

EXHIBIT D

LEASE-LEASEBACK AGREEMENT

Dated as of August 28, 2019

Between

Sylvan Union School District

and

Robert E. Boyer Construction, Inc.

Ustach Middle School Modernization Contract

at Ustach Middle School,

2701 Kodiak Drive, Modesto, CA

**LEASE-LEASEBACK AGREEMENT FOR THE
USTACH MIDDLE SCHOOL MODERNIZATION CONTRACT**

THIS LEASE-LEASEBACK AGREEMENT (this “Agreement”) is entered into as of August 28, 2019, between the Sylvan Union School District, a California public school district (the “Owner”), and Robert E. Boyer Construction, Inc., a California corporation and licensed 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 generally described in Section 1, below (the “Work”) to its modernization on the campus of its Ustach Middle School, located at 2701 Kodiak Drive, Modesto, CA , such Work being performed pursuant to the Agreement and all incorporated documents (the “Contract” and “Contract Documents”), all of which is part of the Owner’s Ustach Middle School Modernization project (“Project”). This Agreement includes and incorporates all of the Contract Documents identified in Section 1.1.1 of the General Conditions of this Contract.

This Agreement is entered into by the Parties pursuant to California Education Code section 17406, which permits the governing board of school district 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 Contract site described and depicted in Exhibit A of the Site Lease (the “Site”) to Contractor in order for Contractor to finance and construct the Contract as described in the Scope of Work set forth in Section 1, below (the “Scope of Work”).

Contractor will lease the Site 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 Contract.

Contractor is experienced in the construction of the type of contract 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 Contract 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 the

**USTACH MIDDLE SCHOOL MODERNIZATION CONTRACT
AT USTACH MIDDLE SCHOOL
STANISLAUS COUNTY, CALIFORNIA,**

all in strict compliance with the Contract Documents, including but not limited to the plans, drawings, and specifications for the Contract approved by the Division of State Architect (“DSA”) as Application No. 02-117460 on August 15, 2019, (conditionally) and prepared by

SWK & Associates, 2237 Scenic Drive, Modesto, CA, 95355 .

The Contract’s scope of work as awarded includes the following alternate items listed in the proposal:

- Alternate Item No. 2 - Install New Compactor;
- Alternate Item No. 4 - Install new roofing on Buildings A, B1, B2, C1, C2, C3, D, E, & F as shown on plans. Roof patching at new penetrations, patching at removed HVAC units, and all roofing shown on Building G shall be part of the base bid; and
- Alternate Item No. 5 - Install Carpet and Base at New Carpet per plans. All other flooring and wall base shall be part of the base bid. Areas where carpet gets replaced with a different floor finish shall be part of the base bid.

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

2. 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.”

3. Time to Complete and Liquidated Damages. Time is of the essence in this Contract. The Contractor shall commence the Work (including mobilization) on or after September 3, 2019, and shall complete the Work on or before August 28, 2020 (this latter date being the “Date for Completion”).

Failure to complete the Work, or applicable milestones or phases of Work, within the time 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 or Milestone Deadline. 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 Work, or milestone or phase of the Work, were not completed by the Date for Completion or Milestone Deadline 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 Work or 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 for every calendar day by which Contractor fails to Complete the Work within the time specified: \$1,500.

If the Contractor becomes liable under this Section 3, 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 3 has been finally determined. If the withheld sublease payments are not sufficient to discharge all liabilities of the Contractor incurred under this Section 3, 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 Contract provisions regarding time of completion and liquidated damages.

4. Total Sublease Amount. For satisfactory performance of the Work, the Owner shall pay a total of **\$10,523,287.00** to Contractor (the "Total Sublease Amount").

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 the Work and shall not be entitled to additional payments because of such excess costs.

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 the Total Sublease Amount to Contractor in sublease payments pursuant to the terms and conditions of the Contract Documents, including but not limited to Section 6 of the Sublease (the "Sublease Payments") and any adjustments to such Total Sublease Amount that may be made in accordance with the terms of the Contract Documents. The sum of the Sublease Payments shall not exceed the Total Sublease Amount established under this Article 4.

The Total Sublease Amount includes all amounts for allowances specified in the Contract Documents, including the Request for Proposals and any addenda thereto, and the use of such funds is entirely at the discretion, and only with the advanced written approval, of the Owner. Contractor must establish entitlement to such an allowance payment pursuant to the Contract Documents' requirements for notices of potential change, change order requests, and claims, including but not limited to Section 4.5 of the General Conditions. The amount of any allowance may only be increased by a Board-approved change order. The unspent amount of the allowances shall be excluded from any calculations of Sublease Payments under the Contract Documents. If an allowance is fully spent or Owner elects to not spend remaining allowance funds, the Contractor must request any additional compensation pursuant to the procedures in the Contract Documents, including but not limited to Section 4.5 of the General Conditions regarding notices of potential change, change order requests, and claims. Upon Completion of the Work, all such allowance funds that are unspent and unencumbered shall remain the property of the Owner, Owner shall have no obligation to pay such funds to Contractor, and Contractor shall have no claim to such funds.

5. Changes. Should the Contractor believe that it is entitled to an increase in the Total Sublease Amount or a time extension for Completion of the Work, it must request such change pursuant to the procedures in the Contract Documents, including but not limited to Section 4.5 of the General Conditions regarding notices of potential change, change order requests, and claims. To be enforceable, any written amendment or change order must be signed by both parties and approved by the Owner's governing body.

6. Term and Termination. The term of the Contract (the "Lease Term") begins on **September 3, 2019**, and automatically ends on the date that the final Sublease Payment is due (as may be adjusted during the Contract) or on the date that the Contract is terminated, all in accordance with the Contract Documents. The Lease Term and the Sublease Payments may be extended as provided in the Sublease. 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 Work 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 this Agreement, with the Parties' respective leasehold interests thereunder automatically ended and released, and title to the Site and Work automatically and fully vested in the Owner.

7. Prequalification of Contractor and Certain Subcontractors.

Owner has determined that the Contract is subject to prequalification pursuant to Education Code section 17406(a)(2)(C) and Public Contract Code section 20111.6(b) through (m). Accordingly, the Owner's Request for Proposals for the Contract 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 Contract. Any subcontractors that Contractor may select after award, must be prequalified by Owner pursuant to Education Code section 17406(a)(2)(C) and Public Contract Code section 20111.6(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. The Contractor may not accept a bid or proposal and may not award the 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.

8. Selection of Subcontractors; DVBE Goals. Contractor shall use only those subcontractors designated in its proposal for any Work constituting more than 0.5% of the Total Sublease Amount allocable to construction Work. All of Contractor's subcontractors shall be afforded the protections of the Subletting and Subcontracting Fair Practices Act (commencing with Public Contract Code section 4100).

Compliance with Disabled Veteran Business Enterprise ("DVBE") contracting goals is required for this Contract. 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 Contract. 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 Contract. 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 Contract, 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 Contract.

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 Contract. 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 Contract. This documentation will be used by the Owner to evaluate its success in meeting its DVBE participation goal.

9. Prevailing Wages. The Contract 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 Contract 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 Contract 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 Contract 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 Contract 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.

10. 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.

11. 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.

12. Skilled and Trained Workforce. 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 Contract that falls within an apprenticeable occupation in the building and construction trades.

For the purpose of this Section 12, 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% of the skilled journeypersons employed on the Contract 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 figure of "50%" in the preceding sentence will increase to 60% effective January 1, 2020 (see Public Contract Code §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.

- 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 12, **except that** a compliance report is not required for any occupation exempted under Public Contract Code §2601(d)(2)(B)-(D). 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 12 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 12 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).

13. 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 Contract.

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.

14. 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 \$1,000,000 per occurrence and \$2,000,000 aggregate for bodily injury, personal injury, and property damage, and the amount of automobile liability insurance shall be \$1,000,000 per accident for bodily injury and property damage combined single limit, \$2,000,000 aggregate.

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

15. 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.

16. 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.

17. 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.

18. 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.

19. 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, other than its laws regarding choice of law, 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 Stanislaus, 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.

20. 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.

21. 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.

22. 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.

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

24. 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:

Robert E. Boyer Construction, Inc.,
a California Corporation

BY: _____
TITLE: President, Vice President,
 or Chairman

BY: _____
TITLE: Secretary, Assistant Secretary,
 CFO, or Assistant Treasurer

CALIFORNIA CONTRACTOR'S
LICENSE NO.

OWNER:

Sylvan Union School District

BY: _____
TITLE: Assistant Superintendent of
 Business Services

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: Sylvan Union School District

Contract: Ustach Middle School Modernization Contract
Ustach Middle School
Modesto, Stanislaus County, California

The undersigned declares:

I am the _____ of _____, the “Contractor” on the Contract identified above. I hereby certify that during the month of _____, 2019, Contractor and its subcontractors employed a total of _____ workers on the Contract in the apprenticeable occupations designated under Public Contract Code sections 2600 et seq., and these workers performed a total of _____ hours of work within the apprenticeable occupations. I certify that all of these workers in the apprenticeable occupations 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 the apprenticeable occupations were performed by such skilled journeypersons and apprentices.

I. CONTRACTOR’S WORKFORCE

For the workers in the apprenticeable occupations employed by Contractor during the aforementioned month, I certify as follows *[check the applicable box]*:

☐ **A. Exemption**

The Contractor’s workers in the apprenticeable occupations performed fewer than ten (10) hours of work on the Contract, and thus are exempt from the percentage compliance requirements of Public Contract Code section 2601(d)(2).

☐ **B. Percentage Compliance by Number of Workers**

[If Contractor meets or exceeds the required percentage of skilled journeypersons that are apprenticeship graduates (see Public Contract Code section 2601(d)(2)-(4)), fill out Paragraphs 1.1-1.4 and 2.1-2.4.]

1.0 Apprenticeable occupations of 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, terrazzo worker or finisher, and tile layer, setter, or finisher:

1.1. Number of Contractor's skilled journeypersons in these apprenticeable occupations = _____

1.2. Number of Contractor's skilled journeypersons in these apprenticeable occupations who are graduates of an apprenticeship program for the applicable occupation = _____

1.3 For apprenticeable occupations where no apprenticeship program had been approved by the Chief before January 1, 1995, the number of skilled journeypersons who commenced working in these apprenticeable occupations before the Chief's approval of an apprenticeship program for each occupation in the county of this Project = _____ *[may not exceed 15% of 1.1, above]*

1.4. Contractor's apprenticeship graduation percentage for these apprenticeable occupations = _____% *[add 1.2 and 1.3, and divide that sum by 1.1; the result must meet or exceed 30% (see Public Contract Code §2601(d)(2)(A))]*

2.0 All apprenticeable occupations other than teamsters and those listed in 1.0 above:

2.1. Number of Contractor's skilled journeypersons in these apprenticeable occupations = _____

2.2. Number of Contractor's skilled journeypersons in these apprenticeable occupations who are graduates of an apprenticeship program for the applicable occupation = _____

2.3 For apprenticeable occupations where no apprenticeship program had been approved by the Chief before January 1, 1995, the number of skilled journeypersons

who commenced working in these apprenticeable occupations before the Chief's approval of an apprenticeship program for each occupation in the county of this Project = _____ *[through December 31, 2019, this number may not exceed 25% of 2.1, above; beginning January 1, 2020, it may not exceed 30% of 2.1, above]*

2.4. Contractor's apprenticeship graduation percentage for these apprenticeable occupations = _____% *[add 2.2 and 2.3, and divide that sum by 2.1; through December 31, 2019, this percentage must be at least 50% (see Public Contract Code §2601(d)(2)(C)); beginning January 1, 2010, this percentage must be at least 60% (see Public Contract Code §2601(d)(2)(D))]*

☐ **C. Percentage Compliance by Number of Hours**

[If Contractor meets or exceeds the required percentage of hours performed by apprenticeship graduates (see Public Contract Code section 2601(d)(2)-(4)), fill out Paragraphs 1.1-1.4 and 2.1-2.4.]

1.0 Apprenticeable occupations of 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, terrazzo worker or finisher, and tile layer, setter, or finisher:

1.1. Number of hours of work performed by Contractor's skilled journeypersons in these apprenticeable occupations = _____

1.2. Number of hours of work performed by Contractor's skilled journeypersons in these apprenticeable occupations who are graduates of an apprenticeship program for the applicable occupation = _____

1.3 For any of these apprenticeable occupations where no apprenticeship program had been approved by the Chief before January 1, 1995, the number of hours of work performed by subcontractor's skilled journeypersons who commenced working in these apprenticeable occupations before the Chief's approval of an apprenticeship program for each occupation in the county of this Project = _____ *[may not exceed 15% of 1.1, above; see Public Contract Code §2601(d)(2)(A) and (d)(3)]*

1.4. Contractor's apprenticeship graduation percentage for these apprenticeable occupations = _____% *[add 1.2 and 1.3, and divide that sum by 1.1; the result must meet or exceed 30% (see Public Contract Code §2601(d)(2)(A)]*

2.0 All apprenticeable occupations other than teamsters and those listed in 1.0 above:

2.1. Number of hours of work performed by Contractor's skilled journeypersons in these apprenticeable occupations = _____

2.2. Number of hours of work performed by Contractor's skilled journeypersons in these apprenticeable occupations who are graduates of an apprenticeship program for the applicable occupation = _____

2.3 For any of these apprenticeable occupations where no apprenticeship program had been approved by the Chief before January 1, 1995, the number of hours of work performed by subcontractor's skilled journeypersons who commenced working in these apprenticeable occupations before the Chief's approval of an apprenticeship program for each occupation in the county of this Project = _____ *[through December 31, 2019, this number may not exceed 25% of 2.1, above; beginning January 1, 2020, it may not exceed 30% of 2.1, above; see Public Contract Code §2601(d)(2)(C), (d)(2)(D), and (d)(3)]*

2.4. Contractor's apprenticeship graduation percentage for these apprenticeable occupations = _____% *[add 2.2 and 2.3, and divide that sum by 2.1; through December 31, 2019, this percentage must be at least 50% (see Public Contract Code §2601(d)(2)(C)); beginning January 1, 2010, this percentage must be at least 60% (see Public Contract Code §2601(d)(2)(D))]*

☐ **D. Failure of Contractor to Demonstrate Compliance**

This Skilled and Trained Workforce Compliance Report does not demonstrate compliance with the graduate percentage requirement due to the failure of Contractor to (1) qualify for exemption under I.A, above, or (2) meet the percentage requirements under I.B or I.C, above.

The total value of the monthly billing for the Contractor is \$ _____. 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).

II. SUBCONTRACTORS' WORKFORCES

I certify that each subcontractor of every tier who performed work during the aforementioned month has provided to Contractor a Skilled and Trained Workforce Compliance Report that is signed under the penalty of perjury, and that provides sufficient detail to allow Contractor to fully and accurately prepare Section II of this form. I certify that Contractor will retain these forms and will provide copies of them to Owner within seven (7) days of Owner's written request. Following review of all of the subcontractors' Skilled and Trained Workforce Compliance Reports, I also certify as follows *[check applicable box(es)]*:

☐ **A. Exemption from Percentage Compliance (PCC §2601(d)(5) and (6))**

The following subcontractors are exempt from the percentage compliance requirements of Public Contract Code section 2601(d)(2) because they employed skilled journeypersons to perform fewer than ten (10) hours of work in the apprenticeable occupations on the Contract: _____ (___ hours), _____ (___ hours), _____ (___ hours), _____ (___ hours), and _____ (___ hours). *[insert names of the subcontractors on the Contract that are exempt for this reason, and the number of hours performed by skilled journeypersons for each one]*

The following subcontractors are exempt from the percentage compliance requirements of Public Contract Code section 2601(d)(2) because they were not a listed subcontractor under Public Contract Code section 4104 or a substitute for a listed subcontractor, and the subcontract does not exceed 0.5% of the price of the prime contract: _____, _____, _____, and _____. *[insert names of the subcontractors on the Contract that are exempt for this reason]*

☐ **B. Percentage Compliance by Number of Workers**

*[For **each** subcontractor that meets or exceeds the required percentage of skilled journeypersons that are apprenticeship graduates (see Public Contract Code section 2601(d)(2)-(4)), fill out Paragraphs 1.1-1.4 and 2.1-2.4.]*

_____ *[insert name of subcontractor]* :

1.0 Apprenticeable occupations of 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, terrazzo worker or finisher, and tile layer, setter, or finisher:

1.1. Number of subcontractor's skilled journeypersons in these apprenticeable occupations = _____

1.2. Number of subcontractor's skilled journeypersons in these apprenticeable occupations who are graduates of an apprenticeship program for the applicable occupation = _____

1.3 For apprenticeable occupations where no apprenticeship program had been approved by the Chief before January 1, 1995, the number of skilled journeypersons who commenced working in these apprenticeable occupations before the Chief's approval of an apprenticeship program for each occupation in the county of this Project = _____ *[may not exceed 15% of 1.1, above]*

1.4. Subcontractor's apprenticeship graduation percentage for these apprenticeable occupations = _____% *[add 1.2 and 1.3, and divide that sum by 1.1; the result must meet or exceed 30% (see Public Contract Code §2601(d)(2)(A)]*

2.0 All apprenticeable occupations other than teamsters and those listed in 1.0 above:

2.1. Number of subcontractor's skilled journeypersons in these apprenticeable occupations = _____

2.2. Number of subcontractor's skilled journeypersons in these apprenticeable occupations who are graduates of an apprenticeship program for the applicable occupation = _____

2.3 For apprenticeable occupations where no apprenticeship program had been approved by the Chief before January 1, 1995, the number of skilled journeypersons who commenced working in these apprenticeable occupations before the Chief's approval of an apprenticeship program for each occupation in the county of this Project = _____ *[through December 31, 2019, this number may*

not exceed 25% of 2.1, above; beginning January 1, 2020, it may not exceed 30% of 2.1, above]

2.4. Subcontractor's apprenticeship graduation percentage for these apprenticeable occupations = _____% *[add 2.2 and 2.3, and divide that sum by 2.1; through December 31, 2019, this percentage must be at least 50% (see Public Contract Code §2601(d)(2)(C)); beginning January 1, 2010, this percentage must be at least 60% (see Public Contract Code §2601(d)(2)(D))]*

☐ **C. Percentage Compliance by Number of Hours**

*[For **each** subcontractor that meets or exceeds the required percentage of hours performed by apprenticeship graduates (see Public Contract Code section 2601(d)(2)-(4)), fill out Paragraphs 1.1-1.4 and 2.1-2.4.]*

_____ *[insert name of subcontractor] :*

1.0 Apprenticeable occupations of 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, terrazzo worker or finisher, and tile layer, setter, or finisher:

1.1. Number of hours of work performed by subcontractor's skilled journeypersons in these apprenticeable occupations = _____

1.2. Number of hours of work performed by subcontractor's skilled journeypersons in these apprenticeable occupations who are graduates of an apprenticeship program for the applicable occupation = _____

1.3 For any of these apprenticeable occupations where no apprenticeship program had been approved by the Chief before January 1, 1995, the number of hours of work performed by subcontractor's skilled journeypersons who commenced working in these apprenticeable occupations before the Chief's approval of an apprenticeship program for each occupation in the county of this Project = _____ *[may not exceed 15% of 1.1, above; see Public Contract Code §2601(d)(2)(A) and (d)(3)]*

1.4. Subcontractor's apprenticeship graduation percentage for these apprenticeable occupations = _____% *[add 1.2 and 1.3, and divide that sum by 1.1; the result must meet or exceed 30% (see Public Contract Code §2601(d)(2)(A)]*

2.0 All apprenticeable occupations other than teamsters and those listed in 1.0 above:

2.1. Number of hours of work performed by subcontractor's skilled journeypersons in these apprenticeable occupations = _____

2.2. Number of hours of work performed by subcontractor's skilled journeypersons in these apprenticeable occupations who are graduates of an apprenticeship program for the applicable occupation = _____

2.3 For any of these apprenticeable occupations where no apprenticeship program had been approved by the Chief before January 1, 1995, the number of hours of work performed by subcontractor's skilled journeypersons who commenced working in these apprenticeable occupations before the Chief's approval of an apprenticeship program for each occupation in the county of this Project = _____ *[through December 31, 2019, this number may not exceed 25% of 2.1, above; beginning January 1, 2020, it may not exceed 30% of 2.1, above; see Public Contract Code §2601(d)(2)(C), (d)(2)(D), and (d)(3)]*

2.4. Subcontractor's apprenticeship graduation percentage for these apprenticeable occupations = _____% *[add 2.2 and 2.3, and divide that sum by 2.1; through December 31, 2019, this percentage must be at least 50% (see Public Contract Code §2601(d)(2)(C)); beginning January 1, 2010, this percentage must be at least 60% (see Public Contract Code §2601(d)(2)(D))]*

☐ **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) to qualify for exemption under II.A, above, or meet the percentage requirements under II.B or II.C, above: _____, _____, _____, _____, and _____.
[insert names of subcontractors]

The total value of the monthly billing for the subcontractor(s) listed in the previous paragraph is \$ _____. 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 each subcontractor listed above will be substituted off the Contract pursuant to Public Contract Code section 4100 *et seq.*, unless it provides a plan to achieve compliance consistent with Public Contract Code section 2602(c)(1).

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 _____, 2019, at _____ [city], California.

Name

EXHIBIT E

LEASE-LEASEBACK

SITE LEASE AGREEMENT

Dated as of August 28, 2019

Between

Sylvan Union School District

and

Robert E. Boyer Construction, Inc.

The Ustach Middle School Modernization Contract

at Ustach Middle School,

2701 Kodiak Drive, Modesto, CA

**LEASE-LEASEBACK
SITE LEASE AGREEMENT FOR THE
THE USTACH MIDDLE SCHOOL MODERNIZATION CONTRACT**

THIS LEASE-LEASEBACK SITE LEASE AGREEMENT (“Site Lease”) is entered into as of August 28, 2019, between the Sylvan Union School District, a California public school district (the “Owner”), as lessor, and Robert E. Boyer Construction, Inc., a California corporation and licensed contractor (the “Contractor”), as lessee. Owner and Contractor are each a “Party” and together are the “Parties” to this Site Lease.

The Owner desires to provide for the construction of certain public improvements (the “Work”) more fully described in that certain Lease-Leaseback Agreement, dated August 28, 2019, between the Owner and Contractor (the “Contract”) and located at Ustach Middle School, 2701 Kodiak Drive, Modesto California, (the “Site”), all of which is part of the Owner’s Ustach Middle School Modernization project (the “Project”); and

The Owner’s governing body has determined that it is in the best interests of the Owner and for the common benefit of the residents it serves to construct and finance the Contract by leasing the Site on which the Contract is to be constructed to Contractor, and subleasing from Contractor the Site, including the Contract, under that certain Sublease Agreement dated August 28, 2019, between Owner and Contractor (the “Sublease”); and

The Owner is authorized under California Education Code section 17406 to lease the Site, and its governing body has authorized the execution and delivery of this Site Lease; and

The purpose of the Site Lease is for Contractor to have necessary access to and use of the Site for the purpose of financing and constructing the Contract; and

Contractor is authorized to lease the Site as lessee and to finance and construct the Contract on the Site, and has authorized the execution and delivery of this Site Lease.

The Parties therefore agree as follows:

1. Site Lease. The Owner leases to Contractor and Contractor leases from the Owner, on the terms and conditions of this Site Lease, the Site more specifically described or depicted in **Exhibit A** attached to this Site Lease, including any real property improvements now or later placed on the Site. References in this Site Lease to the term “Contractor” means Contractor and Contractor’s assigns for those rights, interests, and obligations that may be assigned by Contractor. The Site is leased to Contractor on an “as is” basis. Owner shall not be required to make or construct any alterations including structural changes, additions or improvements to the Site. By entering and taking possession of the Site pursuant to this Site Lease, Contractor accepts the Site in “as is” condition. Any agreements, warranties, or representations not expressly contained herein shall in no way bind either Owner or Contractor, and Owner and Contractor expressly waive all claims for damages by reason of any statement, representation, warranty, promise or agreement, if any, not contained in this Site Lease or the Contract Documents.

2. Term. The term of this Site Lease (“Term”) shall be coterminous with the term of the Lease-Leaseback Agreement. Upon termination of the Contract, as set forth in the Lease-

Leaseback Agreement, the Parties' respective interests under this Site Lease will automatically end and be released, and title to the Site and Work will automatically and fully vest in the Owner. The Work is and shall at all times be and remain the sole property of Contractor until termination of the Contract, and the Owner shall have no right, title, or interest in or to it until termination of the Contract, except as expressly set forth in the Sublease.

3. Representations and Warranties of the Owner. The Owner represents and warrants to Contractor that:

(a) The Owner has good and merchantable fee title to the Site and has authority to enter into and perform its obligations under this Site Lease;

(b) There are no liens on the Site other than permitted encumbrances;

(c) All taxes, assessments, or impositions of any kind with respect to the Site, if applicable, except current taxes, have been paid in full;

(d) The Site is properly zoned for the intended purpose and utilization of it or the Owner intends to render zoning inapplicable pursuant to Government Code section 53094;

(e) The Owner is in compliance with all laws, regulations, ordinances and orders of public authorities applicable to the Site;

(f) There is no litigation of any kind currently pending or threatened regarding the Site or the Owner's use of the Site for the purposes contemplated by this Site Lease, the Sublease, and the Lease-Leaseback Agreement;

(g) To the best of the Owner's knowledge, after actual inquiry: (i) other than those addressed in the Scope of Work, as set forth in the Lease-Leaseback Agreement, no dangerous, toxic or hazardous pollutants, contaminants, chemicals, waste, materials or substances, as defined in or governed by the provisions of any State or Federal Law relating thereto (hereinafter collectively called "Environmental Regulations"), and also including, but not limited to, urea-formaldehyde, polychlorinated biphenyls, asbestos, asbestos containing materials, nuclear fuel or waste, radioactive materials, explosives, carcinogens and petroleum products, or any other waste, material, substance, pollutant or contaminant which would subject the owner of the Site or Contractor or Contractor's subcontractors to any damages, penalties or liabilities under any applicable Environmental Regulation (hereinafter collectively called "Hazardous Substances"), are now or have been stored, located, generated, produced, processed, treated, transported, incorporated, discharged, emitted, released, deposited or disposed of in, upon, under, over or from the Site; (ii) no threat exists of a discharge, release or emission of a Hazardous Substance upon or from the Site into the environment; (iii) the Site has not been used as or for a mine, a landfill, a dump or other disposal facility, industrial or manufacturing facility, or a gasoline service station; (iv) no underground storage tank is now located in the Site; (v) no violation of any Environmental Regulation now exists relating to the Site, no notice of any such violation or any alleged violation thereof has been issued or given by any governmental entity or agency, and there is

not now any investigation or report involving the Site by any governmental entity or agency which in any way relates to Hazardous Substances; (vi) no person, party, or private or governmental agency or entity has given any notice of or asserted any claim, cause of action, penalty, cost or demand for payment or compensation, whether or not involving any injury or threatened injury to human health, the environment or natural resources, resulting or allegedly resulting from any activity or event described in (i) above; (vii) there are not now any actions, suits, proceedings or damage settlements relating in any way to Hazardous Substances, in, upon, under over or from the Site; (viii) the Site is not listed in the United States Environmental Protection Agency's National Priorities List of Hazardous Waste Sites or any other list of Hazardous Substance sites maintained by any federal, state or local governmental agency; and (ix) the Site is not subject to any lien or claim for lien or threat of a lien in favor of any governmental entity or agency as a result of any release or threatened release of any Hazardous Substance.

(h) To the extent permitted by law, the Owner shall not abandon the Site for the use for which it is currently required by the Owner and further, shall not seek to substitute or acquire property to be used as a substitute for the uses for which the Site and Work are to be maintained under the Sublease.

(i) The term "permitted encumbrances" as used herein shall mean, as of any particular time: (i) liens for general ad valorem taxes and assessments, if any, not then delinquent; (ii) this Site Lease, the Sublease, any right or claim of any mechanic, laborer, materialman, supplier, or vendor, if applicable, not filed or perfected in the manner prescribed by law, easements, rights of way, mineral rights, drilling rights, and other rights, reservations, covenants, conditions, or restrictions which exist of record as of the date of this Site Lease and which will not materially impair the use of the Site; (iii) easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions, or restrictions established following the date of recordation of this Site Lease and to which Contractor and the Owner consent in writing which will not impair or impede the operation of the Site.

4. Representations and Warranties of Contractor. Contractor represents and warrants to the Owner that:

(a) Contractor is duly organized, validly existing and in good standing under the laws of the State of California, with full corporate power and authority to lease and own real and personal property.

(b) Contractor has full power, authority, and legal right to enter into and perform its obligations under this Site Lease, and the execution, delivery, and performance of this Site Lease have been duly authorized by all necessary corporate actions on the part of Contractor and do not require any further approvals or consents.

(c) Execution, delivery, and performance of this Site Lease do not and will not result in any breach of or constitute a default under any indenture, mortgage, contract, agreement, or instrument to which Contractor is a party or by which it or its property is bound.

(d) There is no pending or, to the best knowledge of Contractor, threatened action, or proceeding before any court or administrative agency that will materially adversely affect the ability of Contractor to perform its obligations under this Site Lease.

5. Rental. Contractor shall pay to the Owner as and for advance rental hereunder \$1.00 per year per Site, on or before the date of commencement of the term of this Site Lease.

6. Purpose. Contractor shall use the Site solely for the purpose of constructing the Contract on the Site and for subleasing the Site to the Owner. Contractor warrants that it will not engage in any unlawful activities on the Site and that Contractor will not engage in activities on the Site not authorized by the Owner.

7. Termination. Contractor agrees, upon termination of this Site Lease: (i) to quit and surrender the Site in the same good order and condition as it was in at the time of beginning of the term of this Site Lease, reasonable wear and tear excepted; (ii) to release and reconvey to the Owner any liens and encumbrances created or caused by Contractor; and (iii) that any permanent improvements and structures existing upon the Site at the time of the termination of this Site Lease, including but not limited to the Work, shall remain on the Site and title to all such improvements shall vest in the Owner. Notwithstanding the Owner's rights in the event of termination under this Section 7, Contractor shall retain the right to full compensation for all services rendered before the termination in accordance with the Lease-Leaseback Agreement and the Sublease.

8. Quiet Enjoyment. The Owner covenants and agrees that it will not take any action to prevent Contractor's quiet enjoyment of the Site during the term of this Site Lease; and, that in the event the Owner's fee title to the Site is ever challenged so as to interfere with Contractor's right to occupy, use and enjoy the Site, the Owner will use all governmental powers at its disposal, including the power of eminent domain, to obtain unencumbered fee title to the Site and to defend Contractor's right to occupy, use, and enjoy that portion of the Site.

9. No Liens. The Owner shall not mortgage, sell, assign, transfer, or convey the Site or any part thereof to any person during the term of this Site Lease, without the written consent of Contractor. Nothing herein shall preclude the Owner from granting utility easements across the Site to facilitate the use and operation of the Work for which it is intended. Contractor warrants that at all times during this Site Lease, the Site and Work shall remain free and clear of all liens (including mechanic's liens), mortgages, deeds of trust, easements and all other encumbrances, other than liens existing at the time the Work starts, unless the Owner gives Contractor prior written permission to place, or allow to be placed, any liens, mortgages, deeds of trust, easements or other encumbrances on the Site.

10. Right of Entry. The Owner reserves the right for any of its duly authorized representatives to enter upon the Site at any reasonable time to inspect the same or to make any repairs, improvements or changes necessary for the preservation thereof, but in doing so shall not interfere with Contractor's operations on the Contract.

11. Assignment and Subleasing. Contractor will not assign or otherwise dispose of or encumber the Site or this Site Lease without the prior written consent of the Owner.

12. No Waste. 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 it will not willfully or knowingly use or permit the use of the Site for any illegal act or purpose.

13. Eminent Domain. In the event the whole or any part of the Site or the improvements thereon is taken by eminent domain, the financial interest of Contractor shall be recognized and is hereby

determined to be the amount of all Sublease Payments then due or past due and the next succeeding Sublease Payment. The balance of the award, if any, shall be paid to the Owner.

14. Taxes. The Owner covenants and agrees that as between Owner and Contractor, Owner shall pay any and all assessments of any kind or character and also all taxes, including possessory interest - taxes, levied or assessed upon the Site or the improvements thereon.

15. Severability. If a court of competent jurisdiction shall hold any provision of this Site Lease invalid or unenforceable, such holding shall not invalidate or render unenforceable any other provision of this Site Lease, unless elimination of such provision materially alters the rights and obligations embodied in this Site Lease.

16. Binding Effect. This Site Lease shall inure to the benefit of and shall be binding upon the Parties and their respective successors in interest and permitted assigns, if any.

17. Amendments and Modifications. This Site Lease shall not be effectively amended, changed, modified, altered, or terminated without the written agreement of both Parties.

18. Execution in Counterparts. This Site Lease may be simultaneously executed in multiple counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same instrument.

19. Applicable Law. This Site Lease and the rights of the Parties under it shall be governed by and construed in accordance with the laws of California.

20. Headings. The captions or headings in this Site Lease are for convenience only and in no way define, limit or describe the scope or intent of any provisions of this Site Lease.

21. Time. Time is of the essence in this Site Lease and all of its provisions.

22. Terms Not Defined. Capitalized terms used in this Site Lease that are not defined shall have the same meaning as in the Lease-Leaseback Agreement, General Conditions, and other Contract Documents.

* * * * *

CONTRACTOR

OWNER

Robert E. Boyer

Sylvan Union School District

By: _____
Title: President, Vice-President, or Chairperson

By: _____
Assistant Superintendent of Business Services

By: _____
Title: Secretary, Assistant Secretary, CFO,
or Assistant Treasurer

EXHIBIT A

LEASE-LEASEBACK SITE LEASE

DESCRIPTION OR DEPICTION OF SITE

(See attached diagram depicting the Site)

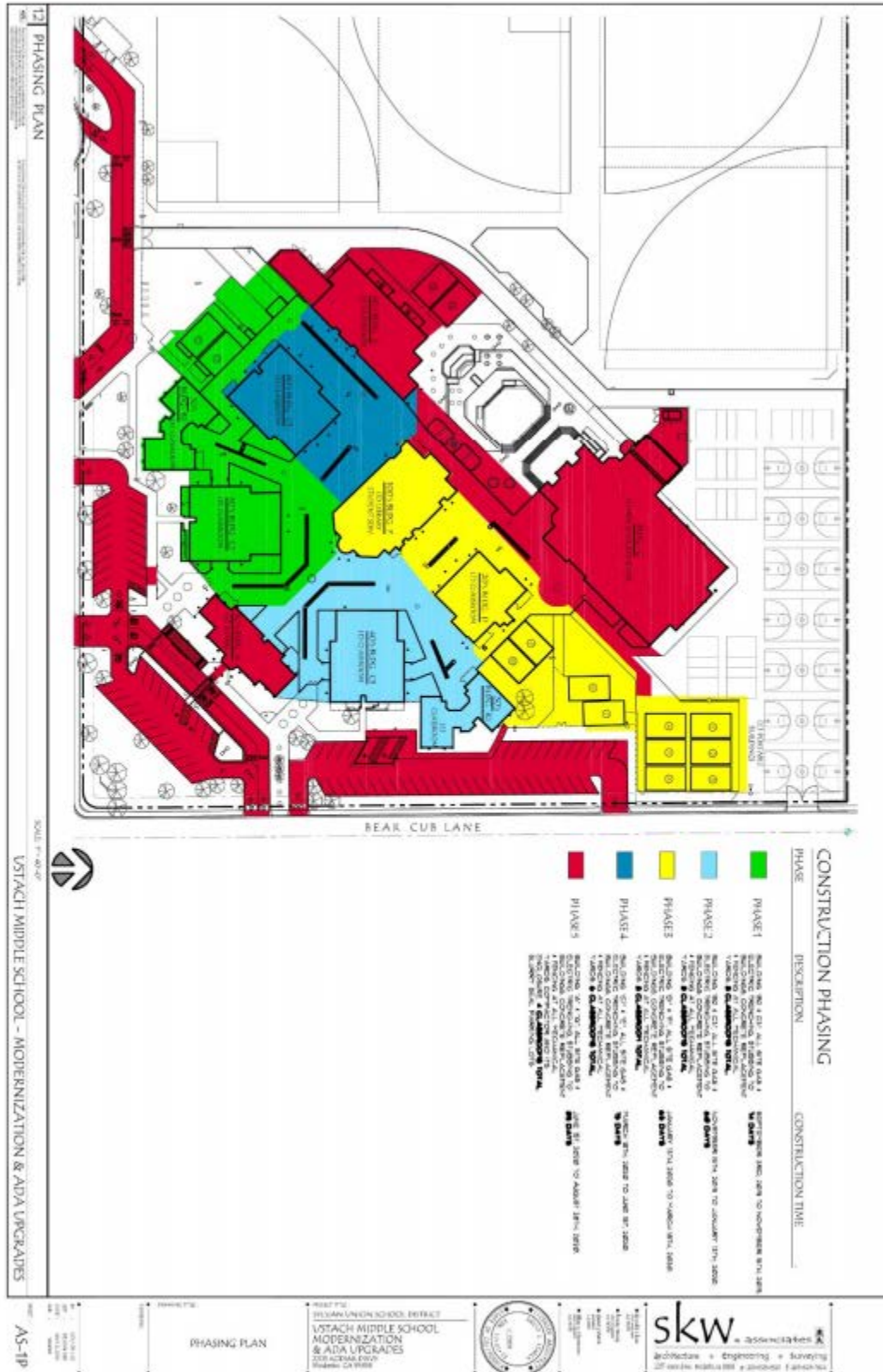


EXHIBIT F
LEASE-LEASEBACK
SUBLEASE AGREEMENT

Dated as of August 28, 2019

Between
Sylvan Union School District

and

Robert E. Boyer Construction, Inc.

The Ustach Middle School Modernization Contract
Ustach Middle School, 2701 Kodiak Drive, Modesto, CA 95355

**LEASE-LEASEBACK
SUBLEASE AGREEMENT
THE USTACH MIDDLE SCHOOL MODERNIZATION CONTRACT**

THIS LEASE-LEASEBACK SUBLEASE AGREEMENT (“Sublease”) is entered into as of August 28, 2019, between Robert E. Boyer Construction, Inc., a California corporation and licensed contractor (“Contractor”), as lessor, and the Sylvan Union School District, a California public school district (the “Owner”), as lessee. Owner and Contractor are each a “Party” and together are the “Parties” to this Sublease.

This Sublease is entered into by the Parties pursuant to California Education Code section 17406 (“Section 17406”), which permits the governing board of school district 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.

The Owner deems it essential for its own governmental purpose to construct and install certain improvements (the “Work”) described in Section 1 of that certain Lease-Leaseback Agreement entered into between the Owner and Contractor and dated August 28, 2019, and situated on the Site described or depicted in Exhibit A of that certain Site Lease dated August 28, 2019, between the Owner and Contractor (the “Contract”), all of which is part of the Owner’s Ustach Middle School Modernization project (the “Project”).

Pursuant to Section 17406, the Owner is leasing the site of the Work (the “Site”) to Contractor under the Site Lease in consideration of Contractor subleasing the Site, including the Contract, to the Owner under the terms of this Sublease.

Contractor will finance construction of the Contract. As part of its Sublease Payments (as described in Section 6, below) to Contractor, District will compensate Contractor for the cost of financing construction of the Contract.

The Owner and Contractor therefore agree as follows:

1. Sublease. Contractor subleases to the Owner, and the Owner subleases from Contractor, the Site, including any real property improvements now or later placed on the Site. Reference in this Sublease to the term “Contractor” means Contractor and Contractor's assigns for those rights, interests, and obligations that may be assigned by Contractor. The purpose of this Sublease is (1) for the Owner to have necessary access to and use of the Site at such times and in such a manner as will not impede the construction of the Work; (2) for the Owner to obtain financing for the Work from the Contractor; and (3) during the term of the Sublease, for the Owner to enjoy beneficial use and occupancy of the Site and the completed Work.

During the term of the Sublease, Owner and its agents, employees and invitees may enter into and upon the Site and the Work at all reasonable times necessary for the Owner to conduct its business. During construction of the Work, the Owner shall not unduly disturb, or unreasonably interfere with Contractor's Work and related improvements to the Site. Following completion of the Work, the Owner shall enjoy full and undisturbed use of the Site during the remainder of the Sublease Term.

2. Term. The term of this Sublease ("Lease Term") shall be coterminous with the term of the Lease-Leaseback Agreement and Contract. Upon the end of the Lease Term, the Parties' respective interests under this Sublease will automatically end and be released, and title to the Site and Work will automatically and fully vest in the Owner. The Work is and shall at all times be and remain the sole property of Contractor until termination of the Contract, and the Owner shall have no right, title, or interest in or to it until termination of the Contract, except as expressly set forth in this Sublease.

3. Representations and Warranties of the Owner. The Owner represents and warrants to Contractor that:

(a) The Owner is a public school district, duly organized and existing under the Constitution and laws of the State of California with authority to enter into and perform all of its obligations under this Sublease.

(b) The Owner's governing body has duly authorized the execution and delivery of this Sublease and further represents and warrants that all requirements have been met and procedures followed to ensure its enforceability.

(c) The execution, delivery, and performance of this Sublease do not and will not result in any breach of or constitute a default under any indenture, mortgage, contract, agreement, or instrument to which the Owner is a party by which it or its property is bound.

(d) There is no pending or, to the knowledge of the Owner, threatened action, or proceeding before any court or administrative agency that will materially adversely affect the ability of the Owner to perform its obligations under this Sublease.

(e) The Work and the Site are essential to the Owner in the performance of its governmental functions and their estimated useful life to the Owner exceeds the term of this Sublease.

(f) The Owner shall take such action as may be necessary to include all Sublease payments in its annual budget and annually to appropriate an amount necessary to make such Sublease payments.

(g) The Owner shall not abandon the Site for the use for which it is currently required by the Owner and, to the extent permitted by law, the Owner shall not seek to substitute or acquire property to be used as a substitute for the use for which the Site is maintained under the Sublease.

(h) Except as may be permitted under federal or state laws, the Owner shall not allow any hazardous materials or substances to be used or stored on, under, or about the Site.

4. Representations and Warranties of Contractor. Contractor represents and warrants to the Owner that:

(a) Contractor is duly organized, validly existing and in good standing as a corporation and licensed contractor under the laws of the State of California, with full corporate power and authority to lease and own real and personal property;

(b) Contractor has full power, authority and legal right to enter into and perform its obligations under this Sublease, and the execution, delivery and performance of this Sublease have been duly authorized by all necessary corporate actions on the part of Contractor and do not require any further approvals or consents;

(c) The execution, delivery, and performance of this Sublease do not and will not result in any breach of or constitute a default under any indenture, mortgage, contract, agreement, or instrument to which Contractor is a party by which it or its property is bound;

(d) There is no pending or, to the knowledge of Contractor, threatened action, or proceeding before any court or administrative agency that will materially adversely affect the ability of Contractor to perform its obligations under this Sublease;

(e) Contractor will not mortgage or encumber the Site or the Sublease or assign this Sublease or its rights to receive Sublease payments, except as permitted under this Sublease.

5. Construction/Acquisition.

(a) The Owner has entered into the Contract with Contractor in order to acquire and construct the Work, while enjoying use of the Site. The cost of the acquisition, construction and installation of the tenant improvements defined as the Work and the Owner's use of the Site under this Sublease is determined by the Total Sublease Amount as set forth in the Lease-Leaseback Agreement and ***Exhibit A*** of this Sublease.

(b) In order to ensure that moneys sufficient to pay all costs will be available for this purpose when required, the Owner shall maintain on deposit in its general or other appropriate fund, and shall annually appropriate funds sufficient to make all Sublease payments which become due to Contractor under this Sublease.

6. Sublease Payments.

(a) Over the Term of this Sublease, the Owner will pay to the Contractor the Total Sublease Amount (excluding any allowances or contingency) in **Eighteen (18)** monthly installments (each such installment being a "Sublease Payment") pursuant to the Schedule of Sublease Payments attached hereto as ***Exhibit A***, which shall be deemed incorporated herein by this reference.

Payments shall be made by the fifth day of each month, pursuant to the General Conditions. The Sublease Payments shall be made in accordance with the Contract Documents, including but not limited to the General Conditions. The parties expressly agree that the Total Sublease Amount represents the fair market value for the Work and for the Owner's use of the Site during the term of the Sublease.

(b) During the Lease Term, the Owner will adjust the Total Sublease Amount to account for any changes in the scope of the Work or use of the Site during the term of the Sublease, including but not limited to (i) spent allowances or contingency, (ii) any change orders, or (iii) Contractor's actual costs being less than its estimated costs. As set forth in the General Conditions, any changes in the Total Sublease Amount shall result in a prorated increase, or decrease, in Sublease Payments made following the adjustment to the Total Sublease Amount.

(c) The obligation of the Owner to pay Sublease Payments shall constitute a current expense of the Owner and shall not in any way be construed to be a debt of the Owner in contravention of any applicable constitutional or statutory limitations or requirements concerning the creation of indebtedness by the Owner, nor shall anything contained in this Sublease constitute a pledge of the general tax revenues, funds, or moneys of the Owner.

7. Extension of Sublease Term.

(a) *Excusable Delay.* If the Date for Completion is extended by change orders that grant time extensions for delay pursuant to the Contract, then the Sublease Term shall be extended by one month for each full month of total time extensions, and Owner shall increase the number, and lower the equal dollar amounts, of the remaining Sublease Payments based on the months added to the Sublease Term.

(b) *Inexcusable Delay.* If the Work will not be completed by the Date for Completion set forth in the Lease-Leaseback Agreement due to delay that is not excusable under the terms of the Contract, including Article 8 of the General Conditions, then the Sublease Term shall be extended by one month for each full month of such delay, and Owner shall either (i) elect not to make a Sublease Payment during construction for each month added to the Sublease Term, or (ii) increase the number, and lower the equal dollar amounts, of the remaining equal Sublease Payments based on the months added to the Sublease Term.

(c) If the total delay in completion is only partially entitled to time extensions for excusable delay under the terms of the Contract, then the Sublease Term shall be extended by one month for each full month of total delay. If the delays entitled to time extensions are less than half of the total delay in completion, then the Owner shall elect between the procedures in Section 7(b)(i) and (ii) above; and if such delays are equal to or more than half of the total delay in completion, the Owner shall proceed pursuant to Section 7(b)(ii) above.

8. Fair Rental Value. Sublease Payments shall be paid by the Owner in consideration of the right of possession of, and the continued quiet use and enjoyment of, the Work and the Site during this Sublease. The Parties have agreed and determined that such total rental is not in excess of the fair rental value of the Work and the Site. In making such determination,

consideration has been given to the fair market value of the Work and the Site, other obligations of the Parties under this Sublease (including, but not limited to, costs of maintenance, taxes and insurance), the uses and purposes which may be served by the Work and the Site and the benefits from the Work and Site which will accrue to the Owner and the general public, the ability of the Owner to make additions, modifications and improvements to the Work and the Site which are not inconsistent with the Lease-Leaseback Agreement and which do not interfere with Contractor's work on the Contract and Site.

9. Sublease Abatement. Sublease Payments due with respect to the Contract shall be subject to abatement prior to the commencement of the use of the Work or during any period in which, by reason of material damage to or destruction of the Work or the Site, there is substantial interference with the use and right of possession by the Owner of the Work and the Site or any substantial portion the Site. For each potential incident of substantial interference, decisions to be made on: (i) whether or not abatement shall apply; (ii) the date upon which abatement shall commence; (iii) the applicable portion of Sublease Payments to be abated and; (iv) the concluding date of the particular abatement, shall all be subject to determinations by the Owner in concert with its insurance provider. Contractor's right to dispute these decisions is not impaired. The amount of abatement shall be such that the Sublease Payments paid by the Owner during the period of Work restoration do not exceed the fair rental value of the usable portions of the Site. In the event of any damage or destruction to the Work or the Site, this Sublease shall continue in full force and effect.

10. Use of Site and Project. During the Sublease Term, Contractor shall provide the Owner with quiet use and enjoyment of the Site without suit or hindrance from Contractor or its assigns. The Owner will not use, operate, or maintain the Site or Project improperly, carelessly, in violation of any applicable law or in a manner contrary to that contemplated by this Sublease. The Owner shall provide all permits and licenses, if any, necessary for the operation of the Project. In addition, the Owner agrees to comply in all respects (including, without limitation, with respect to the time, maintenance and operation of the Project) with laws of all jurisdictions in which its operations involving the Project may extend and any legislative, executive, administrative, or judicial body exercising any power or jurisdiction over the Site or the Project; provided, however, that the Owner may contest in good faith the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of Contractor, adversely affect the estate of Contractor in and to the Site or the Project or its interest or rights under this Sublease. Upon Completion of the Project, as defined in the General Conditions, Contractor shall provide the Owner with quiet use and enjoyment of the Site without suit or hindrance from Contractor or its assigns, subject to reasonable interference from ongoing construction operations at the Site by Contractor.

11. Contractor's Inspection/Access to the Site. The Owner agrees that Contractor and any Contractor representative shall have the right at all reasonable times to enter upon the Site or any portion thereof to construct and improve the Work and to examine and inspect the Site and the Work. The Owner further agrees that Contractor and any Contractor representative shall have such rights of access to the Site as may be reasonably necessary to cause the proper maintenance of the Site and the Work in the event of failure by the Owner to perform its obligations under this Sublease.

12. Contract Acceptance. The Owner shall perform a final inspection and acknowledge Completion of the Work, as set forth in Article 9.7 of the General Conditions. The Owner's governing body shall accept the Work and Contract to the extent required by the Contract Documents, including Article 9.7 of the General Conditions, but acceptance of the Work as Complete shall not terminate the Lease Term. The validity of this Sublease will not be affected by any delay in or failure of Completion of the Contract.

13. Alterations and Attachments. All permanent additions and improvements that are made to, and as part of, the Project shall belong to and become the property of Contractor until termination of the Contract, subject to the provisions of this Sublease. Separately identifiable attachments added to the Project by the Owner shall remain the property of the Owner.

14. Physical Damage; Public Liability Insurance. The Contractor and the Owner shall maintain such damage and public liability insurance policies with respect to the Project and the Site as are required of them by the Lease-Leaseback Agreement.

15. Taxes. The Owner shall keep the Project and the Site free and clear of all levies, liens, and encumbrances and shall pay all license fees, registration fees, assessments, charges, and taxes (municipal, state, and federal) if applicable, which may now or later be imposed upon the ownership, leasing, renting, sale, possession, or use of the Project and the Site, excluding, however, all taxes on or measured by Contractor's income.

16. Non-Waiver. No covenant or condition to be performed by the Owner or Contractor under this Sublease can be waived except by the written consent of the other Party. Forbearance or indulgence by the Owner or Contractor in any regards whatsoever shall not constitute a waiver of the covenant or condition in question. Until complete performance by the Owner or Contractor of a covenant or condition, the other Party shall be entitled to invoke any remedy available to it under this Sublease or by law or in equity despite that forbearance or indulgence.

17. Assignment. Without the prior written consent of Contractor, the Owner shall not (a) assign, transfer, pledge, or hypothecate this Sublease, the Project and the Site, or any part of them, or any interest in them, or (b) sublet or lend the use of the Project or any part of it, except as authorized by the provisions of the California Civic Center Act, Education Code section 38130 *et seq.* Consent to any of the prohibited acts listed applies only in the given instance and is not a consent to any subsequent like act by the Owner or any other person. Contractor shall not assign its obligations under this Sublease with the exception of its obligations to issue default notices and to convey or reconvey its interest in the Project and Site to the Owner upon full satisfaction of the Owner's obligations under this Sublease; however, Contractor may assign its right, title and interest in the Sublease Payments and other amounts due under this Sublease and the Project in whole or in part to one or more assignees or subassignees at any time with the consent of the Owner which shall not be unreasonably withheld. No assignment shall be effective as against the Owner unless the Owner is so notified in writing. The Owner shall pay all Sublease Payments according to the direction of Contractor or the assignee named in the most recent assignment or notice of assignment. During the Sublease Term, the Owner shall keep a complete and accurate record of all such assignments. Subject always to the foregoing, this

Sublease inures to the benefit of, and is binding upon, the heirs, legatees, personal representatives, successors, and assigns of the Parties.

18. Release of Liens.

(a) Upon termination of the Contract, Contractor or its assignee and the Owner shall release Contractor's leasehold interest in the Project.

(b) Contractor shall authorize, execute, and deliver to the Owner all documents reasonably requested by the Owner to evidence (i) the release of any and all liens created under this Sublease and the Site Lease, and (ii) any other documents required to terminate the Site Lease and this Sublease.

19. Severability. If a court of competent jurisdiction shall hold any provision of this Sublease invalid or unenforceable, such holding shall not invalidate or render unenforceable any other provision of this Sublease, unless elimination of such provision materially alters the rights and obligations embodied in this Sublease.

20. Entire Agreement. This Sublease, the Site Lease, the Lease-Leaseback Agreement, and the Contract Documents that make up the "Contract" constitute the entire agreement between the Parties with respect to the Work and the Project, and the Contract shall not be amended, altered, or changed except by a written agreement signed by both Parties.

21. Headings. The captions or headings in this Sublease are for convenience only and in no way define, limit or describe the scope or intent of any provisions of this Sublease.

22. Time. Time is of the essence in this Sublease and all of its provisions.

23. Sublease Interpretation. This Sublease and the rights of the Parties under it shall be governed by and construed in accordance with the laws of California.

24. Execution in Counterparts. This Sublease may be simultaneously executed in multiple counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same instrument.

25. Terms Not Defined. Capitalized terms used in this Sublease that are not defined shall have the same meaning as in the Lease-Leaseback Agreement, General Conditions, or other Contract Documents.

* * * * *

CONTRACTOR:

Robert E. Boyer

BY: _____
TITLE: President, Vice-President, or Chairperson

BY: _____
TITLE: Secretary, Assistant Secretary, CFO,
or Assistant Treasurer

OWNER:

Sylvan Union School District

BY: _____
Assistant Superintendent of
Business Services

EXHIBIT A

SCHEDULE OF SUBLEASE PAYMENTS

The Total Sublease Amount shall be **\$10,523,287.00**.

The Schedule of Sublease Payments shall be as follows:

<u>Payment No.</u>	<u>Date Payment Is Due</u>	<u>Amount of Payment</u>
1	_____ 5, 20__	\$584,627.06
2	_____ 5, 20__	\$584,627.06
3	_____ 5, 20__	\$584,627.06
4	_____ 5, 20__	\$584,627.06
5	_____ 5, 20__	\$584,627.06
6	_____ 5, 20__	\$584,627.06
7	_____ 5, 20__	\$584,627.06
8	_____ 5, 20__	\$584,627.06
9	_____ 5, 20__	\$584,627.06
10	_____ 5, 20__	\$584,627.06
11	_____ 5, 20__	\$584,627.06
12	_____ 5, 20__	\$584,627.06
13	_____ 5, 20__	\$584,627.06
14	_____ 5, 20__	\$584,627.06
15	_____ 5, 20__	\$584,627.06
16	_____ 5, 20__	\$584,627.06
17	_____ 5, 20__	\$584,627.06
18	_____ 5, 20__	\$584,626.98