

AMENDMENT TO AGREEMENT BETWEEN THE BAYSHORE ELEMENTARY SCHOOL DISTRICT AND THE COUNTY OF SAN MATEO TO PROVIDE FOR A LOAN OF FUNDS TO DISTRICT BY COUNTY FOR INTERIM FINANCING OF CONSTRUCTION OF NEW ELEMENTARY SCHOOL AT THE DISTRICT'S BAYSHORE ELEMENTARY SCHOOL SITE

This Amendment (“Amendment”) to the Agreement (“Agreement”) by and between the Bayshore Elementary School District, a public elementary school district formed and existing under the laws of the State of California (“District”), and the County of San Mateo, a political subdivision of the State of California (“County,” and, together with the District, “Parties”) for the purpose of stating the terms of the Amendment to the Agreement for the loan in order to provide the District with interim funding for the construction of the new transitional kindergarten through eighth grade school to be located at the District’s Bayshore Elementary School site (“New School” or “New School Project”) to be located in Daly City, California.

RECITALS

WHEREAS, the District presently owns two school sites located in Daly City, California; specifically the Bayshore Elementary School Site, located at 155 Oriente Street (“Bayshore Site”), and the Robertson Intermediate School Site, located at 1 Martin Street (“Robertson Site”); and

WHEREAS, in January 2015, the District’s Board of Trustees declared the Robertson Site surplus and approved its sale, and also approved the making of an application to the State Board of Education for a waiver of certain provisions of the California Education Code related to the sale of surplus property; and

WHEREAS, pursuant to its authority under the Education Code and the waiver from the State Board of Education granted in response to the above-referenced application, the District has entered into a Purchase Agreement for the sale of the Robertson Site (“Purchase

Agreement”) and the District intends to use the proceeds from the sale of the Robertson Site to finance, in part, the construction of the New School Project on the Bayshore Site; and

WHEREAS, due to the need to move the construction of the New School Project forward as quickly as possible in order to have the project completed in time for the start of the 2017-2018 school year, the District presently has work being done on the New School Project; and

WHEREAS, the Board of Supervisors at its September 4, 2016 meeting approved the Agreement; and

WHEREAS, at the time that the Agreement was entered into, subsequent to the Board of Supervisors’ Meeting on September 4, 2016, close of escrow under the Purchase Agreement was not expected to occur until later in October 2016 and, in the interim, the County and District determined that the District would benefit from the County providing a loan of funds to allow the District, on an interim basis, to continue work on the New School Project pending the close on the sale of the Robertson Site and, in response to the District’s request, the County therefore approved a loan of funds to the District in the amount of five million dollars (\$5,000,000); and

WHEREAS, escrow on the District’s sale of the Robertson Site has not yet closed and the District’s first loan payment of \$625,000 plus interest under the terms of the Agreement would otherwise be due on the last business day of October 2016; and

WHEREAS, District has requested that the terms of the Agreement be amended such that the District’s first loan payment will be due on the last business day of January 2017, with that loan payment set at \$833,333.34 plus interest, with subsequent loan payments in the same amount of \$833,333.34, plus interest, with such a loan payment due on the last business day in February 2017, March 2017, April 2017, May 2017 and June 2017; and

WHEREAS, in light of the foregoing, the County is willing to amend the terms of the Agreement as requested by the District, pending close of the sale of the Robertson Site.

NOW THEREFORE, in consideration of their mutual promises and obligations, the Parties hereby agree as follows:

1. Section 3 of the Agreement is hereby amended in its entirety as follows:

3. Terms of Repayment of the Loan Amount; Interest.

(a) District shall repay to County the full amount of the Loan Amount by no later than June 30, 2017 (the “Full Repayment Date”). The District shall pay interest to the County on the Loan Amount. The interest shall be the amount of interest that the Loan Amount would have earned had it been invested in the San Mateo County Pooled Investment Fund (the “Treasury Pooled Rate”) starting on the Effective Date and ending on the date that the Loan Amount, or any portion of the Loan Amount, is repaid, as more fully described in Section 3(c) of this Agreement.

(b) The District’s payments to the County shall be in the form of six monthly payments beginning January 31, 2017. Subsequent payments shall be made on the last business day of each of the next successive five months (i.e., February 2017, March 2017, April 2017, May 2017, and June, 2017). (The District anticipates that the sale of the Robertson Site will have closed by January 2017 and that the District will thereafter receive the proceeds of sale, which it will be able to use to repay the County’s loan of funds.) Each payment shall be an amount equal to one-sixth of the \$5,000,000 loaned by the County to the District (i.e., \$833,333.34) plus interest as described in Section 3(c) of this Agreement. Along with each payment, District shall, using a form to be provided by the County, submit its calculation for the interest then due and owing pursuant to Section 3(c) of the Agreement. Nothing, however, shall

limit District's discretion to pre-pay amounts owing to the County on any of the six payment dates described herein.

(c) Interest at the Treasury Pooled Rate shall be calculated on a monthly basis according to the following calculation for each month that any portion of the Loan Amount remains outstanding:

Principal x Monthly Interest Rate x (No. of Days in Month/No. Days in Year)

Where "Principal" is the Loan Amount that remains outstanding as of the payment date in question (including the amount of any payment due from the District to County on said date); "Monthly Interest Rate" is the monthly gross earnings as reported in the most recently available San Mateo County Treasurer's monthly investment report, available on the Treasurer-Tax Collector's website: (<http://www.sanmateocountytreasurer.org/investmentReports.html>); "No. of Days in Month" is the number of days in the month for which the Treasury Pooled Rate is being calculated; and "No. of Days in Year" is 365, except in leap years, in which the number of days in the year shall be 366. Notwithstanding the foregoing, in the event that the Monthly Interest Rate is zero or less on connection with the calculation for any payment owed pursuant to Section 3(a) and (b) of this Agreement, the District shall be obligated to pay no less than \$833,333.34 on said payment date. In the event the Loan Amount, along with all accrued interest due pursuant to this Agreement, is not repaid in full by the Full Repayment Date, any portion of the Loan Amount that remains outstanding as of the Full Repayment Date shall accrue interest at the rate specified by law for prejudgment interest.

(d) In addition to the amounts owed as set forth in Sections 3(b) and (c) of this Agreement, the District shall include with its payment due on January 31, 2017 (*i.e.*, the District's first scheduled payment) the interest accrued through December 31, 2016. Said

amount of interest shall be the sum of the monthly interest calculated pursuant to Section 3(c) for each of the months of October 2016, November 2016, and December 2016, where “Principal” shall be the Loan Amount that remains outstanding as of the last calendar day of each of said months.

(e) In the event that the District fails to repay any amounts due to the County on the schedule set forth in Section 3(a) and (b) of this Agreement, the County shall be repaid out of the proceeds of any future sale of bonds pursuant to any measure placed before the electors of the District authorizing the sale of bonds for District school facilities and the District hereby pledges to make such payments to the County to fully repay the Loan Amount prior to the expenditure of such funds for any other purpose.

(f) Further, in the event that the District fails to repay any amount due to the County on the schedule set forth in Section 3(a) and (b) of this Agreement, and payment is not made to the County pursuant to Section 3(d) for any reason, the County shall be repaid directly from the District’s property tax apportionments. The County Controller shall pay, and District does specifically authorize the Controller to pay, the amounts owed by District to County from District secured property tax revenues that would otherwise be payable by the County Controller to District, on December 15th and April 15th of each fiscal year until the full amount owing to the County is repaid. County Controller shall make such payment(s) to County prior to making any other payments to District or any other person or entity, until the District has fully repaid all funds loaned, including any interest or penalties as set forth herein.

2. Section 6 of the Agreement is hereby amended in its entirety to read as follows:

6. Term of Agreement and Provisions for Enforcement

(a) This Agreement, as amended, shall become effective on execution by the parties and shall remain in effect until (i) June 30, 2017 or (ii) such earlier date that all funds loaned by the County to the District pursuant to this Agreement are repaid, provided, however, that this Agreement shall remain effective for the purpose of enforcing any and all obligations of District under this Agreement including, but not limited to, the District obligations for repayment of funds to County as set forth in this Agreement, and for the purpose of enforcing the hold harmless and indemnification provisions of this Agreement.

(b) Nothing set forth in this section shall preclude any remedies available to County at law or equity to compel payment of any amounts still due and owing at the end of the term of this Agreement.

3. All other terms and conditions of the Agreement shall remain unchanged and in full force and effect. All capitalized terms used herein that are not otherwise defined shall have the meanings set forth in the Agreement.

IN WITNESS WHEREOF, DISTRICT and COUNTY have signed this Amendment on the dates set forth below.

**BAYSHORE ELEMENTARY
SCHOOL DISTRICT**

COUNTY OF SAN MATEO

Date: _____

Date: _____

Executed By:

Executed By:
