

SITE LEASE

Historic Window Rehabilitation Project
(Santa Barbara Junior High School Site)

by and between

Santa Barbara Unified School District

as Lessor

and

Frank Schipper Construction Co.

as Lessee

Dated as of [month and day to be filled in upon endorsements], 2020

LOCATION: 721 East Cota Street, Santa Barbara, CA 93103

This Site Lease, made as of [to be filled in upon final endorsements], 2020 (“Effective Date”), is entered into by and between SANTA BARBARA UNIFIED SCHOOL DISTRICT, a public school district duly organized and validly existing under the laws of the State of California, as lessor (the “District”) and FRANK SCHIPPER CONSTRUCTION CO., a corporation licensed to do business as a contractor in the State of California, as lessee (“Contractor”).

RECITALS

WHEREAS, the District owns the land at Santa Barbara Junior High School in the City of Santa Barbara, inclusive of the portions depicted in **Exhibit “A”** attached hereto and incorporated herein by this reference. The area designated on Exhibit “A” is the subject of this Site Lease (collectively, the “Site”);

WHEREAS, the District desires to provide for the improvements at the Site, as more particularly described and depicted in Exhibit “A” to the Facilities Lease and incorporated herein by this reference (the “Project”);

WHEREAS, the District is authorized under Section 17406 of the California Education Code to lease the Site to the Contractor and to have the Contractor provide preconstruction services and to construct the Project on the Site and to lease to the District the Site and the Project (the lease-leaseback delivery method), provided the contract documents are awarded based on a competitive solicitation process, wherein the selected contractor is determined to provide the best value to the school district;

WHEREAS, the Governing Board of the District (the “Board”) has determined that the Contractor’s proposal, submitted in connection with the District’s competitive solicitation process, provides the best value to the District, taking into consideration Contractor’s demonstrated competence and professional qualifications necessary for the satisfactory performance of the services contemplated by this Site Lease and the Facilities Lease;

WHEREAS, the Board has further determined that it is in the best interests of the District to construct the Project by leasing the Site to Contractor pursuant to this Lease and by entering into a Facilities Lease under which the District will sublease the Site and lease the Project from Contractor and make Lease Payments in the amount and frequency as described in the Facilities Lease and Exhibit C thereto;

WHEREAS, the Contractor is authorized to lease the Site as lessee and to construct the Project on the Site, and has duly authorized the execution and delivery of this Lease;

WHEREAS, the Parties have performed all acts, conditions and things required by law to exist, to have happened and to have been performed precedent to and in connection with the execution and entering into of this Site Lease and the Parties are now duly authorized to execute and enter into this Site Lease.

THEREFORE, in consideration of the promises and covenants contained herein, the sum of One Dollar (\$1.00) and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

ARTICLE 1 DEFINITIONS

Section 1.1. Definitions. Unless the context clearly otherwise requires, all words and phrases defined in Section 1.1 of the Facilities Lease by and between the District and the Contractor (the “Facilities Lease”) shall have the same meaning in this Lease.

ARTICLE 2 DEMISING CLAUSES

Section 2.1. Lease of the Site. The District hereby leases to the Contractor, and the Contractor hereby leases from the District the Site, in accordance with the provisions of this Lease, to have and to hold for the term of this Lease. This Lease shall only take effect if the Facilities Lease is executed by the District and Contractor contemporaneous with the execution of this Lease.

Section 2.2. Rental. In consideration for the lease of the Site by the District to the Contractor and for other good and valuable consideration, the Contractor shall pay One Dollar (\$1.00) to the District.

Section 2.3. No Merger. The leasing of the Site by the Contractor to the District pursuant to the Facilities Lease shall not affect or result in a merger of the estates of the District in the Site, and the Contractor shall continue to have a leasehold estate in the Site pursuant to this Lease throughout the term hereof.

ARTICLE 3 QUIET ENJOYMENT

Section 3.1. Quiet Enjoyment. The Parties intend that the Site will be leased back to the District pursuant to the Facilities Lease for the term thereof. It is further intended that, to the extent provided herein and in the Facilities Lease, if an Event of Default occurs under the Facilities Lease, the Contractor, or its assignee, will have the right, for the then remaining term of this Lease, to: (a) take possession of the Site; (b) if it deems it appropriate, cause appraisal of the Site and a study of the then reasonable use thereof to be undertaken; and (c) relet the Site. Subject to any rights the District may have under the Facilities Lease (in the absence of an Event of Default) to possession and enjoyment of the Site, the District hereby covenants and agrees that it will not take any action to prevent the Contractor from having quiet and peaceable possession and enjoyment of the Site during the term hereof and will, at the request of the Contractor, to the extent that it may lawfully do so, join in any legal action in which the Contractor asserts its right to such possession and enjoyment.

ARTICLE 4 SPECIAL COVENANTS AND PROVISIONS

Section 4.1. Waste. The Contractor agrees that at all times that it is in possession of the Site, it will not commit, suffer or permit any waste on the Site, and that it will not willfully or knowingly use or permit the use of the Site for any illegal purpose or act.

Section 4.2. Further Assurances. The District and the Contractor agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Site hereby leased or intended so to be or for carrying out the expressed intention of this Lease and the Facilities Lease.

Section 4.3. Right of Entry. The District reserves the right for any of its duly authorized representatives to enter upon the Site at any reasonable time to inspect the same.

Section 4.4. Representations of District. The District represents and warrants to the Contractor as follows:

(a) The District is a public school district, duly organized and existing under the laws of the State of California.

(b) The District has the full power and authority to enter into, to execute and to deliver this Lease, and to perform all of its duties and obligations hereunder, and has duly authorized the execution of this Lease.

(c) Neither the execution and delivery of this Lease nor the Facilities Lease, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the District is now a Party or by which the District is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the District, or upon the Site.

Section 4.5. Representations of Contractor. The Contractor represents and warrants to the District as follows:

(a) The Contractor is a corporation duly organized and existing under the laws of the State of California, has power to enter into this Lease and the Facilities Lease; is possessed of full power to own and hold real and personal property, and to lease and sell the same; and has duly authorized the execution and delivery of all of the aforesaid agreements.

(b) The Contractor has the full power and authority to enter into, to execute and to deliver this Lease, and to perform all of its duties and obligations hereunder, and has duly authorized the execution of this Lease.

(c) Neither the execution and delivery of this Lease or the Facilities Lease, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the Contractor is now a Party or by which the Contractor is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the Contractor, or upon the Site.

ARTICLE 5

ASSIGNMENT, SUBLEASING, MORTGAGING AND SELLING

Section 5.1. Assignment and Subleasing. This Lease may be assigned and the Site subleased, as a whole or in part, by the Contractor only upon the prior written consent of the District to such sublease. Notwithstanding the foregoing, Contractor may enter into the Facilities Lease between the District and Contractor.

Section 5.2. Restrictions on District. The District agrees that it will not mortgage, sell, encumber, assign, transfer or convey the Site or any portion thereof during the term of this Lease.

Section 5.3. Liens. Provided the District has paid to Contractor, or its assignee, all Lease Payments and other payments which become due under the Facilities Lease, Contractor agrees to keep the Site and every part thereof free and clear of any and all liens, including, without limitation, pledges, charges, encumbrances, claims, materialmen liens, mechanics liens and other liens for or arising out of or in connection with work or labor done, services performed, or materials or appliances used or furnished for or in connection with the Site or the Project. Contractor further agrees to pay promptly and fully and discharge any and all claims on which any such lien may or could be based, and to save and hold District free and harmless from any and all such liens, mortgages, including without limitation, any claims of liens and suits or other proceedings pertaining thereto.

ARTICLE 6

IMPROVEMENTS

Section 6.1. Improvements. Title to all improvements made on the Site during the term hereof shall vest subject to the terms of the Facilities Lease.

**ARTICLE 7
TERM AND TERMINATION**

Section 7.1. Term. The term of this Lease shall commence as of the Effective Date, and shall terminate on the last day of the Term of the Facilities Lease, provided the District has paid to the Contractor, or its assignee, all Lease Payments and other payments which may be due under the Facilities Lease, and provided this Lease has not terminated pursuant to Sections 4.3 of the Facilities Lease.

**ARTICLE 8
MISCELLANEOUS**

Section 8.1. Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed to have been received forty-eight (48) hours after deposit in the United States mail in registered or certified form with postage fully prepaid:

If to the Contractor: Frank Schipper Construction
610 East Cota
Santa Barbara, CA 93103
Attn: Paul Wieckowski; paul@schipperconstruction.com
(Fax: 805-963-1270)

If to District: Santa Barbara Unified School District
720 Santa Barbara St.
Santa Barbara, CA 93101
Attn: Hilda Maldonado, Superintendent
(Fax: 805-962-3146)

With Copy to: Santa Barbara Unified School District
720 Santa Barbara St.
Santa Barbara, CA 93101
Attn: Steve Vizzolini,
Director of Facilities & Modernization
(Fax: 805-963-5685)

Fax numbers are provided for courtesy copies only. The Contractor and the District, by notice given hereunder, may designate different addresses to which subsequent notices, certificates or other communications will be sent.

Section 8.2. Binding Effect. This Lease shall inure to the benefit of and shall be binding upon the Contractor and the District and their respective successors and assigns.

Section 8.3. Severability. In the event any provision of this Lease shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 8.4. Amendments, Changes and Modifications. This Lease may not be amended, changed, modified, altered or terminated without the written agreement of both Parties.

Section 8.5. Execution in Counterparts. This Lease may be executed in several counterparts, each of which shall be original and all of which shall constitute but one and the same instrument.

Section 8.6. Applicable Law and Venue. This Lease shall be governed by and construed in accordance with the laws of the State of California. Any disputes arising out of this Site Lease will be venued in the Santa Barbara County Superior Court.

Section 8.7. Captions. The captions or headings in this Lease are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Lease.

Section 8.8. Prior Agreements. This Site Lease and the corresponding Facilities Lease collectively contain all of the agreements of the Parties hereto with respect to any matter covered or mentioned in this Site Lease and no prior agreements or understanding pertaining to any such matter shall be effective for any purpose. No provision of this Site Lease may be amended or added to except by an agreement in writing signed by the Parties hereto or their respective successors-in-interest.

Section 8.9. Attorneys' Fees. In the event either Party to this Site Lease should default under any of the provisions hereof, and the nondefaulting Party should employ attorneys or incur other expenses for the collection of moneys or the enforcement or performance or observance of any obligation or agreement on the part of the defaulting Party herein contained, the defaulting Party agrees that it will on demand therefor pay to the nondefaulting Party the reasonable fees of such attorneys and such other expenses so incurred by the nondefaulting Party. Furthermore, the prevailing Party in any action or proceeding arising out of or relating to this Site Lease shall be entitled to recover its costs and expenses, including all attorneys' fees determined by a court or arbitrator.

IN WITNESS WHEREOF, the Parties have caused this Site Lease to be executed by their respective duly authorized officers, as of the Effective Date.

SANTA BARBARA UNIFIED SCHOOL DISTRICT

By: _____
Meg Jetté
Assistant Superintendent of Business Services

Schipper Construction Co.

By: _____

Title: President

EXHIBIT A
DESCRIPTION OF SITE

The Site is the Santa Barbara Junior High School campus located at 721 E Cota Street, Santa Barbara, CA 93103. This Project will involve detailed rehabilitation and replacement of windows on multiple buildings on the campus site. One significant and inherent factor guiding the project is the fact that the age and design of existing buildings (and the building windows) give them historic value. Attached to this Exhibit is the project site map (Exh. "A-1").