

**SAUGUS HIGH SCHOOL
BUILDING D MODERNIZATION PROJECT
LEASEBACK AGREEMENT**

By and Between

WILLIAM S. HART UNION HIGH SCHOOL DISTRICT

and

[INSERT CONTRACTOR NAME]

Dated as of February **[]**, 2012

**SAUGUS HIGH SCHOOL
BUILDING D MODERNIZATION PROJECT
LEASEBACK AGREEMENT**

This Saugus High School Building D Modernization Project Leaseback Agreement (“Leaseback Agreement” or “LBA”), dated for reference purposes as of February [REDACTED], 2012, is made by and between the William S. Hart Union High School District (“District”), a school district duly organized and existing under the laws of the State of California and lessee herein, and [Insert Contractor Name] (“Contractor”), a [REDACTED] and lessor herein. The District and the Contractor hereinafter may be referred to individually as a “Party” and collectively as the “Parties.”

RECITALS

A. The District desires to provide for modernization of Building D at the District’s Saugus High School, which includes generally interior upgrades, construction of an accessory storage and utility room, construction of a canopy shade structure, utilities upgrades, and replacement of exterior pavement (the “Project”).

B. The District Board has determined that it is in the best interests of the District to construct the Project, in accordance with Education Code Section 17406, by: (i) leasing the Project Site to the Contractor pursuant to that certain “Saugus High School Building D Modernization Project Site Lease” by and between the District and the Contractor, dated for reference purposes as of even date herewith (“Site Lease”) for purposes of having the Contractor undertake the Work; and (ii) leasing the Project Site and the Project back from the Contractor pursuant to this Leaseback Agreement for District use during the Site Lease Term. The Project Site is depicted and described in Exhibit A attached to the Site Lease.

C. In order to ensure that the Work and resulting improvements to Building D at the School will meet the District’s expectations, the Parties, concurrently with entering into the Site Lease and this Leaseback Agreement, have entered into that certain “Construction Services Agreement for Saugus High School Building D Modernization Project” by and between the District and the Contractor, dated for reference purposes as of even date herewith (“Construction Services Agreement” or “CSA”). The Work is generally described in Exhibit A to the Construction Services Agreement.

D. The District is authorized pursuant to Section 17406 of the California Education Code to lease the Project Site and the Project back from the Contractor in order to provide for District use during the Site Lease Term, and the District Board has duly authorized the execution and delivery of this Leaseback Agreement. The Contractor is authorized to lease the Project Site and the Project back to the District, and the Contractor has duly authorized the execution and delivery of this Leaseback Agreement.

E. The Parties intend that the LLB Agreements shall be construed as an integrated whole, and any capitalized terms used, but not defined, in this LBA shall have the meanings ascribed to such terms in the other LLB Agreements.

Now, therefore, in consideration of the foregoing and of the covenants set forth herein, the District and the Contractor agree as follows:

AGREEMENT

Section 1. Leaseback to the District. Subject to all provisions herein, the Contractor hereby leases to the District the Project Site and the Project, together with all improvements thereto made during the Site Lease Term, and the District hereby leases the same from the Contractor. Notwithstanding anything to the contrary, such leaseback to the District shall not effect or result in a merger of the District's leasehold estate pursuant to this LBA and its fee estate as lessor under the Site Lease, and, subject to the provisions of the LLB Agreements, the Contractor shall continue to have and hold a leasehold estate in the Project Site pursuant to the Site Lease.

Section 2. Effective Date and Leaseback Term. This LBA shall have the same Effective Date as the Site Lease. The term of this Leaseback Agreement ("Leaseback Term") shall be coextensive with the Site Lease Term.

Section 3. Possession and Use by District. During the Leaseback Term and subject to any limitations set forth in the LLB Agreements, the District may possess and use the Project Site and the Project: (i) to examine and inspect the Work; (ii) to inspect, maintain and operate the Project Site and Project; (iii) for purposes of its educational, recreational and other programs; and (iv) for other reasonable purposes of the District. The District, its officers, employees, contractors, consultants and agents (collectively, the "District Agents"), and others as necessary or convenient for District purposes shall have the right at all reasonable times during the Leaseback Term to enter in and upon the Project Site in connection with such District uses. However, during the Leaseback Term, the District shall not permit any such use of the Project Site and/or the Project in a manner that unreasonably interferes with the Contractor's rights pursuant to the Site Lease to possess and use the same. The Parties anticipate that educational activities may be conducted at the School at various times during performance of the Work, but no such activities shall be deemed or construed to constitute unreasonable interference with such rights of the Contractor. Except as may be provided in the LLB Agreements, the District, at its own expense, must obtain or otherwise have in effect all permits, licenses and similar authorizations for its activities on, in and at the Project Site and the Project.

Section 4. Leaseback Payments. During the Leaseback Term, the District shall make lease payments to the Contractor of \$200 per month, due within five days after the first day of each such month (each a "Leaseback Payment"). If necessary, the District shall pay a pro-rata portion of the Leaseback Payment amount on account of partial-month periods at the beginning and end of the Leaseback Term. On or before the first day of the Leaseback Term, the District may pay to the Contractor, as total advance payment of the Leaseback Payments, the aggregate sum of \$667 [\$200 x approximate 3.33-month Leaseback Term]. If, for any reason that is the fault of or is caused by the Contractor, the Leaseback Term is extended beyond 100 days, the amount of the Leaseback Payments due during such extended period shall be reduced to \$1 per month. The District shall not make Leaseback Payments using any capital-facilities funds of the District. The Contractor shall separately invoice the District for the Leaseback Payments and the Construction Progress Payments due pursuant

to the General Conditions, and each Party shall maintain adequate records distinguishing between Leaseback Payments and Construction Progress Payments.

Section 5. Fair Rental Value. The Parties acknowledge and agree that the Leaseback Payments described in Section 4 of this LBA are fair and adequate consideration to the Contractor in light of the Contractor's continued rights to possess and use the Project Site and the Project for the purposes described in the Site Lease, and the consequently limited rights of the District to use the same, and such Leaseback Payments are not in excess of the fair rental value of the same. In making such determination, the Parties have considered: (i) the obligations of the Parties pursuant to the LLB Agreements (including but not limited to costs of maintenance, taxes and insurance); (ii) the limited uses and purposes which may be served by the Project Site and the Project from time to time during the Leaseback Term; (iii) the limited ability of the District to make additions, modifications and improvements to the Project Site and the Project during the Leaseback Term that will not unreasonably interfere with the Contractor's ability to perform the Work; and (iv) the benefits accruing to the District and the public generally from the performance of the Work by the Contractor.

Section 6. Abatement of Leaseback Payments. Notwithstanding any damage to or destruction of the Project Site or the Project, or any other substantial interference with the District's rights to possess and use the Project Site and the Project pursuant to this LBA, this LBA shall continue in full force and effect. However, in addition to any other conditions on the District's obligation to make Leaseback Payments, any Leaseback Payments due hereunder shall be subject to abatement at any time during the Leaseback Term in which, due to material damage to or destruction of the Project Site or the Project or for any other reason not the fault of the District, there is substantial interference with the District's rights pursuant to this LBA to possess and use the Project Site and/or the Project, or any substantial portion thereof. For each occurrence of potentially-substantial interference with such rights, the District shall reasonably determine: (i) whether abatement shall apply; (ii) the date upon which abatement shall commence; (iii) the portion of the Leaseback Payments to be abated; and (iv) the date such abatement ends. The amount of abatement shall be such that the Leaseback Payments paid by the District during the abatement period do not exceed the fair rental value of the portions of the Project Site and/or the Project that the District reasonably may continue to use in accordance with this LBA.

Section 7. No Acceleration of Leaseback Payments. Notwithstanding anything to the contrary, in no circumstances shall the Contractor have the right to accelerate or require accelerated payment of any payment due from the District pursuant to any of the LLB Agreements that is not then due or in default, or to otherwise declare any such payment immediately due and payable.

Section 8. Responsibility for Taxes. During the Leaseback Term, the District shall keep the Project Site and the Project free of all newly-imposed levies, liens, and encumbrances other than those that: (i) are normally or reasonably incident to the ownership of real property; (ii) are necessary in connection with the maintenance and operation of the Project Site and/or the Project; or (iii) arise from actions of the Contractor or any of the Contractor Agents. During the Leaseback Term, the District shall timely pay all taxes, assessments, and similar charges that now or hereafter may duly be imposed upon the District's ownership, leasing, renting, possession, or use of the Project Site and/or the Project.

Section 9. Responsibility for Utility Services. Except as may be provided in the LLB Agreements, the District shall contract for and pay the expenses of all utility services required for its possession and use of the Project Site and the Project, including, but not limited to, all electricity, gas, water, and sewer.

Section 10. Maintenance and Security. During the Leaseback Term, the District, at its expense, shall maintain in good condition and repair such portions of the Project Site and the Project of which it has sole possession and use. Otherwise, except as may be provided in the LLB Agreements, the Contractor, at its expense, shall during the Leaseback Term have sole responsibility for maintenance and security of the Project Site and the Project.

Section 11. Damage and Loss. With the exception of any loss and/or damage caused solely by the District's activities or resulting from the negligence or willful misconduct of the District, any of the District Agents, or any others present at or on the Project Site at the District's request or direction, at all times prior to full completion of the Work and acceptance thereof by the District, and notwithstanding anything else to the contrary, the Contractor shall be deemed and construed to have assumed all risk of loss of and/or damage to the Project Site and the Project. Subject to the other provisions of the LLB Agreements, no such loss or damage shall relieve the District of the obligations to: (i) compensate the Contractor for completion of the Work in accordance with the Contract Documents; or (ii) perform its other obligations pursuant to the LLB Agreements. Likewise, subject to the other provisions of this LLB Agreement, no such loss or damage shall relieve the Contractor of the obligations to: (i) perform and complete (including, without limitation, repair of any damage to) the Work in accordance with the Contract Documents; and (ii) perform its other obligations pursuant to the LLB Agreements. Except as provided in the LLB Agreements, each Party waives the benefits of Civil Code Sections 1932(2) and 1933(4) and any and all other rights to terminate the LLB Agreements as a result of any damage or destruction to the Project Site and/or the Project.

Section 12. District Insurance. During the Leaseback Term, the District, at its expense, shall have in effect liability and property insurance providing coverage in such amounts, and subject to such terms, as the District determines will adequately protect the District's interests in the Project Site and the Project. The District may in its discretion obtain and maintain any such insurance through an Owner Controlled Insurance Program or through a joint-powers self-insurance cooperative of which the District is a member. Except as may be provided in the LLB Agreements, such insurance shall be endorsed to name the Contractor as an additional insured, in which case the District shall deliver certificates evidencing such insurance to the Contractor. Notwithstanding anything to the contrary, in connection with the Work, any insurance maintained by the Contractor with respect to the Project Site and/or the Project shall be primary and insurance maintained by the District shall be considered excess. In the event a portion of the Project Site, Project and/or School damaged in connection with the performance of the Work is to be repaired or replaced, the proceeds of the Contractor's insurance shall be applied for such purposes prior to applying proceeds of the District's insurance for such purposes.

Section 13. Termination. Notwithstanding anything to the contrary, at any time prior to the Effective Date, the District may terminate this LBA by giving written notice to the Contractor, in which event neither Party shall have any obligation to the other Party pursuant to the LLB Agreements. The Leaseback Term shall automatically terminate upon the earliest to occur of any of the following

events: (i) the Site Lease and/or the CSA are duly terminated; or (ii) the Site Lease Term and/or the Leaseback Term expires (or has expired) and the Contractor has received all compensation due pursuant to the LLB Agreements.

Section 14. Additional Representations and Warranties. In addition to the representations and warranties of the Parties set forth in the Site Lease, the Contractor further represents and warrants that:

- (i) To the best of its knowledge, except for the existing and potential conditions described in clauses (i) and (ii) of Section 14 of the Site Lease, the Contractor is not aware of any Hazardous Substances that are located in, on or about the Project Site that would subject the District to any damages, penalties or liabilities under any Environmental Laws;
- (ii) The Contractor has received no notice, from any governmental entity with competent jurisdiction, of any violation of any Environmental Law with respect to the Project Site or the other portions of the School that now exists or allegedly exists; and
- (iii) Except to the extent permissibly incorporated into the Work in accordance with the LLB Agreements, the Contractor shall keep the Project Site and the other portions of the School free of Hazardous Materials.

Section 15. Giving of Notice. Each notice from one Party to the other given pursuant to this LBA must be given in accordance with Section 23.10 of the General Conditions.

Section 16. Governing Law and Venue. The terms and provisions of this LBA shall be construed in accordance with the laws of the State. Any action, arbitration, mediation or other proceeding arising from this LBA shall be initiated and conducted only in the County.

Section 17. Modifications. This LBA may not be amended or otherwise modified except by written agreement duly-approved, signed and delivered by the Parties.

Section 18. Recitals and Exhibits. The Recitals set forth herein, and all Exhibits referenced herein and attached hereto, are hereby incorporated as operative and effective provisions of this LBA.

Section 19. Counterparts. This LBA may be signed in one or more counterparts, which, taken together, shall constitute one and the same original instrument. Signature pages may be detached from counterpart originals and combined to physically form one or more original copies of this LBA bearing signatures of both Parties.

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Section 20. Due Authority of Signatories. Each person signing this LBA represents and warrants that he or she has been duly authorized by appropriate action of the Party he or she represents to execute, and thereby bind such Party to, this LBA.

In Witness Whereof, the Parties have executed this LBA as evidenced by the signatures of their authorized representatives below.

William S. Hart Union High School District

[Insert Contractor Name]

By: _____
Thomas B. Cole, Chief
Operations Officer

By: _____
Print Name: _____
Print Title: _____

Approved as to Form

By: Bowie, Arneson, Wiles & Giannone,
Attorneys for the William S. Hart
Union High School District

By: _____
Brian W. Smith