

**FORMER KETTLER ELEMENTARY SCHOOL SITE
CAPITAL IMPROVEMENT PROJECTS
DISTRICT EDUCATION CENTER PROJECT**

SITE LEASE

Dated as of _____, 2017

Between

Huntington Beach City School District

and

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

DISTRICT EDUCATION CENTER 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 construction of a District Education Center ("Project"); and

WHEREAS, the Plans and Specifications for the Project have been approved by the Division of the State Architect; and

WHEREAS, the Board of Trustees 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 (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 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 final guaranteed maximum price ("GMP") for 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”), 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, 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 and 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. **“Construction Services Agreement”** means the construction services agreement for construction of the Project by and between the District and Lessee, dated as of _____, 2017.

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

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

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

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

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

G. **“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 constructing the Project.

H. **“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.

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

J. **“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.

K. **“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.

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.

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. 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 8. TERMINATION.

A. 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.

B. 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.

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

D. 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 9. 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 10. NO LIENS.

The District shall not mortgage, sell, assign, transfer, or convey the Site or any part thereof to any person during the Term of this Site Lease without the written consent of 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 11. RIGHT OF ENTRY.

The District reserves the right for any of its duly authorized representatives to enter upon the Site at any reasonable time to inspect the same or to make any repairs, improvements, or changes necessary for the preservation thereof, but, in doing so, shall not interfere with Lessee's operations regarding the Project.

SECTION 12. 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 13. 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 14. 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 15. 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 16. 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 17. 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 18. 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. 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 19. 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 20. 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 21. 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 22. 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 23. 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 24. 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 25. 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 26. 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 27. 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 28. 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