

[For use with LLB fee proposals]

LEASE-LEASEBACK AGREEMENT

Dated as of _____, 2019

Between

_____ School District

and

_____ Project

_____ [insert location]

LEASE-LEASEBACK AGREEMENT

[REDACTED] **[PROJECT NAME]**

THIS LEASE-LEASEBACK AGREEMENT (this “Agreement”) is entered into as of [REDACTED], 2019 between the [REDACTED] School District, a California public school district (the “Owner”), and [REDACTED], a California [corporation] and licensed general contractor (the “Contractor”). Owner and Contractor are each a “Party” and together are the “Parties” to this Agreement.

The Owner intends to make certain tenant improvements (the “Project”) to its [REDACTED] on the campus of its [REDACTED] School, located at [REDACTED], [REDACTED], CA 9[REDACTED] the scope of which is generally described in Section 1, below.

This Agreement is entered into by the Parties pursuant to California Education Code section 17406, which permits the governing board of school district, without advertising for bids, 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.

In connection with the approval of this Agreement, the Owner will enter into a site lease with Contractor (the “Site Lease”), under which it will lease the Project site described and depicted in Exhibit A of the Site Lease (the “Site”) to Contractor in order for Contractor to finance and construct the Project as described in the Scope of Work set forth in Section 1, below (the “Scope of Work”).

Contractor will lease the Site and the Project back to the Owner pursuant to a Sublease Agreement (the “Sublease”), under which the Owner will be required to make sublease payments to Contractor for the use and occupancy of the Site, including the Project.

Contractor is experienced in the construction of the type of project and type of work desired by the Owner and is willing to perform said construction work for the Owner, all as more fully set forth in this Agreement.

The Owner and Contractor therefore agree as follows:

1. Scope of Work. The Contractor agrees to finance construction of the Project and to furnish all labor, equipment and materials, including tools, implements, and appliances required, and to perform all of the Work, as that term is defined in Article 1.1.3 of the General Conditions, in a good and workmanlike manner, free from any and all liens and claims from mechanics, material suppliers, subcontractors, artisans, machinists, teamsters, freight carriers, and laborers required for:

[REDACTED] **PROJECT**
AT [REDACTED] **SCHOOL**
[REDACTED] **COUNTY, CALIFORNIA,**

all in strict compliance with the plans, drawings and specifications (“Plans and Specifications”) for the Project submitted to the Division of State Architect (“DSA”) for approval and prepared by:

[Insert Architect Name, Address, phone Number, Fax]

and other contract documents relating to the Project.

The Scope of Work shall include any revisions to the Plans and Specifications that are made as a result of DSA review or at the direction of DSA.

The Scope of Work does not include Contractor’s performance of the pre-construction services as set forth in Section 2, below.

Until DSA approval of the plans, drawings and specifications for the Project has been received by Owner, Contractor may not commence any work on the Project for which a contractor’s license is required and DSA approval is required.

In accordance with California Public Contract Code section 3300, Contractor has a Class “ ” license that Contractor shall maintain in good standing for the duration of Contractor’s work on the Project.

2. Pre-Construction Services. Contractor shall perform the following pre-construction services to be completed by [], 20 [] [Fill date]:

- a. *Site Evaluation.* Contractor shall perform an evaluation of the Site for the Project and make recommendations relating to scope, constructability, and schedule of the Project. Contractor shall also review the scope of necessary demolition work, if any, to develop a hazardous materials removal plan. The purpose of this evaluation is to improve the Project’s design and minimize unforeseen conditions. At Owner’s request, Contractor shall provide the results of its evaluation in written form to the Owner.
- b. *Constructability Review.* Contractor shall provide at least 2 constructability reviews of the Plans and Specifications before or at each of the following intervals of preconstruction: (i) one upon the completion of design development; and (ii) one immediately prior to the submittal of the Plans and Specifications to DSA.

Contractor shall review the Plans and Specifications and related construction documents for errors and omissions, clarity, consistency, and coordination. Contractor’s review shall emphasize ensuring that the Project can be completed within the Owner’s available budget to the level of quality and educational goals desired, and can be completed within the established schedule. Contractor shall specifically provide recommendations on construction feasibility, energy conservation, availability of materials and labor, time requirements for installation and construction, and factors related to cost, including costs of alternative designs of materials, preliminary budgets, and possible economies of scale. Contractor shall provide written reports, identifying by page and detail the issues to be discussed and resolved. As part of the constructability review, Contractor shall identify areas where value engineering principles could be applied (including potential cost savings and the schedule impact of such savings), and

identify items requiring a long lead time before construction. Contractor shall assist the District in considering operating or maintenance costs with respect to selecting systems and products for the Project.

- c. *Design/Coordination Meetings.* Contractor shall be responsible for facilitating all design/coordination meetings as needed. Such meetings shall include participation of design professionals and specialty subcontractors.
- d. *Schedule.* Contractor shall develop a master critical path method (“CPM”) project schedule for the Project that shall include all milestone dates for the Project, including submittal of Contractor’s GMP proposal for each Project phase, completion of design development, submittal of all estimates contemplated by the Contract, re-submission of the Plans and Specifications to DSA (if necessary), anticipated re-approval by DSA (if any), finalization of Contract Documents, construction sequencing and durations, preparation and processing of shop drawings and samples, delivery of materials or equipment requiring long-lead time procurements, phasing, and Owner move-in. Contractor’s schedule shall be submitted to the Owner for approval within 30 days’ of execution of this Agreement; the Owner shall have the right to request reasonable changes and updates in the schedule. Contractor shall provide schedule updates with each estimate, or more often if reasonably requested by the Owner or if required in Contractor’s judgment to communicate changes in market conditions.
- e. *Estimates.* Contractor shall provide an estimate of total Project cost, as well as necessary updates to that estimate. Contractor’s initial estimate shall be due to the District within two weeks of completion of its first constructability review. Updated cost estimates shall be given in accordance with the approved CPM project schedule for the Project. Contractor shall also provide an updated estimate upon the submission of the Plans and Specifications to DSA (and at any other time required or reasonably necessary pursuant to this Agreement). Contractor’s cost estimate shall identify all trades and unit costs and shall also identify all allowable general condition costs and fees. If any cost estimate submitted to the Owner exceeds a previously approved estimate, the Contractor shall make appropriate recommendations to the Owner for reducing the estimated cost of the Project. All estimates shall assume that construction of the Project is subject to the payment of prevailing wages under the California Labor Code and applicable regulations, and that the Project will be subject to compliance monitoring and enforcement by the California Department of Industrial Relations.
- f. *Construction Planning.* Contractor shall provide assistance to Owner in construction planning, including phasing, staging, site logistics, sequencing, fencing, office locations and means and methods of construction. The Contractor shall (1) provide a preliminary evaluation of the Owner’s schedule, cost and design requirements for the Project; (2) develop an anticipated construction schedule pursuant to Subsection d. above; (3) develop a preliminary cost estimate for each type of work contemplated by the Project pursuant to Subsection e. above; (4) clarify and delineate the Architect’s, the Contractor’s, and the Owner’s respective duties and responsibilities; and (5) set forth a plan for the administration and coordination of all Work on the Project, including pre-construction meetings. The Architect and Owner shall review the above for acceptance. Contractor will also ensure that all Work complies with the guidelines established by the State of California Office of Public School Construction and any other Federal or State agencies having jurisdiction over the Project. The objective of this step will be to develop

an overall program strategy as relates to timing, budgets, construction materials, means and methods and the program interface during construction.

3. Contract Documents. The Contractor and the Owner agree that this Agreement, and all of the documents listed in Article 1.1.1 of the General Conditions, together form the “Contract Documents,” which form the “Contract.”

4. Time to Complete and Liquidated Damages. Time is of the essence in this Contract. The time for completion of the Project shall be [REDACTED] () calendar days from the date of Owner’s approval of the Total Sublease Amount (as set forth in Section 5 of this Agreement), pursuant to California Education Code section 17406(a)(3). Date for Completion (as that term is defined in Article 8.1.1. of the General Conditions) of the Project shall be on or before [REDACTED], 20[REDACTED].

Failure to complete the Project within the date(s) and in the manner provided for by the Contract Documents, shall subject the Contractor to liquidated damages for each calendar day by which such completion is delayed beyond the Date for Completion. For purposes of liquidated damages, the concept of substantial completion shall not constitute completion and is not part of the Contract Documents. The actual occurrence of damages and the actual amount of the damages which the Owner would suffer if the Project were not completed by the Date for Completion are dependent upon many circumstances and conditions which could prevail in various combinations and, from the nature of the case, it is impracticable and extremely difficult to fix the actual damages. Damages that the Owner would suffer if completion is delayed include, but are not limited to, loss of the use of the Project, disruption of activities, costs of administration, supervision and the incalculable inconvenience and loss suffered by the public.

Accordingly, the Parties agree that the following dollar figure shall be the amount of damages which the Owner shall directly incur upon failure of the Contractor to complete the Project within the time specified: \$ [REDACTED], for each calendar day by which completion of the Project is delayed beyond the Date for Completion, which may be adjusted in accordance with the Contract Documents.

If the Contractor becomes liable under this Section, the Owner, in addition to all other remedies provided by law, shall have the right to withhold sublease payments, and to collect the interest thereon, which would otherwise be or become due the Contractor until the liability of the Contractor under this Section has been finally determined. If the withheld sublease payments are not sufficient to discharge all liabilities of the Contractor incurred under this Section, then the Contractor and its sureties shall continue to remain liable to the Owner for such liabilities until all such liabilities are satisfied in full.

If the Owner accepts any work or makes any payment under this Agreement after a default by reason of delays, the payment or payments shall in no respect constitute a waiver or modification of any Agreement provisions regarding time of completion and liquidated damages.

5. Total Sublease Amount. Owner shall pay Contractor a total amount for the Scope of Work (“Total Sublease Amount”) which will be calculated following: (i) Contractor’s completion of the preconstruction services set forth in Section 2; (ii) the selection of all subcontractors in accordance with Education Code section 17406(a)(4) and the Request for Sealed Proposals; and (iii) any required DSA approval of the Plans and Specifications for the Work.

Following the occurrence of all of the events set forth in the paragraph above, Contractor shall provide Owner with objectively verifiable information of its costs to perform the Work and a written rationale for the proposed Total Sublease Amount, including documentation sufficient to support the calculation. Contractor's written rationale shall detail the "base construction cost" for the Project, consisting of (a) all subcontracts to be awarded by Contractor for the Project, plus (b) any separately awarded contracts for materials and supplies for the Project. The product of the base construction cost, multiplied by the Percentage offered by the Contractor in its response to the Request for Sealed Proposals, shall be the "Contractor Fee", which shall also be set forth in Contractor's written rationale. The Total Sublease Amount shall be the sum total of the base construction cost and the Contractor Fee.

The proposed Total Sublease Amount shall be approved or rejected by the Owner at a public meeting before Contractor may proceed with any further Work under the Contract Documents. Once approved, the Parties shall execute *Exhibit A* of the Sublease, setting forth the Total Sublease Amount and Sublease Payments, whereupon *Exhibit A* shall be incorporated into, and become part of the Contract Documents. Contractor shall immediately commence the Work after approval of the Total Sublease Amounts by the Owner, and the time for completion of the Work shall commence to run upon such approval by the Owner. If the Owner rejects the Total Sublease Amount and requests another calculation from Contractor, then Contractor shall submit another calculation complying with this Section's procedures. If the Owner rejects the Total Sublease Amount and does not request another calculation from Contractor, then such rejection will act as a Termination for Convenience pursuant to Article 14.3.2 of the General Conditions and the Owner may award a lease-leaseback contract for the Project to the next highest best value contractor from the selection process used for the Project.

Except as otherwise provided in the General Conditions, the Contractor shall assume the risk of all costs in excess of the Total Sublease Amount in the performance of such work and shall not be entitled to additional payments because of such excess costs. Should the Contractor believe that it is entitled to an increase in the Total Sublease Amount or a time extension for completion, it must request it pursuant to the procedures in the General Conditions for change orders and claims. Contractor shall finance the cost of construction of the Work. Contractor shall pay all subcontractors and suppliers as they perform Work or furnish supplies. The Owner shall pay Contractor sublease payments pursuant to the terms and conditions of Section 6 of the Sublease (the "Sublease Payments"). The sum of the Sublease Payments shall not exceed the Total Sublease Amount established under this Section 5.

6. Changes. Should the Contractor believe that it is entitled to an increase in the Total Sublease Amount or a time extension for completion, it must request such change pursuant to the procedures in the General Conditions for change orders and claims.

7. Term and Termination. The term of the Contract (the "Lease Term") automatically ends on [REDACTED], 20 [REDACTED] ("Termination Date"). *[See memo for advice regarding setting the Termination Date.]* The Owner or Contractor may terminate the Contract prior to the Termination Date, but only as provided in the General Conditions. All of the covenants, representations and warranties set forth in the Contract, including indemnification obligations, that are intended to bind the Parties after the completion of the Project or termination of the Contract will survive such completion or termination

for the periods provided for in the Contract or otherwise allowed by law. The Site Lease and the Sublease each shall automatically end at the same time as the Contract, with the Parties' respective leasehold interests thereunder automatically ended and released, and title to the Site and Project automatically and fully vested in the Owner.

8. Prequalification of Contractor and Certain Contractors.

[For districts with ADA of 2500 or more]

Owner has determined that the Project is subject to prequalification pursuant to Education Code section 17406 subsection (a)(2)(C) and Public Contract Code section 20111.6 subsections (b) through (m). Accordingly, the Owner's Request for Proposals for the Project required that all entities proposing for this Contract, including Contractor, must be prequalified as well as all electrical, mechanical, and plumbing subcontractors to be utilized on the Project.

Any subcontractors that Contractor may select after award pursuant to Section 9, below, must be prequalified by Owner pursuant to Education Code section 17406 subsection (a)(2)(C) and Public Contract Code section 20111.6 subsections (b) through (m) if bidding or proposing for work requiring C-4, C-7, C-10, C-16, C-20, C-34, C-36, C-38, C-42, C-43, or C-46 licenses or other 'C' licenses specified by Owner in the Request for Proposals. Contractor may not accept a bid or proposal and may not award a subcontract to a bidding or proposing subcontractor that has not met the requirements of this Section. When soliciting bids or proposals from subcontractors, the Contractor shall provide notice to all subcontractors of which subcontractors must be prequalified to submit bids or proposals, and Contractor shall state where the prequalification applications may be obtained and where and when they must be submitted. The prequalification questionnaires and financial statements are not public records and are not open to public inspection.

[For districts with ADA under 2500]

Owner has elected to prequalify Contractor in accordance with the prequalification requirements of Public Contract Code section 20111.5. *[See memo for additional advice regarding this Section.]*

9. Selection of Subcontractors; DVBE Goals. *[If DVBE is not required for this project, delete "DVBE GOALS" from this heading and delete the last four paragraphs in this Section]* For any subcontractors not listed in Contractor's proposal who will perform more than 0.5% of the Work, Contractor shall provide public notice of availability of work to be subcontracted in accordance with the publication date applicable to the District's competitive bidding process (including but not limited to Public Contract Code section 20112), including a fixed date and time on which qualifications statements, bids, or proposals will be due. Contractor shall establish reasonable qualification criteria and standards and shall award each subcontract either on best value basis as described in Education Code section 17406(a)(4) or to the lowest responsible bidder. All subcontractors shall be afforded the protections of the Subletting and Subcontracting Fair Practices Act (commencing with Public Contract Code section 4100). Contractor's subcontractor selection process shall be subject to review by, and approval of Owner.

Compliance with Disabled Veteran Business Enterprise ("DVBE") contracting goals is required for this Project. In accordance with Education Code section 17076.11 the Owner has a DVBE participation goal of 3% per year of the overall dollar amount of state funds allocated to the Owner pursuant to the Leroy F. Greene School Facilities Act of 1998, and expended each year by the Owner for this Project. The Owner is seeking DVBE participation under this Agreement.

The Contractor must make a good faith effort to contact and utilize DVBE subcontractors and suppliers in securing bids, in the manner set forth in this Section for performance of the Project. Information regarding certified DVBE firms can be obtained from the State's Office of Small Business and DVBE Services (OSDS) at (916) 375-4940 as well as the OSDS website at www.bidsync.com/DPXBisCASB. Verification of DVBE status must be obtained from the OSDS by receiving an approved certification letter and reference number from that office. Contractor is required, as a material condition of this Agreement, to retain documentation of its good faith efforts in utilizing DVBEs for this Project, for submission to the Owner or to the applicable state agency in the event such documentation is requested.

Good faith efforts are demonstrated by evidence of the following: (a) contact was made with the Owner regarding the identification of DVBEs; (b) contact was made with other state agencies and with local DVBE organizations to identify DVBEs; (c) advertising was published in trade papers and other papers focusing on DVBEs; (d) invitations to bid or proposal solicitations were submitted to potential DVBE contractors; and (e) available DVBEs were considered. Contractor shall certify, under penalty of perjury, that a good faith effort was made to include DVBE subcontractors and suppliers in the Project.

Prior to, and as a condition precedent for the final Sublease payment made to Contractor by the Owner pursuant to Section 6 of the Sublease, the Contractor shall provide the Owner with written documentation identifying the amount paid to certified DVBE subcontractors and suppliers in performance of the Project. The Contractor shall also provide the Owner with a copy of the DVBE Certification Letter issued by OSDS for each DVBE that has participated in the Project. This documentation will be used by the Owner to evaluate its success in meeting its DVBE participation goal.

10. Prevailing Wages. The Project is a public work, the Work shall be performed as a public work, and under California Labor Code section 1770 *et seq.*, the Director of the California Department of Industrial Relations ("DIR") has determined the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality in which the Work is to be performed, for each craft, classification or type of worker needed to execute this Contract. Per diem wages shall be deemed to include employer payments for health and welfare, pension, vacation, apprenticeship or other training programs, and similar purposes. Copies of the rates are on file at the Owner's principal office. The rate of prevailing wage for any craft, classification or type of workmanship to be employed on this Project is the rate established by the applicable collective bargaining agreement which rate so provided is hereby adopted by reference and shall be effective for the life of this Agreement or until the Director of the DIR determines that another rate be adopted. It shall be mandatory upon the Contractor and on any subcontractor to pay not less than the said specified rates to all workers employed in the execution of this Agreement.

The Contractor and any subcontractor under the Contractor as a penalty to the Owner shall forfeit not more than Two Hundred Dollars (\$200.00) for each calendar day or portion thereof for each worker paid less than the stipulated prevailing rates for such work or craft in which such worker is employed. The difference between such stipulated prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the stipulated prevailing wage rate shall be paid to each worker by the Contractor.

The Contractor and each Subcontractor shall keep or cause to be kept an accurate record for work on this Project showing the names, addresses, social security numbers, work classification, straight time and overtime hours worked and occupations of all laborers, workers and mechanics employed by them in connection with the performance of this Contract or any subcontract thereunder, and showing also the actual per diem wage paid to each of such workers, which records shall be open at all reasonable hours to inspection by the Owner, its officers and agents and to the representatives of the Division of Labor Standards Enforcement of the DIR. Contractor and all subcontractors shall comply with Labor Code section 1776. In accordance with Labor Code section 1771.4(a)(1), the Project is subject to compliance monitoring and enforcement by the DIR. The Contractor and each subcontractor shall furnish a certified copy of all payroll records directly to the Labor Commissioner on a monthly basis, unless directed by the Owner to furnish such records more often, and in the format prescribed by the Labor Commissioner.

As a public work, the Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. For all projects over Twenty-five Thousand Dollars (\$25,000): in order to be qualified to submit a bid or to be listed in a bid proposal subject to the requirements of Public Contract Code section 4104, or enter into, or engage in the performance of any contract of public work (as defined by Division 2, Part 7, Chapter 1 (§§ 1720 *et seq.*) of the Labor Code), a contractor or subcontractor must be currently registered and qualified under Labor Code section 1725.5 to perform public work as defined by Division 2, Part 7, Chapter 1 (§§ 1720 *et seq.*) of the Labor Code.

11. Working Hours. Under California Labor Code sections 1810 to 1815, the time of service of any worker employed by the Contractor or a Subcontractor doing or contracting to do any part of the Work contemplated by this Agreement is limited and restricted to 8 hours during any one calendar day and 40 hours during any one calendar week, provided, that work may be performed by such employee in excess of said 8 hours per day or 40 hours per week provided that compensation for all hours worked in excess of 8 hours per day, and 40 hours per week, is paid at a rate not less than 1½ times the basic rate of pay. The Contractor and every Subcontractor shall keep an accurate record showing the name of and the actual hours worked each calendar day and each calendar week by each worker employed by them in connection with the Work. The Contractor and every Subcontractor shall keep the records open at all reasonable hours to inspection by representatives of the Owner and the Division of Labor Standards Enforcement. The Contractor shall as a penalty to the Owner forfeit \$25.00 for each worker employed in the execution of this Agreement by the Contractor or by any subcontractor for each calendar day during which such worker is required or permitted to work more than 8 hours in any one calendar day, and 40 hours in any one calendar week, except as herein provided.

12. Apprentices. The Contractor shall comply with California Labor Code sections 1777.5 and 1777.6. These sections require that contractors and subcontractors employ apprentices in apprenticeable occupations in a ratio of not less than 1 hour of apprentice's work for each 5 hours of work performed by a journeyman (unless an exemption is granted in accordance with Labor Code section 1777.5) and that contractors and subcontractors shall not discriminate among otherwise qualified employees as indentured apprentices on any public works solely on the ground of sex, race, religious creed, national origin, ancestry or color. Only apprentices as defined in Labor Code section 3077, who are in training under apprenticeship standards and who have signed written apprentice

agreements, will be employed on public works in apprenticeable occupations. The responsibility for compliance with these provisions is fixed with the Contractor for all apprenticeable occupations.

13. Skilled and Trained Workforce. *If District has a project labor agreement (“PLA”), contact legal counsel for alternate language for this Section.* The Contractor and its subcontractors at every tier shall comply with Education Code section 17407.5 and Public Contract Code sections 2600-2602, which require the Contractor and its subcontractors at every tier to employ a skilled and trained workforce, as defined herein, to perform all work on the Project that falls within an apprenticeable occupation in the building and construction trades.

For the purpose of this Section 13, the following definitions apply:

- A. “Apprenticeable occupation” means an occupation for which the Division of Apprenticeship Standards of the DIR had approved an apprenticeship program before January 1, 2014.
- B. “Graduate of an apprenticeship program” means either (a) an individual that has been issued a certificate of completion under the authority of the California Apprenticeship Council for completing an apprenticeship program approved by the DIR pursuant to Section 3075 of the Labor Code, or (b) an individual that has completed an apprenticeship program located outside California and approved for federal purposes pursuant to apprenticeship regulations adopted by the federal Secretary of Labor.
- C. “Skilled and trained workforce” means that all of the workers are either apprentices registered in an apprenticeship program approved by the DIR, or skilled journeypersons, with at least 30 percent of the skilled journeypersons employed on the Project in the following occupations being graduates of an apprenticeship program: acoustical installer, bricklayer, carpenter, cement mason, drywall installer or lather, marble mason, finisher, or setter, modular furniture or systems installer, operating engineer, pile driver, plasterer, roofer or waterproofer, stone mason, surveyor, teamster, terrazzo worker or finisher, and tile layer, setter, or finisher. For work performed on or after January 1, 2019, and before January 1, 2020, at least 50 percent of the skilled journeypersons employed on the Project in all other apprenticeable occupations must be graduates of an apprenticeship program. The 50 percent requirement will increase over time (see Public Contract Code section 2601(d)(2).) Pursuant to Sections 2600-2602 of the Public Contract Code, the percentage requirement (1) may be partially met in some apprenticeable occupations by skilled journeypersons who commenced working before an apprenticeship program existed; (2) may be met by the hours performed by the skilled journeypersons; (3) need not be met if less than ten (10) hours of work were performed; and (4) need not be met by some subcontractors. *[Note: If Work will continue into 2020, consult legal counsel.]*
- D. “Skilled journeyperson” means any of the following: (i) a person who has graduated from an apprenticeship program for the applicable occupation that was approved by the DIR, (ii) a person who has graduated from an apprenticeship program for the applicable occupation that was located outside of California and approved for federal purposes in accordance with regulations adopted by the federal Secretary of Labor, or (iii) a person

who has at least as many hours of on-the-job experience in the applicable occupation as would be required to graduate from an apprenticeship program approved by the DIR.

For each calendar month during the Work, Contractor shall provide a compliance report to the Owner for each contractor or subcontractor before the fifth day of each month, using the format attached hereto as *Exhibit A*, or in a substantially similar format, demonstrating compliance with this Section 13. Such monthly compliance reports shall be subject to the California Public Records Act (commencing with Government Code section 6250), and shall be open to public inspection.

If Contractor fails to comply with this Section 13 then Owner, at its sole discretion, may terminate the Agreement pursuant to Article 14 of the General Conditions, in addition to any other rights or remedies provided to Owner in the Contract Documents. Notwithstanding any other provision of the Agreement or the General Conditions if Contractor fails to provide any required monthly compliance report pursuant to this Section 13 on or before the fifth day of the following month, or provides an incomplete report, Owner shall withhold further payments to Contractor that would otherwise be due and payable consistent with Public Contract Code section 2602(b).

14. DSA Oversight Process. The Contractor must comply with the applicable requirements of the Division of State Architect (“DSA”) Construction Oversight Process (“DSA Oversight Process”), including but not limited to (a) notifying the Inspector of Record (“IOR”) upon commencement and completion of each aspect of the work as required under DSA Form 156; (b) coordinating the Work with the IOR’s inspection duties and requirements; (c) submitting verified reports under DSA Form 6-C; and (d) coordinating with the Owner, Owner’s Architect, any Construction Manager, any laboratories, and the IOR to meet the DSA Oversight Process requirements without delay or added costs to the Project.

Contractor shall be responsible for any additional DSA fees related to review of proposed changes to the DSA-approved construction documents, to the extent the proposed changes were caused by Contractor’s wrongful actions or omissions. If inspected Work is found to be in non-compliance with the DSA-approved construction documents or the DSA-approved testing and inspection program, then it must be removed and corrected. Any construction that covers unapproved or uninspected Work is subject to removal and correction, at Contractor’s expense, in order to permit inspection and approval of the covered Work in accordance with the DSA Oversight Process.

15. Indemnification, Insurance, and Bonds. The Contractor will defend, indemnify and hold harmless the Owner, its governing board, officers, agents, trustees, employees and others as provided in the General Conditions.

By this statement the Contractor represents that it has secured the payment of Workers’ Compensation in compliance with the provisions of the California Labor Code and during the performance of the work contemplated herein will continue so to comply with said provisions of said Code. The Contractor shall supply the Owner with certificates of insurance evidencing that Workers’ Compensation Insurance is in effect and providing that the Owner will receive 30 days’ notice of cancellation.

Contractor shall provide the insurance set forth in the General Conditions. The amount of general liability insurance shall be \$ [REDACTED] per occurrence for bodily injury, personal injury, and

property damage, and the amount of automobile liability insurance shall be \$ [REDACTED] per accident for bodily injury and property damage combined single limit.

Contractor shall provide the bonds set forth in the General Conditions, including performance and payments bonds.

16. Entire Agreement. The Contract constitutes the entire agreement between the Parties, and supersedes any prior or contemporaneous agreement between the Parties, oral or written, unless such agreement is expressly incorporated herein. The Owner makes no representations or warranties, express or implied, not specified in the Contract. The Contract is intended as the complete and exclusive statement of the Parties' agreement pursuant to California Code of Civil Procedure section 1856.

17. Execution of Other Documents. The Parties to this Agreement shall cooperate fully in the execution of any and all other documents and in the completion of any additional actions that may be necessary or appropriate to give full force and effect to the terms and intent of the Contract.

18. Execution in Counterparts. This Agreement may be executed in counterparts such that the signatures may appear on separate signature pages. A copy, or an original, with all signatures appended together, shall be deemed a fully executed Agreement.

19. Binding Effect. Contractor, by execution of this Agreement, acknowledges that Contractor has read this Agreement and the other Contract Documents, understands them, and agrees to be bound by their terms and conditions. The Contract shall inure to the benefit of and shall be binding upon the Contractor and the Owner and their respective successors and assigns.

20. Severability; Governing Law; Venue. If a court of competent jurisdiction shall hold any provision of the Contract invalid or unenforceable, then such holding shall not invalidate or render unenforceable any other provision hereof. The laws of the State of California shall govern the Contract. Any action or proceeding seeking any relief under or with respect to this Agreement shall be brought solely in the Superior Court of the State of California for the County of [REDACTED], subject to transfer of venue under applicable State law, provided that nothing in this Agreement shall constitute a waiver of immunity to suit by Owner.

21. Amendments. The terms of the Contract shall not be waived, altered, modified, supplemented, or amended in any manner whatsoever except by written agreement signed by the Parties and approved or ratified by the Owner's Governing Board.

22. Assignment of Contract. The Contractor shall not assign or transfer by operation of law or otherwise any of its rights, burdens, duties or obligations without the prior written consent of the surety on the payment bond, the surety on the performance bond, and the Owner.

23. Written Notice. Written notice shall be deemed to have been duly served if delivered in person to the individual or member of the firm or to an officer of the corporation for whom it was intended, or if delivered at or sent by registered or certified or overnight mail to the last business address known to the person who gives the notice.

24. Terms Not Defined. Capitalized terms used in this Agreement that are not otherwise defined have the same meaning as in the General Conditions or other Contract Documents.

25. Parties Bound by Agreement. Each person signing this Agreement below warrants and guarantees that he or she is legally authorized to execute this Agreement on behalf of the listed Party and that such execution binds that Party to the terms and conditions of this Agreement.

CONTRACTOR:

OWNER:

_____,
a California _____

_____ School District

BY: _____

TITLE: President

BY: _____

TITLE: Superintendent

BY: _____
TITLE: Corporate Secretary

CALIFORNIA CONTRACTOR'S
LICENSE NO.

LICENSE EXPIRATION DATE

NOTE: Contractor must give the full business address of the Contractor and sign with Contractor's usual signature. Partnerships must furnish the full name of all partners and the Agreement must be signed in the partnership name by a general partner with authority to bind the partnership in such matters, followed by the signature and designation of the person signing. The name of the person signing shall also be typed or printed below the signature. Corporations must sign with the legal name of the corporation, followed by the name of the state of incorporation and by the signature and designation of the chairman of the board, president or any vice president, and then followed by a second signature by the secretary, assistant secretary, the chief financial officer or assistant treasurer. All persons signing must be authorized to bind the corporation in the matter. The name of each person signing shall also be typed or printed below the signature. Satisfactory evidence of the authority of the officer signing on behalf of a corporation shall be furnished.

EXHIBIT A – Lease-Leaseback Agreement

**SKILLED AND TRAINED WORKFORCE COMPLIANCE REPORT
FOR WORK PERFORMED
ON OR AFTER JANUARY 1, 2019 AND BEFORE JANUARY 1, 2020**
(Education Code § 17407.5 and Public Contract Code §§ 2600-2602)

Owner: [redacted] School District

Contract: [redacted] Project
[redacted] School
[redacted] [city], [redacted] County, California

The undersigned declares:

I am the [redacted] of [redacted], the “Contractor” on the Project identified above. I hereby certify that during the month of [redacted], 20__, there were a total of [redacted] workers employed in the apprenticeable occupations designated under Public Contract Code section 2600 *et seq.* and these workers performed a total of [redacted] hours of work within an apprenticeable occupation. I certify that all of these workers in an apprenticeable occupation are either skilled journeypersons or apprentices registered in an apprenticeship program approved by the Department of Industrial Relations (DIR), and that all of these hours performed in this apprenticeable occupation were performed by such skilled journeypersons and apprentices. I certify that each subcontractor who performed work during the aforementioned month has provided to Contractor a Skilled and Trained Workforce Compliance Report consistent with Public Contract Code section 2602.

Following review of all Skilled and Trained Workforce Compliance Reports, I also certify as follows *[check applicable box(es)]*:

A. Exemption from Percentage Compliance

Of the above total number of hours of work performed by workers employed in an apprenticeable occupation this month, [redacted] ([redacted]) were performed by skilled journeypersons, which is less than the statutory threshold of ten (10) hours.

B. Percentage Compliance by Number of Workers

1. Of the above total number of workers employed in an apprenticeable occupation this month, [redacted] ([redacted]) were apprentices registered in an apprenticeship program approved by the DIR.
2. Of the above total number of workers employed in an apprenticeable occupation in this month, [redacted] were skilled journeypersons. Included in these skilled journeypersons are the following:

- a. [redacted] who are graduates of an apprenticeship program for the following occupations: acoustical installer, bricklayer, carpenter, cement mason, drywall installer or lather, marble mason, finisher, or setter, modular furniture or systems installer, operating engineer, pile drive, plasterer, roofer or waterproofer, stone mason, surveyor, teamster, terrazzo worker or finisher, and tile layer, setter, or finisher;
- b. [redacted] who are graduates of another apprenticeship program not listed in subsection (a) for the applicable occupation; and
- c. [redacted] who are not graduates of an approved apprenticeship program for this apprenticeable occupation, but (a) no apprenticeship program had been approved by the DIR before January 1, 1995, for this apprenticeable occupation; and (b) these workers commenced working in this apprenticeable occupation before DIR approval of an apprenticeship program for that occupation in the county in which the Project is located.

The combined number of skilled journeypersons listed in Section B.1 and Section B.2 meets the requirements as contained in Education Code section 17407.5 and Public Contract Code sections 2600-2602, with no more than half of this percentage requirement being satisfied by the number of skilled journeypersons listed in Section B.2.c.

C. Percentage Compliance by Number of Hours

1. Of the above total number of hours of work performed by workers employed in this apprenticeable occupation this month, [redacted] hours were performed by apprentices registered in an apprenticeship program approved by the DIR.
2. Of the above total number of hours of work performed by workers employed in this apprenticeable occupation in this month, [redacted] hours were performed by skilled journeypersons. Included in these hours are the following:
 - a. [redacted] hours performed by graduates of an apprenticeship program for the following occupations: acoustical installer, bricklayer, carpenter, cement mason, drywall installer or lather, marble mason, finisher, or setter, modular furniture or systems installer, operating engineer, pile driver, plasterer, roofer or waterproofer, stone mason, surveyor, teamster, terrazzo worker or finisher, and tile layer, setter, or finisher;
 - b. [redacted] hours performed by graduates of another apprenticeship program not listed in subsection (a) for the applicable occupation; and
 - c. [redacted] hours performed by skilled journeypersons who are not graduates of an approved apprenticeship program for this apprenticeable occupation, but (a) no apprenticeship program had been approved by the DIR before January 1, 1995, for this apprenticeable occupation; and (b) these workers commenced working in this

apprenticeable occupation before DIR approval of an apprenticeship program for that occupation in the county in which the Project is located.

The combined hours of work performed by skilled journeypersons listed in Section C.1 and Section C.2 meets the percentage requirements as set forth in Education Code section 17407.5 and Public Contract Code sections 2600-2602, with no more than half of this percentage requirement being satisfied by the hours performed by skilled journeypersons listed in Section C.2.c.

D. Failure of a Subcontractor to Demonstrate Compliance

This Skilled and Trained Workforce Compliance Report does not demonstrate compliance with the graduate percentage requirement due to the failure of the following subcontractor(s):

The value of the monthly billing for the listed subcontractor(s) is \$ [redacted]. I have attached sufficient information to document to value of the monthly billing and understand that the District will withhold 150 percent of the aforementioned amount until a plan to achieve substantial compliance is approved by the District consistent with Public Contract Code section 2602(c).

I certify that the subcontractor(s) will be substituted pursuant to Public Contract Code section 4100 *et seq.*, unless that subcontractor provides a plan to achieve compliance consistent with Public Contract Code section 2602(c).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on [redacted], 20[redacted], at [redacted] [city], California.

[redacted]

[Name]

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on [redacted], 20[redacted], at [redacted] [city], California.

[redacted]

[Name]