

LEASE-LEASEBACK

SUBLEASE AGREEMENT

Dated as of _____, 20__

Between

Chicago Park Elementary School District

and

**The Facilities Modernization and Construction of One TK Classroom
Contract**

**Chicago Park Elementary School
15725 Mt Olive Rd,
Grass Valley, CA 95945**

**LEASE-LEASEBACK
SUBLEASE AGREEMENT
THE _____ CONTRACT**

THIS LEASE-LEASEBACK SUBLEASE AGREEMENT (“Sublease”) is entered into as of _____, 2023, between _____, a California [corporation] and licensed contractor (“Contractor”), as lessor, and the Chicago Park Elementary 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.

This Sublease is entered into by the Parties pursuant to California Education Code section 17406 (“Section 17406”), which permits the governing board of school district to lease to any person, firm, or corporation any real property owned by the school district if the instrument by which such property is leased requires the lessee to construct on the leased premises, or provides for the construction thereon, of a building for the use of the school district during the term of the lease, and provides that title to that building shall vest in the school district at the expiration of the lease.

The Owner deems it essential for its own governmental purpose to construct and install certain improvements (the “Work”) described in Section 1 of that certain Lease-Leaseback Agreement entered into between the Owner and Contractor and dated _____, 2023, and situated on the Site described or depicted in Exhibit A of that certain Site Lease dated _____, 2023, between the Owner and Contractor (the “Contract”), all of which is part of the Owner’s Facilities Modernization and Construction of One TK Classroom project (the “Project”).

Pursuant to Section 17406, the Owner is leasing the site of the Work (the “Site”) to Contractor under the Site Lease in consideration of Contractor subleasing the Site, including the Contract, to the Owner under the terms of this Sublease.

Contractor will finance construction of the Contract. As part of its Sublease Payments (as described in Section 6, below) to Contractor, District will compensate Contractor for the cost of financing construction of the Contract.

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. 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 will not impede the construction of the Work; (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 Sublease Term.

Each phase of the Work (see Section IV.F of the Request for Proposals and Qualifications) shall separately comply with the provisions of this Sublease, including but not limited to Sections 6 and 7.

2. Term. The term of this Sublease (“Lease Term”) shall be coterminous with the term of the Lease-Leaseback Agreement and Contract. Upon the end of the Lease Term, the Parties’ respective interests under this Sublease will automatically end and be released, and title to the Site and Work will automatically and fully vest in the Owner. The Work is and shall at all times be and remain the sole property of Contractor until termination of the Contract, and the Owner shall have no right, title, or interest in or to it until termination of the Contract, except as expressly set forth in this Sublease.

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 Work 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 Contract 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 the Lease-Leaseback Agreement and *Exhibit A* of this Sublease.

(b) In order to ensure that moneys 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 this Sublease, the owner will pay to the Contractor the Total Sublease Amount for Phase _____ (excluding any allowances or contingencies) in _____ (____) equal monthly installments (each such installment being a "Sublease Payment") pursuant to the Schedule of Sublease Payments which shall be prepared based on the form attached as *Exhibit A*, executed by the Contractor, and then approved by the Owner's governing board when it approves the Total Sublease Amount for Phase _____ pursuant to Education Code section 17406(a)(3). *[repeat the previous sentence for each phase]* Upon execution by the Parties and approval by the Owner's governing body, the Schedule of Sublease Payments shall act as a written amendment to this Sublease. Payments shall be made by the fifth day of each month, pursuant to the General Conditions. The Sublease Payments shall be made in accordance with the Contract Documents, including but not limited to the General Conditions. 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 for each phase to account for any changes in the scope of the Work or use of the Site during the term of the Sublease, including but not limited to (i) spent allowances or contingency, (ii) any change orders, or (iii) Contractor's actual costs being less than its estimated costs. As set forth in the General Conditions, any changes in the Total Sublease Amount for each phase shall result in a prorated increase, or decrease, in Sublease Payments made following the adjustment to the Total Sublease Amount.

(c) The obligation of the Owner to pay 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 moneys of the Owner.

7. Extension of Sublease Term.

(a) *Excusable Delay.* If the Date for Completion for each phase is extended by change orders that grant time extensions for delay pursuant to the Contract, then the Sublease Term shall be extended by one month for each full month of total time extensions, and Owner shall increase the number, and lower the equal dollar amounts, of the remaining Sublease Payments for that phase based on the months added to the Sublease Term.

(b) *Inexcusable Delay.* If the Work will not be completed by the Date for Completion for a phase set forth in 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 Sublease Term for that phase shall be extended by one month for each full month of such delay, and Owner shall either (i) elect not to make a Sublease Payment during construction for each month added to the Sublease Term, or (ii) increase the number, and lower the equal dollar amounts, of the remaining equal Sublease Payments based on the months added to the Sublease Term.

(c) If the total delay in completion for a phase is only partially entitled to time extensions for excusable delay under the terms of the Contract, then the Sublease Term for that phase 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 Owner shall elect between the procedures in Section 7(b)(i) and (ii) above; and if such delays are equal to or more than half of the total delay in completion, the Owner shall proceed pursuant to Section 7(b)(ii) above.

8. 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 Work 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 Work and the Site. In making such determination, consideration has been given to the fair market value of the Work 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 Work and the Site and the benefits from the Work 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 Work

and the Site which are not inconsistent with the Lease-Leaseback Agreement and which do not interfere with Contractor's work on the Contract and Site.

9. Sublease Abatement. Sublease Payments due with respect to the Contract shall be subject to abatement prior to the commencement of the use of the Work or during any period in which, by reason of material damage to or destruction of the Work or the Site, there is substantial interference with the use and right of possession by the Owner of the Work and the Site or any substantial portion 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 Work 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 Work or the Site, this Sublease shall continue in full force and effect.

10. Use of Site and Project. During the Sublease Term, 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 Project, 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 at the Site by Contractor.

11. 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 and improve the Work and to examine and inspect the Site and the Work. 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.

12. Contract Acceptance. The Owner shall perform a final inspection and acknowledge Completion of the Work, as set forth in Article 9.7 of the General Conditions. The Owner's governing body shall accept the Work and Contract to the extent required by the Contract Documents, including Article 9.7 of the General Conditions, but acceptance of the Work as Complete shall not terminate the Lease Term. The validity of this Sublease will not be affected by any delay in or failure of Completion of the Contract.

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 termination of the

Contract, subject to the provisions 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. 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.

17. 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.

18. Release of Liens.

(a) Upon termination of the Contract, 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.

19. 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.

20. 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.

21. 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.

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

23. 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.

24. 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.

25. 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.

CONTRACTOR:

BY: _____
TITLE: President

OWNER:

Chicago Park Elementary School District

BY: _____
Superintendent

BY: _____
TITLE: Corporate Secretary

EXHIBIT A

FORM FOR SCHEDULE OF SUBLEASE PAYMENTS

The following form shall be used as an amendment to the Sublease when the Owner’s governing board approves the Total Sublease Amount prior to the commencement of construction.

AMENDMENT TO LEASE-LEASEBACK SUBLEASE

**TOTAL SUBLEASE AMOUNT
FOR PHASE _____
AND SCHEDULE OF SUBLEASE PAYMENTS**

For the Lease-Leaseback Agreement, Site Lease, and Sublease entered into between the _____ School District (“Owner”) and _____ (“Contractor”), and dated _____, 20__, for the Owner’s _____ work (the “Contract”), the Owner and Contractor hereby agree that the Total Sublease Amount for Phase _____ shall be \$_____.00, which includes the following _____ *[insert “allowances,” “contingency,” or “allowances and contingency”]*:

- An allowance of \$_____ for _____ work;
- An allowance of \$_____ for _____ work; and
- A contingency of \$_____.

This Total Sublease Amount for Phase _____ has been calculated as provided in the Contract, including but not limited to Section 5 of the Lease-Leaseback Agreement.

Based on the Total Sublease Amount for Phase _____ (less any allowances or contingencies) and the _____ *[insert number of sublease payments; see Sublease §6]* required Sublease Payments, the Schedule of Sublease Payments for the Contract shall be as follows:

Payment No. <i>[adjust the number of payments to match Section 6(a) above]</i>	Date Payment Is Due	Amount of Payment <i>[equal monthly payments]</i>
1	5, 20__	\$ _____.
2	5, 20__	_____.
3	5, 20__	_____.
4	5, 20__	_____.
5	5, 20__	_____.
6	5, 20__	_____.
7	5, 20__	_____.
8	5, 20__	_____.

9	5, 20	.
10	5, 20	.

CONTRACTOR:

BY: _____
 TITLE: President

BY: _____
 TITLE: Corporate Secretary

OWNER:

Chicago Park Elementary School District

BY: _____
 Superintendent