

MEMORANDUM OF UNDERSTANDING NORTH ELEMENTARY SCHOOL PROJECT

This Memorandum of Understanding (“MOU”) is entered into as of February 27, 2019 by and between the City of Hermosa Beach, a California municipal corporation (“City”) and the Hermosa Beach City School District, a California Public School District (“District”), hereinafter collectively referred to as the “Parties” or, singularly, “Party.”

1. RECITALS

1.1. On November 13, 2017, the District published the Draft Environmental Impact Report (“DEIR”) for the North Elementary School Project (“School” or “Project”). On January 2, 2018, the City commented on the DEIR topics including transportation and traffic including student loading and unloading.

1.2. On April 30, 2018, in response to the City’s comments, the District Board of Directors (“Board”) voted to recirculate the DEIR (the “recirculated DEIR”) with a revised traffic assessment.

1.3. On August 2, 2018, the District published the recirculated DEIR. On September 20, 2018, the City commented on the recirculated DEIR on topics including transportation, traffic, and student loading and unloading.

1.4. On December 26, 2018, the District published the Final Environmental Impact Report (“EIR”) for the Project. On January 9, 2019, the City commented on the EIR on topics including transportation, traffic, and student loading and unloading.

1.5. On January 9, 2019, the Board certified the EIR, adopted Mitigation Measures and a Statement of Overriding Considerations, and approved the Project at a public hearing in which the Board considered the City’s comments on transportation, traffic, and student loading and unloading.

1.6. On February 9, 2019, the parties entered into a Tolling Agreement tolling the statute of limitations for the City to challenge the EIR until February 28, 2019 to give the Parties time to negotiate a memorandum of understanding on managing transportation, traffic, and student loading and unloading related to the Project, including implementation of the Mitigation Measures, loading and unloading procedures, pedestrian and vehicle travel routes, potential additional offsite drop off locations, and cost sharing.

1.7. The Parties agree that this MOU shall not include discussions affecting the onsite footprint, size, and/or configuration of the Project (onsite parking, onsite loading or unloading, play areas, and/or other educational areas of the School; *provided*, however, that the Parties may discuss onsite parking and onsite loading or unloading, as appropriate, *after* the Project is approved by all relevant agencies of the State of

California to the extent any changes or improvements do not effect Design Immunity under Government Code Section 830.6 and do not effect Field Act approvals from the Division of State Architect (“DSA”).)

1.8. The Parties agree that this MOU shall establish mutually agreed principles and commitments for resolving traffic and transportation topics raised by the City to advance the Parties’ mutual desire to maximize the safety, efficiency, and equity of transportation and traffic related to the Project.

1.9. By this MOU, the Parties desire to work collaboratively and in good faith as community partners to accomplish important community goals.

NOW, THEREFORE, in consideration of the foregoing, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

2. DEFINITIONS

2.1 Anticipated School Enrollment. The number of students enrolled to attend North Elementary School approximately 400.

2.2 Maximum School Enrollment. A number of students enrolled to attend North Elementary School not to exceed 510, as identified in the EIR.

2.3 Neighborhood Traffic Management Plan (“NTMP”) means the plan described in and required under Mitigation Measure TRAF-5(d) and is generally described as an iterative plan to identify operational traffic concerns on adjacent streets resulting from the Project (limited to the geographic areas described for study in Recirculated DEIR Section 5.12.1) and ways to manage them accordingly. The purpose of the plan is to improve pedestrian, bicycle and vehicular safety; enhance quality of life for surrounding land uses caused by speeding vehicles and careless drivers and help the District and City prioritize limited resources.

2.4 Recommended Vehicle Travel Routes Map (“Travel Routes”) means a map described in and required under Mitigation Measure TRAF-5(b) and is generally described as a map of vehicle travel routes to school that limits two-way travel on streets in the immediate vicinity of North Elementary School and is distributed to students and parents and available on the District’s website.

2.5 Pedestrian School Route Plan (“Pedestrian Routes”) means a map described in and required under Mitigation Measure TRAF-5(a) and is generally described as guidance on the preferred travel routes and locations of cross-streets based on the existing and proposed traffic control devices to provide guidance on pedestrian and bicycle safety.

2.6 Transportation Management Program (“Transportation Program”) means the program described in and required under Mitigation Measure TRAF-1 and is generally described as a program to emphasize use, awareness and safety of public transit, ride sharing, walking and bicycling to North Elementary School. The program shall consider bus service and a walking school bus program and provide information on availability and benefits of various travel modes for faculty/staff, students and parents and offer incentives for faculty/staff using public transit or carpools.

3. TERMS AND CONDITIONS

3.1. Term. This MOU shall commence upon execution by both Parties and remain in effect until the Parties’ obligations as set forth herein are completed.

3.2. Good Faith Negotiations. The Parties shall negotiate in good faith regarding the topics in this MOU.

3.3. Binding Contract; Warranties and Representations. This MOU creates binding contractual obligations and commits the Parties to courses of action regarding the preparation and implementation of the plans and measures addressed herein, which commitments are enforceable pursuant to the provisions of this MOU. The Parties warrant and represent to each other that their respective undersigned representative has full, complete, and duly obtained authority to execute this MOU. The Parties further warrant and represent to each other that they have negotiated this MOU through their respective counsel and voluntarily execute it after consulting with counsel of their choice.

3.4. Transportation Planning/Traffic Engineer. The Parties shall jointly retain, and each pay fifty (50) percent of the cost of a mutually agreeable transportation planner, traffic engineer, or other third-party expert to assist with and/or manage the preparation of the plans and measures (as limited to the geographic areas described for study in Recirculated DEIR Section 5.12.1) (other intersections are outside the scope of this agreement.) The Parties shall mutually agree upon the scope of work for the Request for Proposals to hire the abovementioned consultant(s). The Parties will release the Request for Proposals and the City Council and Board shall mutually agree on selection of consultant(s). The Parties shall jointly serve as Lead Agency for purposes of managing the administration of contract with the consultant(s) and the consultant shall separately invoice both parties equally for services rendered. The Substance of the consultant(s)’ work product shall be mutually agreed upon by the Parties. Each Party shall designate at least one representative to serve on a joint project team responsible for administering the consultant(s)’ contract and managing the consultant(s).

3.5. Data Collection and Analysis. The Parties shall collaborate on collecting and evaluating relevant data including, as appropriate: Speed surveys, traffic volume counts, reported accidents, bicycle routes, pedestrian activity, impacts on neighboring streets, and suitable offsite student loading and unloading locations.

3.6. Submission for Grants or Funding. City and District shall work in good faith to submit projects or recommendations from the NTMP to Safe Routes to School funding or other grant opportunities that may be available. Any costs, deadlines, or consultants needed to support preparation of grant applications will be agreed to between the Parties. Any grant funds will be shared pursuant to the cost sharing data set forth in paragraph 3.4 and 3.12.

3.7. Mitigation Measures. The Mitigation Measures adopted by the Board in the EIR shall be implemented in accordance with the following terms:

3.7.1. TRAF-2 (Staggered Bell Schedule). Mitigation Measure TRAF-2 provides for a 30-minute staggered bell schedule for the Project, unless infeasible, in which case a 15-minute (or other “smaller, more practical”) staggered bell schedule shall be implemented. TRAF-2 recognizes that the “staggered schedule would separate arrival and departure times for the two grade levels and reduce peak traffic surge by approximately 50 percent.” Understanding peak traffic surge is essential to the Parties’ decision-making under this MOU. The District shall therefore determine the bell schedule to be implemented under TRAF-2 by October 1, 2019.

3.7.2. TRAF-1 & TRAF-5 (Certain Program, Plans, and Maps). Mitigation Measures TRAF-1 and TRAF-5 provide that the District and/or the Parties shall prepare and implement the following:

- Neighborhood Traffic Management Plan (“NTMP”);
- Recommended Vehicle Travel Routes Map (“Travel Routes”) and Pedestrian School Route Plan (“Pedestrian Routes”); and
- Transportation Management Program (“Transportation Program”).

The Parties shall use the opportunity of the Transportation Program, NTMP, Travel Routes, and Pedestrian Routes to gather and evaluate traffic data and develop and implement appropriate measures to manage transportation and traffic associated with the Project, which measures are expected to include jointly funded capital projects to facilitate and address offsite student loading and unloading, as provided for under Section 3.7 of this MOU.

To provide for the timely implementation of the measures prescribed by the NTMP, Travel Routes, Pedestrian Routes, and Transportation Program, the Parties shall prepare these documents according to the following schedule:

NTMP	March 31, 2020
Travel Routes	March 31, 2020
Pedestrian Routes	March 31, 2020
Transportation Program	August 31, 2020

The NTMP, Travel Routes, Pedestrian Routes, and Transportation Program shall account for and incorporate, as appropriate, the following components:

3.7.2.1. Staggered bell schedule (if applicable);

3.7.2.2. Student loading and unloading plans; and

3.7.2.3. Adaptive management that responds to circumstances arising from transportation and traffic data, varying levels of enrollment and differing grade levels for Anticipated School Enrollment and Maximum School Enrollment, and evaluation of emergency access to the Project and surrounding area, including:

- Performance metrics;
- Traffic volume thresholds;
- LOS thresholds; and
- Technology to monitor and warrant the implementation of additional management measures.
- As explained in TRAF-5(d), the NTMP shall include additional ways to manage traffic safety and vehicle queueing and stacking at problem areas to address operation traffic safety hazards that remain after implementation of all requirements in Mitigation Measure TRAF-5.

The preparation of the Transportation Program, NTMP, Travel Routes, and Pedestrian Routes shall include and incorporate:

3.7.2.4. Community Involvement. The Parties shall form a stakeholder group which will jointly hold at least two (2) community meetings to share information and gather public input on relevant topics including peak traffic surge, speed, safety, sight distance, anticipated and proposed student loading and unloading locations, and parent and resident concerns that might deter walking and biking to school or use of certain routes to/from the Project.

3.7.2.5. Management Measure Identification and Prioritization. The Parties shall review public input and data to inform the preparation of the Transportation Program, NTMP, Travel Routes, and Pedestrian Routes. The Transportation Program, NTMP, Travel Routes, and Pedestrian Routes shall be refined with public input and the input of the City-School Compact prior to submittal for approval of City commissions, City Council, and the Board. Potential criteria for evaluating and prioritizing management measures includes the following:

- Effect on student safety;
- Effect on emergency response;
- Cost-effectiveness;
- Ease of implementation;
- Effects on non-Project transportation and traffic;
- Speed to implement; and
- Permanency of solution.

3.7.2.6. Board, City Council, and Commission Review and Approvals. The initial development of the Transportation Program, Travel Routes, and Pedestrian Routes shall be reviewed by the City, and approved by the Board. The initial development of the NTMP, and any subsequent revisions, shall be approved by the City Council, all appropriate City commissions, and the Board. Subsequent revisions to the Transportation Program, Traffic Map, and Pedestrian Plan are not subject to review or approval by the City or Board, unless they would require revisions to the Neighborhood Traffic Management Plan.

3.8. Capital Projects and Other Measures. The NTMP shall include, and the Transportation Program, NTMP, Travel Routes, and Pedestrian Routes may include, as appropriate, capital projects and other physical measures to facilitate and address offsite student loading and unloading that shall be joint funded consistent with the Cost Sharing provision of this MOU. Such capital projects may include improvements to Valley Park and other City and/or District real property and other measures may include, but are not limited to:

- Painting curbs red;
- Installing additional traffic control improvements, off-site loading areas, and crossing guards, if needed.
- Installing additional stop or yield signs to restrict turning movements during peak traffic periods.
- Restricting more on-street parking during peak traffic periods.
- Widening the passenger loading zone on Myrtle.

3.9. Project Implementation. Upon approval of the Transportation Program, NTMP, Travel Routes, and Pedestrian Routes pursuant to Section 3.7.2.6 of this MOU, all capital projects and other expenses prescribed therein shall be included in the Parties' respective budgets consistent with the cost-sharing provisions of this MOU.

If a Party does not have sufficient funds available, the Party shall develop a plan that identifies the timeline for funding its portion of the capital projects and all other costs prescribed in the Transportation Program, NTMP, Travel Routes, and Pedestrian Routes.

3.10. Ongoing Monitoring and Re-Evaluation. The Parties shall establish a schedule for monitoring and periodic review of the measures prescribed in this MOU, including periodic assessment of performance metrics, thresholds, technology, and data used to identify necessary changes to the Transportation Program, NTMP, Travel Routes, and Pedestrian Routes. Metrics to be used to identify such changes shall include surveys and monitoring to determine how students get to and from the Project, length and duration of queues at student loading and unloading locations, and levels of service ("LOS") at roadways and intersections surrounding the Project.

3.11. Unforeseen Circumstances. The Parties agree to work together in good faith. However, should the Parties not reach agreement or implementation not meet the timelines set forth in this MOU, either Party may notify the other Party of unforeseen circumstances that justify an extension. The first extension is automatic upon such

notification and shall result in a thirty (30) day extension in time. All additional extensions shall be subject to mutual agreement of the Parties.

3.12. Cost Sharing. The parties agree to share costs to carry out the provisions of this MOU as follows:

- **Initial Development and Future Updates to NTMP:** The City and District will evenly share the cost of preparing the NTMP (as limited to the geographic areas described for study in Recirculated DEIR Section 5.12.1), each paying 50 percent of the cost of plan development and any future update(s) (as explained in Section 3.4 above);
- **School Site and Adjacent Right-Of-Way Improvements:** The District will contract the construction of and pay for 100% of the School site access improvements and any right-of-way improvements adjacent to the School property, including those specific items identified in Mitigation Measure TRAF-3, TRAF-4 and to the extent required under TRAF-5. These proposed changes are to be submitted by the District, to the Hermosa Beach Public Works Department, for review and issuance of permits to construct. Permits are subject to any established permitting fees set forth in the City's Master fee schedule.
- **NTMP Projects and Infrastructure Upgrades:** Any costs associated with the recommendations of the NTMP that entail construction of physical improvements or implementation of traffic control devices will be assigned a proportional cost to the District relative to the LOS impact or increased volume of traffic that would otherwise be generated by the Project.
- **On-Going Operational Costs:** Requests for operational support with on-going personnel costs, such as the use of additional crossing guards or traffic control officers to mitigate traffic conditions, will be considered by the City Council upon request of the Board and may require an update to the NTMP (triggering cost sharing as noted above). To the extent traffic control devices or fixtures may be able to provide similar traffic relief, these devices shall be prioritized and may require an update to the NTMP (triggering cost sharing as noted above).

3.13. Dispute Resolution. Except as otherwise provided herein, all disputes arising under this MOU shall be resolved as follows:

3.13.1. Continuing Obligation. Each Party shall continue to perform its obligations under this MOU pending final resolution of any dispute arising out of or relating to this MOU.

3.13.2. Confidentiality. All negotiations, mediation, and arbitration conducted pursuant to this Section 3.13. shall be confidential compromise and settlement negotiations, to which Evidence Code section 1152 shall apply.

3.13.3. Good Faith Negotiation. The Parties shall attempt in good faith to promptly resolve any dispute arising out of or relating to this MOU by negotiations between the Parties' authorized representatives. Notice of a dispute between the Parties shall be provided by written notice. Within twenty (20) days after delivery of

such notice, the Parties' authorized representatives shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary to exchange information and to attempt to resolve the dispute.

3.13.4. Mediation. If the Parties do not resolve the dispute through good faith negotiation within ninety (90) days of the notice, any party may initiate mediation. The mediation shall be facilitated by a mediator acceptable to both parties or randomly selected pursuant to the rules of JAMS or Judicate West, which firm shall be selected as agreed by the Parties or, if the Parties do not agree, by the Party noticing the dispute. The mediation shall be structured to minimize time and expense and shall conclude within sixty (60) days of its commencement, unless the Parties agree to extend the mediation. The Parties shall each pay fifty (50) percent of the mediator's fee, if any. The mediation shall be conducted in accordance with the Commercial Mediation Rules of the American Arbitration Association; provided, however, that each party shall bear its own legal fees and expenses.

3.13.5. Arbitration. If a dispute is not resolved through mediation, the dispute shall be resolved through binding arbitration. Arbitration shall be structured to minimize costs and delay pursuant to the following terms:

3.13.5.1. Single Arbitrator; Selection. The arbitration shall be held before a single mutually agreed arbitrator, if the Parties agree upon an arbitrator. If the Parties do not agree upon an arbitrator, a single arbitrator shall be randomly selected pursuant to the rules of JAMS or Judicate West, which firm shall be selected by agreement of the Parties or, if the Parties do not agree, by the Party noticing the dispute. Code of Civil Procedure sections 1281.9 and 1281.91 shall apply to the selection of the arbitrator.

3.13.5.2. Subject Matter Jurisdiction. All disputes about whether the arbitrator has subject matter jurisdiction to adjudicate controversies, disputes, or claims arising out of this MOU shall be decided by the arbitrator unless the rules and procedures of JAMS or Judicate West, as applicable, provide otherwise. In the event such rules and procedures conflict with the California Arbitration Act, Code of Civil Procedure Section 1280, et seq., the California Arbitration Act shall govern, except that the arbitrator shall decide all issues of arbitrability and shall apply California substantive law.

3.13.5.3. Relief Available. Either Party may seek a preliminary injunction or other provisional remedy, in addition to any other remedy it may seek, if the Party deems such relief necessary to avoid irreparable damage or to preserve the status quo.

3.13.5.4. Technical Assistance. If the arbitrator desires the assistance of a technical expert to aid in deciding the dispute, the technical expert shall be chosen by agreement of the Parties or, absent such agreement, by the arbitrator, subject to the Parties' right to disqualify the expert for conflict of interest.

3.13.5.5. Presentation; Time Limits. Unless otherwise ordered by the arbitrator, each arbitrating Party's presentation at the arbitration hearing shall be limited to seven (7) hours, and the hearing shall be no longer than three (3) business days.

3.13.5.6. Decision. The arbitration decision shall be rendered no later than thirty (30) days after the final arbitration hearing and, unless the arbiter commits errors of law or legal reasoning, in which case the decision may be vacated or corrected on appeal to a court of competent jurisdiction, the arbitration decision shall be judicially enforceable, non-appealable and binding, and shall have the same preclusive effect as a final judgment by a court of competent jurisdiction with respect to all pending or subsequent disputes arising out of or relating to this MOU.

3.13.6. Judicial Appeal. If a Party contends the arbiter committed errors of law or legal reasoning in the decision rendered pursuant to section 3.13.5.6. of this MOU, the Party may apply to vacate or correct the decision on appeal to a court of competent jurisdiction with venue in Los Angeles County.

3.13.7. Judicial Enforcement. If a Party contends the other Party has not complied with an arbitration decision rendered pursuant to section 3.13.5.6. of this MOU, the Party may apply to enforce the decision by appropriate motion to a court of competent jurisdiction with venue in Los Angeles County

3.14. Governing Law. This MOU shall be governed by and construed in accordance with the laws of the State of California, applied without regard to its laws applicable to choice of law or conflicts of law.

3.15. MOU Not Confidential. Notwithstanding any prior confidentiality agreements between the Parties, neither this MOU, nor any of its terms or conditions, shall be deemed confidential, nor shall this MOU, or any of its terms or conditions, be deemed to be covered by any mediation-related privilege or provision.

3.16. Entire Agreement. This MOU shall constitute the entire agreement between the Parties with respect to the subject matter of this MOU and shall supersede and replace any previous agreements and understandings between or among the Parties, whether written or oral, with respect to the subject matter of this MOU; *provided, however,* that any prior confidentiality agreements between the Parties shall remain in full force and effect, except as otherwise provided in Section 3.14. above. This MOU represents the final agreement between the Parties and may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the Parties.

3.17. No Waiver. The provisions of this MOU may not be changed, discharged, terminated, altered or waived orally, but only by an instrument in writing signed by the Parties. The failure of any Party to enforce its rights under this MOU on

any occasion shall not operate as or be deemed to be a waiver of any future enforcement or exercise of such rights.

3.18. No Construction Against Drafters. No provisions of this MOU shall be construed against or interpreted to the disadvantage of any of the Parties by any mediator, arbiter, court, or other governmental or judicial authority by reason of such Party having or being deemed to have drafted, prepared, or imposed such provisions.

3.19. No Representative Relationship. Nothing in this MOU shall be deemed to create a partnership, joint venture, or principal and agent relationship among the Parties. Nothing in this MOU shall limit or restrict the ability of any Party, at its own expense and on its own behalf, to assert a claim, commence litigation, or other legal proceeding, or negotiate to settle any claims against any non-Parties.

3.20. Expenses. Except as otherwise provided in this MOU, each Party shall pay its own fees and expenses (including, without limitation, those of its legal advisors) related to the negotiation, preparation, execution, and delivery of this MOU and the implementation of same.

3.21. Notices. All notices, requests, and other communications permitted or required by this MOU shall be in writing and shall be deemed to have been duly given if (a) by personal delivery, (b) by email with a read receipt to the Parties at the following addresses, (c) mailed certified mail, return receipt requested (in which case such notice, request or communication shall be deemed to have been given three (3) business days after mailing), or (d) by overnight courier (in which case such notice, request or communication shall be deemed to have been given two (2) business days after sending):

If to the City:

City Manager
City of Hermosa Beach
1315 Valley Drive
Hermosa Beach, CA90254
suja@hermosabch.org

With a copy to:

City Attorney
City of Hermosa Beach
Best, Best, & Krieger LLP
1230 Rosecrans Avenue, Suite 110
Manhattan Beach, CA 90266
michael.jenkins@bbklaw.com

If to the District:

Superintendent
Hermosa Beach City School District
1645 Valley Drive
Hermosa Beach, CA 90254
pescalante@hbcsd.org

With a copy to:

School District Attorney
Terry Tao
The Tao Firm
921 N. Harbor Blvd., Suite 408
La Habra, CA 90631
(714) 761-3007 ext. 701

3.22. Multiple Counterparts. This MOU may be executed in multiple counterparts, including facsimile or email copies of signature pages, each of which shall be deemed an original, but all of which constitute the same MOU.

3.23. Enforced Delay/Force Majeure.

3.23.1. In addition to specific provisions of this Agreement, performance by any Party hereunder shall not be deemed to be in default where delays or defaults are due to war, insurrection, strikes, walkouts, riots, floods, earthquakes, fires, casualties, acts of God, litigation (including without limitation, third party legal challenges to the Project), governmental restrictions imposed or mandated by governmental entities, enactment of conflicting state or federal laws or regulations (but only if the Party claiming delay complies at all times with provisions of this Agreement pertaining to such conflicting laws), delays due to the enforcement of environmental regulations, litigation brought by third parties, or similar bases for excused performance.

3.23.2. An extension of time for any such cause (a “Force Majeure Delay”) shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the Party claiming such extension is sent to the other Party within thirty (30) days of knowledge of the commencement of the cause. Notwithstanding the foregoing, none of the foregoing events shall constitute a Force Majeure Delay unless and until the Party claiming such delay and interference delivers to the other Party written notice describing the event, its cause, when and how such Party obtained knowledge, the date the event commenced, and the estimated delay resulting therefrom. Any Party claiming a Force Majeure Delay shall deliver such written notice within thirty (30) days after it obtains actual knowledge of the event.

Notwithstanding the first sentence of paragraph (3.23.2), above, the following shall apply: (i) a Party shall be entitled to a Force Majeure Delay for a period longer than the period of enforced delay if the City Council or Board of the other Party determines that such longer period is reasonably required; and (ii) a Party shall be entitled to a Force

Majeure Delay notwithstanding the fact that they may not have given timely notice, if the City Council or Board determines that such Force Majeure Delay is reasonably required.


A Force Majeure Delay shall not include the existence of any difficult or adverse market or economic conditions.

IN WITNESS WHEREOF, the parties have executed this Memorandum of Understanding as of the date and year first written above.

Dated: Feb. 27, 2019

CITY OF HERMOSA BEACH

By: 
STACEY ARMATO,
MAYOR

ATTEST:

CITY CLERK

HERMOSA BEACH CITY SCHOOL
DISTRICT

Dated: Feb. 27, 2019

By: 
DOUGLAS GARDNER,
PRESIDENT

ATTEST:
