction Services Agreement for construction of improvements, including modernization improvements, on District's Huntington Seacliff Elementary School site, by and between District and Lessor, dated as of October 16, 2019.

D. **“Contract Documents”** means the Construction Services Agreement, this Sublease, and the Site Lease.

E. **“District”** means the Huntington Beach City School District, a school district duly organized and existing under the laws of the State of California.

F. **“Effective Date”** shall mean the day on which District issues a Notice to Proceed for the Project in accordance with Section 5 of the Construction Services Agreement.

G. **“Event of Default”** means one or more events of default as defined in Section 18 of this Sublease.

H. **“Guaranteed Maximum Price” or “GMP”** means the Guaranteed Maximum Price established pursuant to Section 4 of the Construction Services Agreement, consisting of the combined "Tenant Improvement Payments" and "Sublease Payments" as such terms are defined in Exhibit "C" of this Sublease. Exhibit "C" of this Sublease will be revised in accordance with Section 4 of the Construction Services Agreement to reflect the final GMP after the completion of preconstruction services and DSA approval of the plans and specifications, prior to commencement of construction on the Project.

I. **“Lessor”** shall mean [REDACTED] and its successors and assigns.

J. **“Site”** means that certain parcel of real property and improvements thereon (if any) more particularly described in Exhibit “B” attached hereto.

K. **“Project”** means the improvements and equipment to be constructed and installed by Lessor as part of the Project, as more particularly described in Exhibit “A” attached hereto.

L. **“Site Lease”** means the Site Lease dated as of October 16, 2019, by and between District and Lessor, together with any duly authorized and executed amendment thereto under which District leases the Site to Lessor.

M. **“Sublease”** means this Sublease together with any duly authorized and executed amendment hereto.

N. **“Sublease Payment”** means any payment required to be made by District pursuant to Section 7 and Exhibit "C" of this Sublease.

O. **“Tenant Improvement Payments”** means any payment required to be made by District pursuant to the Construction Services Agreement and Exhibit "C" of this Sublease.

P. **“Term of this Sublease” or “Term”** means the time during which this Sublease is in effect, as provided for in Section 3 of this Sublease.

SECTION 2. SUBLEASE.

Lessor hereby leases and subleases to District, and District hereby leases and subleases from Lessor the Project and the Site, including any real property improvements now or hereafter affixed thereto in accordance with the provisions herein for the full term of this Sublease. The leasing by Lessor to District of the Site shall not effect or result in a merger of District’s leasehold estate pursuant to this Sublease and its fee estate as Lessor under the Site Lease, and Lessor shall continue to have and hold a leasehold estate in said Site pursuant to the Site Lease throughout the term thereof and the term of this Sublease.

SECTION 3. TERM OF THE SUBLEASE.

A. The terms and conditions of this Sublease shall become effective upon the Effective Date. The term of this Sublease for the purposes of District's obligation to make

Sublease Payments shall commence on the earlier of the following two (2) events ("Commencement Date") and shall terminate **six (6) months** after the Commencement Date (the "Term"):

1. The date the District takes beneficial occupancy of the Project; or
2. The date of Project Completion, as defined in Section 12 of this Sublease.

B. On the Commencement Date, the parties shall execute the Memorandum of Commencement attached hereto as Exhibit "D" to memorialize the commencement and expiration dates of the Term. Notwithstanding this Term, the parties hereby acknowledge that each has obligations, duties, and rights under this Sublease that exist upon the Effective Date and prior to the beginning of the Term.

C. **Adjustment of Term.** The Term may be extended or shortened upon the occurrence of any of the following events:

1. An Event of Default, as specified below, and non-defaulting party's election to terminate this Sublease;
2. A third-party taking of the Project under Eminent Domain, only if the Term is ended as indicated in Section 15 of the Site Lease; or
3. The exercise of District's Purchase Option under Section 7, below.

SECTION 4. REPRESENTATIONS, COVENANTS, AND WARRANTIES OF DISTRICT.

District represents, covenants, and warrants to Lessor that:

A. District is a political subdivision duly organized and existing under the Constitution and laws of the State of California with authority to enter into this Sublease and to perform all of its obligations hereunder;

B. District's governing body has duly authorized the execution and delivery of this Sublease and further represents and warrants that all requirements have been met and procedures followed to ensure its enforceability;

C. The execution, delivery, and performance of this Sublease does not and will not result in any breach of or constitute a default under any indenture, mortgage, contract, agreement, or instrument to which District is a party by which it or its property is bound;

D. 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 Sublease;

E. The Project and the Site are essential to District in the performance of its governmental functions and their estimated useful life to District exceeds the term of this Sublease;

F. District shall take such action as may be necessary to include all Sublease Payments in its annual budget and annually to appropriate an amount necessary to make such Sublease Payments;

G. District shall not abandon the Site for the use for which it is currently required by District and, to the extent permitted by law, District shall not seek to substitute or acquire property to be used as a substitute for the uses for which the Site is maintained under the Sublease; and

H. District shall not allow any Hazardous Substances (as such term is defined in the Site Lease and limited by that which shall be disclosed by District prior to the commencement date for the Project in the Notice to Proceed) to be used or stored on, under, or about the Site.

SECTION 5. REPRESENTATIONS, COVENANTS, AND WARRANTIES OF LESSOR.

Lessor represents, covenants, and warrants to District that:

A. Lessor is duly organized, validly existing, and in good standing as a corporation under the laws of the State of California, with full power and authority to lease and own real and personal property in California;

B. Lessor has full power, authority, and legal right to enter into and perform its obligations under this Sublease, and the execution, delivery, and performance of this Sublease has been duly authorized by all necessary company actions on the part of Lessor and does not require any further approvals or consents;

C. The execution, delivery, and performance of this Sublease does not and will not result in any breach of or constitute a default under any indenture, mortgage, contract, agreement, or instrument to which Lessor is a party by which it or its property is bound;

D. There is no pending or, to the knowledge of Lessor, threatened action or proceeding before any court or administrative agency which will materially adversely affect the ability of Lessor to perform its obligations under this Sublease;

E. Lessor will not mortgage or encumber the Site or sublease or assign this Sublease or its rights to receive Sublease Payments hereunder, except as permitted herein; and

F. Lessor shall not allow any Hazardous Substances (as such term is defined in the Site Lease) to be used or stored on, under, or about the Site.

SECTION 6. CONSTRUCTION/ACQUISITION.

A. District has entered into a Construction Services Agreement and a Site Lease with Lessor in order to acquire and construct the Project. The cost of the construction and installation of the Project is determined by the GMP as set forth in Section 4 of the Construction Services Agreement.

B. In order to ensure that moneys sufficient to pay all costs will be available for this purpose when required, District shall maintain funds on deposit in its general fund and shall annually appropriate funds sufficient to make all Sublease Payments which become due to Lessor under this Sublease Agreement.

SECTION 7. SUBLEASE PAYMENTS.

A. District shall pay Lessor sublease payments ("Sublease Payments") in accordance with the provisions in Exhibit "C" of this Sublease. The District shall have no obligation to make Sublease Payments hereunder in the event the Effective Date of this Sublease does not occur as a result of District's inability to issue a Notice to Proceed for the Project pursuant to the provisions of Section 5 of the Construction Services Agreement.

B. Should District fail to pay any part of the Sublease Payments not otherwise excused pursuant to this Section or Section 9, below, within fifteen (15) business days from the due date thereof, District shall, upon Lessor's written request, pay interest on such delinquent payment from the date said payment was due until paid at the rate of twelve percent (12%) per annum or the maximum legal rate, whichever is less.

C. **Purchase Option.** If District is not in default hereunder, District shall be granted the option to purchase not less than the entire Project in its "as-is" condition and terminate the Sublease. Under no circumstances can the purchase option occur on or before one-half of the Sublease Payments, in accordance with the terms of Exhibit "C," have been made by the District. If the District exercises this option, the District shall pay directly to Lessor all remaining Sublease Payments and Tenant Improvement Payments, not previously paid.

D. Each Payment Constitutes a Current Expense of District.

1. The District and Contractor understand and intent that the obligation of the District to pay Sublease Payments and other payments hereunder constitutes a current expense of the District and shall not in any way be construed to be a debt of the District in contravention of any applicable constitutional or statutory limitation or requirement concerning the creation of indebtedness by the District, nor shall anything contained herein constitute a pledge of the general tax revenues, funds or moneys of the District.

2. Sublease Payments due hereunder shall be payable only from current funds which are budgeted and appropriated or otherwise made legally available for this purpose. This Sublease shall not create an immediate indebtedness for any aggregate payments that may become due hereunder.

3. The District covenants to take all necessary actions to include the estimated Sublease Payments in each of its final approved annual budgets.

4. The District further covenants to make all necessary appropriations (including any supplemental appropriations) from any source of legally available funds of the District for the actual amount of Sublease Payments that come due and payable during the period covered by each such budget. Contractor acknowledges that the District has not pledged the full faith and credit of the District, State of California or any state agency or state department to the payment of Sublease Payments or any other payments due hereunder. The covenants on the part of District contained in this Sublease constitute duties imposed by law and it shall be the duty of each and every public official of the District to take such action and do such things as are required by law in the performance of the official duty of such officials to enable the District to carry out and perform the covenants and agreements in this Sublease agreed to be carried out and performed by the District.

5. The Contractor cannot, under any circumstances, accelerate the District's payments under the Sublease.

SECTION 8. FAIR RENTAL VALUE.

"Sublease Payments" as defined in Exhibit "C" of this Sublease shall be paid by District in consideration of the right of possession of, and the continued quiet use and enjoyment of, the Project and the Site during the Term. Title to the tenant improvements shall vest progressively as Tenant Improvement Payments are made under the Construction Services Agreement and Sublease Payments are made under the Sublease, but title shall not fully vest until the end of the Term of this Sublease and payment of any amounts owed under this Sublease. The parties hereto have agreed and determined that such total rental is not in excess of the fair rental value for the Project and the Site. In making such determination, consideration has been given to the fair market value for the Project and the Site; other obligations of the parties under this Sublease (including, but not limited to, costs of maintenance, taxes, and insurance); the uses and purposes which may be served by the Project and the Site, and the benefits therefrom which will accrue to District and the general public; and the ability of District to make additions, modifications, and improvements to the Project and the Site which are not inconsistent with the Construction Services Agreement and which do not interfere with Lessor's work on the Project and the Site.

SECTION 9. SUBLEASE PAYMENT ABATEMENT.

In addition to delay of Sublease Payments provided in Section 7, above, Sublease Payments due hereunder with respect to the Project and the Site shall be subject to abatement prior to the commencement of the use of the Project and the Site by District or during any period in which, by reason of material damage to or destruction of the Project or the Site, there is substantial interference with the use and right of possession by District of the Project and the Site or any substantial portion thereof. For each potential incident of substantial interference, decisions to be made on i) whether or not abatement shall apply; ii) the date upon which abatement shall commence; iii) the applicable portion of Sublease Payments to be abated; and iv) the concluding date of the particular abatement

shall all be subject to determinations by District. The amount of Sublease abatement shall be such that the Sublease Payments paid by District during the period of the Project and Site restoration do not exceed the fair rental value of the usable portions of the Project and Site. In the event of any damage or destruction to the Project or the Site, this Sublease shall continue in full force and effect. If, after the parties have executed the Memorandum of Commencement Date attached as Exhibit "D", the Project is destroyed or damaged beyond repair, the District may determine to abate its use of the Project, and upon written notice to Lessor, the Term shall cease. Thereafter, the District shall have no obligation to make, nor shall Lessor have the right to demand, any future Sublease Payments as indicated in the GMP provisions of Exhibit "C" to this Sublease.

SECTION 10. USE OF SITE AND PROJECT.

Lessor acknowledges that portions of the Site shall, at all times, be occupied by the District as an operating school. During the term of this Sublease, Lessor shall provide District with quiet use and enjoyment of such occupied portions of the Site without suit, or hindrance from Lessor or its assigns, provided District is in compliance with its duties under this Sublease. District will not use, operate, or maintain the Site or Project improperly, carelessly, in violation of any applicable law, or in a manner contrary to that contemplated by this Sublease. District shall provide all permits and licenses, if any, necessary for the operation of the Project and Site. In addition, District agrees to comply in all respects (including, without limitation, with respect to the time, maintenance, and operation of the Project and Site) with laws of all jurisdictions in which its operations involving the Project and Site may extend and any legislative, executive, administrative, or judicial body exercising any power or jurisdiction over the Site or Project; provided, however, that District may contest in good faith the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of Lessor, adversely affect the estate of Lessor in and to the Site or Project or its interest or rights under this Sublease. Upon substantial completion of the Project or severable portions hereof, Lessor shall provide District with quiet use and enjoyment of the Site and Project without suit or hindrance from Lessor or its assigns, subject to reasonable interference from ongoing construction operations on any remaining portion of the Site under construction by Lessor.

SECTION 11. LESSOR'S INSPECTION/ACCESS TO THE SITE.

District agrees that, with prior written approval of District, Lessor and any of Lessor's representatives shall have the right at reasonable times to enter upon the Site or any portion thereof to construct and improve the Project, to examine and inspect the Site and Project, and to exercise its remedies pursuant to the section in this Sublease entitled "Remedies on Default."

SECTION 12. PROJECT COMPLETION AND ACCEPTANCE.

District shall acknowledge final inspection and completion of the Project by executing a Certificate of Acceptance approved by the governing board ("Project Completion"), and recording a Notice of Completion.

SECTION 13. ALTERATIONS AND ATTACHMENTS.

All permanent additions and improvements that are made to the Project shall belong to and become the property of Lessor, subject to the provisions of the Site Lease. Separately identifiable attachments added to the Project by District shall remain the property of District.

SECTION 14. MAINTENANCE.

Once the Project is substantially complete and occupied by the District, the District shall have responsibility for maintenance and repair of the entire Project and the Site, except for warranty or other obligations of Lessor relating to the improvements as set forth in the Construction Services Agreement.

SECTION 15. UTILITIES.

Unless otherwise so specified in the Construction Services Agreement, District shall, in its own name, contract for and pay the expenses of all utility services required for the Project once constructed. Such utilities include but are not limited to, all air conditioning, heating, electrical, gas, refuse collection, water, and sewer units. District shall be liable for payment as well as maintenance of all utility services received.

SECTION 16. TAXES.

District shall keep the Project and the Site free and clear of all levies, liens, and encumbrances and shall pay all license fees, registration fees, assessments, charges, and taxes (municipal, state, and federal) if applicable, which may now or hereafter be imposed upon the ownership, leasing, renting, sale, possession, or use of the Project and the Site, excluding, however, all taxes on or measured by Lessor's income.

SECTION 17. INDEMNITY.

In addition to the indemnification set forth in Section 34 of the Construction Services Agreement and Section 18 of the Site Lease, to the extent permitted by law, the parties shall, with respect to the Project and the Site, indemnify each other against and hold each other harmless from any and all claims, actions, suits, proceedings, costs, expenses, damages, and liabilities, including attorneys' fees, arising out of, connected with, or resulting from any acts of omission or commission by the indemnifying party's employees and Sublease aspects of the Project and third parties on the Site, including, without limitation, the construction, possession, use or operation of the Project including any and all claims, actions, suits, proceedings, costs, expenses, damages, and liabilities brought by third parties under the supervision, direction, or control of the indemnifying party.

SECTION 18. EVENTS OF DEFAULT.

The term "Event of Default," as used in this Sublease means the occurrence of any one or more of the following events:

A. District fails to make any unexcused Sublease Payment (or any other payment) within fifteen (15) days after the due date thereof or District fails to perform or observe any other covenant, condition, or agreement to be performed or observed by it hereunder and such failure to either make the payment or perform the covenant, condition, or agreement is not cured within ten (10) days after written notice thereof by Lessor.

B. Lessor discovers that any statement, representation, or warranty made by District in this Sublease, or in any document ever delivered by District pursuant hereto or in connection herewith is misleading or erroneous in any material respect.

C. District becomes insolvent, is unable to pay its debts as they become due, makes an assignment for the benefit of creditors, applies or consents to the appointment of a receiver, trustee, conservator, or liquidator of District or of all or a substantial part of its assets, or a petition for relief is filed by District under federal bankruptcy, insolvency, or similar laws.

D. Lessor fails to perform or observe any covenant, condition, or agreement to be performed or observed by it hereunder and such failure to perform the covenant, condition, or agreement is not cured within ten (10) days after written notice thereof by District.

E. District discovers that any statement, representation, or warranty made by Lessor in this Sublease, or in any document ever delivered by Lessor pursuant hereto or in connection herewith is misleading or erroneous in any material respect.

F. Lessor becomes insolvent, is unable to pay its debts as they become due, makes an assignment for the benefit of creditors, applies or consents to the appointment of a receiver, trustee, conservator, or liquidator of Lessor or of all or a substantial part of its assets, or a petition for relief is filed by Lessor under federal bankruptcy, insolvency, or similar laws.

SECTION 19. REMEDIES ON DEFAULT.

Upon the happening of any Event of Default, the non-defaulting party may exercise remedies set forth below; provided, however, that notwithstanding anything herein to the contrary, there shall be no right under any circumstances to accelerate the Sublease Payments or otherwise declare any Sublease Payments not then in default to be immediately due and payable.

A. In the event that the non-defaulting party does not elect to terminate this Sublease pursuant to subsection B., below, the parties shall remain responsible for the performance of all conditions herein.

B. In the event of termination of this Sublease by Lessor at its option and in the manner hereinafter provided on account of default by District, District shall pay Lessor undisputed Sublease Payments then owing for past Sublease Payments due and not paid and undisputed compensation on the basis of time and materials for all labor, materials, and services provided up to the date of Lessor's termination of the Sublease. In the event of termination of this Sublease by District at its option and in the manner hereinafter provided on account of default by Lessor, District shall not be

responsible to pay Lessor future Sublease Payments or compensate Lessor for time and materials for labor, materials, and services provided after the date of District's termination of the Sublease.

No right or remedy herein conferred upon or reserved to the parties is exclusive of any other right or remedy herein, but each shall be cumulative of every other right or remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise, and may be enforced concurrently therewith or from time to time; provided, however, that notwithstanding any provisions to the contrary herein, Lessor shall not under any circumstances have the right to accelerate the Sublease Payments that fall due in future Sublease periods or otherwise declare any Sublease Payments not then in default to be immediately due and payable.

SECTION 20. NON-WAIVER.

No covenant or condition to be performed by District or Lessor under this Sublease can be waived except by the written consent of both parties. Forbearance or indulgence by District or Lessor in any regard whatsoever shall not constitute a waiver of the covenant or condition in question. Until complete performance by District or Lessor of said covenant or condition, the other party shall be entitled to invoke any remedy available to it under this Sublease or by law or in equity despite said forbearance or indulgence.

SECTION 21. ASSIGNMENT.

Without the prior written consent of the other party, which consent shall not be unreasonably withheld, neither District nor Lessor shall (a) assign, transfer, pledge, or hypothecate this Sublease, the Project and the Site, or any part thereof, or any interest therein, or (b) sublet or lend the use of the Site or any part thereof, except as authorized by the provisions of the California Civic Center Act, Education Code section 38130 et seq. Consent to any of the foregoing prohibited acts applies only in the given instance and is not a consent to any subsequent like act by District or any other person. Lessor shall not assign its obligations under this Sublease with the exception of its obligation to issue default notices and to convey or reconvey its interest in the Project and the Site to District upon full satisfaction of District's obligations hereunder. This Sublease inures to the benefit of, and is binding upon, the heirs, legatees, personal representatives, successors, and assigns of the parties hereto. Notwithstanding anything to the contrary contained in this Sublease, no consent from the District shall be required in connection with any assignment by Lessor to a lender for purposes of financing the Project as long as there are not additional costs to the District.

SECTION 22. OWNERSHIP.

The District will obtain title to the Project from Lessor, and any and all additions, repairs, replacements, or modifications thereof, as construction progresses and Sublease Payments and Tenant Improvement Payments are made to Lessor, provided that full title will not vest in the District until all Sublease Payments have been paid in accordance with the terms of this Sublease. Title shall be transferred to and vested in District hereunder without the necessity for any further instrument of transfer. At the termination of this Sublease, any improvements constructed thereon shall vest in District.

SECTION 23. RELEASE OF LIENS.

At the conclusion of the term of this Sublease, Lessor shall authorize, execute, and deliver to District all documents reasonably requested by District to evidence (i) the release of any and all liens created pursuant to the provisions of this Sublease and the Site Lease as they relate to the Project, the Sublease, and the Site Lease, and (ii) any other documents required to terminate the Site Lease and this Sublease.

SECTION 24. TERMINATION OF CONSTRUCTION SERVICES AGREEMENT.

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

SECTION 25. SEVERABILITY.

If any provision of this Sublease shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision of this Sublease, unless elimination of such provision materially alters the rights and obligations embodied in this Sublease.

SECTION 26. INTEGRATION/MODIFICATION.

This Sublease constitutes the entire agreement between Lessor and District 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 it shall not be amended, altered, or changed except by a written agreement signed by the parties hereto.

SECTION 27. NOTICES.

Service of all notices under this Sublease shall be sufficient if given personally or mailed to the party involved at its respective address hereinafter set forth or at such address as such party may provide in writing from time to time. 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 fax followed by regular mail, addressed as follows:

If to Lessor:

[Redacted]

Attn: [Redacted], [Redacted]

If to District:

Huntington Beach City School District
8750 Dorsett Drive
Huntington Beach, CA 92646
Attn: Gregory Haulk, Superintendent

EXHIBIT "A"

Description of Project

The Scope of Work for the Huntington Seacliff Elementary School Project is expected to include 21st Century Classroom renovations, Learning Commons renovation, Library Courtyard repair, code required upgrades, play field repair and painting, as will be depicted in the plans and specifications for the Project once approved by DSA and the District.

EXHIBIT "B"

Map of Site

EXHIBIT "C"

ESTIMATED GUARANTEED MAXIMUM PRICE AND OTHER PROJECT
COST, FUNDING, PAYMENT AND INSURANCE PROVISIONS

1. Site Lease Payments. As indicated in the Site Lease, Contractor shall pay One Dollar (\$1.00) to the District as consideration for the Sublease.

2. Guaranteed Maximum Price. Pursuant to the Sublease, Contractor will cause the Project to be constructed for [REDACTED] (\$ [REDACTED]) ("Estimated Guaranteed Maximum Price" or "GMP"). Once the Plans and Specifications for the Project have been DSA/District approved and a Final GMP agreed to, Exhibit C will be amended to reflect the Final GMP. Except as indicated herein for modifications to the Project set forth herein or in Section 4 of the Construction Services Agreement, Contractor will not seek additional compensation from District in excess of the GMP. District shall pay the GMP to Contractor in the form of Tenant Improvement Payments and Sublease Payments as indicated herein. The GMP includes the following components and as further detailed herein:

(a) **Cost to Perform Work.**

(1) **Subcontractor Costs.** Payments made by the Contractor to Subcontractors, which payments shall be made in accordance with the requirements of the Contract Documents.

(2) **Contractor-Performed Work.** Costs incurred by the Contractor for self-performed work.

2. General Conditions. The fixed amount to be paid for all costs of labor, equipment and materials for the items identified therein which are necessary for the proper management of the Project, and shall include all costs paid or incurred by the Contractor for insurance (except for general liability insurance), permits, taxes, and all contributions, assessments and benefits, holidays, vacations, retirement benefits, and incentives, whether required by law or collective bargaining agreements or otherwise paid or provided by Contractor to its employees. The District reserves the right to request changes to the personnel, equipment, or facilities provided as General Conditions as may be necessary or appropriate for the proper management of the Project, in which case, the cost of General Conditions shall be increased or reduced accordingly.

2.3 Fees. All fees, assessments and charges that are required to be paid to other agencies or entities to permit, authorize or entitle construction, reconstruction or completion of the Project.

2.4 Bonds and Insurance. [Reserved]

2.5 Overhead and Profit. [Reserved]

3.0 Payment of Guaranteed Maximum Price. District shall pay the GMP to Contractor in the form of Tenant Improvement Payments and Sublease Payments as indicated herein.

4.1 Tenant Improvement Payments. Prior to the District's taking delivery or occupancy of the Project, the District shall pay to Contractor [REDACTED] (\$ [REDACTED]), inclusive of the [REDACTED] (\$ [REDACTED]) in retention to be released pursuant to Public Contract Code section 7107 ("Tenant Improvement Payment(s)"), pursuant to Section 21 of the Construction Services Agreement.

4.2 Sublease Payments. After the parties execute the Memorandum of Commencement ("MOC") Date, attached as Exhibit "D" of this Sublease, the District shall pay to Contractor [REDACTED] (\$ [REDACTED]) ("Sublease Payment(s)"), as indicated below.

(a) The Sublease Payments shall be consideration for the District's rental, use, and occupancy of the Project and Site and shall be made in equal monthly installments for the duration of the Term.

(b) The District represents that the total annual Sublease Payment obligation does not surpass the District's annual budget and will not require the District to increase or impose additional taxes or obligations on the public that did not exist prior to the execution of the Sublease.

(c) **Fair Rental Value.** District and Contractor have agreed and determined that the total Sublease Payments constitute adequate consideration for the Construction Services Agreement and Sublease and are reasonably equivalent to the fair rental value of the Project. In making such determination, consideration has been given to the obligations of the Parties under the Construction Services Agreement, Site Lease and Sublease, the uses and purposes which may be served by the Project and the benefits therefrom which will accrue to the District and the general public.

(d) The Sublease Payment Amount shall be paid pursuant to the following structure and the annual interest rate shall be at **Two and One Half percent (2.5%)**:

Date of Payment	(a) Beginning Balance*	(b) Payment	(c) Interest at 2.5% per annum	(d) Principal Paid	(e) Ending Balance [(a)-(d)]
Upon execution of MOC	\$ [REDACTED]	\$ [REDACTED]	\$ 0.00	\$ [REDACTED]	\$ [REDACTED]
MOC + 1 month	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
MOC + 2 months	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
MOC + 3 months	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
MOC + 4 months	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
MOC + 5 months	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ 0.00
Total		\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	

*The Prepayment Price shall be the Beginning Balance as of the date the Purchase Option is exercised pursuant to Section 7 of the Sublease Agreement.

(e) **Financed Portion of Sublease Payments.** The District requires the Contractor to finance a portion of the Sublease Payments and that financing is reflected in the table above.

5. Insurance and Bond Reimbursement. At Project Completion, Contractor shall require reimbursement from its insurance brokers and/or insurers and its bond brokers and/or sureties, all portions of Contractor's bond premiums, either paid or to be paid, that are not at-risk due to a reduction in the GMP. All amounts of premium reimbursement that Contractor receives from the Contractor's insurance brokers and/or insurers and its bond brokers and or sureties, shall be withheld by District from Contractor's Sublease Payment(s). The District shall estimate this amount until Contractor indicates the total amount of this reimbursement.

6. District Insurance. In addition to the Contractor's insurance requirements set forth in the Construction Services Agreement, the District shall carry and maintain in force the following insurance at all times from and after District's acceptance of the Project:

(a) **Rental Interruption Insurance.** District shall carry and maintain in force for the benefit of District and Contractor, as their interests may appear, rental interruption insurance to cover loss, total or partial, of the use of the Project due to damage or destruction, in an amount at least equal to the maximum estimated Sublease Payments payable under this Sublease and for the entire term of the Sublease. This insurance may be maintained as part of or in conjunction with any other insurance coverage carried by the District, and such insurance may be maintained in whole or in part in the form of participation by the District in a joint powers agency or other program providing pooled insurance. This insurance may not be maintained in the form of self-insurance. The proceeds of this insurance shall be paid to the Contractor in lieu of the Sublease Payments that would otherwise be due and owing during this period.

(b) **Property Insurance.** District shall carry and maintain a policy of property insurance for 100% of the insurable replacement value with no coinsurance penalty, on the Site and the Project, together with all improvements thereon, under a standard "all risk" contract insuring against loss or damage. Contractor shall be named as additional insureds or co-insureds thereon by way of endorsement. District shall not be relieved from the obligation of supplying any additional funds for replacement of the Project and the improvements thereon in the event of destruction or damage where insurance does not cover replacement costs. District shall have the right to procure the required insurance through a joint powers agency or to self-insure against such losses or portion thereof as is deemed prudent by District. Notwithstanding any provision to the contrary in this Sublease or the Construction Services Agreement, the District shall, concurrent with any occupancy, use or possession of any portion of the Project, furnish property and loss liability insurance to cover any such portion of the Project or the Site it occupies, uses or possesses. At such time the District commences occupancy, use or possession, District's insurance shall be primary and any coverage by Lessor be non-contributing excess over any other applicable insurance. District shall provide certificates of insurance and additional insured

endorsements naming Lessor, which shall include wording that the District's coverage is primary and coverage provided by Lessor, if any, is non-contributing.

(c) **Commercial General Liability Insurance.** District shall carry and maintain a policy of commercial general liability insurance policy of \$1,000,000. Contractor shall be named as an additional insured or co-insured thereof by way of endorsement. District shall have the right to procure the required insurance through a joint powers agency or to self-insure against such losses or portion thereof as is deemed prudent by District.

EXHIBIT "D"

SUBLEASE

MEMORANDUM OF COMMENCEMENT DATE
(Huntington Seacliff Elementary School Modernization Project)

[TO BE ENTERED INTO AFTER CONSTRUCTION IS SUBSTANTIALLY COMPLETE TO COMMENCE THE SUBLEASE TERM – DO THIS AFTER NOC]

This MEMORANDUM OF COMMENCEMENT DATE is dated [redacted], 20[redacted], and is made by and between [redacted] ("Contractor"), as Lessor, and the Huntington Beach City School District ("District"), as Lessee.

1. Contractor and District have previously entered into a Sublease dated as of October 16, 2019 (the "Sublease") for the leasing by Contractor to District of the Site and Project in Huntington Beach, California, referenced in the Sublease.

2. District hereby confirms the following:

A. That all construction of the Project required to be performed pursuant to the Construction Services Agreement has been completed by Contractor in all respects;

B. The District has accepted and entered into possession of the Project and now occupies same; and

C. That the term of the Sublease commenced on [redacted], 20[redacted], and will expire at 11:59 p.m. on [redacted], 20[redacted].

THIS MEMORANDUM OF COMMENCEMENT DATE IS ACCEPTED AND AGREED
on the date indicated below:

Dated: _____

Dated: _____

Huntington Beach City School District

[redacted]

By: _____

By: _____

Print Name: _____

Print Name: _____

Print Title: _____

Print Title: _____