

**LEASE-LEASEBACK**

**SUBLEASE AGREEMENT**

**Dated as of March 28, 2017,**

**Between**

**Scotts Valley Unified School District**

**and**

**C. Overaa & Company**

**The Scotts Valley Middle School Campus Modernization Project**

**at Scotts Valley Middle School,**

**8 Bean Creek Road, Scotts Valley, CA**

**LEASE-LEASEBACK  
SUBLEASE AGREEMENT  
THE SCOTTS VALLEY MIDDLE SCHOOL CAMPUS MODERNIZATION PROJECT**

**THIS LEASE-LEASEBACK SUBLEASE AGREEMENT** ("Sublease") is entered into as of March 28, 2017, between C. Overaa & Company, a California corporation and licensed contractor ("Contractor"), as lessor, and the Scotts Valley Unified School District, a California public school district (the "Owner"), as lessee. Owner and Contractor are each a "Party" and together are the "Parties" to this Sublease.

Under California Education Code Section 17406 et seq., the Owner may enter into leases and agreements relating to real property and buildings used by the Owner.

The Owner deems it essential for its own governmental purpose to construct and install certain improvements (the "Project") described in Article 1 and Exhibit A of the Lease-Leaseback Agreement entered into between the Owner and Contractor dated the date of this Sublease (the "Lease-Leaseback Agreement") and situated on the Site described or depicted in Exhibit A of the Site Lease dated the same date between the Owner and Contractor (the "Site Lease"). The site described or depicted in the Site Lease is referred to in this Sublease as the "Site." The Project improvements to be financed and constructed by Contract are the "Work."

Under California Education Code Section 17406, the Owner is leasing the Site to Contractor under the Site Lease in consideration of Contractor subleasing the Site, including the Project, to the Owner under the terms of this Sublease.

The Owner owns the Site and under the Lease-Leaseback Agreement has prepared, adopted, and had approved plans and specifications for the completion of the Project as required by California Education Code Section 17402.

Further, Contractor intends to finance the construction of the Work, as described in the Lease-Leaseback Agreement. As part of its Sublease Payments (as described in Section 6) to Contractor, District will compensate Contractor for the cost of financing construction of the Work.

The Owner and Contractor agree to mutually cooperate now or hereafter, to the extent possible, in order to sustain the intent of this Sublease and the bargain of the Parties, and to provide payments according to this Sublease.

The Owner and Contractor therefore agree as follows:

**1. Sublease.** Contractor subleases to the Owner, and the Owner subleases from Contractor, the Site, including any real property improvements now or later placed on the Site. Following this sentence, reference in this Sublease to the term "Contractor" means Contractor and Contractor's assigns for those rights, interests, and obligations that may be assigned by Contractor. The purpose of this Sublease is (1) for the Owner to have necessary access to and use of the Site at such times and in such a manner as allowed by the Contract Documents; (2) for the Owner to obtain financing for the Work from the Contractor; and (3) during the term of the Sublease, for the Owner to enjoy beneficial use and occupancy of the Site and the completed Work. During the term of the Sublease, Owner and its agents, employees and invitees may enter into and upon the Site and the Work at all reasonable times necessary for the Owner to conduct its business. During construction of the Work,

the Owner shall not unduly disturb, or unreasonably interfere with Contractor's Work and related improvements to the Site. Following completion of the Work, the Owner shall enjoy full and undisturbed use of the Site during the remainder of the Lease Term.

**2. Term.** The term of this Sublease ("Lease Term") shall begin as of the date above and shall be coterminous with the term of the Lease-Leaseback Agreement. Upon the final Sublease payment or termination, the Parties' respective interests under this Sublease will automatically end and be released, and title to the Site, Work, and Project will automatically and fully vest in the Owner.

**3. Representations and Warranties of the Owner.** The Owner represents and warrants to Contractor that:

(a) The Owner is a public school district, duly organized and existing under the Constitution and laws of the State of California with authority to enter into and perform all of its obligations under this Sublease.

(b) The Owner'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 do not and will not result in any breach of or constitute a default under any indenture, mortgage, contract, agreement, or instrument to which the Owner is a party by which it or its property is bound.

(d) There is no pending or, to the knowledge of the Owner, threatened action, or proceeding before any court or administrative agency that will materially adversely affect the ability of the Owner to perform its obligations under this Sublease.

(e) The Project and the Site are essential to the Owner in the performance of its governmental functions and their estimated useful life to the Owner exceeds the term of this Sublease.

(f) The Owner 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) The Owner shall not abandon the Site for the use for which it is currently required by the Owner and, to the extent permitted by law, the Owner shall not seek to substitute or acquire property to be used as a substitute for the use for which the Site is maintained under the Sublease.

(h) Except as may be permitted under federal or state laws, the Owner shall not allow any hazardous materials or substances to be used or stored on, under, or about the Site.

**4. Representations and Warranties of Contractor.** Contractor represents and warrants to the Owner that:

(a) Contractor is duly organized, validly existing and in good standing as a corporation and licensed contractor under the laws of the State of California, with full corporate power and authority to lease and own real and personal property;

(b) Contractor 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 have been duly

authorized by all necessary corporate actions on the part of Contractor and do not require any further approvals or consents;

(c) The execution, delivery, and performance of this Sublease do not and will not result in any breach of or constitute a default under any indenture, mortgage, contract, agreement, or instrument to which Contractor is a party by which it or its property is bound;

(d) There is no pending or, to the knowledge of Contractor, threatened action, or proceeding before any court or administrative agency that will materially adversely affect the ability of Contractor to perform its obligations under this Sublease;

(e) Contractor will not mortgage or encumber the Site or the Sublease or assign this Sublease or its rights to receive Sublease payments, except as permitted under this Sublease.

## **5. Construction/Acquisition.**

(a) The Owner has entered into the Lease-Leaseback Agreement and the Site Lease with Contractor in order to acquire and construct the Work, while enjoying use of the Site. The cost of the acquisition, construction and installation of the tenant improvements defined as the Work and the Owner's use of the Site under this Sublease is determined by the Total Sublease Amount as set forth in Article 4 of the Lease-Leaseback Agreement.

(b) In order to ensure that monies sufficient to pay all costs will be available for this purpose when required, the Owner shall maintain on deposit in its general or other appropriate fund, and shall annually appropriate funds sufficient to make all Sublease payments which become due to Contractor under this Sublease.

## **6. Sublease Payments.**

(a) Over the term of the Sublease, the Owner will pay to the Contractor the Total Sublease Amount in nineteen (19) monthly installments of \$1,748,842.11 each (with each such installment being a "Sublease Payment"), as set forth in **Exhibit A**. The Total Sublease Amount includes the following: (1) All trades and unit costs for the Work, including all labor, material, and equipment, whether the Work is performed by Contractor or its subcontractors; (2) the cost of insurance for the Work; (3) the cost of bonds for the Work; (4) the General Condition items for which Contractor is responsible; (5) the Contractor's overhead and profit for the Work; and (6) the cost of financing the Work for the duration of the lease, including the portion of the lease after Completion of the Work. The parties expressly agree that the Total Sublease Amount represents the fair market value for the Work and for the Owner's use of the Site during the term of the Sublease.

(b) During the Lease Term, the Owner will adjust the Total Sublease Amount to account for (i) unused allowances, (ii) any change orders, (iii) Contractor's actual costs being less than its estimated costs, or (iv) use of the Site during the term of the Sublease. Any adjustment to the Total Sublease Amount shall result in a prorated increase, or decrease, in Sublease Payments made following such adjustment, as calculated by the District.

(c) The obligation of the Owner to make Sublease Payments shall constitute a current expense of the Owner and shall not in any way be construed to be a debt of the Owner in contravention of any

applicable constitutional or statutory limitations or requirements concerning the creation of indebtedness by the Owner, nor shall anything contained in this Sublease constitute a pledge of the general tax revenues, funds, or monies of the Owner.

(d) **Extension of Lease Term.** If the Work will not be Completed by the Date for Completion set forth in Article 3 of the Lease-Leaseback Agreement due to delay that is not excusable under the terms of the Contract, including Article 8 of the General Conditions, then the Lease Term shall be extended by one month for each full month of such delay, and District shall either (i) elect not to make a Sublease Payment during construction for each month added to the Lease Term, or (ii) increase the number, and lower the dollar amount, of the remaining equal Sublease Payments based on the months added to the Lease Term.

To maintain the number of post-Completion Sublease Payments, if the Date for Completion is extended by change orders that grant time extensions for delay pursuant to the Contract, then the Lease Term shall be extended by one month for each full month of total time extensions, and District shall increase the number, and lower the dollar amount, of the remaining equal Sublease Payments based on the months added to the Lease Term.

If the total delay in Completion is only partially entitled to time extensions for excusable delay under the terms of the Contract, then the Lease Term shall be extended by one month for each full month of total delay. If the delays entitled to time extensions are less than half of the total delay in completion, then the District shall elect between the procedures in Section 6(d)(i) and (ii) above; and if such delays are equal to or more than half of the total delay in Completion, the District shall proceed pursuant to Section 6(d)(ii) above.

**7. Fair Rental Value.** Sublease Payments shall be paid by the Owner in consideration of the right of possession of, and the continued quiet use and enjoyment of, the Project and the Site during this Sublease. The Parties 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, 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 from the Project and Site which will accrue to the Owner and the general public, the ability of the Owner to make additions, modifications and improvements to the Project and the Site which are not inconsistent with the Lease-Leaseback Agreement and which do not interfere with Contractor's Work on the Project and Site.

**8. Sublease Abatement.** Sublease Payments due with respect to the Work shall be subject to abatement prior to the commencement of the use of the Project 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 Owner of the Project and the Site or any substantial portion of the Site. 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 Owner in concert with its insurance provider. Contractor's right to dispute these decisions is not impaired. The amount of abatement shall be such that the Sublease Payments paid by the Owner during the period of Project restoration do not exceed the fair rental value of the usable portions of the Site. In the event of any damage or destruction to the Project or the Site, this Sublease shall continue in full force and effect.

**9. Use of Site and Project.** During the term of this Sublease, Contractor shall provide the Owner

with quiet use and enjoyment of the Site without suit, or hindrance from Contractor or its assigns. The Owner 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. The Owner shall provide all permits and licenses, if any, necessary for the operation of the Project. In addition, the Owner agrees to comply in all respects (including, without limitation, with respect to the time, maintenance and operation of the Project) with laws of all jurisdictions in which its operations involving the Project may extend and any legislative, executive, administrative, or judicial body exercising any power or jurisdiction over the Site or the Project; provided, however, that the Owner 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 Contractor, adversely affect the estate of Contractor in and to the Site or the Project or its interest or rights under this Sublease. Upon Completion of the Work or severable portions thereof, as defined in the General Conditions, Contractor shall provide the Owner with quiet use and enjoyment of the Site without suit or hindrance from Contractor or its assigns, subject to reasonable interference from ongoing construction operations on any remaining portion of the Site under construction by Contractor.

**10. Contractor's Inspection/Access to the Site.** The Owner agrees that Contractor and any Contractor representative shall have the right at all reasonable times to enter upon the Site or any portion thereof to construct the Work and improve the Project, to examine and inspect the Site and the Work and to exercise its remedies pursuant to section 21 of this Sublease. The Owner further agrees that Contractor and any Contractor representative shall have such rights of access to the Site as may be reasonably necessary to cause the proper maintenance of the Site and the Work in the event of failure by the Owner to perform its obligations under this Sublease.

**11. Project Acceptance.** The Owner shall perform final inspection and acknowledge Completion of the Work. The Owner's Board shall accept the Work to the extent required by the Contract Documents, including Section 9.7 of the General Conditions. The validity of this Sublease will not be affected by any delay in or failure of Completion of the Work.

**12. Lease-Leaseback Agreement and Site Lease.** All of the terms of the Lease-Leaseback Agreement and Site Lease apply to this Sublease as if they were contained in this Sublease.

**13. Alterations and Attachments.** All permanent additions and improvements that are made to, and as part of, the Project shall belong to and become the property of Contractor until the final Sublease payment or termination of the Contract, subject to the provisions of sections 2, 21 and 22 of this Sublease. Separately identifiable attachments added to the Project by the Owner shall remain the property of the Owner.

**14. Physical Damage; Public Liability Insurance.** The Contractor and the Owner shall maintain such damage and public liability insurance policies with respect to the Project and the Site as are required of them by the Lease-Leaseback Agreement.

**15. Taxes.** The Owner 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 later 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 Contractor's income.

**16. Indemnity.** In addition to the indemnification set forth in Article 14 of the Lease-Leaseback Agreement, to the extent permitted by law, and with the exception of the Contractor's responsibilities

as "Contractor" under the Lease-Leaseback Agreement, the Owner shall, with respect to the Project and the Site, indemnify Contractor against and hold Contractor harmless from any and all claims, actions, suits, proceedings, costs, expenses, damages, and liabilities, including attorneys' fees, arising out of, connected with or resulting from any acts of omission or commission by the Owner's employees and agents or claims resulting from incidents or occurrences involving the financing of the Project and Lease-Leaseback aspects of the Project and third parties on the Site, including without limitation, the construction, possession, use or operation of the Project and further, the Owner agrees, to the extent the law allows, to indemnify Contractor against and hold Contractor harmless from and against any and all claims, actions, suits, proceedings, cost, expenses, damages, and liabilities, including attorney's fees, arising out of, connected with or resulting from the clean-up of any hazardous materials or toxic wastes from the Site or the Project; provided, however, that the Owner shall not be required to indemnify Contractor in the event that such liability or damages are caused by the breach of the Contract, negligence, or intentional misconduct of Contractor.

**17. 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 Owner fails to make any undisputed Sublease Payment within 15 days after its due date; (b) the Owner or the Contractor fails to perform or observe any other covenant, condition or agreement to be performed or observed by it under this Sublease and such failure to either make the payment or perform the covenant, condition or agreement is not cured within 10 days after written notice of it by the other Party; (c) the discovery by a Party that any statement, representation or warranty made by the other Party in this Sublease, or in any document ever delivered by that other Party under or in connection with this Sublease is misleading or erroneous in any material respect; or (d) a Party becomes insolvent, is unable to pay its debts as they become due, makes an assignment for the benefit of creditors, applies or consents to the appointment of a receiver, trustee, conservator or liquidator of the Party or of all or a substantial part of its assets, or a petition for relief is filed by the Party under federal bankruptcy, insolvency or similar laws.

**18. Remedies on Default.** Upon the happening of any Event of Default, the non-defaulting Party may exercise all remedies available under the Contract, including but not limited to Article 14 of the General Conditions. In a Contractor Event of Default, Owner may withhold Sublease Payments. Despite any Sublease provisions to the contrary, Contractor 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.

**19. Non-Waiver.** No covenant or condition to be performed by the Owner or Contractor under this Sublease can be waived except by the written consent of the other Party. Forbearance or indulgence by the Owner or Contractor in any regards whatsoever shall not constitute a waiver of the covenant or condition in question. Until complete performance by the Owner or Contractor of a 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 that forbearance or indulgence.

**20. Assignment.** Without the prior written consent of Contractor, the Owner shall not (a) assign, transfer, pledge, or hypothecate this Sublease, the Project and the Site, or any part of them, or any interest in them, or (b) sublet or lend the use of the Project or any part of it, except as authorized by the provisions of the California Civic Center Act, Education Code Section 38130 *et seq.* Consent to any of the prohibited acts listed applies only in the given instance and is not a consent to any subsequent like act by the Owner or any other person. Contractor shall not assign its obligations under this Sublease with the exception of its obligations to issue default notices and to convey or reconvey its interest in the Project and Site to the Owner upon full satisfaction of the Owner's

obligations under this Sublease; however, Contractor may assign its right, title and interest in the Sublease Payments, and other amounts due under this Sublease and the Project in whole or in part to one or more assignees or subassignees at any time with the consent of the Owner which shall not be unreasonably withheld. No assignment shall be effective as against the Owner unless the Owner is so notified in writing. The Owner shall pay all Sublease Payments according to the direction of Contractor or the assignee named in the most recent assignment or notice of assignment. During the Sublease term, the Owner 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.

**21. Ownership.** The Project is and shall at all times be and remain the sole property of Contractor until completion of the Project or termination of the Contract, and the Owner shall have no right, title, or interest in or to it until completion of the Project or termination of the Contract, except as expressly set forth in this Sublease (including, but not limited to, Section 2, above).

**22. Release of Liens.**

(a) Upon the final Sublease Payment or termination, Contractor or its assignee and the Owner shall release Contractor's leasehold interest in the Project.

(b) Contractor shall authorize, execute, and deliver to the Owner all documents reasonably requested by the Owner to evidence (i) the release of any and all liens created under this Sublease and the Site Lease, and (ii) any other documents required to terminate the Site Lease and this Sublease.

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

**24. Entire Agreement.** This Sublease, the Site Lease, the Lease-Leaseback Agreement, and the Contract Documents that make up the "Contract" constitute the entire agreement between the Parties with respect to the Work and the Project, and the Contract shall not be amended, altered, or changed except by a written agreement signed by both Parties.

**25. Notices.** Any notices or filings required to be given or made under this Sublease shall be served, given, or made in writing upon the Owner or Contractor, as the case may be, by personal delivery or registered mail (with a copy sent via fax or regular mail) to the respective addresses given below, or at such address as such Party may provide in writing from time to time.

If to Contractor:

C. Overaa & Company  
Attn: Carl Overaa (VP) and Mike Conrad (project manager)  
200 Parr Boulevard  
Richmond, CA 94801

If to Owner:

Scotts Valley Unified School District  
Attn: Tanya Krause (superintendent) and Mike Smith (project manager)  
4444 Scotts Valley Drive, Suite 5B  
Scotts Valley, CA 95066

If to Contractor:

C. Overaa & Company  
Attn: Carl Overaa (VP) and Mike Conrad (project manager)  
200 Parr Boulevard  
Richmond, CA 94801

If to Owner:

Scotts Valley Unified School District  
Attn: Tanya Krause (superintendent) and Mike Smith (project manager)  
4444 Scotts Valley Drive, Suite 5B  
Scotts Valley, CA 95066

**26. Headings.** The captions or headings in this Sublease are for convenience only and in no way define, limit or describe the scope or intent of any provisions of this Sublease.

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

**28. Sublease Interpretation.** This Sublease and the rights of the Parties under it shall be governed by and construed in accordance with the laws of California.

**29. Execution in Counterparts.** This Sublease may be simultaneously executed in multiple counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same instrument.

**30. Terms Not Defined.** Capitalized terms used in this Sublease that are not defined shall have the same meaning as in the Lease-Leaseback Agreement, General Conditions, or other Contract Documents.

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**CONTRACTOR:**

C. Overaa & Company

BY: Carl Overaa  
TITLE: PRESIDENT, VICE-PRESIDENT,  
OR CHAIRMAN

BY: [Signature]  
TITLE: SECRETARY, ASSISTANT SECRETARY,  
CFO, OR ASSISTANT TREASURER

**OWNER:**

Scotts Valley Unified School District

BY: Tanya Krause  
Superintendent

## **EXHIBIT A**

### **SCHEDULE OF SUBLEASE PAYMENTS**

The term of this sublease shall commence as of the date shown on page 1 of this Sublease. Sublease payments shall be paid monthly in accordance with the Contract Documents, including Section 6 of this Sublease, and the total Sublease Payments made shall not exceed the amount of the final Total Sublease Amount as defined in Article 4 of the Lease-Leaseback Agreement.

Notwithstanding the foregoing, the term of this Sublease may be extended and payment options may be modified by written agreement of the Parties hereto.

The initial schedule of Sublease Payments shall be as follows:

<b><u>Payment No.</u></b>	<b><u>Date Payment Is Due</u></b>	<b><u>Amount of Payment</u></b>
1	June 5, 2017	\$ 1,748,842.11
2	July 5, 2017	1,748,842.11
3	August 5, 2017	1,748,842.11
4	September 5, 2017	1,748,842.11
5	October 5, 2017	1,748,842.11
6	November 5, 2017	1,748,842.11
7	December 5, 2017	1,748,842.11
8	January 5, 2018	1,748,842.11
9	February 5, 2018	1,748,842.11
10	March 5, 2018	1,748,842.11
11	April 5, 2018	1,748,842.11
12	May 5, 2018	1,748,842.11
13	June 5, 2018	1,748,842.11
14	July 5, 2018	1,748,842.11
15	August 5, 2018	1,748,842.11
16	September 5, 2018	1,748,842.11
17	October 5, 2018	1,748,842.11
18	November 5, 2018	1,748,842.11
19	December 5, 2018	1,748,842.11