

LEASE

THIS LEASE, made this 8th day of January, 2013, between the CITY OF SANTA BARBARA, a municipal corporation, herein referred to as "Lessor" or "City," and the SANTA BARBARA UNIFIED SCHOOL DISTRICT, a public body corporate and politic created and authorized under the Education Code of the State of California, herein referred to as "Lessee,"

WITNESSETH:

1. PROPERTY LEASED.

Lessor hereby leases to Lessee that certain portion of the Eastside Library and Franklin Center real property, owned by Lessor, located at 1102 and 1136 East Montecito Street, Santa Barbara County Assessor's Parcel APN 017-061-002 (hereinafter the "Premises"), which has been and is presently still occupied and used for placement by Lessee of certain existing educational classroom structures as a portion of adjacent Franklin Elementary School, owned by Lessee, located at 1111 East Mason Street, Santa Barbara County Assessor's Parcels APN 017-061-003, 017-094-002, APN 017-101-003 and APN 017-101-004, said portion of the Eastside Library property occupied by Lessee being more particularly described in the attached Exhibit A.

2. TERM OF LEASE.

This Lease shall commence upon the date the City Administrator is authorized by Santa Barbara City Council to execute said Lease, and shall expire on April 30, 2016, unless otherwise specified herein

3. RENTAL.

Lessee agrees to pay Lessor as rental for the use and occupancy of said premises the sum of one dollar (\$1.00) per year payable yearly on or before the first day of July. Lessor hereby acknowledges receipt of rental payment in the pro-rated amount of fifty cents (\$0.50) paid by Lessee for the period commencing on December 1, 2012, and ending on June 30, 2013.

4. TAXES.

Lessee agrees to pay all taxes, assessments or charges which may be or become a lien or may be levied upon the real property, improvements, or personal property situated upon the leased Premises, if any.

5. UTILITIES.

During the term hereof, Lessee shall pay all charges for, and shall furnish at Lessee's own expense, water, sewage, gas, electricity, and other utility services supplied to and used on the Premises.

6. CONDITION OF PREMISES.

Lessee accepts the condition of the Premises as is.

7. USE OF PREMISES.

Lessee shall use the Premises for the placement, use and maintenance of classrooms and appurtenant facilities solely necessary and consistent with the operation of Franklin Elementary School, and for uses incidental thereto. Lessee shall not use, or permit Premises, or any part thereof, to be used for any purpose or purposes other than the purpose or purposes for which Premises are hereby leased, provided that any building or structure placed or installed on the leased premises shall be constructed and maintained solely at Lessee's risk and expense. If at any time Lessee ceases to use the Premises for any purpose or purposes inconsistent with the operation of Franklin Elementary School, Lessor or Lessee may terminate this lease upon ninety (90) days notice Lessee, provided that Lessee shall not be deemed to have ceased to use the Premises as a part of Franklin Elementary School in the event any structure or facility is destroyed or becomes unusable and Lessee uses reasonable diligence in the restoration and replacement of such educational facilities.

8. MAINTENANCE.

During the term of the Lease, Lessee shall at its sole cost and expense keep and maintain the Premises and all improvements, fixtures, equipment and utilities on the Premises in good order, condition and repair, and in compliance with all applicable laws. Lessor shall have the right to enter upon the Premises at any time, in the case of an emergency, and otherwise at reasonable times, for the purpose of inspecting the condition of the Premises.

9. REMOVAL.

It is agreed that all buildings and improvements placed or caused to be placed upon the Premises by Lessee shall be the property of Lessee. Upon expiration of the Lease, or earlier termination thereof, Lessee shall have the obligation to remove said buildings, improvements, and facilities from the Premises at the sole cost and expense of Lessee not later than the expiration of ninety (90) days from expiration or termination of Lease, and shall fill all excavations and remove all debris and surrender possession of Premises to Lessor in a clean and orderly condition. If Lessee fails or refuses to remove buildings, facilities, or improvements designated by Lessor, or to do any other

the work required under this paragraph within the time required by this Lease, Lessor may remove, or cause to have removed, said buildings, improvements and facilities and do said work. Lessee shall, and hereby agrees to reimburse Lessor within thirty (30) days of date of invoice submitted by Lessor to Lessee for all expenses incurred by Lessor in removing said buildings, improvements, facilities or other property and for doing any other work or having any work done in connection therewith.

10. INDEMNITY AND HOLD HARMLESS.

Lessee agrees to investigate, defend, indemnify and hold harmless the Lessor, its officers, employees and agents, from and against any and all loss, damage, liability, claims, demands, detriments, costs, charges and expense (including attorneys' fees) and causes of action of whatsoever character ("Losses") which the Lessor may incur, sustain or be subjected to on account of loss or damage to property and loss of use thereof and for bodily injury to or death of any persons (including but not limited to property, employees, subcontractors, agents and invitees of each party hereto) arising out of or in any way connected with the work to be performed or occupancy, operation, maintenance, enjoyment, or use of the Premises under this agreement and arising from any cause whatsoever, excluding any Losses resulting from the gross negligence or willful misconduct by the Lessor.

11. INSURANCE.

A. Required Insurance Coverage

Lessee shall maintain and keep in force during the term of this Lease, for the mutual benefit of City and Lessee, at Lessee's sole cost and expense, the following insurance:

Property Insurance insuring against loss of or damage to all improvements, fixtures and equipment on the Premises resulting from fire, lightning, vandalism, malicious mischief and those risks ordinarily insured by special form property coverage. Such property insurance shall be in an amount equal to the full replacement cost of said improvements, fixtures and equipment, including all required code upgrades. In addition, Lessee shall at its expense provide such additional insurance as may be reasonably required in the event Lessee provides alcohol service on the Premises.

Comprehensive General Liability Insurance with limits of not less than Two Million Dollars (\$2,000,000) in any combination of primary or excess coverage for each occurrence combined single limit for bodily injury and property damage. Coverage thereunder shall include endorsements for contractual liability, personal injury, owners' and contractors' protection, and fire legal liability.

Automobile Liability Insurance with limits of not less than Two Million Dollars (\$2,000,000) in any combination of primary or excess coverage each occurrence combined single limit for bodily injury and property damage for all vehicles owned or operated by Lessee.

B. Workers' Compensation Insurance in compliance with statutory limits.

i. General Insurance Policy Requirements

All insurance provided for in this section shall be enacted under valid and enforceable policies in form and substance satisfactory to City issued by insurers satisfactory to City and authorized to do business in the State of California. Such insurance shall apply as primary and not in excess of or contributing with any insurance that City may carry. The policies required shall name City, its officers, employees and agents as additional insured. Lessee's policies had been issued to each. Lessee's insurance, as required by this Lease, shall not be subject to cancellation or material reduction without at least thirty (30) days prior written notice to the City. Lessee shall furnish to City a Certificate of Insurance evidencing that the above requirements have been met on or before the commencement of this Lease and upon the renewal of each policy.

Lessee hereby expressly waives on behalf of its insurers hereunder any right of subrogation against City by reason of any claim, liability, loss or expense arising under this agreement. This provision applies regardless of whether or not the Lessee obtains a waiver of subrogation endorsement from its insurer.

City shall retain the right to review at any time the coverage, form and amount of insurance required hereby. If, in the opinion of City, the insurance provisions in this Lease do not provide adequate protection for City and for members of the public using the Premises, City may require Lessee to obtain insurance sufficient in coverage, form and amount to provide adequate protection. City's requirements shall be reasonable but shall be designed to assure protection from and against the kind and extent of the risks that exist at the time a change in insurance is required. Lessee may substitute self-insurance for any or all of the above-stated required commercial insurance requirements subject to the approval by the City.

The procuring of such required policy or policies of insurance shall not be construed to limit Lessee's liability hereunder or to fulfill the indemnification provisions and requirements of this Lease. Notwithstanding said policy or policies of insurance, Lessee shall be obligated for the full and total amount of any damage, injury or loss caused by negligence or neglect connected with this Lease or with use or occupancy of the Premises.

12. USE OF INSURANCE PROCEEDS

Upon the occurrence of any loss covered by the required property insurance, the proceeds of any insurance shall be paid to a financial institution or trust company with an office in Santa Barbara County designated by Lessee and approved by City (the "Insurance Trustee"). In the event of such loss, to the extent of available insurance proceeds received by Lessee, Lessee shall be obligated to remove any debris or

damaged property and otherwise restore the premises to a condition which fully safeguards and protects City's reversionary interest in the Premises. All sums deposited with the Insurance Trustee shall be held in trust by the Insurance Trustee with the following powers and duties:

The Insurance Trustee shall pay the contractor retained by Lessee for the restoration in installments as the construction progresses. A retention fund of ten percent (10%) of the total contract price shall be established. The contractor shall be paid the retained amount upon the completion of the restoration, acceptance of the work by the Lessee and City, payment of all costs, expiration of all applicable lien periods and proof that the Premises is free of all mechanics' liens and lienable claims.

Payments to the contractor shall be made on presentation of certificates or vouchers from the architect or engineer retained by Lessee showing the amount due. If the Insurance Trustee, in the Insurance Trustee's reasonable discretion, determines that the certificates or vouchers are being improperly approved by the architect or engineer retained by Lessee, the Insurance Trustee shall have the right to appoint an architect or engineer to supervise the construction and to make payments to the contractor on certificates or vouchers approved by the architect or engineer retained by the Insurance Trustee. The reasonable expenses and charges of the architect or engineer retained by the Insurance Trustee shall be paid by the Insurance Trustee out of the trust fund.

If the sums held by the Insurance Trustee are insufficient to pay the actual cost of the repair, restoration or replacement, Lessee shall have the right but not the obligation to deposit the amount of the deficiency with the Insurance Trustee within thirty (30) days after request by the Insurance Trustee indicating the amount of the deficiency.

Any undistributed funds following compliance with the provisions of this section shall be delivered to Lessee.

All actual costs of the Insurance Trustee shall first be paid from the insurance proceeds, then by Lessee. If the Insurance Trustee resigns or for any reason is unable or unwilling to act or continue to act in accordance with these provisions, Lessee shall substitute a new trustee for the designated trustee. The new trustee must be a financial institution or trust company with an office in Santa Barbara County approved by City.

Both Parties shall promptly execute all documents and perform all acts reasonably required by the Insurance Trustee in order for the Insurance Trustee to perform its obligations under this section.

13. ASSIGNMENT OR SUBLEASE.

Lessee shall not sublet the whole or any part of Premises, nor sell, assign, or mortgage this Lease or any interest or right herein without the written consent of Lessor. Any

such subletting, sale, assignment, or mortgage without Lessor's consent shall be void, and shall, at Lessor's option, terminate this Lease.

14. EMINENT DOMAIN.

If at any time during the term hereof the Premises, or any part thereof, are taken under the laws of eminent domain, then and in every such case the leasehold estate and interest of Lessee in the Premises, or part thereof taken, shall forthwith cease and terminate, and all compensation awarded by reason of the taking of the leased land shall be payable to and be the sole property of Lessor, and all compensation as shall be awarded for the taking of or injury to any building, improvements or facilities then located on the leased land shall be paid to Lessee, and unless all of the leased premises shall be so taken or Lessee or Lessor shall exercise the option to terminate this Lease as hereinafter provided, this Lease shall continue in force and effect as to the remainder of the leased premises. If only a part of the leased premises shall be taken and this Lease shall continue as to the remainder thereof, provided, however, that if such taking shall prevent Lessee's use of the Premises for the purposes set forth hereinabove, Lessee and Lessor shall each have the option to terminate this Lease.

15. NOTICES.

All notices required or permitted by this Lease shall be in writing and may be delivered in person (by hand or by messenger or courier service) or may be sent by regular, certified or registered mail with the U.S. Postal Service, with postage prepaid, and shall be deemed sufficiently given if served in the manner specified herein. If such notice is intended for Lessor it shall be addressed to:

City Clerk
City of Santa Barbara
Post Office Box 1990
Santa Barbara, California 93102-1990

With a Copy to:

Senior Real Property Agent
City of Santa Barbara
Post Office Box 1990
Santa Barbara, California 93102-1990

And if intended for Lessee it shall be addressed to:

Business Office
Santa Barbara Unified School District
720 Santa Barbara Street
Santa Barbara, California 93101-2232

Or to such other address as either party may have furnished to the other in writing as a place for the service of notice. Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of deliver shown on the receipt card, or if no date is shown, the postmark thereon. If sent by regular mail, the notice shall be deemed given forty-eight (48) hours after the same is addressed as required herein and mailed with postage prepaid. Notices sent by overnight courier services that guarantee next day delivery shall be deemed given twenty-four (24) hours after delivery of the same to the courier. If notice is received on Saturday, Sunday, or a legal holiday it shall be deemed received on the next business day.

16. REMEDIES OF LESSOR ON DEFAULT.

In the event of any breach of this Lease by Lessee, then Lessor, besides other rights or remedies it may have, shall have the immediate right of re-entry and may remove all persons and property, whether real or personal property, from the Premises, and all personal property so removed shall from the Premises may be stored in a public warehouse or elsewhere at the cost of and for the account of Lessee. No such re-entry or taking possession of said Premises by Lessor shall be construed as an election on its part to terminate this Lease unless a written notice of such intention be given to Lessee or unless the termination thereof be decreed by a court of competent jurisdiction. Should Lessor at any time re-enter and terminate this Lease for any breach, in addition to any other remedy Lessor may have, Lessor may recover from Lessee all damages Lessor may incur by reason of such breach, including the cost of recovering the premises and removing any building, improvements or facilities located thereon.

17. NO WAIVER.

No waiver of any default under this Lease shall constitute or operate as a waiver of any subsequent default hereunder, and no delay, failure or omission in exercising or enforcing any right, privilege or option under this Lease shall constitute a waiver, abandonment, or relinquishment thereof or prohibit or prevent any election under or enforcement or exercise of any right, privilege or option hereunder. No ,waiver of any provision hereof by City or Lessee shall be deemed to have been made unless and until such waiver shall have been reduced to writing and signed by Lessor or Lessee, as the case may be. Failure by Lessor or Lessee, as the case may be, to enforce any of the terms, covenants, or conditions of this Lease for any length of time, or from time to time shall not be deemed to waive or decrease the right of City to insist thereafter upon strict performance by Lessee.

18. SEVERABILITY

If any term, covenant, condition, or provision of this Lease is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and in no way affected, impaired, or invalidated thereby.

19. NO PRIOR AGREEMENTS

This Lease contains all agreements between the Parties with respect to any matter mentioned herein, and no prior or contemporaneous agreement or understanding shall be effective.

[signatures on next page]

IN WITNESS WHEREOF, we hereby execute this document in duplicate the day and year first above written.

CITY OF SANTA BARBARA,
a municipal corporation

SANTA BARBARA UNIFIED SCHOOL
DISTRICT

James L. Armstrong
City Administrator

Monique Limon
President, Board of Education

ATTEST:

ATTEST:

Gwendolynn Peirce
City Clerk Services Manager

David E. Cash
Clerk of the Board

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Tava Ostrenger
Deputy City Attorney

Craig Price
Legal Counsel to Santa Barbara Unified
School District

APPROVED AS TO CONTENT:

Christine F. Andersen
Public Works Director

Irene Macias
Library Director

APPROVED AS TO INSURANCE:

Mark Howard
Risk Manager