



**RELOCATABLE CLASSROOM REPLACEMENT AND CAMPUS WIDE  
ROOFING/PAINTINGRECONSTRUCTION PROJECTS**

**at**

**CESAR CHAVEZ ELEMENTARY SCHOOL**

**SUBLEASE AGREEMENT**

Between

**DAVIS JOINT UNIFIED SCHOOL DISTRICT**

and

**LANDMARK CONSTRUCTION, INC.**

Dated as of May 21, 2015

# RELOCATABLE CLASSROOM REPLACEMENT & CAMPUS WIDE ROOFING/PAINTING

## RECONSTRUCTION PROJECT at CESAR CHAVEZ ELEMENTARY SCHOOL

### SUBLEASE AGREEMENT

This SUBLEASE AGREEMENT ("Sublease") is dated as of May 21, 2015 and is by and between the Davis Joint Unified School District, a school district duly organized and existing under the laws of the State of California ("District"), **LANDMARK CONSTRUCTION, INC.**, a California corporation and operating under the laws of the State of California ("Lessor").

#### RECITALS:

WHEREAS, the District deems it essential for its own governmental purpose, to finance the construction of certain improvements as described in Exhibit "A" attached hereto (the "Project") and situated on the Cesar Chavez Elementary School site described in Exhibit "B" attached hereto (the "Site"); and

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

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

WHEREAS, the District owns the Site and pursuant, to that certain Construction Services Agreement entered into by and between the District and Lessor of even date herewith (the "Construction Services Agreement") attached hereto as Exhibit "D", has prepared and adopted plans and specifications for the completion of the Project which have been approved pursuant to law as required by Section 17402 of the Education Code; and

WHEREAS the 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:

In consideration of the mutual covenants hereinafter set forth, the District and Lessor parties hereto agree as follows:

1. **DEFINITIONS.** Unless the context otherwise requires, the terms defined in this Article 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. **"Commencement Date"** shall mean the Project commencement date found in the Notice to Proceed for the Project in accordance with the Construction Services Agreement.
  - C. **"Construction Costs"** means any and all costs incurred by the Lessor with respect to the construction and equipping, as the case may be, of the Project, whether paid or incurred prior to or after the date hereof, including, without limitation, costs for Site preparation, the removal or demolition of existing structures, the construction of the Project and related facilities and improvements, and all other work in connection therewith, security of the Site and Project, Lessor's overhead and supervision at the project site, all costs and expenses including any taxes or insurance premiums paid by the Lessor with respect to the Property, and administrative and other expenses necessary or incident to the Project, excluding Lessor's

and Developer's home office overhead and profit. The term "Construction Costs" includes all Lessor's costs associated with preparing or generating additional copies of any Construction Documents, as defined below, related to or required for the Project, including preparation or generation of additional plans and specifications for Lessor's subcontractors. In no event shall Construction Costs exceed the Guaranteed Maximum Price.

- D. **"Construction Services Agreement"** (CSA) means the Construction Services Agreement attached hereto, together with any duly authorized and executed amendments hereto.
- E. **"Construction Documents"** consist of the Plans and Specifications approved by DSA under Application Number 02-114122, File Number 57-11, Allowances stipulated in the Contract Documents, and all Addenda's, if any, issued prior to the entry into this Agreement. The Construction Documents shall include all Modifications generated after the Effective Date in accordance with the Contract Documents, including, without limitation, a written amendment to the Contract signed by the Contractor and duly executed and approved by the District, a Change Order, a Construction Change Document, or a written order for a minor change in the Work issued by the Architect.
- F. **"Contract Documents"** means those documents which form the entire Contract by and between District and Contractor. As of the effective date of the Lease and Sublease, the Contract Documents consist of the Lease, the Sublease, any General, Supplementary and other Conditions, the Construction Services Agreement, including all exhibits and attachments hereto, and the Construction Documents. The Contract Documents collectively form the Contract. The Contract represents the entire and integrated Agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a written Modification. The Contract Documents shall be binding solely upon the District and Contractor, do not create a contractual relationship of any kind between the Architect and Contractor, between the District and any Subcontractor or Sub-subcontractor, or between any persons or entities other than the District and the Contractor, and are not intended to and do not create any third party beneficiary. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties. (See Article 14 of the CSA).
- G. **"Day"** means a calendar day unless specifically designated as a business day.
- H. **"District"** means the Davis Joint Unified School District, a school district duly organized and existing under the laws of the State of California.
- I. **"Effective Date"** is the latter of the date upon which the District Board approves the Site Lease and the Sublease and Contractor has executed the Site Lease and Sublease.
- J. **"Event of Default"** means one or more events of default as defined in Article 16 of this Sublease.
- K. **"Guaranteed Maximum Price" or "GMP"** means the Guaranteed Maximum Price established pursuant to Article 5 of the CSA to be paid to Lessor for Lessor's construction of the Project hereunder, subject to any adjustments for Extra Work/Modifications as provided in Article 17 of the CSA.
- L. **"Lessor"** shall mean **LANDMARK CONSTRUCTION, INC.**, and its successors and assigns.
- M. **"Prepayment Price"** means the price to be paid by the District to exercise its option to purchase the Site and the Project prior to the natural termination of this Sublease, in accordance with the provisions of Article 21 herein.
- N. **"Project"** means the improvements and equipment to be constructed and installed by the Lessor, as more particularly described and/or referenced in Exhibit "A" attached hereto.

- O. **"Site"** refers to the grounds of the Project or in some cases may refer to multiple sites as defined in the Contract Documents and such adjacent lands as may be directly affected by the performance of the Work, particularly described in Exhibit "B" attached hereto.
- P. **"Site Lease" or "Lease"** means the Site Lease of even date herewith, by and between the District and the Lessor as set forth in Exhibit "C" attached hereto, together with any duly authorized and executed amendment thereto under which the District leases the Site to the Lessor.
- Q. **"Sublease"** means this Sublease together with any duly authorized and executed amendment hereto.
- R. **"Sublease Payment"** means any payment required to be made by the District pursuant to Article 7 of this Sublease.
- S. **"Sublease Prepayment"** means any payment required to be made by the District pursuant to Article 21 of this Sublease.
- T. **"Term of this Sublease" or "Term"** means the time during which this Sublease is in effect, as provided for in Article 3 of this Sublease.

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 the Lessor to the District of the Site shall not effect or result in a merger of the District's leasehold estate pursuant to this Sublease and its fee estate as lessor under the Site Lease, and the 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.

3. **TERM OF THE SUBLEASE.**

The terms and conditions of this Sublease shall become effective upon issuance of a Notice to Proceed. The term of the Sublease shall terminate upon completion of the Punchlist defined under Article 13 of the Construction Services Agreement and payment of the last Sublease Payment, unless sooner terminated as hereinafter provided.

- A. Termination of Term. Except as otherwise provided, the Term of this Sublease shall terminate upon the earliest of any of the following events:
  - (1) An Event of Default and the Lessor's election to terminate this Sublease pursuant to the provisions of Articles 16 and 17, hereof;
  - (2) The arrival of the last day of the Term of this Sublease and payment of all Sublease Payments hereunder; or
  - (3) The exercise of the District's option under Article 21 hereof.

4. **REPRESENTATIONS, WARRANTIES AND COVENANTS OF DISTRICT.** The District represents and warrants to Lessor that:

- A. District is a public school district, 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 the 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 the District prior to the Project commencement date in the Notice to Proceed) to be used or stored on, under or about the Site.
5. **REPRESENTATIONS AND WARRANTIES OF LESSOR.** Lessor represent and warrant to District that:
- A. Lessor is duly organized in the State of California, and in good standing as a corporation under the laws of the State of California, with full corporate power and authority to lease and own real and personal property;
  - 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 corporate 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 they or their 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 their obligations under this Sublease; and
  - E. Lessor will not mortgage or encumber the Site or the Sublease or assign this Sublease or their rights to receive Sublease Payments hereunder, except as permitted herein.
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 Article 5 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 on deposit, and shall annually appropriate funds sufficient to make all Sublease Payments which become due to Lessor under this Sublease Agreement.
7. **SUBLEASE PAYMENTS.**

- A. District shall pay Lessor lease payments (the “Sublease Payments”) comprising the same amount per month as the Lease Payment, which the Parties acknowledge and agree is good and sufficient consideration for the rights of possession associated with the Sublease as described herein. In no event shall the sum of the Sublease Payments due hereunder exceed the GMP as it may be revised by the District from time to time in accordance with the provisions set forth in the Construction Services Agreement. The District shall have no obligation to make Sublease payments hereunder in the event the Commencement Date of this Sublease does not occur as a result of District’s inability to issue a Notice to Proceed.
- B. Should the District fail to pay any part of the Sublease Payments not otherwise excused pursuant to this Article or Article 9 hereof, or otherwise questioned or challenged by the District pursuant to the Construction Services Agreement, within twenty-five (25) business days from the due date thereof, the 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 seven percent (7%) per annum or the maximum legal rate chargeable to Public Entities, whichever is less. The obligation of the District to pay Sublease Payments hereunder shall constitute 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 limitations or requirements 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.
- C. In the event that the District exercises its option under Article 21(B) below, and purchases the Project by paying the Prepayment Price, the District’s obligations under this Sublease, including but not limited to the District’s obligation to pay Sublease Payments under this Article, shall thereupon cease and terminate.
- D. Except as specifically provided in this Article and in Article 9 hereof or as otherwise provided by law, the obligation of the District to make Sublease Payments when due and payable hereunder will be absolute and unconditional in all events and will not be subject to any set-off, defense, counterclaim, abatement or recoupment for any reason whatsoever.

8. **FAIR RENTAL VALUE.**

Sublease Payments 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, as separate and distinct consideration from the Progress Payments made pursuant to the CSA through which title to the improvements to the District’s real property made by Contractor shall vest progressively in the District. The parties hereto have agreed and determined that such total rental is not in excess of the fair rental value of the Project and the Site. In making such determination, consideration has been given to the fair market value of the Project and the Site, that title to the improvements completed and paid for by District as to which the District shall have the right of possession and continued quiet use and enjoyment, shall vest in District on a continuous basis, 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 the District and the general public, the ability of the District to make additions, modifications and improvements to the Project and the Site which are not inconsistent with the Construction Services Agreement (Exhibit “D” hereof) and which do not interfere with the Lessor’s work on the Project and the Site.

9. **SUBLEASE ABATEMENT.**

In addition to delay of Sublease Payments provided in Article 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 the 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 the 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 the District. The amount of Sublease abatement shall be such that the Sublease Payments paid by the District during the period of 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.

10. **USE OF SITE AND PROJECT.**

During the term of this Sublease, Lessor shall provide the District with quiet use and enjoyment of the Site without suit, or hindrance from Lessor or their 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, the 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 the 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 the Project or its interest or rights under this Sublease. Lessor acknowledges that at any time during the term of this Sublease, District may access the Site to conduct District business. Lessor acknowledges and agrees to the District's use or occupation of the Site, so long as such use or occupation does not unreasonably interfere with construction of the Project. Upon substantial completion of the Project or severable portions hereof, the Lessor shall provide the District with quiet use and enjoyment of the Site without suit or hindrance from the Lessor or its assigns, subject to reasonable interference from ongoing construction operations on any remaining portion of the Site under construction by the Lessor.

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

District agrees that Lessor and any of Lessor's representatives shall have the right at all reasonable times to enter upon the Site or any portion thereof to construct and improve the Project, to examine and inspect the Site and the Project and to exercise its remedies pursuant to the section in this Sublease entitled "Remedies on Default." District further agrees that Lessor and any of Lessor's representatives shall have such rights of access to the Site as may be reasonably necessary to cause the proper maintenance of the Site and the Project in the event of failure by District to perform its obligations hereunder.

12. **PROJECT ACCEPTANCE.**

District shall acknowledge final inspection and completion of the Project by executing and recording a Notice of Completion. The validity of this Sublease will not be affected by any delay in or failure of completion of the Project.

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 this Sublease and Articles 20 and 21 hereof. Separately identifiable attachments added to the Project by the District shall remain the property of the District. At Lessor's request, the District agrees to remove the attachments and restore the Project to substantially as good condition as when acquired and constructed, normal wear and tear excepted, in the event of failure by the District to perform its obligations hereunder.

14. **UTILITIES.**

Until the date the Project is deemed Substantially Complete as defined in the the Construction Services Agreement, Lessor shall, in its own name, contract for and pay the expenses of all utility services required for the Project once constructed and Site, such utilities, including but not limited to, all air conditioning, heating, electrical, gas, water, and sewer units. Once the Project is Substantially Complete as defined in the Construction Services Agreement, the District shall be liable for payment as well as maintenance of all utility services received.

15.

**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.

16.

**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. The District fails to make any unexcused Sublease Payment (or any other payment) within fifteen (15) days after the due date thereof or the 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. The Lessor discovers that any statement, representation or warranty made by the District in this Sublease, or in any document ever delivered by the District pursuant hereto or in connection herewith is misleading or erroneous in any material respect;
- C. The District becomes insolvent, is unable to pay its debts as they become due, makes an assignment for the of creditors, applies or consents to the appointment of a receiver, trustee, conservator or liquidator of the District or of all or a substantial part of its assets, or a petition for relief is filed by the District under federal bankruptcy, insolvency or similar laws.

17.

**REMEDIES ON DEFAULT.** Upon the happening of any Event of Default, Lessor 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. The District shall continue to remain liable for the payment of Sublease Payments and damages for breach of this Sublease and the performance of all conditions herein such Sublease Payments and damages shall be payable to Lessor at the time and in the manner set forth in subsections (A) and (B) of this Article:

- A. In the event that Lessor does not elect to terminate this Sublease pursuant to subsection (B) below, the District agrees to and shall remain liable for the payment of Sublease Payments and the performance of all conditions herein and shall reimburse Lessor for the full amount of the Sublease Payments to the end of the Sublease term.
- 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 the District, the District shall pay Lessor Sublease Payments then owing for past Sublease Payments due and not paid, 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. Neither notice to pay Sublease Payments or to deliver up possession of the Project and the Site given pursuant to law nor any proceeding in unlawful detainer taken by Lessor shall of itself operate to terminate this Sublease. In the event of any such litigation between the parties, the parties shall pay for their respective costs incurred, including attorneys' fees.

No right or remedy herein conferred upon or reserved to Lessor 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.

18.

**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 the other party. 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 the 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.

19.

**ASSIGNMENT.**

Without the prior written consent of the Lessor, which consent shall not be unreasonably withheld, the District shall not (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 Project or any part thereof, except as authorized by the provisions of the California Civic Center Act, Education Code section 38130 *et seq.* However, District may lease, license or otherwise allow use or occupation of the Site for third party use so long as such use or occupation does not unreasonably interfere with construction of the Project. 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 the District or any other person. The Lessor shall not assign its obligations under this Sublease with the exception of their obligation to issue default notices and to convey or re-convey their interest in the Project and Site to the District upon full satisfaction of the District's obligations hereunder; however, the Lessor may assign their right, title and interest in this Sublease, the Sublease Payments and other amounts due hereunder and the Project in whole or in part to one or more assignees or sub-assignees at any time upon written notice to the District. No assignment shall be effective as against the District unless and until the District is so notified in writing. The District shall pay all Sublease Payments due hereunder pursuant to the direction of Lessor or the assignee named in the most recent assignment or notice of assignment. During the Sublease term, the District shall keep a complete and accurate record of all such assignments. Subject always to the foregoing, this Sublease inures to the benefit of, and is binding upon, the heirs, legatees, personal representatives, successors, and assigns of the parties hereto.

20.

**OWNERSHIP.**

The Project is and shall at all times be and remain the sole and exclusive property of the Lessor, and the District shall have no right, title, or interest therein or thereto except as expressly set forth herein. During the Term of this Sublease Agreement, the District shall hold title to the Site and obtain title to the Project from the Lessor, and any and all additions which comprise fixtures, repairs, replacements or modifications thereof, as construction progresses and lease payments are made to Lessor. During the term of this Sublease Agreement, the Lessor shall have a leasehold interest in the Site pursuant to the Site Lease. If the District prepays the Sublease Payments in full pursuant to Article 21 hereof or otherwise pays all Sublease Payments, all remaining right, title and interest of the Lessor, if any, in and to the Project and the Site, shall be fully transferred to and vested in the District. Title shall be transferred to and vested in the District hereunder without the necessity for any further instrument of transfer. At the termination of this Sublease Agreement, title to the Site, and any improvements constructed thereon shall vest in the District.

21.

**SUBLEASE PREPAYMENTS/PURCHASE OPTION.**

A. **Sublease Prepayments.** At any time during the term of this Sublease, the District may, upon the request of the Lessor or on upon its own initiative, make Sublease Prepayments to the Lessor. No Sublease Prepayments requested by the Lessor may be made by the District in an amount not to exceed the aggregate true cost to the Lessor of the work on the Project completed to the date the Lessor submits the request for a Sublease Prepayment less the aggregate amount of: (1) all Sublease Payments previously made by the District to the Lessor; (2) all Sublease Prepayments previously made by the District to the Lessor; (3) all amounts previously retained pursuant to Article 21(A)(3), below, from Sublease Prepayments previously made by the District to the Lessor (unless the Lessor shall have previously substituted securities for such retained amounts pursuant to Article 21(A)(3)); and (4) the Retention for such Sublease Prepayment pursuant to Article 21(A)(3). Lessor must submit evidence that the conditions precedent set forth in Article 21(A)(1), below, have been met. In the event District elects to make Sublease Prepayments, the Prepayment Price, contemplated in Article 21(B), below, shall be adjusted accordingly.

- (1) The following are conditions precedent to any Sublease Prepayments made to the Lessor pursuant to a request of the Lessor:
  - a. Satisfactory progress of the Construction pursuant to the time schedule required pursuant to Article 9 of the Construction Services Agreement (the "Time Schedule") shall have been made as determined in Article 21(A)(2), below.
  - b. Lessor shall also submit to the District (i) duly executed conditional lien releases and waivers (in the form provided in California Civil Code section 8132) from the Lessor and all Subcontractors, consultants and other persons retained by the Lessor in connection with the Project, whereby such persons conditionally waive all lien and stop notice rights against the District, the Project and the Project site with respect to the pending Sublease Prepayment to be made by the District, (ii) duly executed unconditional lien releases and waivers (in the form provided in California Civil Code section 8134) from the Lessor and all subcontractors, consultants and other persons retained by the Lessor in connection with the Project, whereby such persons unconditionally and irrevocably waive all lien and stop notice rights against the District, the Project and the Project site with respect to all previous Sublease Prepayments made by the District, and (iii) any other items that the Lessor may be required to collect and distribute to the District pursuant to the terms and provisions of the Construction Services Agreement. Lessor shall promptly pay all amounts due to each subcontractor, consultant and other person retained by Lessor in connection with the Project no later than ten (10) days after Lessor's receipt of a Sublease Prepayment from the District.
- (2) The determination of whether satisfactory progress of the Construction pursuant to the Time Schedule has occurred shall be made by the inspector hired by the District pursuant to Article 10 of the Construction Services Agreement. If the District's inspector determines that pursuant to the Time Schedule, the work required to be performed, as stated in the Lessor's Sublease Prepayment request has not been substantially completed, the Lessor shall not be eligible to receive the requested Sublease Prepayment
- (3) The determination of whether satisfactory progress of the Construction pursuant to the Time Schedule has occurred shall be made by the inspector hired by the District pursuant to Article 10 of the Construction Services Agreement. If the District's inspector determines that pursuant to the Time Schedule, the work required to be performed, as stated in the Lessor's Sublease Prepayment request has not been substantially completed, the Lessor shall not be eligible to receive the requested Sublease Prepayment.

- B. **Purchase Option.** If the District is not in default hereunder, the District shall be granted options to purchase not less than all the Project in as-is condition. The Prepayment Price at any given time shall be an amount equal to the GMP, as it may be revised from time to time, less the sum of any Sublease Payments and/or Sublease Prepayments made by the District prior to the date on which the District elects to exercise its option under this Article.

22. **RELEASE OF LIENS.**

- A. Notwithstanding Article 21, upon District executing a Certificate of Acceptance and filing a Notice of Completion on the Project, as such term is defined herein and in the Construction Services Agreement, Lessor or its assignee and the District shall release Lessor's leasehold interest in Project and the Site. However, District shall retain any and all claims and or warranties it may have under the Construction Services Agreement.
- B. Lessor shall authorize, execute and deliver to the District all documents reasonably requested by the District to evidence (i) the release of any and all liens created pursuant to the provisions of this Sublease and the Site Lease, and (ii) any other documents required to terminate the Site Lease and this Sublease.

23. **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.

24. **SEVERABILITY.**

If any provision of this Sublease shall be held invalid or unenforceable by a court of competent jurisdiction, such holdings 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.

25. **INTEGRATION/MODIFICATION.**

This Sublease constitutes the entire agreement between Lessor and the 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.

26. **NOTICES.**

Services 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 by telex, telegram, or fax followed by regular mail, addressed as follows:

If to Lessor:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

If to District:

Davis Joint Unified School District  
526 B Street  
Davis, CA 95616  
Attn: **Bruce Colby, Associate Superintendent Business Services**

27. **TITLES.**

The titles to the Articles or sections of this Sublease are solely for the convenience of the parties and are not an aid in the interpretation thereof.

28. **TIME.**

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

29. **LAWS, VENUE AND ATTORNEYS' FEES.**

The terms and provisions of this Sublease 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 Sublease, the action shall be brought in a state court situated in the County of Yolo, State of California, unless a court finds jurisdiction or venue is only proper in a federal court, or a court outside this county. In the event of any such litigation between the parties, each party shall bear its own attorney's fees.

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

**DISTRICT**

**"LESSOR"**

**DAVID JOINT UNIFIED SCHOOL DISTRICT**

BY:

\_\_\_\_\_  
**Bruce Colby, Associate  
Superintendent Business Services**

BY:

\_\_\_\_\_  
\_\_\_\_\_

**EXHIBIT A**

**Description of Project**  
**[TO BE INSERTED]**

**EXHIBIT B**  
**DESCRIPTION OF SITE**

***[TO BE INSERTED]***

**EXHIBIT C**

**SITE LEASE**

***[TO BE INSERTED]***

**EXHIBIT D**  
**CONSTRUCTION SERVICES AGREEMENT**  
***[TO BE INSERTED]***