

**FORMER KETTLER ELEMENTARY SCHOOL SITE
CAPITAL IMPROVEMENT PROJECTS**

MAINTENANCE DEPARTMENT RELOCATION PROJECT

SITE LEASE

Dated as of _____, 2017

Between

Huntington Beach City School District

and

**FORMER KETTLER ELEMENTARY SCHOOL SITE
CAPITAL IMPROVEMENT PROJECTS**

MAINTENANCE DEPARTMENT RELOCATION PROJECT

SITE LEASE

This site lease ("Site Lease") is dated as of _____, 2017 ("Effective Date") 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"), as lessor, and _____, a corporation organized and operating under the laws of the State of California and holding in good standing California State Contractors Licensing Board License # _____ ("Lessee").

RECITALS

WHEREAS, the District owns the former Kettler Elementary School site, located at 8750 Dorsett Drive, Huntington Beach, California 92646 ("School"); and

WHEREAS, the District desires to construct certain improvements at the School, including, but not limited to, the relocation of the District Maintenance Department ("Project"); and

WHEREAS, the District has retained SVA Architects, Inc. as its architect ("Architect") to assist Lessee in preparing the plans and specifications for the Project ("Plans and Specifications"); and

WHEREAS, it has been determined that the Plans and Specifications will require approval by the Division of the State Architect ("DSA"); and

WHEREAS, the Board of Education of the District ("Board") has determined that it is in the best interest of the District and for the common benefit of the citizens it serves to construct the Project using the lease-leaseback project delivery method pursuant to California Education Code section 17406 ("Section 17406"), which permits the Board, after completion of a competitive solicitation process, to lease to the proposer providing the best value to the District, taking into consideration the proposer's demonstrated competence and professional qualifications necessary for the satisfactory performance of the services required, and in accordance with the guidelines adopted and published by the District at BP/AR 3311.5, real property owned by the District if the instrument by which property is leased requires the lessee to construct on that property, or provide for the construction thereon of, a facility for the use of the District during the term of the lease, providing that title to that facility shall vest in the District at the expiration of that lease; and

WHEREAS, pursuant to Section 17406, the District may enter into (i) a construction services agreement for the construction of a project by the selected proposer; (ii) a site lease under which the District leases to the selected proposer the construction site and contracts with the selected proposer to perform preconstruction services before written approval is obtained from the DSA; and (iii) a sublease agreement under which the District is required to make payments to the selected proposer for the use and occupancy of the Project Site; and

WHEREAS, the District has provided for a competitive solicitation process with respect to the Project, in accordance with Section 17406 and BP/AR 3311.5.

WHEREAS, the District prepared a request for sealed proposals (“RFP”) seeking qualified proposers who have been determined by the District to be prequalified, consistent with Public Contract Code section 20111.6 and BP 3310, to provide preliminary and construction services for the Project; and

WHEREAS, the District gave notice of the RFP in the manner required by Public Contract Code section 20112; and

WHEREAS, after evaluating the submitted proposals, in which proposers provided a fixed fee amount for the preliminary services and an estimated guaranteed maximum price ("GMP") based upon a cost-plus-fixed fee for the construction services, the District selected Lessee as the successful proposer, determining that it is in the best interest of the District to do so, and represents the best value to the District, taking into consideration Lessee’s demonstrated competence and professional qualifications necessary for the satisfactory performance of the services required; and

WHEREAS, pursuant to Section 17406, the District desires to lease to Lessee the site at which the Project is to be constructed, as more specifically described in Exhibit “A”, attached hereto (“Site”), to contract with Lessee to provide preliminary services for the Project, and to sublease from Lessee the Site and the Project under a sublease agreement, attached hereto as Exhibit “B” (“Sublease”), and both incorporated herein by this reference; and

WHEREAS, Lessee desires to lease the Site from the District pursuant to this Site Lease and to sublease the Site and the Project from the District pursuant to the Sublease;

WHEREAS, Lessee also desires to provide preliminary services to the District (as such term is defined in Section 1.E. below) (“Preliminary Services”); and

WHEREAS, Lessee understands that the Preliminary Services do not involve work for which a contractor is required to be licensed or for which DSA approval is required; and

WHEREAS, Lessee represents to District that it has the experience and expertise in construction, consulting, management, and supervision to perform all Preliminary Services to the highest standard and that it shall exercise best efforts, skill, and judgment in furthering the

interests of the District in the performance of said Preliminary Services, as more fully set forth herein; and

WHEREAS, Lessee is registered with the Department of Industrial Relations, as required by Labor Code section 1725.5; and

WHEREAS, the District and Lessee have entered into a construction services agreement, attached hereto as Exhibit “C” (“Construction Services Agreement”) and by this reference incorporated herein, to ensure that the Project will meet the District’s expectations; and

WHEREAS, the Board has duly authorized the execution of this Site Lease; and

WHEREAS, Lessee is authorized to lease the Site, provide Preliminary Services, and, upon DSA approval of the Project Plans and Specifications and approval of the final GMP, construct the Project, and has duly authorized the execution and delivery of this Site Lease.

WITNESSETH

NOW THEREFORE, in consideration of the covenants hereinafter set forth, the 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 Site Lease, have the meanings herein specified.

A. “Basic Services” means services of a general nature that shall be performed and provided throughout the Preliminary Plan Phase and Working Drawing Phase of the Project.

B. “Construction Budget” means the budget amount established by the District, representing the maximum authorized cost for construction of the Project. The Construction Budget does not include fees for professional architectural and engineering services, District inspection, or testing and inspection services, or District Contingency.

C. “Construction Documents” means the approved final working drawings and specifications, and the conditions under the Construction Services Agreement, including general, special (if any), and supplementary, that set forth in detail all of the requirements for construction of the entire Project.

D. “Construction Services Agreement” means the construction services agreement for construction of the Project by and between the District and Lessee, dated as of _____, 2017.

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

F. **“Deliverable”** means any tangible item provided or to be provided under the Site Lease or the Construction Services Agreement. A Deliverable does not include services.

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

H. **“Lessee”** means _____ and its successors and assigns.

I. **“Phase”** means a distinct portion of the work to be provided under the Site Lease or the Construction Services Agreement.

J. **“Preliminary Services”** means advice provided prior to construction of the Project, including, but not limited to, assisting Architect in the preparation and review of the Plans and Specifications, identifying and calling out deficiencies and inconsistencies that will affect constructability of the Project (i.e., design and specification omissions, incomplete and/or inconsistent plans, details, and specifications, and any lack of coordination), and scheduling, pricing, and phasing to assist the District to design a more constructible Project, together with all other appropriate and required preliminary services in preparation for development and construction of the Project as more particularly described in in Section 9.B, but excludes work for which a contractor is required to be licensed or for which DSA approval is required.

K. **“Preliminary Plan Phase”** means the initial design Phase, typically developed in two distinct stages, Schematic Design and Design Development.

L. **“Project”** means the improvements and equipment to be constructed and installed by Lessee, as more particularly described in Exhibit “A” of the Sublease.

M. **“Site”** means that certain parcel of real property and improvements thereon more particularly described in Exhibit “A”, attached hereto.

N. **“Site Lease”** means this Site Lease together with any duly authorized and executed amendment hereto, under which the District leases the Site to Lessee for purposes of providing Preliminary Services and of constructing the Project.

O. **“Sublease”** means the Sublease Agreement dated as of _____, 2017 by and between the District and Lessee together with any duly authorized and executed amendment thereto.

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

Q. **“Tenant Improvement Payments”** means the payments required to be made by the District pursuant to the Construction Services Agreement and Exhibit “C” of the Sublease.

R. “Term of this Site Lease” or “Term” means the time during which this Site Lease is in effect, as provided for in Section 3 of this Site Lease.

S. “Working Drawing Phase” means the Phase that includes working drawings, technical specifications, addenda, general conditions, special conditions (if any), and supplementary conditions, developed to set forth in detail all aspects of the design, function, and construction of the Project, typically developed in one distinct stage, Construction Drawing Development.

SECTION 2. SITE LEASE.

The District leases to Lessee, and Lessee leases from the District, on the terms and conditions set forth herein, the Site situated in the City of Huntington Beach, County of Orange, State of California, more specifically described in Exhibit “A”, attached hereto, including any real property improvements now or hereafter affixed thereto. The Lessee also agrees to perform the Preliminary Services with respect to the Project pursuant to this Site Lease.

SECTION 3. TERM.

The Term of this Site Lease commences on the Effective Date. The Term of this Site Lease shall terminate as of the last day of the Sublease, provided the District has paid to Lessee, or its assignee, all payments that may be due under the Construction Services Agreement and Sublease, and provided that this Site Lease has not been terminated pursuant to the termination provisions of the Sublease. Without limiting any other term or provision of the Construction Services Agreement or Sublease between the parties, at the termination of this Site Lease, natural or otherwise, title to the Site and any improvements constructed thereon by Lessee shall vest in the District, in accordance with Section 17406.

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

District represents, covenants, and warrants to 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, as defined below.

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 purposes 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, to the best knowledge of the District, 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 containment that would subject the owner of the Site, Lessee, or Lessee's subcontractors to any damages, penalties, or liabilities under any applicable Environmental Regulation (collectively, "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 Regulations now exists relating to the Site, no notice of any 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 that 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 Subsection G.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 Substances sites maintained by any federal, state, or local governmental agency or entity.

9. The Site is not subject to any lien, claim for lien, or threat of lien in favor of any governmental agency or entity as a result of any release or threatened release of any Hazardous Substances.

H. To the extent permitted by law, the District shall not abandon use of the Site for the use currently intended by the District and shall not seek to substitute or acquire property to be used as a substitute for the use intended pursuant to this 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, materialman, 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 that exist of record as of the date of this Site Lease and that 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 this Site Lease and to which the District and Lessee consent in writing that will not impair or impede the operation of the Site.

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

Lessee represents and warrants to the District that:

A. 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. 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 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 Lessee is a party or by which Lessee or its property is bound.

D. There is no pending or, to the best knowledge of Lessee, threatened action or proceeding before any court or administrative agency that could materially or adversely affect the ability of Lessee to perform its obligations under this Site Lease.

SECTION 6. SITE RENTAL.

In consideration for the lease of the Site by the District to Lessee and for other good and valuable consideration, Lessee shall pay to the District one dollar (\$1.00) per year, or any portion of a year that this Site Lease is in effect, within thirty (30) days of the end of the Term of this Site Lease. Lessee shall have no obligation to make rental payments hereunder in the event of the District's inability to issue the necessary Notices to Proceed for the Project pursuant to the provisions of Section 5 of the Construction Services Agreement.

SECTION 7. COMPENSATION FOR PRELIMINARY SERVICES.

The District shall compensate Lessee for the Preliminary Services required hereunder, as follows:

A. Lessee shall be compensated for services described in Section 9 of this Site Lease on a fixed fee basis, in the amount of _____ Dollars (\$_____) for the "Preliminary Plan Phase", and _____ Dollars (\$_____) for the "Working Drawing Phase" of the Preliminary Services, for a combined fixed fee amount of _____ Dollars (\$_____), which amount shall be included in the GMP for construction of the Project.

B. The District shall reimburse Lessee for the cost of necessary reproduction of documents related to the Project and produced by Architect, including its consultants, and other design professionals engaged by the District, subject to the District's prior written approval, up to the combined maximum amount of _____ Dollars (\$_____). In every other respect, Lessee shall be responsible for all costs and expenses incurred for providing the Preliminary Services required by this Site Lease, including costs of hiring subconsultants and other professionals, travel expenses to the Project Site and meetings with the District and its representatives, long distance telephone charges, other copying expenses, salaries of Lessee's staff and employees working on the Project, overhead and profit, and any other cost and expense reasonably required of, and actually incurred by, Lessee in performance of its obligations under this Site Lease.

C. The District shall pay Lessee within thirty (30) days of receipt of a proper, complete, and accurate invoice from Lessee, consistent with the rates included in Exhibit "D." Invoices shall be broken down in detail and include supporting back-up documentation prior to the District's approval and payment.

SECTION 8. USE OF SITE.

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 as defined under the Sublease, Lessee may exercise the remedies provided for in the Construction Services Agreement or the Sublease.

SECTION 9. PRELIMINARY SERVICES.

Lessee shall abide by the following when performing Preliminary Services for the Project:

A. Lessee's Services and Responsibilities.

1. Lessee's Preliminary Services shall consist of those services performed by Lessee, and Lessee's employees and subconsultants, as specified below.

2. All Preliminary Services described in this Section shall be performed to the highest standard of care applicable to a licensed California building contractor engaged in the construction of public school projects involving construction services, construction management services, and all other specified services described herein.

3. Lessee shall not be subject to the professional standard of care of a licensed architect or professional engineer, shall not bear responsibility for errors in the Plans and Specifications resulting from the professional negligence or misconduct of any licensed architect or professional engineer, and shall not perform, or be responsible for the performance of, any duties requiring licensure as an architect or professional engineer.

4. Lessee shall make a written record of all meetings, conferences, discussions, and decisions made between or among the District, Lessee, and the District's consultants, including Architect, during all phases of the Project and concerning any material condition in the requirements, scope, performance, and/or sequence of the work for the Project.

B. Scope of Lessee's Services.

1. The Scope of Work for which Lessee shall be responsible under the Site Lease includes the following Basic Services as well as the Preliminary Services described below for the Preliminary Plan Phase and Working Drawing Phase of the Project. Exhibit "E", Lessee's Proposal, is attached hereto, and describes Lessee's approach to performance of the Scope of Work.

2. Basic Services

a. Lessee agrees to provide or perform, as Basic Services, the services and tasks set forth in this section and any other services that are necessary, normal, customary, or incidental to the performance of Lessee's responsibilities under either Preliminary Services Phase.

b. More specifically, Lessee agrees to:

i. Provide a sufficient number of specialists and other workers with requisite skills and experience as appropriate for the successful completion of the Project.

ii. Review the geotechnical investigation and report on the Project Site as directed by the District.

iii. Investigate and document the Project Site and inspect the existing facilities, systems, and conditions to ensure an accurate understanding of the existing conditions.

iv. Identify equipment or material requiring extended delivery times and advise the District on expedited procurement of those items.

v. Provide all Deliverables and Project correspondence in Adobe Acrobat.pdf format, Microsoft Word.doc format, and AutoCAD.dwg format, as indicated in this RFP, or as agreed upon with the District, throughout the term of the Contract Documents.

vi. Assist the District by communicating any perceived non-conformance to applicable statutes, building codes, regulations, rules, guidelines, and requirements.

vii. Provide quality assurance ("QA"), commencing with the Preliminary Plan Phase. The QA shall be designed to advance the goal of achieving a quality Project, within schedule and budget, in compliance with the terms of this Site Lease and the Construction Services Agreement. At a minimum, the following shall apply:

(a) Lessee shall ensure that all drawings and specifications shall be reviewed and checked by at least one professional trained in the same discipline as the professional who prepared the drawings and specifications, with the goals of:

(1) Advising the District of the completeness of the drawings and specifications;

(2) Assuring a high level of construction

quality; and

- (3) Avoiding change orders to the Construction Services Agreement that are caused by conflicts, ambiguities, inaccuracies, and deficiencies in the construction drawings and specifications.

(b) The QA will identify the specific methodology that will be used to cross-check drawings of the various disciplines for completeness and accuracy at each submittal stage.

3. Preliminary Plan Phase

a. During the Preliminary Plan Phase, Lessee shall, in coordination with the District, Architect, or Engineer, and other third parties (as necessary and authorized by the District), provide the following:

i. Design: Lessee shall provide design services in conjunction with Architect and attend planning meetings with a project manager and estimator representatives to discuss Project issues with the District and Architect.

ii. Constructability Reviews: After reviewing all design documents for completeness and coordination, Lessee shall make recommendations and provide information and cost comparisons regarding construction materials, methods, systems, and phasing, in order to ensure efficient construction. A Constructability Review shall be conducted on the 100% Design Development Documents.

iii. Value Analysis: Lessee shall lead the activities of the District, Architect, and other Project participants in a Value Analysis, and verify the cost-effectiveness of the design. Lessee shall actively evaluate the Project for value saving options and present all such options to the District and Architect for review and consideration. Lessee is responsible for confirming, at the end of each stage, in writing to the District, that all Project and construction costs have been identified. Lessee shall demonstrate to the satisfaction of the District and shall certify in writing to the District that the design documents and/or Construction Documents, at the end of each of these stages, are in conformance with the requirements of the Project program and quality standards set by the District, and that Lessee's current total cost estimate for construction of the Project is equal to or less than the Construction Budget. Lessee shall conduct Value Analysis Workshops at the 100% Design Development Stage.

iv. Cost Control Management: Lessee shall prepare, based upon design documents prepared by Architect or Engineer and identified by the District, its own cost estimate of the total construction cost of the Project at several intervals, as specified in this

Scope of Work. Lessee shall compare its cost estimate with the cost estimate independently prepared by Architect or Engineer for these same design documents, and endeavor to resolve discrepancies in the estimates to the satisfaction of the District, with the goal that both cost estimates are less than or equal to the District's Construction Budget. Lessee shall recommend, if necessary, appropriate modifications of the design documents to lower both Lessee's and the Architect or Engineer's independent estimates to amounts equal to or lower than the Construction Budget. Lessee's cost estimates shall be provided according to Unifomat standards and as specified below, and arranged in Unifomat format (a building systems organization format). Construction cost estimates shall be developed/updated and submitted as part of each of the following submittals:

- (a) 100% Design Development; Unifomat II format elemental categories and detailed to Level 3.
- (b) Each cost estimate shall:
 - (1) Reflect the best professional estimate of actual costs anticipated.
 - (2) Establish internal estimating allowances, consistent with good professional practice and appropriate to the Phase of development. Larger allowances are assumed held at early Phases, gradually diminishing to zero at completion of the final cost estimate.

v. Authorization to proceed with each succeeding step in the design process is contingent upon the District's written acceptance of both Architect's or Engineer's and Lessee's independent cost estimates, which, when evaluated separately, must both be equal to or less than the Construction Budget.

b. Upon successful provision of all Deliverables and services of the Preliminary Plan Phase, the District will issue a written communication that the Preliminary Plan Phase is complete.

4. Working Drawing Phase

a. During the Working Drawing Phase, Lessee shall, in coordination with the District, Architect, or Engineer, and other third parties (as necessary and authorized by the District), provide the following:

i. Constructability Reviews: Lessee shall review all design documents for accuracy, completeness, clarity, consistency, coordination, and overall constructability. Lessee shall make recommendations based on this review, and provide information and cost comparisons regarding construction materials, methods, systems, and

phasing, to ensure efficient construction. Lessee shall provide detailed written Constructability Reviews identifying, by drawing sheet, detail and specification section, and page, the issues to be discussed and resolved. As part of the Constructability Reviews, Lessee shall identify areas where value analysis principles could be applied, and identify long-lead items. Constructability Reviews shall be conducted on 50% and 90% Working Drawing Documents.

ii. Value Analysis: Lessee shall conduct Value Analysis workshops at 50% and 90% Working Drawing Stages to confirm that all Project and construction costs have been identified, lead the activities of the District, Architect, and other Project participants in the Value Analysis, and verify the cost-effectiveness of the design and the conformance of the design or Construction Documents to the Project budget program and quality standards set by the District. Lessee shall develop Value Engineering Proposals ("VEP") for District and Architect approval of alternative systems, means, methods, finishes, equipment, and the like that satisfy the general design criteria of the Project but that result in savings of time and/or money in constructing or operating and maintaining the Project. Each VEP shall describe the proposed change, identify all aspects of the Project affected by the change, specify the cost or time savings to be achieved if the VEP is accepted, and detail any anticipated effect on the Project's service life, economy of operation, ease of maintenance, appearance, design, or safety standards. Completion of each VEP, including District and Architect approval of each VEP, is to be achieved sufficiently in advance to permit Architect to complete the construction document phase of the design and permit Architect to secure DSA approval.

iii. Cost Control Management: Lessee shall prepare, based upon design documents prepared by Architect or Engineer and identified by the District, its own cost estimate of the total construction cost of the Project at several intervals, as specified in this Scope of Work. The cost estimate shall identify all trades and unit costs. Lessee shall also identify all allowances, contingencies, General Condition costs, Special Condition costs (if any), and fees. If any cost estimate submitted to the District exceeds previously-approved estimates for the Construction Budget, Lessee shall make appropriate recommendations to the District for getting the Project back within budget. All estimates shall be broken down by trade and specification section and shall include a variance report that shows the differences between the estimates at various stages. Lessee shall compare its cost estimate with the cost estimate independently prepared by Architect or Engineer for these same design documents, and endeavor to resolve discrepancies in the estimates to the satisfaction of the District, with the goal that both cost estimates are less than or equal to the District's Construction Budget. Lessee shall recommend, if necessary, appropriate modifications of the design documents to lower both Lessee's and Architect or Engineer's independent estimates to amounts equal to or lower than the Construction Budget. Lessee's cost estimates shall be provided according to Unifomat standards and as specified below, and arranged in Unifomat format (a building systems organization format). Construction cost estimates shall be developed/updated and submitted as a part of each of the following submittals:

- (a) Working Drawing
 - (1) 50% milestone; Unifomat II format

elemental categories and detailed to Level 3.

- (2) 90% milestone; Unifomat II format elemental categories and detailed to Level 3.

(b) Each cost estimate shall:

- (1) Reflect the best professional estimate of actual costs anticipated.
- (2) Establish internal estimating allowances, consistent with good professional practice and appropriate to the Phase of development. Larger allowances are assumed held at early Phases, gradually diminishing to zero at completion of the final cost estimate.
- (3) Adjust reported cost values to contract ENR CCCI values. Do not advance costs to the estimated start of construction, mid-point of construction, or present day values, unless otherwise directed by the District. Questions regarding the calculation of ENR CCCI values shall be reviewed with the District Project Manager.

iv. Conditions: Lessee shall develop Special Conditions (if any) and Supplementary Conditions (with District and Architect participation and subsequent District written approval) that address the Project conditions and modify the General Conditions as appropriate and as agreed upon by the District.

v. Master Schedule: Lessee shall provide the Master Schedule for construction of the Project, which must, unless modified by a written amendment to the Construction Services Agreement, and regardless of weather conditions, be completed on or before _____, 2018, approximately ___ calendar days from the date of the Construction Services Notice to Proceed. The Master Schedule shall include all milestone dates, including, but not limited to, (1) complete design, (2) Preliminary Services, (3) agency approvals, (4) utility service approvals, (5) preparation and submittal of a final GMP proposal for construction of the Project, (6) preparation and processing of shop drawings and samples, (7) delivery of materials and equipment requiring long-lead time procurements, (8) phasing, (9) construction sequencing and durations, (10) construction, (11) commissioning, and (12) District acceptance. The Master Schedule for the Construction Phase of the Project shall be provided to the District, and is subject to the District's written approval. Preparation of the Master Schedule for the Construction Phase will take into consideration sufficient time for the District to authorize said Phase, including any time necessary for the District to obtain approval of funding. Lessee

shall provide schedule updates at least monthly, or more often if reasonably required, to communicate market conditions or other conditions affecting the Project. Lessee shall provide a separate bidding schedule for each Phase of construction, as applicable.

b. Upon the District's written approval of the final design documents, the design documents are incorporated into and become an integral part of the Construction Documents, and, upon approval of the Master Schedule applicable to the Construction Phase, the District will issue a written communication that the Working Drawing Phase is complete.

2. Limited Authority.

Lessee's duties, responsibilities, and limitations of authority shall not be restricted, modified, or extended without written agreement between the District and Lessee.

3. Schedule.

Lessee shall perform constructability reviews and estimates promptly upon receipt of the documents. The Preliminary Services shall be completed by Friday, April 30, 2018. If the Preliminary Services period is extended through no fault of Lessee, upon prior written approval of the District, Lessee may be compensated based on the hourly rates included in Exhibit "D", attached hereto.

4. Ability to Add to the Scope of Work.

The District may add work to Lessee's Scope of Work, including, but not limited to, procurement of materials and equipment (e.g., long-lead items, furniture, deferred approval item materials, and lighting) and preparation or procurement of necessary shop drawings.

C. The District's Responsibilities.

The District shall provide Preliminary Services requirements to Lessee, including information regarding the District's objectives, budget, schedule, constraints, and criteria.

SECTION 10. LESSEE AS INDEPENDENT CONTRACTOR.

Lessee is retained to Perform Preliminary Services as an independent contractor and is not employed by the District. No officer, agent, or employee of Lessee shall become an employee of the District for any purpose. It is agreed that the District is interested only in the results obtained from Preliminary Services rendered under this Site Lease and that Lessee shall perform as an independent contractor with sole control of the manner and means of performing said Preliminary Services. Lessee shall complete the Preliminary Services according to its own methods of work, which shall be in the exclusive charge and control of Lessee and which shall not be subject to control or supervision by the District, except as to results of the work. It is expressly understood and agreed that Lessee and its employees shall in no event be entitled to

any benefits to which District employees are entitled, including, but not limited to, overtime, retirement benefits, insurance, vacation, workers' compensation benefits, sick or injury leave, or other benefits. Lessee shall be responsible for all salaries, payments, and benefits for all of its officers, agents, and employees in performing Preliminary Services pursuant to this Site Lease.

SECTION 11. SUBCONTRACTORS AND CONSULTANTS.

A. Pursuant to Section 17406(a)(4)(A), the District specified in its RFP that the following particular types of subcontractors be included in each proposal: Electrical, mechanical, and plumbing. These subcontractors shall be afforded the protections of the Subletting and Subcontracting Fair Practices Act.

B. Pursuant to Section 17406(a)(4)(B), Lessee must follow the procedures set forth therein and below before hiring subcontractors not provided for in its proposal, insofar as these subcontracts have a value exceeding one-half of one percent (.005%) of the price allocable to construction work. These subcontractors shall be afforded the protections of the Subletting and Subcontracting Fair Practices Act. The applicable procedures are as follows:

1. Provide public notice of availability of work to be subcontracted in accordance with the District's publication requirements applicable to its competitive bidding process, including a fixed date and time on which qualification statements, bids, or proposals will be due.
2. Establish reasonable qualification criteria and standards.
3. Award the subcontract either on a best value basis or to the lowest responsible bidder. This process may include prequalification or short-listing.

C. Lessee's electrical, mechanical, and plumbing subcontractors shall be subject to the prequalification requirements for proposers described in Public Contract Code section 20111.6, including the requirement for the completion and submission of a standardized prequalification questionnaire and financial statement that is verified under oath and is not a public record.

D. Lessee shall submit, for written approval by the District, the names of any consultant firms proposed for the Project. Nothing in this Site Lease shall create any contractual relation between the District and any consultants employed by Lessee under the terms hereunder.

E. Lessee's consultants shall be licensed to practice in California and have relevant experience with California school design and construction during the last five (5) years. If any employee or consultant of Lessee is deemed not acceptable to the District, upon the District's request, that individual shall be replaced with an acceptable, competent person acceptable to the District.

SECTION 12. Insurance.

Lessee shall purchase and maintain policies of insurance with an insurer or insurers qualified to do business in the State of California and acceptable to the District, which will protect Lessee and the District from claims that may arise out of or result from Lessee's actions or inactions relating to Lessee's rendering of Preliminary Services under this Site Lease, whether such actions or inactions be by Lessee, its employees, consultants, subconsultants, or agents, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts or omissions any of them may be liable. Such insurance coverage shall include the following:

A. Workers' compensation insurance in accordance with the laws of the State of California and employers' liability insurance in the amount of at least one million dollars (\$1,000,000).

B. Comprehensive general and auto liability insurance with limits of not less than one million dollars (\$1,000,000) combined single limit, bodily injury and property damage liability per occurrence, and two million dollars (\$2,000,000) in aggregate, including: (1) owned, non-owned, and hired vehicles; (2) broad form property damage; (3) products/completed operations; and (4) personal injury.

C. Each policy of insurance required above shall name the District and its Board, administrators, employees, and agents as additional insureds; shall state that, with respect to the operations of Lessee hereunder, such policy is primary and any insurance carried by the District is excess and noncontributory; and shall state that not less than thirty (30) days' written notice shall be given to the District prior to cancellation, non-renewal, or reduction in coverage. Lessee shall notify the District in the event of any material change in, or failure to renew, each policy. Prior to commencing Preliminary Services under this Site Lease, Lessee shall deliver to the District proof of insurance as evidence of compliance with the requirements herein. In the event Lessee fails to secure or maintain any policy of insurance required hereby, the District may, at its sole discretion, secure such policy of insurance in the name of and for the account of Lessee, and, in such event, Lessee shall reimburse the District upon demand for the cost thereof, or the District may withhold the cost of such insurance from amounts due Lessee.

SECTION 13. TERMINATION.

A. In the event of a dispute between the parties as to performance or interpretation of this Site Lease, or payment pursuant to this Site Lease, the parties shall attempt to resolve the dispute. Pending resolution of any dispute, Lessee agrees to continue to diligently perform any outstanding Preliminary Services to completion. If the dispute is not resolved, Lessee agrees it will not stop the progress of Preliminary Services to be rendered hereunder.

B. Lessee agrees, upon termination of the Term of this Site Lease:

1. To quit and surrender the Site in the same good order and condition as it was at the time of commencement of the Term of this Site Lease, reasonable wear and tear excepted;

2. To release any liens and encumbrances created or caused by Lessee; and

3. To relinquish any permanent improvements and structures existing upon the Site at the time of the termination of this Site Lease, which shall remain thereon, and title thereto shall vest in the District.

C. Notwithstanding the District's foregoing rights in the event of a dispute or termination, Lessee shall retain the right to full compensation for all undisputed services rendered prior to the termination of this Site Lease, including all rights Lessee has 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.

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

E. If the District exercises its option to purchase the Project pursuant to the Sublease, this Site Lease shall terminate concurrently with the District's buy out and termination of the Sublease.

SECTION 14. QUIET ENJOYMENT.

Subject to the terms of the Sublease, the District covenants and agrees that it will not take any action to prevent Lessee's quiet enjoyment of the Site during the Term of this Site Lease and that, in the event the District's fee title to the Site is ever challenged so as to interfere with 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 Lessee's right to occupy, use, and enjoy the Site. The District, however, retains the right, throughout the Term of this Site Lease, to use the Site for District purposes, pursuant to the terms of the Sublease.

SECTION 15. 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 Lessee. Nothing in this Site Lease shall preclude the District from granting utility easements across the Site to facilitate the use and operation of the Project.

SECTION 16. 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 Lessee's operations regarding the Project.

SECTION 17. ASSIGNMENT AND SUBLEASING.

Lessee will not assign or otherwise dispose of or encumber the Site or this Site Lease without the prior written consent of the District. Neither shall Lessee assign any monies due or to become due to Lessee pursuant to this Site Lease without the prior written consent of the District.

SECTION 18. NO WASTE OR ILLEGAL ACTIVITY.

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

SECTION 19. DEFAULT.

In the event Lessee shall be in default in the performance of any of its obligations under the terms of the Construction Services Agreement or this Site Lease, which default continues for thirty (30) days following notice and demand for correction thereof to Lessee, the District may exercise any and all remedies granted by law or equity.

SECTION 20. TITLE.

During the Term of this Site Lease, the District shall hold title to the Site and obtain title to the Project from the Lessee, including any and all additions that comprise improvements, fixtures, repairs, replacements, or modifications, as payments are made under the terms of the Construction Services Agreement and Sublease, provided, however, that full title shall not vest in the District until the end of the Term of the Sublease and Site Lease.

SECTION 21. 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 Lessee shall be recognized and is hereby determined to be the amount of all Sublease Payments and Tenant Improvement Payments less any unearned interest as of the date Lessee receives payment in full. The balance of the award in such eminent domain action, if any, shall be paid to the District.

SECTION 22. TAXES.

The terms of this Site 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. In the event a possessory tax is levied against the Lessee, it shall be the District's responsibility to pay or otherwise satisfy such a tax assessment.

SECTION 23. INDEMNIFICATION.

A. By the District.

The District covenants and agrees to indemnify and defend Lessee, and to hold Lessee harmless, from and against any and all losses, claims, suits, damages, and expenses (including reasonable attorneys' fees) arising out of the condition of the Site, including, but not limited to, all costs required to be incurred by Lessee as a result of any condition described in Section 4.G. of this Site Lease, 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 Lessee pursuant to the provisions of the Construction Services Agreement.

B. By Lessee.

1. Lessee covenants and agrees to indemnify and defend the District, and to hold the District and its Board, administrators, employees, and agents ("Indemnitees") harmless from any and all losses, claims, suits, damages, and expenses (including reasonable attorneys' fees, and collectively referred to as "Claim") arising from or in connection with any negligent or intentional acts or omissions of Lessee, its agents, employees, and consultants relating to Lessee's performance of its obligations under this Site Lease, unless it is determined by a court of competent jurisdiction that such Claim was caused by the sole negligence or willful misconduct of any Indemnitee.

2. Lessee shall indemnify and defend the District, and hold the District harmless, from any claim for employment benefits, workers' compensation, or other benefits by any agent or employee of Lessee, or any consultant or subconsultant.

3. The District may retain, to the extent it deems necessary, the money due to Lessee under and by virtue of the Contract Documents until disposition has been made of any Claim specified above.

C. 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 24. NOTICES.

Any notices or filings required to be given or made under this Site Lease shall be given or made in writing, by personal delivery or registered mail, to the respective addresses given below or at such other address as such party may provide in accordance with the provisions of this Section. Any change in address shall not be binding upon the other party unless preceded by written notice of no less than thirty (30) days. Any such notice shall be deemed to have been received by the addressee if delivered to the person for whom it is intended or if sent by registered mail, return receipt requested, or fax followed by regular mail, addressed as follows:

If to Lessee: _____

_____, CA _____
Attn: _____, _____

If to District: Huntington Beach City School District
17011 Beach Boulevard, Suite 530
Huntington Beach, CA 92647
Attn: Jon M. Archibald
Assistant Superintendent, Administrative Services

SECTION 25. NO THIRD PARTY RIGHTS.

Nothing contained in this Site Lease shall create a contractual relationship with, or cause of action in favor of, any third party against either the District or Lessee.

SECTION 26. BINDING EFFECT.

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

SECTION 27. SEVERABILITY.

In the event any provision of this Site Lease shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof, unless elimination of such invalid provision materially alters the rights and obligations embodied in this Site Lease, the Sublease, or the Construction Services Agreement.

SECTION 28. EQUAL OPPORTUNITY CLAUSE.

Lessee agrees to not discriminate in its recruiting, hiring, promotion, demotion, or termination practices on the basis of race, color, national origin, religion, age, ancestry, medical

condition, disability, or gender in the performance of this Site Lease, and agrees to comply with the provisions of all applicable state and federal laws in relation thereto.

SECTION 29. AMENDMENTS AND MODIFICATIONS.

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

SECTION 30. EXECUTION IN COUNTERPARTS.

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

SECTION 31. 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, such action shall be brought in a state court situated in the County of Orange, State of California, unless a court finds jurisdiction or venue is only proper in a federal court, or a court outside this county. If either party brings an action or proceeding involving the Site, to enforce the terms of this Site Lease, or to declare rights hereunder, each party shall bear the cost of its own attorneys' fees.

SECTION 32. INTEGRATION.

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, promise, or representation with respect to those matters covered herein.

SECTION 33. HEADINGS AND RECITALS.

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 provision or section of this Site Lease. The recitals set forth at the beginning of this Site Lease are hereby incorporated herein by this reference.

SECTION 34. TIME.

Time is of the essence with respect to 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.

LESSEE:

DISTRICT:

Huntington Beach City School District

By:

By:

Its:

Its:

EXHIBIT "A"

Description of Site

EXHIBIT "B"

Sublease

EXHIBIT "C"

Construction Services Agreement

EXHIBIT "D"

Hourly Rates for Preliminary Services

Lessee will invoice the District for actual costs on a monthly basis, subject to the fixed fee amount. The following rates shall also be the basis of billing for any additional Preliminary Services agreed to by and between the parties that expand beyond the Scope of Work set forth in Section 9.B. of this Site Lease.

Classification	Rate
Principal	\$ ____/hour
Senior Project Manager (Project Director)	\$ ____/hour
Estimator	\$ ____/hour
Project Manager	\$ ____/hour
Estimator (Staff Level)	\$ ____/hour
Superintendent	\$ ____/hour
Project Engineer	\$ ____/hour
MEP Coordinator	\$ ____/hour
Project Coordinator	\$ ____/hour

EXHIBIT "E"

Lessee's Proposal