WESTERN PLACER UNIFIED SCHOOL DISTRICT
600 SIXTH STREET, SUITE 400,
LINCOLN, CALIFORNIA 95648
Phone: 916.645.6350 Fax: 916.645.6356

MEMBERS OF THE GOVERNING BOARD

Paul Carras - President
Paul Long - Vice President
Kris Wyatt - Clerk
Brian Haley - Member
Damian Armitage - Member

DISTRICT ADMINISTRATION

Scott Leaman, Superintendent
Mary Boyle, Deputy Superintendent of Educational Services
Joyce Lopes, Assistant Superintendent of Business Services

STUDENT ENROLLMENT

School	2010 CBEDS	04/08/11	05/03/11
Sheridan School (K-5)	84	83	83
First Street School (K-5)	449	454	454
Carlin C. Coppin Elementary (K-5)	420	397	397
Creekside Oaks Elementary (K-5)	620	639	643
Twelve Bridges Elementary (K-5)	716	728	727
Foskett Ranch Elementary (K-5)	543	544	539
Lincoln Crossing Elementary (K-5)	612	609	608
Glen Edwards Middle (6-8)	699	691	689
Twelve Bridges Middle School (6-8)	832	814	818
Lincoln High School (9-12)	1,496	1,415	1,414
Phoenix High School (10-12)	80	85	84
PCOE Home School	0	0	0
TOTAL:	**6,551**	**6,458**	**6,456**

Preschool/Head Start

First & J Street	24
Carlin Coppin	23 - A.M. /20 - P.M.
Sheridan	20

Pre-K/Special Ed

Foskett	19
FSS PPPIP	66
Carlin Coppin	10

Adult Education 201

First-5 Program

First Street	20-A.M. / 13-P.M.
Sheridan	9

GLOBAL DISTRICT GOALS

~Develop and continually upgrade a well articulated K-12 academic program that challenges all students to achieve their highest potential.
~Foster a safe, caring environment where individual differences are valued and respected.
~Provide facilities for all district programs and functions that are suitable in terms of function, space, cleanliness and attractiveness.
~Promote the involvement of the community, local government, business, service organizations, etc. as partners in the education of our students.
~Promote student health and nutrition in order to enhance readiness for learning.

Western Placer Unified School District
Special Meeting of the Board of Trustees
May 31, 2011, 7:00 P.M.
LINCOLN HIGH SCHOOL–Performing Arts Building
790 J Street, Lincoln, CA 95648

AGENDA

2010-2011 Goals & Objectives (G & O) for the Management Team: Component I: Quality Student Performance; **Component II:** Curriculum Themes; **Component III:** Special Student Services; **Component IV:** Staff & Community Relations; **Component V:** Facilities/Administration/Budget.

All Open Session Agenda related documents are available to the public for viewing at the Western Placer Unified School District Office located at 600 Sixth Street, Fourth Floor in Lincoln, CA 95648.

5:55 P.M. START

1. **CALL TO ORDER** – Lincoln High School – Performing Arts Building

6:00 P.M.

2. **CLOSED SESSION** – Lincoln High School - Office Conference Room
   - 2.1 **CONFERENCE WITH LABOR NEGOTIATOR**
     Bargaining groups: WPTA & CSEA Negotiations
     Agency Negotiators: Scott Leaman, Superintendent, Mary Boyle, Deputy Superintendent, Ryan Davis, Director of Human Services, Joyce Lopes, Assistant Superintendent of Business Services
   - 2.2 **PUBLIC EMPLOYEE DISCIPLINE/DISMISSAL/RELEASE**
   - 2.3 **INTERDISTRICT ATTENDANCE APPEAL**
     a. Interdistrict Request Appeal 11/12 - 12
     b. Interdistrict Request Appeal 11/12 - 13
     c. Interdistrict Request Appeal 11/12 - 14
     d. Interdistrict Request Appeal 11/12 - 15

7:00 P.M.

3. **ADJOURN TO OPEN SESSION/PLEDGE OF ALLEGIANCE** – Lincoln High School – Performing Arts Building
   - 3.1 **CONFERENCE WITH LABOR NEGOTIATOR**
     Bargaining groups: WPTA & CSEA Negotiations
     Agency Negotiators: Scott Leaman, Superintendent, Mary Boyle, Deputy Superintendent, Ryan Davis, Director of Human Services, Joyce Lopes, Assistant Superintendent of Business Services
   - 3.2 **PUBLIC EMPLOYEE DISCIPLINE/DISMISSAL/RELEASE**
   - 3.3 **INTERDISTRICT ATTENDANCE APPEAL**
     a. Interdistrict Request Appeal 11/12 - 12
     b. Interdistrict Request Appeal 11/12 - 13
     c. Interdistrict Request Appeal 11/12 - 14
     d. Interdistrict Request Appeal 11/12 - 15

4. CONSENT AGENDA

NOTICE TO THE PUBLIC
All items on the Consent Agenda will be approved with one motion, which is not debatable and requires a unanimous vote for passage. If any member of the Board, Superintendent, or the public, so request, items may be removed from this section and placed in the regular order of business following the approval of the consent agenda.

4.1 Approve Master contract with Marcher Covington Architects, Inc.
4.2 Approve Lease-Leaseback Firm for summer 2011 Projects.
4.3 Approve Facilities Lease and Site Lease for Glen Edwards Middle School Fire Restoration between Landmark Construction and WPUSD.

5. COMMUNICATION FROM THE PUBLIC

This portion of the meeting is set aside for the purpose of allowing an opportunity for individuals to address the Board regarding matters not on the agenda, but within the board's subject matter jurisdiction. The Board is not allowed to take action on any item, which is not on the agenda except as authorized by Government Code Section 54954.2. Request forms for this purpose "Request to Address Board of Trustees" are located at the entrance to the Performing Arts Theater. Request forms are to be submitted to the Board Clerk prior to the start of the meeting.

6. ♦ACTION ♦DISCUSSION ♦INFORMATION

Members of the public wishing to comment on any items should complete a yellow REQUEST TO ADDRESS BOARD OF TRUSTEES form located on the table at the entrance to the Performing Arts Theater. Request forms are to be submitted to the Board Clerk before each item is discussed.

6.1 Action **CONSIDER ADOPTING THE EARLY RETIREMENT INCENTIVE PROGRAM THROUGH THE PUBLIC AGENCY RETIREMENT SERVICES (PARS) THEREBY IMPLEMENTING THE RETIREMENT OF 33 DISTRICT EMPLOYEES – Leaman** *(10-11 G & O Component I, IV, V)*

•The Western Placer Unified School District has worked with Public Agency Retirement Services (PARS) to design a Supplementary Retirement Plan (SRP), a retirement incentive that has encouraged senior Certificated and senior Classified employees to potentially retire early. The goal of the program is to generate savings, or at a minimum, no cost to the District by increasing the numbers of retirements in the 2010-2011 school year. Based on the best estimates of replacement and non-replacement savings the PARS early retirement incentive is projected to save the District approximately $779,325 or more in the 2011-2012 and approximately $3,614,000 or more cumulative over 5 years.

7. BOARD OF TRUSTEES

7.1 BOARD MEMBER REPORTS/COMMENTS

8. ESTABLISHMENT OF NEXT MEETING(S)

The President will establish the following meeting(s):
➢**June 7, 2011** 7:00 P.M., Regular Board of Trustees Meeting – Lincoln High School, Performing Arts Theater
➢**June 21, 2011** 7:00 P.M., Regular Board of Trustees Meeting – Lincoln High School Performing Arts Theater

9. ADJOURNMENT

BOARD BYLAW 9320: Individuals requiring disability-related accommodations or modifications including auxiliary aids and services in order to participate in the Board meeting should contact the Superintendent or designee in writing at least two days prior to meeting date. (American Disabilities Act) Government Code 54954.1

Posted: 05/26/11
h:\wpfiles\board\agendas\053111

DISCLOSURE

OF ACTION

TAKEN IN

CLOSED SESSION,

IF ANY

Western Placer Unified School District
CLOSED SESSION AGENDA

Place: **Lincoln High School – Main Office Conference Room**
Date: **Tuesday, May 31, 2011**
Time: **6:00 P.M.**

1. LICENSE/PERMIT DETERMINATION

2. SECURITY MATTERS

3. CONFERENCE WITH REAL PROPERTY NEGOTIATOR

4. CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

5. CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

6. LIABILITY CLAIMS

7. THREAT TO PUBLIC SERVICES OR FACILITIES

8. PERSONNEL
- * PUBLIC EMPLOYEE APPOINTMENT
- * PUBLIC EMPLOYEE EMPLOYMENT
- * PUBLIC EMPLOYEE PERFORMANCE EVALUATION
- * **PUBLIC EMPLOYEE DISCIPLINE/DISMISSAL/RELEASE**
- * COMPLAINTS OR CHARGES AGAINST AN EMPLOYEE

9. CONFERENCE WITH LABOR NEGOTIATOR

10. STUDENTS
- * STUDENT DISCIPLINE/EXPULSION PURSUANT TO E.C. 48918
- * STUDENT PRIVATE PLACEMENT
- * **INTERDISTRICT ATTENDANCE APPEAL**
- * STUDENT ASSESSMENT INSTRUMENTS
- * STUDENT RETENTION APPEAL, Pursuant to BP 5123

1. **LICENSE/PERMIT DETERMINATION**
   a. Specify the number of license or permit applications.
2. **SECURITY MATTERS**
   a. Specify law enforcement agency
   b. Title of Officer,
3. **CONFERENCE WITH REAL PROPERTY NEGOTIATOR**
   a. Property: specify the street address, or if no street address the parcel number or unique other reference to the property under negotiation.
   b. Negotiating parties: specify the name of the negotiating party, not the agent who directly or through an agent will negotiate with the agency's agent.

c. Under negotiations: specify whether the instructions to the negotiator will concern price, terms of payment or both.

4. **CONFERENCE WITH LEGAL COUNSEL-EXISTING LITIGATION**
   a. Name of case: specify by reference to claimant's name, names or parties, case or claim number.
   b. Case name unspecified: specify whether disclosure would jeopardize service of process or existing settlement negotiations.

5. **CONFERENCE WITH LEGAL COUNSEL-ANTICIPATED LITIGATION**
   a. Significant exposure to litigation pursuant to subdivision (b) of Government Code section 54956.9 (if the agency expects to be sued) and also specify the number of potential cases.
   b. Initiation of litigation pursuant to subdivision (c) of Government Code Section 54956.9 (if the agency intends to initiate a suit) and specify the number of potential cases.

6. **LIABILITY CLAIMS**
   a. Claimant: specify each claimants name and claim number (if any). If the claimant is filing a claim alleging district liability based on tortuous sexual conduct or child abuse, the claimant's name need not be given unless the identity has already been publicly disclosed.
   b. Agency claims against.

7. **THREATS TO PUBLIC SERVICES OR FACILITIES**
   a. Consultation with: specify name of law enforcement agency and title of officer.

8. **PERSONNEL:**
   A. **PUBLIC EMPLOYEE APPOINTMENT**
      a. Identify title or position to be filled.
   B. **PUBLIC EMPLOYEE EMPLOYMENT**
      a. Identify title or position to be filled.
   C. **PUBLIC EMPLOYEE PERFORMANCE EVALUATION**
      a. Identify position of any employee under review.
   D. **PUBLIC EMPLOYEE DISCIPLINE/DISMISSAL/RELEASE**
      a. It is not necessary to give any additional information on the agenda.
   E. **COMPLAINTS OR CHARGES AGAINST AN EMPLOYEE, UNLESS EMPLOYEE REQUESTS OPEN SESSION**
      a. No information needed

9. **CONFERENCE WITH LABOR NEGOTIATOR**
   a. Name any employee organization with whom negotiations to be discussed are being conducted.
   b. Identify the titles of unrepresented individuals with whom negotiations are being conducted.
   c. Identify by name the agency's negotiator

10. **STUDENTS:**
   A. **STUDENT DISCIPLINE/EXPULSION PURSUANT TO E.C. 48918**
   B. **STUDENT PRIVATE PLACEMENT**
      ●Pursuant to Board Policy 6159.2
   C. **INTERDISTRICT ATTENDANCE APPEAL**
      a. Education Code 35146 and 48918
   D. **STUDENT ASSESSMENT INSTRUMENTS**
      a. Reviewing instrument approved or adopted for statewide testing program.
   E. **STUDENT RETENTION/ APPEAL**
      a. Pursuant to Board Policy 5123

WESTERN PLACER UNIFIED SCHOOL DISTRICT
BOARD OF TRUSTEE MEETING FACT SHEET

MISSION STATEMENT: Empower Students with the skills, knowledge, and attitudes for Success in an Ever Changing World.
DISTRICT GLOBAL GOALS
1. **Develop and continually upgrade a well articulated K-12 academic program that challenges all students to achieve their highest potential, with a special emphasis on students**
2. **Foster a safe, caring environment where individual differences are valued and respected.**
3. **Provide facilities for all district programs and functions that are suitable in terms of function, space, cleanliness and attractiveness.**
4. **Promote the involvement of the community, parents, local government, business, service organizations, etc. as partners in the education of the students.**
5. **Promote student health and nutrition in order to enhance readiness for learning.**

SUBJECT:
Bargaining Groups:
WPTA & CSEA Negotiations
Agency Negotiators:
Scott Leaman, Superintendent
Mary Boyle, Deputy Superintendent
Ryan Davis, Director of Human Services
Joyce Lopes, Assistant Superintendent of Business Services

AGENDA ITEM AREA:
Disclosure of action taken in closed session

REQUESTED BY:
Ryan Davis
Director of Human Services

ENCLOSURES:
No

DEPARTMENT:
Personnel

FINANCIAL INPUT/SOURCE:
N/A

MEETING DATE:
May 31, 2011

ROLL CALL REQUIRED:
No

BACKGROUND:

Labor Negotiator will give the Board of Trustees an update on Western Placer Teachers Association & Classified Schools Employee Association Bargaining Groups.

ADMINISTRATION RECOMMENDATION:

Administration recommends the board of trustees be updated on negotiations.

wp/rk/factform

WESTERN PLACER UNIFIED SCHOOL DISTRICT
BOARD OF TRUSTEE MEETING FACT SHEET

MISSION STATEMENT: Empower Students with the skills, knowledge, and attitudes for Success in an Ever Changing World.
DISTRICT GLOBAL GOALS
1. **Develop and continually upgrade a well articulated K-12 academic program that challenges all students to achieve their highest potential, with a special emphasis on students**
2. **Foster a safe, caring environment where individual differences are valued and respected.**
3. **Provide facilities for all district programs and functions that are suitable in terms of function, space, cleanliness and attractiveness.**
4. **Promote the involvement of the community, parents, local government, business, service organizations, etc. as partners in the education of the students.**
5. **Promote student health and nutrition in order to enhance readiness for learning.**

SUBJECT:
PULBIC EMPLOYEE DISCIPLINE/DISMISSAL/ RELEASE

AGENDA ITEM AREA:
Closed Session

REQUESTED BY:
Board of Trustees

ENCLOSURES:
No

DEPARTMENT:
Ryan Davis
Director of Human Services

FINANCIAL INPUT/SOURCE:
N/A

MEETING DATE:
May 31, 2011

ROLL CALL REQUIRED:
No

BACKGROUND:

The Board of Trustees will disclose any action taken in closed session in regard to Public Employee Discipline/Dismissal/Release.

RECOMMENDATION:

Administration recommends the Board of Trustees disclose action taken in closed session in regard to Public Employee Discipline/Dismissal/Release.

wp/rk/factform

3.2

WESTERN PLACER UNIFIED SCHOOL DISTRICT
BOARD OF TRUSTEE MEETING FACT SHEET

MISSION STATEMENT: Empower Students with the skills, knowledge, and attitudes for Success in an Ever Changing World.
DISTRICT GLOBAL GOALS
1. Develop and continually upgrade a well articulated K-12 academic program that challenges all students to achieve their highest potential, with a special emphasis on students **2. Foster a safe, caring environment where individual differences are valued and respected.** **3. Provide facilities for all district programs and functions that are suitable in terms of function, space, cleanliness and attractiveness.** **4. Promote the involvement of the community, parents, local government, business, service organizations, etc. as partners in the education of the students.** **5. Promote student health and nutrition in order to enhance readiness for learning.**

SUBJECT:
Interdistrict Appeal

AGENDA ITEM AREA:
Disclosure of Action Taken in Closed Session

REQUESTED BY:
Scott Leaman,
Superintendent

ENCLOSURES:
No

DEPARTMENT:
Administration

FINANCIAL INPUT/SOURCE:
N/A

MEETING DATE:
May 31, 2011

ROLL CALL REQUIRED:
No

BACKGROUND:

The Board of Trustees will discuss disclose any action taken in closed session regarding the following transfer appeals:

- Interdistrict Request Appeal 11/12 - 12
- Interdistrict Request Appeal 11/12 – 13
- Interdistrict Request Appeal 11/12 - 14
- Interdistrict Request Appeal 11/12 – 15

ADMINISTRATION RECOMMENDATION:

Disclose any action taken.

wp/rk/factform

CONSENT

AGENDA

ITEMS

WESTERN PLACER UNIFIED SCHOOL DISTRICT
BOARD OF TRUSTEE MEETING FACT SHEET

MISSION STATEMENT: Empower Students with the skills, knowledge, and attitudes for Success in an Ever Changing World.

DISTRICT GLOBAL GOALS

1. **Develop and continually upgrade a well articulated K-12 academic program that challenges all students to achieve their highest potential, with a special emphasis on students**
2. **Foster a safe, caring environment where individual differences are valued and respected.**
3. **Provide facilities for all district programs and functions that are suitable in terms of function, space, cleanliness and attractiveness.**
4. **Promote the involvement of the community, parents, local government, business, service organizations, etc. as partners in the education of the students.**
5. **Promote student health and nutrition in order to enhance readiness for learning.**

SUBJECT:
Master contract with Marcher Covington Architects, Inc.

AGENDA ITEM AREA:
Consent

REQUESTED BY:
Joyce Lopes, Assistant Superintendent

ENCLOSURES:
Yes

DEPARTMENT:
Business Services

FINANCIAL INPUT/SOURCE:
Project Savings, COP Funds, Grant Funds and Deferred Maintenance Funds

MEETING DATE:
May 31, 2011

ROLL CALL REQUIRED:
No

BACKGROUND:

Staff requests Board of Trustee approval to enter into contract with Marcher Covington Architects, Inc. This would be a Master Contract that would allow the District to enter into Project Authorizations on individual smaller projects as needed. Marcher Covington Architects is a pre-selected firm from the District's architect pool. The District intends to use this firm for upcoming projects of; Lincoln High School Old Gym Re-Roof, Phoenix High School Portable and Lincoln High School Project Lead the Way Classroom Renovation

RECOMMENDATION:

Approve Master Contract and authorize Assistant Superintendent of Business Services to enter into Project Agreements as necessary for architectural services with Marcher Covington Architects, Inc.

Master Agreement between Owner and Architect for Small Projects

This Agreement, made in two (2) copies on the 25th day of May in the year two thousand and eleven.

BY AND BETWEEN

Western Placer Unified School District.
hereinafter referred to as the **OWNER**,

and

MCA, Inc. (Marcher Covington Architects, Inc.),
hereinafter referred to as the **ARCHITECT**.

Witnessed

Whereas, the Owner intends to:

Place relocatable classroom buildings at existing school facilities and/or perform minor renovations to existing school facilities within the Western Placer Unified School District, hereinafter referred to as the Project.

Now, Therefore, the Owner and Architect agree as follows:

ARTICLE 1 PROJECT BUDGET and SCHEDULE

1.1 The project budget and schedule shall be established and agreed upon by the Owner and Architect prior to the Design Development phase.
.1 The size of the Project and the type and quality of construction are dependent upon the funds available for the Project. The Architect will exercise his best judgment in determining the balance between the size of the Project, the type of construction, and the quality of construction to achieve a satisfactory solution within budget limitations.

ARTICLE 2 BASIC SERVICES OF THE ARCHITECT

2.1 Program
.1 The Architect shall review with the Owner information furnished by the Owner under this Agreement, including the Owner's program and schedule requirements and budget for the Cost of the Work, each in terms of the other. The Architect shall review such information to ascertain that it is consistent with the requirements of the Project and shall notify the Owner of any other information or consultant services that may be reasonably needed for the Project.

2.2 Schematic Design Phase
.1 Due to the size and complexity of the Project, no work will be required on behalf of the Architect under this Phase, unless requested by the Owner prior to start of the Project.

2.3 Design Development Phase (Preliminary Plans)
.1 The Architect shall review, with the Owner, Design Development Documents consisting of drawings and other documents to fix and describe the size and character of the Project as to architectural, civil, structural, mechanical and electrical systems and materials, landscape design and such other elements as may be appropriate.

2.4 Construction Document Phase
.1 The Architect shall prepare, from the approved design development documents, working drawings, and specifications setting forth in detail and prescribing the work to be done, and the materials, workmanship, finishes, and equipment required for the architectural, civil, structural, mechanical, electrical service connected equipment and landscape design and irrigation drawings
.2 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.
.3 Architect will conduct a constructability review of construction documents prior to Construction.

2.5 Bidding Phase
.1 Due to the size and complexity of the Project, no work will be required on behalf of the Architect under this Phase, unless requested by the Owner prior to start of the Project.

2.6 Construction Phase
.1 Due to the size and complexity of the Project, no work will be required on behalf of the Architect under this Phase, unless requested by the Owner prior to start of the Project.

ARTICLE 3 EMPLOYEES AND CONSULTANTS

3.1 The Architect, as part of the basic professional services, shall furnish at his expense the normal services of structural, mechanical, and electrical engineering consultants, properly skilled and licensed where required by law, in the various aspects of the design and construction of facilities required.

ARTICLE 4 EXTRA SERVICES OF THE ARCHITECT

4.1 The following services, if performed due to unusual circumstances and through no fault or neglect on the part of the Architect, cause the Architect extra expense and shall be paid for by the Owner as provided in Article 8:
.1 Plan preparation and/or construction contract administration work on that portion of a Project prepared for a separate bid contract.
.2 Contract administration of repair of damage to the Project.
.3 Providing consultation concerning replacement of Work damaged by fire or other cause during construction, and furnishing services required in connection with the replacement of such Work.
.4 The selection by the Architect at the Owner's request of movable furniture, equipment or articles which are not included in the construction contract.
.5 The additional services caused by the delinquency or insolvency of the contractor.

4.1.1

.6 If directed by the Owner, the employment of special consultants, the preparation of special delineations and models, and overtime work by the Architect's employees.
.7 Providing contract administration services after the construction contract time has been exceeded through no fault of the Architect, and where it is determined that the fault is that of the contractor.
.8 Life-cycle costing (including Unconventional Energy and Utility Energy Rebate applications) specific to obtaining extra funding.
.9 Plan revisions required due to code changes, product changes or other causes resulting from delays in bidding project after receiving DSA approvals.

4.2 Prior to starting extra services as outlined in Article 4.1, Architect will provide Owner a written estimate of expenses for Owner's approval.

ARTICLE 5 OWNER RESPONSIBILITIES

5.1 The Owner shall provide full information regarding requirements for the Project, including a program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements.

5.2 The Owner shall establish and update an overall budget for the Project, including the Construction Cost, the Owner's other costs and reasonable contingencies related to all of these costs.

5.3 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data pertaining to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

5.4 The Owner shall furnish the services of geotechnical engineers when such services are requested by the Architect. Such services may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, including necessary operations for anticipating subsoil conditions, with reports and appropriate professional recommendations.
.1 The Owner shall furnish the services of other consultants when such services are reasonably required by the scope of the Project and are requested by the Architect.

5.5 The Owner shall furnish structural, mechanical, chemical, air and water pollution tests, tests for hazardous materials, and other laboratory and environmental tests, inspections and reports required by law or the Contract Documents.

5.6 The Owner shall furnish all construction testing and inspection services.

5.7 The Owner shall furnish all legal advice and services as required for the Project.

5.8 The Owner shall notify the Architect of administrative procedures required and name a representative authorized to act in its behalf. The Owner shall promptly render decisions pertaining thereto to avoid unreasonable delay in the progress of the Project. The Owner shall observe the procedure of issuing any orders to contractors only through the Architect.

5.9 During the contractor's one year guarantee period, the Owner shall notify the Architect in writing of apparent deficiencies in materials or workmanship.

ARTICLE 6 PROJECT CONSTRUCTION COST

6.1 Project construction cost as used in the Agreement means the total cost to the Owner of all work designed or specified by the Architect, including work covered by approved change orders and/or alternates, but excluding the following:
.1 Any payments to Architect are not included in Project.

ARTICLE 7 ESTIMATES OF PROBABLE PROJECT CONSTRUCTION COSTS

7.1 The Architect shall review the budgeted amount of the Project with the Owner and provide an estimate of probable project construction cost in the form of a tentative statement, which is subject to later revision.

ARTICLE 8 ARCHITECT'S COMPENSATION

8.1 Compensation will be based on a stipulated sum, Architect is to submit proposal for review and approval by Owner via a Project Authorization as defined in Article 20, prior to commencing work.

8.2 Compensation for extra services
.1 The Owner further agrees to pay the Architect compensation for extra services due to unusual circumstances provided by Article 4, as follows:

a) Each portion of the Project awarded separately on a segregated bid basis shall be considered a separate Project for purposes of determining the fee.

b) Hourly, per current fee schedule dated April 17, 2010 (refer to attached Appendix A)

c) Direct billings of consultants.

8.3 Reimbursement at cost shall be paid to the Architect for:
.1 Approved reproduction of drawings and specifications in excess of the copies outlined in Article 14.
.2 Fees advanced for securing approval of authorities having jurisdiction over the Project.
.3 Costs for creating digital files of record drawings for Owner's use.

ARTICLE 9 PAYMENTS TO THE ARCHITECT

.1 The Architect shall invoice and progress payments shall be made monthly in accordance with the completeness of each phase of the project.

ARTICLE 10 TERMINATION OF AGREEMENT

10.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, prior to suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Architect shall be paid all sums

4.1.2

due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

10.2 If the Project is suspended by the Owner for more than 30 consecutive days, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architects' services. The Architect's fees for the remaining services and the schedules shall be equitably adjusted.

10.3 If the Project is suspended or the Architect's services are suspended for more than 90 consecutive days, the Architect may terminate this Agreement by giving not less than seven days' written notice.

10.4 This Agreement may be terminated by either party upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

10.5 This Agreement may be terminated by the Owner upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

10.6 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses.

10.7 If this Agreement is suspended or terminated by the Owner due to default of the Architect, the Owner agrees to give the Architect thirty (30) days reasonable notice and opportunity to correct such default prior to notice of suspension or termination.

10.8 If, upon payment of the amount required to be paid under this Article following the termination of the Agreement, the Owner thereafter should determine to complete the original Project or substantially the same project, the Owner for such purpose shall have the right of utilizing any completed drawings, specifications, estimates, or other completed contract documents prepared under this Agreement by the Architect who shall make them available to the Owner upon request without additional compensation.

ARTICLE 11 TIME SCHEDULE

11.1 Upon request, the Architect will prepare for the Owner an estimated time schedule necessary to complete the contract documents and construction, barring delays caused by conditions beyond the reasonable control of the Architect.

ARTICLE 12 ACCOUNTING RECORDS OF THE ARCHITECT

12.1 Records of the Architect's direct personnel and reimbursable expense pertaining to the extra services of this Project, and records of accounts between the Owner and contractor shall be kept on a generally recognized accounting basis and shall be available to the Owner or his authorized representative at mutually convenient times.

ARTICLE 13 INSURANCE TO BE CARRIED BY THE ARCHITECT

13.1 To the maximum extent permitted by law, the Owner hereby agrees to limit the liability of the Architect, its employees, agents and Consultants, to the Owner and to all Contractors and Subcontractors on the Project, to a maximum of $1,000,000.00. This limitation shall apply regardless of the cause of action or legal theory plead or asserted and shall include but not be limited to claims for indemnity and or contribution arising out of Owner's alleged liability to others. Owner agrees to include a similar provision in its agreement with the Contractors and Subcontractors on the Project. Architect's policy is effective during periods of construction and for three years after filing of the Notice of Completion, upon which time, architects' liability shall cease.

ARTICLE 14 REPRODUCTION OF DOCUMENTS

14.1 The Architect shall provide, at the Owner's expense and in the number required, the preliminary plans and construction documents for the review and approval of the Owner and applicable State agencies.

14.2 The Architect shall provide, at the Owner's expense, ten (10) copies of the construction documents for bidding and construction purposes; total number of documents for bid distribution to be determined with Owner.

ARTICLE 15 OWNERSHIP OF DOCUMENTS

15.1 The plans, specifications, and estimates shall be and remain the property of the Owner, pursuant to Section 17316 of the Education Code.

ARTICLE 16 RE-USE OF DOCUMENTS

16.1 In the event the Owner retains the Architect's services to design all or part of another Project which would be essentially identical to the Project which is the subject of the Agreement, the Architect agrees to:

.1 Re-use his design and the corresponding contract documents.

.2 Prepare such modifications as may be dictated by topography, soils conditions, utility services, existing construction and similar conditions.

.3 Perform as far as applicable all of the services provided by this Agreement.

.4 Compensation for rendering the foregoing services shall be in the amount agreed upon by Owner and Architect prior to the commencement of work, and shall form the basis of a separate Agreement.

ARTICLE 17 MEDIATION

.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to arbitration or the institution of legal or equitable proceedings by either party. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by arbitration.

.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Request for mediation shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. The request may be made concurrently with the filing of a demand for arbitration but, in such event, mediation shall proceed in advance of arbitration or legal or equitable proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

ARTICLE 18 SUCCESSORS AND ASSIGNS

18.1 It is mutually understood and agreed that this Agreement shall be binding upon the Owner and its successors and upon the Architect, his partners, successors, executors, and administrators. Neither this Agreement, nor any monies due or to become due thereunder, may be assigned by the Architect without the consent and approval of the Owner.

ARTICLE 19 ADDITIONAL PROVISIONS

19.1 Unless otherwise provided in this Agreement, the Architect and Architect's consultants. shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials in any form at the Project site, including but not limited to asbestos, asbestos' products, polychlorinated biphenyl (PCB) or other toxic substances.

19.2 The following amendments and/or additions are made a part of this Agreement and shall be given effect notwithstanding any other provision contained herein:

.1 The furnishing of current as built drawings of existing structures is the responsibility of the Owner.

.2 Independent Contractor: Architect enters into this Agreement as an independent contractor and not as an employee of the Owner. The Architect shall have no power or authority by this Agreement to bind the Owner in any respect. Nothing in this Agreement shall be construed to be inconsistent with this relationship or status. All employees, agents, contractors or subcontractors hired or retained by the Architect are employees, agents, contractors or subcontractors of the Architect and not of the Owner. The Owner shall not be obligated in any way to pay wage claims or other claims made against the Architect by any such employee, agents, contractors or subcontractors or any other person resulting from performance of this Agreement. .

.3 Compliance with Local Law: Architect shall comply with professional standards regarding interpretation of applicable laws, ordinances and codes of federal, state and local governments, and shall commit no trespass on any public or private property in performing any of the work authorized by this Agreement. It shall be the Owner's responsibility to obtain all rights of way and easements to enable Architect to perform services hereunder.

.4 Indemnity: Architect shall indemnify, but shall have no obligation to defend the Owner, its officers, officials, and employees from and against liability for damages, to the extent actually determined to have been caused by Architect's negligent performance of work hereunder or its negligent failure to comply with any of its obligations contained in the Agreement, except such loss or damage which was caused by the negligence, or willful misconduct of the Owner or of any Third Party. Architect's duty to indemnify Client shall survive the termination of this Agreement for the period of statutes of limitations and repose applicable to Architect's services.

.5 This Agreement uses portions of AIA Document B141, Standard From of Agreement Between Owner and Architect - 1997 Edition, and has been modified specifically for the Owner and Architect's use for this Project.

19.3 If any term, provision, or covenant of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the Agreement shall remain in full force and effect.

ARTICLE 20 PROJECT AUTHORIZATIONS

20.1 A separate document titled, Project Authorization, will be issued by the Owner prior to the start of each project authorizing the Architect to begin services for said Project under the terms of this Master Agreement. The Project Authorization will:

.1 Add/Delete/Revise Articles of this Master Agreement that pertain specifically to each individual project;

.2 Outline the scope of work for each individual Project,

.3 Identify terms of compensation for the Project as outlined in Articles 8 and 9 of this Master Agreement,

.4 Begin the Statutes of Limitations for the specific Project.

The Owner and Architect hereby agree to the full performance of the covenants contained herein.

Architect:

Mark V. Covington, C-27596
Marcher Covington Architects, Inc.
1107 Investment Blvd, Suite 175
El Dorado Hills, CA 95762

Owner:

Joyce Lopes, Assistant Superintendent of Business
Western Placer Unified School District
600 6th Street, Suite 400
Lincoln CA 95648

I:\contracts\wpusdmastersmallprojects.docx

PROJECT AUTHORIZATION

Date: ..... April 27, 2011

Project Name: ..... Remodel Existing Metal Shop Classroom, Project Lead The Way, Lowe's Grant

Project Description: ..... Prepare Design Layouts and Descriptions for Owner's use in Soliciting Proposals from Lease-Leaseback Contractor to Remodel Existing Metal Shop Classroom at Lincoln High School, 790 J Street, Lincoln, CA 95648-1699.

Architect: ..... MCA, Inc., El Dorado Hills, CA
Architect's Project No.: 11.1122
Project Authorization No.: 1122.1

The Owner hereby authorizes the Architect to perform professional services as identified in the terms of the Master Agreement between Owner and Architect for Small Projects, dated May 1, 2011.

All Articles of said Master Agreement are inclusive of this authorization unless modified by the following paragraphs:

ARTICLE 2 Basic Services of the Architect (Revise the following Articles)

2.1 Schematic Design Phase
- .1 Due to the size and complexity of the Project, this Article is not used.

2.2 Design Development Phase (Preliminary Plans)
- .1 Prepare design development drawings from existing as-builts provided by Owner;
- .2 Provide one (1) or two (2) sheets of descriptive plans to assist Owner with Communicating construction needs to Owner's LLB Contractor;
- .3 Plans may consist of a demolition plan, new floor plan and reflected ceiling plan.

2.3 Construction Document Phase
- .1 Due to the size and complexity of the Project, this Article is not used.

2.4 Bidding Phase
- .1 Due to the size and complexity of the Project, this Article is not used.

2.5 Construction Phase
- .1 Due to the size and complexity of the Project, this Article is not used.

2.6 Contract Closeout
- .1 Due to the size and complexity of the Project, this Article is not used.

ARTICLE 5 Owner Responsibilities (ADD the following Articles)

5.1 Owner has chosen to exclude construction documents, bid negotiations and submission to agencies having jurisdiction over the projects from the Architect's scope of services;

5.2 Owner has chosen to exclude Structural, Mechanical, Plumbing and Electrical design services from the Architect's scope of services.

Compensation and payment for services performed under this authorization will be as outlined in Articles 8.1 and 9.1 for a not to exceed amount of:

Two Thousand, Six Hundred and Twenty Five Dollars ..... $ 2,625.00

Joyce Lopes, Assistant Superintendent of Business
Western Placer Unified School District

PROJECT AUTHORIZATION

Date:.....April 27, 2011

Project Name: .....Re-Roof Weight Room and Locker Room at Lincoln High Old Gym

Project Description:.....Remove and Replace approximately 9,000 square feet of built-up roofing over the Old Gym Weight Room and Locker Rooms.
Lincoln High School, 790 J Street, Lincoln, CA 95648-1757.

Architect: .....MCA, Inc., El Dorado Hills, CA
Architect's Project No.: 11.1125
Project Authorization No.: 1125.1

The Owner hereby authorizes the Architect to perform professional services as identified in the terms of the Master Agreement between Owner and Architect for Small Projects, dated May 1, 2011.

All Articles of said Master Agreement are inclusive of this authorization unless modified by the following paragraphs:

Article 2 Basic Services of the Architect (Revise the following Articles)

2.2 Design Development

.1 The Architect shall review as-built drawings provided by the Owner;

.2 The Architect shall visit the site to gather existing information for comparison to Owner's as-built drawings;

.3 The Architect shall prepare background drawings in electronic format of the existing conditions and

.4 The Architect shall prepare for approval by the Owner, Design Development Documents consisting of drawings and other documents to fix and describe the size and character of the architectural portion of the Project.

2.3 Construction Documents

.1 The Architect shall prepare, from the approved design development documents, working drawings, and specifications setting forth in detail and prescribing the work to be done, and the materials, workmanship, finishes, and equipment required for the architectural, ~~civil, structural, mechanical, electrical service connected equipment and landscape design and irrigation drawings~~

~~.2 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.~~

Compensation and payment for services performed under this authorization will be as outlined in Articles 8.1 and 9.1 for a not to exceed amount of:

Nine Thousand, two hundred dollars.....$9,200.00

Joyce Lopes, Assistant Superintendent of Business
Western Placer Unified School District

c:\legalcontractdocuments\contracts\1125pa-1_wpusd.docx

4.1.6

PROJECT AUTHORIZATION

Date:.....April 27, 2011

Project Name: .....New Classroom at Phoenix High School

Project Description:.....Place One (1) pre-fabricated classroom by Gary Doupnik Mfg, Inc.,
at Phoenix Continuation High School, 870 J Street, Lincoln, CA 95648-1757.

Architect: .....MCA, Inc., El Dorado Hills, CA
Architect's Project No.: 11.1126
Project Authorization No.: 1126.1

The Owner hereby authorizes the Architect to perform professional services as identified in the terms of the Master Agreement between Owner and Architect for Small Projects, dated May 1, 2011.

All Articles of said Master Agreement are inclusive of this authorization unless modified by the following paragraphs:

Article 2 Basic Services of the Architect (Revise the following Articles)

2.3 Construction Documents

.1 The Architect shall prepare, from the approved design development documents, working drawings, and specifications setting forth in detail and prescribing the work to be done, and the materials, workmanship, finishes, and equipment required for the architectural, ~~civil, structural, mechanical,~~ electrical service connected equipment ~~and landscape design and irrigation drawings~~

~~.2 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.~~

Compensation and payment for services performed under this authorization will be as outlined in Articles 8.1 and 9.1 for a not to exceed amount of:

Five Thousand, nine hundred dollars ..... $ 5,900.00

Joyce Lopes, Assistant Superintendent of Business
Western Placer Unified School District

c:\legalcontractdocuments\contracts\1126pa-1_wpusd.docx

4.1.7

WESTERN PLACER UNIFIED SCHOOL DISTRICT
BOARD OF TRUSTEE MEETING FACT SHEET

MISSION STATEMENT: Empower Students with the skills, knowledge, and attitudes for Success in an Ever Changing World.

DISTRICT GLOBAL GOALS

1. **Develop and continually upgrade a well articulated K-12 academic program that challenges all students to achieve their highest potential, with a special emphasis on students**
2. **Foster a safe, caring environment where individual differences are valued and respected.**
3. **Provide facilities for all district programs and functions that are suitable in terms of function, space, cleanliness and attractiveness.**
4. **Promote the involvement of the community, parents, local government, business, service organizations, etc. as partners in the education of the students.**
5. **Promote student health and nutrition in order to enhance readiness for learning.**

SUBJECT:
Approval of Lease-LeaseBack Firm for Summer 2011 Projects

AGENDA ITEM AREA:
Consent

REQUESTED BY:
Joyce Lopes, Assistant Superintendent

ENCLOSURES:
No

DEPARTMENT:
Business Services

FINANCIAL INPUT/SOURCE:
Project Savings, COPs, Grant Funds, Insurance Reimbursements & Deferred Maintenance Funds

MEETING DATE:
May 31, 2011

ROLL CALL REQUIRED:
No

BACKGROUND:
The District advertized for qualifications for a Lease-Leaseback firm for upcoming construction projects including; Glen Edwards Fire Restoration, Lincoln High School Re-Roofing of Old Gym, Project Lead the Way Classroom Remodel and Phoenix High School Portable. Three firms were selected from that pool to submit guaranteed maximum prices (GMPs) for the Glen Edwards Fire Reconstruction and also for Lincoln High School Roof. Staff has chosen the firm of Landmark Construction. This is due to not only qualifications, but also competitive, responsive pricing. While a Facilities Lease and Site Lease have been prepared for the Glen Edwards Middle School Fire Reconstruction already, lease agreements and price negotiations will need to take place throughout the summer for the other above mentioned projects. These agreements will be under the same Lease-Leaseback with negotiated GMP conditions as the GEMS Fire Reconstruction Project.

RECOMMENDATION:
Staff requests the Board approve the Lease-Leaseback firm selection and authorize the Assistant Superintendent of Business to enter into negotiations and agreement between WPUSD and Landmark Construction for construction projects as listed.

WESTERN PLACER UNIFIED SCHOOL DISTRICT
BOARD OF TRUSTEE MEETING FACT SHEET

MISSION STATEMENT: Empower Students with the skills, knowledge, and attitudes for Success in an Ever Changing World.
DISTRICT GLOBAL GOALS
1. **Develop and continually upgrade a well articulated K-12 academic program that challenges all students to achieve their highest potential, with a special emphasis on students**
2. **Foster a safe, caring environment where individual differences are valued and respected.**
3. **Provide facilities for all district programs and functions that are suitable in terms of function, space, cleanliness and attractiveness.**
4. **Promote the involvement of the community, parents, local government, business, service organizations, etc. as partners in the education of the students.**
5. **Promote student health and nutrition in order to enhance readiness for learning.**

SUBJECT:

Approval of Facilities Lease
And Site Lease for Glen Edwards
Middle School Fire Restoration
between Landmark Construction
and WPUSD

AGENDA ITEM AREA:

Consent

REQUESTED BY:

Joyce Lopes, Assistant Superintendent

ENCLOSURES:

Yes

DEPARTMENT:

Business Services

FINANCIAL INPUT/SOURCE:

COP Funds/Insurance
Reimbursements

MEETING DATE:
May 31, 2011

ROLL CALL REQUIRED:
No

BACKGROUND:
After a Request for Qualifications for Lease-Leaseback Firms, three were selected to submit a guaranteed maximum price (GMP) for the Glen Edwards Middle School Fire Restoration project. Landmark Construction entered a complete submission that was also the lowest of the three. Traveler's Insurance has reviewed the GMP's and has also approved the submission from Landmark Construction The attached Facilities Lease and Site Lease are required documents prior to the start of construction. The guaranteed maximum price (GMP) submitted is $722,261.00.

RECOMMENDATION:
Staff requests the Board approve the attached documents and authorize the Assistant Superintendent of Business to enter into agreement with Landmark Construction for the Glen Edwards Middle School Fire Reconstruction.

SITE LEASE

By and Between

WESTERN PLACER UNIFIED SCHOOL DISTRICT
as Lessor

and

Landmark Construction
as Lessee

Dated as of June 1, 2011

SITE LEASE

4.3.1

THIS SITE LEASE (the "Site Lease") is dated as of May 19, 2009, for reference purposes only, and is made by and between the **WESTERN PLACER UNIFIED SCHOOL DISTRICT** (the "District"), a school district duly organized and validly existing under the laws of the State of California, as lessor, and **LANDMARK CONSTRUCTION.** ("Developer"), a [Type of Entity], as lessee.

RECITALS

WHEREAS, District currently owns a parcel of land located in Lincoln, California as more particularly described in Exhibit A to this Site Lease ("Site"), which Site the District has determined to be adequate to accommodate the construction of the **GLEN EDWARDS MIDDLE SCHOOL FIRE RESTORATION**; and

WHEREAS, the Board of Trustees of the District (the "Board") has determined that it is in the best interests of the District and for the common benefit of the citizens residing in the District to develop the Project by leasing the Site to Developer and by immediately entering into the Facilities Lease (as defined below) under which District will lease back the Project from Developer; and

WHEREAS, the District is authorized under Section 17406 of the Education Code of the State of California to lease the Site to Developer and to have Developer develop and cause the construction of the Project thereon and lease the Project and Site back to the District by way of the Facilities Lease, and the Board has duly authorized the execution and delivery of this Site Lease in order to effectuate the foregoing, based upon a finding that it is in the best interest of the District to do so; and

WHEREAS, Developer is authorized to lease the Site from District as lessee and to develop and cause the construction of the Project on the Site, and has duly authorized the execution and delivery of this Site Lease; and

WHEREAS, District has performed all acts, conditions and things required by law to exist, to have happened and to have been performed precedent to and in connection with the execution and entering into of this Site Lease, and those conditions precedent do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the parties hereto are now duly authorized to execute and enter into this Site Lease;

WHEREAS, Developer has had adequate opportunities to review any soils reports concerning the Site and to make its own independent investigation of the Site;

WHEREAS, the District has a substantial need for the Glen Edwards Middle School Fire Restoration to be provided by the Project under the Facilities Lease and has entered into this Site Lease and the Facilities Lease under the authority granted to District by Section 17406 of the Education Code of the State of California in order to fill that need. The option to purchase provisions contained in the Facilities Lease have been designed to enable the District to comply with all applicable federal and state requirements, including but not limited to, the requirements

and policies of the California State Office of Public School Construction and the State Allocation Board pertaining to school facilities funding and the District's expenditure of any funding for school facilities it may receive from the State Allocation Board; and

WHEREAS, the District and Developer further acknowledge and agree that they have entered into this Site Lease and the Facilities Lease pursuant to as the best available and most expeditious means for the District to satisfy its substantial need for restoration on fire damaged areas of Glen Edwards Middle School facility to accommodate and educate current and new students served by the District.

NOW, THEREFORE, in consideration of the promises and of the mutual agreements and covenants contained herein, and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto do hereby agree as follows:

ARTICLE 1
DEFINITIONS

1.1 Unless the context clearly requires otherwise, all words and phrases defined in Section 1.1 of that certain Facilities Lease dated as of June 8, 2011 by and between District and Developer (the "Facilities Lease") shall have the same meanings when used in this Site Lease.

ARTICLE 2
DEMISING CLAUSES

2.1 Lease of the Site. The District hereby leases to Developer, and Developer hereby leases from District, the Site, subject only to the Permitted Encumbrances, in accordance with the terms and provisions of this Site Lease, to have and to hold for the term of this Site Lease. This Site Lease shall only take effect if the Facilities Lease is executed by District and Developer within three (3) calendar days of execution of this Site Lease.

2.2 Rental. In consideration for the leasing of the Site by District to Developer, and for other good and valuable consideration, Developer shall pay District rent of One Dollar ($1.00) per year.

2.3 No Merger. The leasing of the Site by Developer to the District pursuant to the Facilities Lease shall not effect or result in a merger of the estates of the District in the Site, and Developer shall continue to have a leasehold estate in the Site pursuant to this Site Lease throughout the term as described hereinafter below.

ARTICLE 3
QUIET ENJOYMENT

3.1 Possession. The parties intend that the Site will be leased back to the District pursuant to the Facilities Lease for the term thereof. Subject to any rights the District may have under the Facilities Lease (in the absence of an Event of Default) to possession and enjoyment of the Site, the District hereby covenants and agrees that it will not take any action to prevent Developer from having quiet and peaceable possession and enjoyment of the Site during the term hereof and will, at the request of Developer, to the extent that it may lawfully do so, join in any legal action in which Developer asserts its right to such possession and enjoyment.

3.2 Access to Site. Prior to the acceptance of the Project by District, the District shall have the right to enter upon the Site at reasonable times for the purposes of inspection of the progress of the work on the Project and District shall comply with all safety precautions required by Developer and Developer's contractors.

3.3 District's Title. In the event District's fee title to the Site is ever challenged so as to interfere with Developer's rights to occupy, use and enjoy the Site under this Site Lease, the District will use all reasonable efforts at its disposal to obtain fee title to the Site and to defend Developer's rights to occupy, use and enjoy the Site.

ARTICLE 4
SPECIAL COVENANTS AND PROVISIONS

4.1 Waste. Developer 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 that it will not willfully or knowingly use or permit use of the Site for any illegal purpose or act.

4.2 Further Assurances and Corrective Instruments. The District and Developer agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, any such further instruments as may be reasonably required for correcting any inadequate or incorrect description of the Site hereby leased or intended so to be leased or for carrying out the expressed intention of this Site Lease and the Facilities Lease.

4.3 Right of Entry. The District reserves the right for any of its duly authorized representatives to enter upon the Site at any reasonable time to inspect the same, subject to all reasonable safety precautions required by Developer.

4.4 Representations of the District. The District represents and warrants to Developer, to the best of District's knowledge without any duty to investigate, as follows:

4.4.1 Due Organization and Existence. The District is a school district, duly organized and existing under the Constitution and laws of the State of California.

4.4.2 Title. District has good and merchantable fee title to the Site and there are no liens on the Site other than Permitted Encumbrances.

4.4.3 Authorization. The District has the full power and authority to enter into, to execute and to deliver this Site Lease, and to perform all of its duties and obligations hereunder, and has duly authorized the execution of this Site Lease.

4.4.4 No Violations. Neither the execution and delivery of this Site Lease and the Facilities Lease, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the District is now a party or by which the District is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the District, or upon the Site, except Permitted Encumbrances.

4.4.5 Taxes and Impositions. All general and special taxes, assessments or impositions of any kind with respect to the Site have been paid current and District covenants to pay any and all future taxes, assessments and impositions of any kind levied or assessed upon the Site, the improvements thereon and this Site Lease, including any possessory interest taxes imposed upon Developer as a result of this Site Lease.

4.4.6 Zoning. The Site is properly zoned for its intended purpose and utilization as a middle school site and related facilities.

4.4.7 Compliance. District is in compliance with all laws, regulations, ordinances and orders of government authorities applicable to the Site, including, but not limited to, the requirements of the California Environmental Quality Act (Public Resources Code section 21000 et seq.) ("CEQA").

4.4.8 No Litigation. District is not aware of any litigation of any kind currently pending or threatened regarding the Site or the District's use of the Site for the school purposes contemplated by this Site Lease and the Facilities Lease.

4.4.9 No Contamination. To the District's actual knowledge, the District has not received notice that: (I) the Site contains any dangerous, toxic or hazardous pollutants, contaminants, chemicals, waste, materials or substances, as defined in or governed by the provisions of any local, state or federal laws relating thereto (hereinafter collectively called "Environmental Regulations"), or that it contains any asbestos, asbestos containing materials, urea-formaldehyde, polychlorinated byphenyls, nuclear fuel or nuclear waste, radioactive materials, explosives, lead-based paint, carcinogens and petroleum products, or any other waste, material, substance, pollutant or contaminant which would subject the owner or operator of the Site to any damages, penalties or liabilities under any applicable Environmental Regulation (hereinafter collectively called "Hazardous Substances"), that 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) a threat exists of a discharge, release or emission of a Hazardous Substance upon or from the site into the environment; (iii) the Site has been used as or for a

mine, a dump or other disposal facility, industrial or manufacturing facility, or a gasoline service station; (iv) any underground storage tank is now located in the Site or has previously been located therein but has been removed therefrom; (v) any violation of any Environmental Regulation now exists relating to the Site, that there is any such violation or any alleged violation thereof has been issued or given by any governmental entity or agency, and that there is any investigation or report involving the site by any governmental entity or agency which in any way relates to Hazardous Substances; (vi) any 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 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 listed in the United States Environmental Protection Agency's National Priorities List of Hazardous Waste Sites or any other list of Hazardous Substances sites maintained by any federal, state or local governmental agency; and (ix) the Site is subject to any lien or claim of 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.

4.4.10 Abandonment. To the extent permitted by law, the District shall not abandon the Site for the school use for which it is currently intended by the District for the Term of this Site Lease and the Facilities Lease and further, the District shall not seek to substitute or acquire other property to be used as a substitute for the uses for which the Site and Project are to be maintained under the Site Lease and Facilities Lease.

4.5 Representations of Developer. Developer represents covenants and warrants to the District as follows:

4.5.1 Due Organization and Existence. Developer is a California Corporation duly organized and existing under the laws of the State of California, has the power to enter into this Site Lease and the Facilities Lease; is possessed of full power to own and hold real and personal property, and to lease and sell the same; and has duly authorized the execution and delivery of all of the aforesaid agreements.

4.5.2 Authorization. Developer has the full power and authority to enter into, to execute and to deliver this Site Lease, and to perform all of its duties and obligations hereunder, and has duly authorized the execution of this Site Lease.

4.5.3 No Violations. Neither the execution and delivery of this Site Lease and the Facilities Lease, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which Developer is now a party or by which Developer is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of Developer, or upon the Site, except Permitted Encumbrances.

4.5.4 No Bankruptcy. Developer is not now nor has it ever been in bankruptcy or receivership.

ARTICLE 5
ASSIGNMENT, SUBLEASING, MORTGAGING AND SELLING

5.1 Assignment and Subleasing. Developer shall not assign or otherwise dispose of or encumber the Site or this Site Lease without the prior written consent of District.

5.2 Restrictions on District. The District agrees that it will not mortgage, sell, encumber, assign, transfer or convey the Site or any portion thereof during the term of this Site Lease.

5.3 Liens. Developer agrees to keep the Site and every part thereof free and clear of any and all liens, including without limitation, pledges, charges, encumbrances, claims, materialmen liens, mechanic liens and other liens for or arising out of or in connection with work or labor done, services performed, or materials or appliances used or furnished for or in connection with the Site or the Project. Developer further agrees to pay promptly and fully discharge any and all claims on which any such lien may or could be based, and to save and hold harmless District from any and all such liens, mortgages, judgments and claims of liens and suits or other proceedings pertaining thereto.

ARTICLE 6
IMPROVEMENTS

6.1 Improvements. Title to all improvements made on the Site during the term of this Site Lease shall vest in Developer until conveyance to the District at the end of the Facility Lease's Term pursuant to Section 7.1, 7.2 or 7.3 below.

ARTICLE 7
TERM AND TERMINATION

7.1 Term. The term of this Site Lease shall commence as of June 8, 2011, and shall terminate at 11:59 PM on the last day of the original Term of the Facilities Lease, whereupon all improvements made on the Site during the term of this Site Lease shall vest in District, notwithstanding the fact that the Facilities Lease may have been terminated earlier due to a default of the District. Notwithstanding the foregoing, that if on the date scheduled for the expiration or termination of this Site Lease the Lease Payments and Additional Payments owing to Developer under the Facilities Lease have not been fully paid to Developer by District, then the term of this Site Lease shall be extended until the date upon which all such Lease Payments and Additional Payments shall be fully paid, and Developer shall continue to have the right of possession of the Site during such time period.

7.2 Termination Upon Purchase of Project. If the District exercises its option to purchase the Project pursuant to the Facilities Lease, then this Site Lease shall terminate concurrently with the close of escrow for District's purchase of the Project.

7.3 Termination Due to Default by Developer. If Developer defaults under Section 9.2.1 of the Facilities Lease, District shall give Developer a thirty (30) day notice to cure ("Notice to Cure"). If Developer has failed to cure the default by the end of the thirty (30) days, or, in the event of a default which will take longer to cure than thirty (30) days, and Developer fails to commence to cure prior to the expiration of the period and diligently prosecute the cure thereafter, then District may terminate the Site Lease and the Facilities Lease upon seven (7) days' written notice to Developer. If District terminates the Site Lease and the Facilities Lease pursuant to this section, the Site and any improvements built upon the Site shall vest in District, upon payment by District of any outstanding amounts owed to Developer based upon the percentage of completion of the Project at the time of termination of the Site Lease and Facilities Lease. If there is any credit owing to District by Developer based upon the percentage of completion of the Project and sums received by Developer from District by virtue of payments made for tenant improvements, Developer shall pay the amount of such credit to District within thirty (30) days of District's demand for payment. In no event shall District be obligated to pay Developer any amount in excess of the sum set forth above."

7.4 Not Used.

7.5 Termination by District.

7.5.1 Notwithstanding anything to the contrary stated elsewhere in the Lease/Lease-Back Documents, the District may terminate this Site Lease (i) for convenience at anytime (for any reason or no reason at all) upon ten (10) days' prior written notice to Developer and (ii) immediately upon the occurrence of a Default hereunder by Developer. Upon any termination of this Site Lease for convenience prior to the final completion of the Project pursuant to the Facilities Lease, the termination provisions set forth in the Facilities Lease

shall govern and control the rights and obligations of the parties, in connection with such termination. Upon any termination of this Site Lease as a result of a Default by Developer prior to the final completion of the Project, the termination provisions of the Facilities Lease shall govern the rights and obligations of the parties in connection with such termination. Upon any termination for convenience by the District or Default by Developer after the final completion of the Project, then subject to the District's offset and withholding rights set forth in the Facilities Lease, its rights to indemnity under the Lease/Lease-Back Documents, its right to damages resulting from, or to pursue its equitable remedies arising from any Developer Default hereunder or Developer Default under any of the other Lease/Lease-Back Documents, and its right to attorneys' fees, costs and expenses if it is the prevailing party in any dispute under the Lease/Lease-Back Documents, this Site Lease shall terminate and the District shall pay to Developer all amounts payable under the Lease/Lease-Back Documents (including any "Facilities Lease payments" payable under the Facilities Lease and any "Project Purchase Price" payable under the Services Agreement). Upon termination of this Site Lease for any reason, and in addition to any other obligations of Developer in connection with any such termination set forth elsewhere in the Lease/Lease-Back Documents, Developer shall be obligated to:

7.5.1.1 Quit and, subject to the terms and provisions of 7.5.1.3 below, surrender the Site in good order and condition, reasonable wear and tear excepted;

7.5.1.2 Release or reconvey to the District any liens and encumbrances created or caused by Developer or anyone claiming by, under or through Developer; and

7.5.1.3 Leave in place on the Site any and all improvements and structures existing upon the Site at the time of the termination of this Site Lease (including, without limitation, any improvements and structures constructed by Developer pursuant to the Facilities Lease) and transfer and vest title thereto to the District in accordance with the terms of Section 4.7 of the Facilities Lease.

7.5.2 If the Facilities Lease is terminated pursuant to the provision therein, this Site Lease shall immediately terminate concurrently therewith.

ARTICLE 8
MISCELLANEOUS

8.1 Binding Effect. This Site Lease shall inure to the benefit of and shall be binding upon the District, Developer and their respective successors, transferees and assigns.

8.2 Severability. In the event any provision of this Site Lease shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof, unless elimination of such invalid provision materially alters the rights and obligations embodied in this Site Lease or the Facilities Lease.

8.3 Amendments, Changes and Modifications. This Site Lease may not be effectively amended, changed, modified, or altered without the written agreement of both parties hereto.

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

8.5 Applicable Law. This Site Lease shall be governed by and construed in accordance with the laws of the State of California. The parties further agree that any action or proceeding brought to enforce the terms and conditions of this Site Lease shall be maintained in Placer County, California.

8.6 Recitals. The recitals set forth at the beginning of this Site Lease are hereby incorporated herein by reference and each party stipulates and agrees that such recitals are true and correct.

8.7 Captions. 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 or sections of this Site Lease.

8.8 Time of Essence. Time is of the essence of every portion of this Site Lease that specifies a time for performance.

8.9 Remedies. The parties shall have any and all legal and equitable remedies available under applicable California law, except that the District shall have no right to terminate this Site Lease as a remedy for default by Developer or any assignee of Developer separate and apart from a concurrent termination of the Facilities Lease due to a material breach by Developer or its assignee. The remedies of the parties under this Site Lease are cumulative and shall not exclude any other remedies to which either party may be lawfully entitled.

8.10 Notices. Any notice to either party shall be in writing and given by delivering the same to such party in person or by sending it by nationally recognized overnight delivery service for next business day delivery, such as Federal Express, or by mailing the same by certified mail, return receipt requested, with postage fully prepaid, to the following addresses:

If to District:

Western Placer Unified School District
600 6th Street, Fourth Floor
Lincoln, CA 95648
Attn: Heather Steer

4.3.10

With a copy to:

Heather Edwards
Girard & Edwards, Attorneys at Law
1121 L Street, Suite 510
Sacramento, CA 95814

If to Developer:

Joe Bittaker, President
Landmark Construction
5948 King Road
Loomis CA 95650

Any party may change its mailing address at any time by giving written notice of such change to the other party in the manner provided herein for notices. All notices under this Site Lease shall be deemed given, received, made or communicated on the date personal delivery is affected, or if mailed or sent by overnight delivery service, on the delivery date or attempted delivery date shown on the return receipt or delivery record. No party shall evade or refuse delivery of any notice.

8.11 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 Developer shall be recognized and is hereby determined to be the amount of all Lease Payments and Additional Payments then due or past due together with all remaining and succeeding installments of Lease Payments and Additional Payments for the remainder of the original Term of the Facilities Lease, as more fully stated in the Facilities Lease. The balance of the award, if any, shall be paid to the District.

8.12 Indemnification by District. The District covenants and agrees to defend, indemnify and hold Developer harmless from and against any and all losses, claims, suits, damages and expenses (including reasonable attorneys' fees and costs) arising out of any unforeseen or unforeseeable condition of the Site, including but not limited to, all costs required to be incurred by Developer as a result of any condition described in Section 4.4.9, whether or not known to District; provided, however, that the District shall not be required to indemnify Developer in the event that such liability or damage is caused by the negligent or intentional act or omission of Developer.

8.13 Indemnification by Developer. Developer covenants and agrees to defend, indemnify and hold District harmless from and against any and all losses, claims, suits, damages, and expenses (including reasonable attorneys' fees and costs) arising out of any unforeseen condition of the Site if caused by Developer, including, but not limited to, all costs required to be incurred by District as a result of any condition described in Section 4.4.9 if caused by Developer, provided, however, that Developer shall not be required to indemnify the District in the event such liability or damage is caused by the District. All liabilities under this Site Lease on the part of Developer are solely liabilities of Developer, and District

4.3.11

hereby releases each and every member, director, shareholder and officer of Developer of and from any personal liability or individual liability under this Site Lease, provided, however, that the District does not release any member, director, shareholder or officer of Developer of and from personal or individual liability arising from such person's intentional act or intentional omission. Except as otherwise provided in this section, no member, director, shareholder or officer of Developer shall at any time or under any circumstances be individually or personally liable for anything done or omitted to be done by Developer under this Site Lease.

8.14 Further Assurances and Corrective Instruments. To the extent permissible under California law and as long as there are no additional costs to the District, the District agrees that it will execute and deliver estoppel certificates, financing statements or other assurances as may be reasonably necessary or requested by Developer to carry out assignments of this Site Lease and the Facilities Lease, including without limitation, to perfect and continue any security interests herein intended to be created or to correct any inadequate or incorrect description of the Site being leased or intended to be leased.

8.15 Interpretation. It is agreed and acknowledged by the parties hereto that the provisions of its Site Lease and its exhibits have been arrived at through negotiation, and that each of the parties has had a full and fair opportunity to revise portions of this Site Lease and its exhibits and to have such provisions reviewed by legal counsel. Therefore, the normal rule of construction of documents that any ambiguities are to be resolved against the drafting party shall not apply in construing or interpreting this Site Lease and its exhibits.

8.16 Estoppel Certificates. Each party, within twenty (20) days after written notice from the other party, shall execute, acknowledge and deliver to the other party in recordable form an estoppel certificate certifying that this Site Lease is: (I) unmodified and in full force and effect, or if there have been modifications, that the same is in full force and effect as modified and stating the modifications; and (ii) stating whether or not the other party is in default in the performance of any provision of this Site Lease, and if so, specifying each such default of which the party may have knowledge. Each party shall only be required to certify the foregoing information to the extent that such information is truthful and accurate.

8.17 Lender Protection. If District receives notice from Developer's Lender (as defined below) requesting a copy of any notice of default given to Developer under this Site Lease and specifying the address for service thereof, then District shall deliver to such Lender, concurrently with service thereon to Developer, any notice being given to Developer with respect to any claim by District that Developer has committed a default or is otherwise in non-compliance with the terms of this Site Lease. Following receipt of District's notice, the Lender shall have the right, but not the obligation, to cure or remedy, on behalf of Developer, the default claimed or the areas of non-compliance set forth in the District's notice for a period of time equal to that time period provided for Developer to cure under this Site Lease. The terms "Lender" and "Developer's Lender" as used herein shall be defined as any person or entity which holds a mortgage or deed of trust or an assignment or other security interest in Developer's right, title and interest as the tenant under this Site Lease.

4.3.12

8.18 Insurance. At all times during the term of this Site Lease, Developer, the Site and Project shall be insured pursuant to, and in accordance with, the applicable terms and provisions of Articles 5 and Exhibit E to the Facilities Lease (General Construction Provisions) to the Facilities Lease.

8.19 Compliance With The Law. Developer covenants and agrees that Developer shall not use, or suffer or permit any person or persons to use, the Site or any part thereof, or any improvements thereon, for any use or purpose in violation of the laws of the United States of America, the State of California, or the ordinances, regulations or requirements of the local municipal or county governing body or other lawful authorities having jurisdiction over the Site or the Project, including, without limitation, any such laws, ordinances, regulations or requirements relating to Hazardous Materials.

8.20 Other Provisions Of The Law. Each and every provisions of law and clause required to be inserted shall be deemed to be inserted herein and the Site Lease or Facility Sublease shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted or is not currently inserted, that upon application of either party the contract shall forthwith be physically amended to make such insertion or correction.

IN WITNESS WHEREOF, the parties hereto have executed this Site Lease by their authorized officers as of the dates so indicated below.

DISTRICT:

Western Placer Unified School District,
a school district organized and existing under the laws
of the State of California

By: _____ Date: _____

_____, Superintendent

DEVELOPER:

Landmark Construction

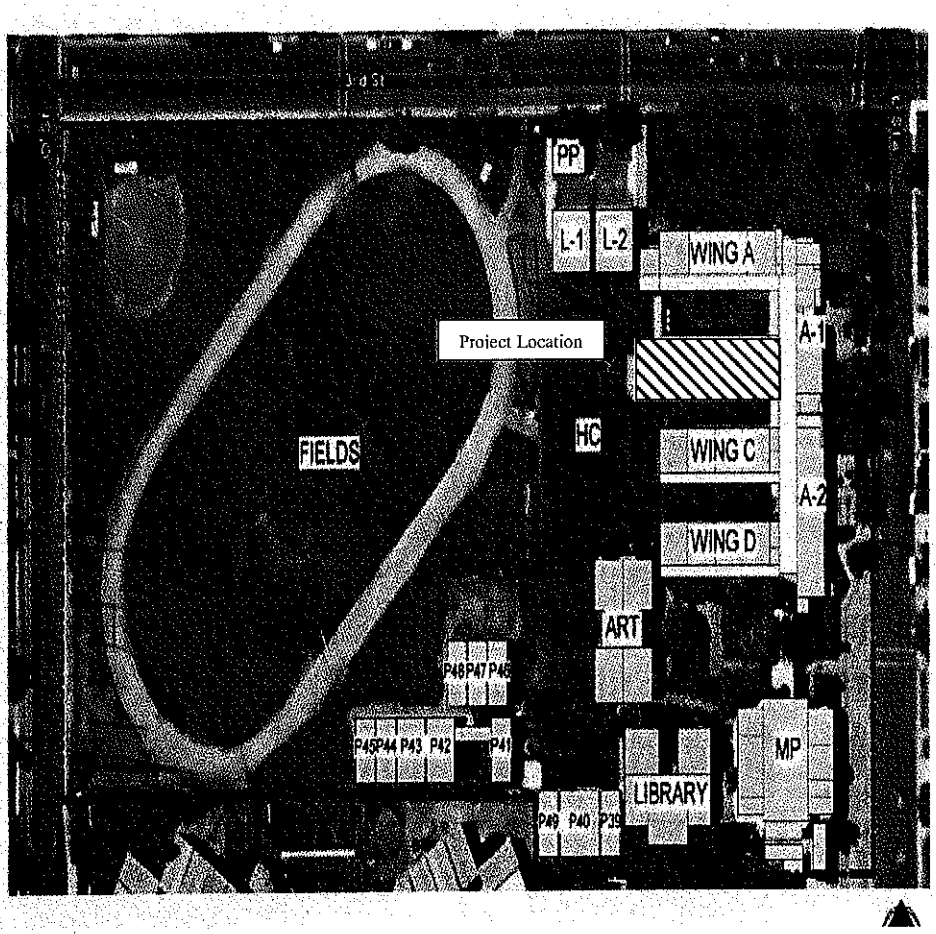
By: _____ Date: _____

Its: _____

4.3.13

EXHIBIT A

The property is known as Glen Edwards Middle School and located at 204 L Street in Lincoln, California. The campus is generally bordered by 3rd Street to the North and 1st Street to the South. The East and West borders are defined by O Street and L Street respectively. The fire damage was primarily located in Wing B of the campus, with minor damage to surrounding areas. The project location is shown pictorially below:



4.3.14

FACILITIES LEASE

GLEN EDWARDS MIDDLE SCHOOL FIRE REPAIR PROJECT
By and Between

Landmark Construction
as Lessor

and

WESTERN PLACER UNIFIED SCHOOL DISTRICT
as Lessee

Dated as of June 1, 2011

4.3.15

FACILITIES LEASE

THIS FACILITIES LEASE (the "Facilities Lease") is dated and entered into as of June 7, 2011, for reference purposes only, and is made by and Landmark Construction, as lessor ("Developer"), and the **WESTERN PLACER UNIFIED SCHOOL DISTRICT**, a school district duly organized and validly existing under the Constitution and laws of said State of California, as lessee ("District").

RECITALS

WHEREAS, the District desires to provide for the Glen Edwards Middle School Fire Reconstruction of Wing B and adjacent bathroom spaces as a result of fire damage in October 2010 and related site work at Glen Edwards Middle School as more particularly described in Exhibit A attached hereto and incorporated herein by this reference (the "Project") and has hired an architect, Rainforth Grau Architects, to prepare Construction Documents;

WHEREAS, the Construction Documents were approved by the State of California's Division of the State Architect (the "DSA") on _____;

WHEREAS, Developer has reviewed the Construction Documents;

WHEREAS, on the date hereof, the District has leased to Developer, for the development and construction of the Project, a parcel of property located in Lincoln, California, as more particularly described on Exhibit B attached hereto (the "Site") pursuant to the terms of a Site Lease dated as of the date hereof by and between the District and Developer;

WHEREAS, the District is authorized under Section 17406 of the Education Code of the State of California to lease the Site to Developer and to have Developer develop and construct the Project on the Site and to lease back to the District the Site and the Project, and has duly authorized the execution and delivery of this Facilities Lease;

WHEREAS, Developer is authorized to lease the Site as lessee and to develop the Project and to have the Project constructed on the Site and to lease the Project and the Site back to the District, and has duly authorized the execution and delivery of this Facilities Lease;

WHEREAS, the Board of Trustees of the District (the "Board") has determined that it is in the best interests of the District and for the common benefit of the citizens residing in the District to construct the Project by leasing the Site to Developer and by immediately entering into this Facilities Lease under which the District will leaseback the Site and the Project from Developer and make Tenant Improvement Payments and Lease Payments on the dates and in the amounts set forth in this Facilities Lease and in the payment schedule attached hereto as Exhibit C (the "Lease Payment Schedule");

4.3.16

WHEREAS, the parties have performed all acts, conditions and things required by law to exist, to have happened and to have been performed precedent to and in connection with the execution and entering into of this Facilities Lease and all those conditions precedent do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the parties hereto are now duly authorized to execute and enter into this Facilities Lease;

WHEREAS, the District has a substantial need for the Glen Edwards Middle School Fire Reconstruction to be provided by the Project under the Facilities Lease and has entered into the Site Lease and the Facilities Lease under the authority granted to District by Section 17406 of the Education Code of the State of California in order to fill that need. The purchase provisions contained in this Facilities Lease are designed to enable the District to comply with all applicable federal and state requirements, including but not limited to, the requirements and policies of the California State Office of Public School Construction and the State Allocation Board pertaining to school facilities funding and the District's expenditure of any funding for school facilities it may receive from the State Allocation Board; and

WHEREAS, the District and Developer further acknowledge and agree that they have entered into the Site Lease and the Facilities Lease as the best available and most expeditious means for the District to satisfy its substantial need for the Glen Edwards Middle School Fire Reconstruction to accommodate and educate current and new students served by the District; and;

WHEREAS, on May 31, 2011, the Board of Trustees approved entering into a lease/leaseback agreement with Developer.

NOW, THEREFORE, in consideration of the above recitals and of the mutual covenants hereinafter contained, the parties hereto do hereby agree as follows:

ARTICLE 1
DEFINITIONS AND EXHIBITS

ARTICLE 1.1 Definitions. Unless the context otherwise requires, the terms defined in this Section shall, for all purposes of this Facilities Lease, have the meanings herein specified.

ARTICLE 1.1.1. "Construction Documents" means the plans and specifications for the Glen Edwards Middle School Fire Reconstruction which District had prepared by Rainforth Grau Architects, and approved by the State of California's Division of the State Architect ("DSA") and reviewed by Developer. In case of any inconsistency or conflict between the Construction Documents and the Facilities Lease, the terms and conditions of the Facilities Lease shall prevail.

ARTICLE 1.1.2. "District" means the Western Placer Unified School District, a school district duly organized and existing under the laws of the State of California.

4.3.17

ARTICLE 1.1.3. "District Representative" means the Superintendent or any other person authorized by the Board of Trustees of the District to act on behalf of the District under or with respect to this Facilities Lease.

ARTICLE 1.1.4. "Event of Default" means one or more events as defined in section 9.1 of this Facilities Lease.

ARTICLE 1.1.5. "Facilities Lease" means this Facilities Lease together with any duly authorized and executed amendment hereto.

ARTICLE 1.1.6. "Lease Payment" means any payment required to be made by the District pursuant to Section 4.5 of this Facilities Lease and as set forth in Exhibit C attached to this Facilities Lease.

ARTICLE 1.1.7. "Lease Payment Schedule" shall mean the payment schedule attached hereto as Exhibit C.

ARTICLE 1.1.8. "Notice to Proceed" shall mean a written communication, signed by an authorized representative of District, directing Developer to cause commencement of the Project as provided in this Facilities Lease and which is delivered to Developer at the address provided herein.

ARTICLE 1.1.9. "Permitted Encumbrances" means, as of any particular time: (i) liens for general and valorem taxes and assessments, if any, not then delinquent, or which the District may, pursuant to provisions of Section 5.3 hereof, permit to remain unpaid; (ii) the Site lease, (iii) this Facilities Lease, (iv) 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 Facilities Lease; (v) easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions or restrictions established following the date of recordation of this Facilities Lease and to which Developer and the District consent in writing which will not impair or impede the operation of the Site; and (vi) any assignment agreement or leasehold deed of trust entered into by Developer for the purpose of obtaining financing for the development and construction of the Project to be provided by Developer for District's use pursuant to the terms of this Facilities Lease.

ARTICLE 1.1.10. "Project" means the improvements and equipment to be constructed and installed by Developer as more particularly described in Exhibit A attached hereto, and includes, unless the context requires otherwise, the Site.

ARTICLE 1.1.11. "Developer" means Landmark Construction, doing business in the State of California organized and existing under the laws of the State of California, and its successors and assigns.

ARTICLE 1.1.12. "Developer's Representative" means Joe Bittaker, President, or any person authorized to act on behalf of Developer under or with respect to this Facilities Lease as evidenced by a resolution conferring that representative with such authorization adopted by the managing members of Developer.

ARTICLE 1.1.13. "Site" means that certain parcel of real property and improvements thereon (if any) more particularly described in Exhibit B attached hereto.

ARTICLE 1.1.14. "Site Lease" means the Site Lease dated concurrent herewith by and between the District and Developer together with any duly authorized and executed amendments thereto under which the District leased the Site to Developer attached hereto as Exhibit H.

ARTICLE 1.1.15. "Term of this Facilities Lease" or "Term" means the time, commencing with District acceptance of the Project, during which the District's obligation to make the Lease Payments under this Facilities Lease is in effect, as provided for in Section 4.2 of this Facilities Lease.

ARTICLE 1.2 Exhibits. The following Exhibits are attached to and by reference incorporated and made a part of this Facilities Lease:

Exhibit A – THE PROJECT: See attached description.

Exhibit B – THE SITE: The description of the real property constituting the site.

Exhibit C – LEASE PAYMENT SCHEDULE: The schedule of Lease Payments to be paid by the District hereunder. See Article 3.4

Exhibit D – CONSTRUCTION SERVICES AGREEMENT

Exhibit E – GENERAL CONSTRUCTION PROVISIONS: For Glen Edwards Middle School Fire Reconstruction Project for the Western Placer Unified School District, Lincoln, Placer County, California consisting of the General Conditions, Special conditions, and Supplemental Conditions.

Exhibit F – MEMORANDUM OF COMMENCEMENT DATE: The Memorandum which will memorialize the commencement and expiration dates of the Term.

Exhibit G – GUARANTEED MAXIMUM PRICE-VALUE ENGINEERING WORKSHEET

Exhibit H – SITE LEASE

4.3.19

ARTICLE 2
REPRESENTATIONS, COVENANTS AND WARRANTIES

ARTICLE 2.1 Representations, Covenants and Warranties of the District. The District represents, covenants and warrants to Developer to the best of District's knowledge, without any duty to investigate, as follows:

ARTICLE 2.1.1. Due Organization and Existence. The District is a school district, duly organized and existing under the Constitution and laws of the State of California.

ARTICLE 2.1.2. Authorization. The District has the full power and authority to enter into, to execute and to deliver this Facilities Lease, and to perform all of its duties and obligations hereunder, and has duly authorized the execution of this Facilities Lease. The representatives of District executing this Facilities Lease and the Site Lease are fully authorized to execute the same.

ARTICLE 2.1.3. No Violations. Neither the execution and delivery of this Facilities Lease nor of the Site Lease, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach or default (with due notice or the passage of time, or both) under the organizational instruments of the District or any applicable law or administrative rule or regulation, or any applicable court or administrative decree or order, or a breach of any of the terms, conditions or provisions of any restriction or any agreement or instrument to which the District is now a party or by which the District is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the District, or upon the Site, except Permitted Encumbrances.

ARTICLE 2.1.4. Abandonment. To the extent permitted by law, the District shall not abandon the Project for the school use for which it is currently intended by the District during the Term of this Facilities Lease and further, shall not seek to substitute, lease or acquire other property to be used as a substitute for the uses to which the Project is to be maintained under this Facilities Lease during the Term of this Facilities Lease.

ARTICLE 2.1.5. No Litigation. There is no pending or, to the knowledge of District, threatened action or proceeding before any court or federal, state, municipal, or other government authority or administrative agency which will materially adversely affect the ability of District to perform its obligations under this Facilities Lease.

ARTICLE 2.1.6. Additional Consents Not Required. No consent or approval of any trustee or holder of any indebtedness of the District or of the voters of the District, and no consent, permission, authorization, order or license, or filing or registration with any governmental authority is necessary in connection with the execution and delivery of the Site Lease and this Facilities Lease or the consummation of any transaction herein and

4.3.20

therein contemplated, except as have been obtained or made, and as are in full force and effect.

ARTICLE 2.1.7. CEQA Compliance. The District has complied with all requirements imposed upon it by the California Environmental Quality Act (Public Resources Code Section 21000 et seq.)("CEQA") in connection with the Project, and no further environmental review of the Project is necessary pursuant to CEQA before construction of the Project may commence by Developer. Any mitigation measure required of the developer in satisfaction of any CEQA requirement is shown on the plans and specifications prepared by Rainforth Grau Architects.

ARTICLE 2.1.8. Architect Insurance. District represents and warrants that it has required the Architect to carry and maintain separate errors and omissions insurance coverage for the Project.

ARTICLE 2.1.9. Condemnation Proceedings. District covenants and agrees, but only to the extent that it may lawfully do so, that so long as this Facilities Lease remains in effect, the District will not seek to exercise the power of eminent domain with respect to the Project so as to cause a full or partial termination of this Facilities Lease. If for any reason the foregoing covenant is determined to be unenforceable or in some way invalid, or if District should fail or refuse to abide by such covenant, then, to the extent it may lawfully do so, District agrees that the appraised value of the Project shall not be less than the present value of the total amount of all Lease Payments for the remainder of the original Term of this Facilities Lease, plus any Additional Payments then remaining unpaid.

ARTICLE 2.2. Representations, Covenants and Warranties of Developer. Developer represents, covenants and warrants to District as follows:

ARTICLE 2.2.1. Due Organization and Existence. Developer is doing business in the State of California duly organized and existing under the laws of the State of California, has the power to enter into this Facilities Lease and the Site Lease; is possessed of full power to own, rent and hold real and personal property, and to lease and sell the same; and has duly authorized the execution and delivery of all of the aforesaid agreements.

ARTICLE 2.2.2. Authorization. Developer has the full power and authority to enter into, to execute and to deliver this Facilities Lease, and to perform all of its duties and obligations hereunder, and has duly authorized the execution of this Facilities Lease.

ARTICLE 2.2.3. No Violations. Neither the execution and delivery of this Facilities Lease and the Site Lease, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which Developer is now a party or by which Developer is bound, or constitutes a default under any of the foregoing, or results in the creation or

imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of Developer or the Site, except the Permitted Encumbrances.

ARTICLE 2.2.4. No Litigation. There is no pending or, to the knowledge of Developer, threatened action or proceeding before any court or administrative agency which will materially adversely affect the ability of Developer to perform its obligations under this Facilities Lease.

ARTICLE 2.2.5. No Encumbrances. Developer shall not pledge the Lease Payments or other amounts derived from the Site and from its other rights under this Facilities Lease, and shall not mortgage or encumber the Site, except as allowed under the provisions of the Facilities Lease and/or the Site Lease to finance construction of the project.

ARTICLE 2.2.6. Continued Existence. For up to twelve months following completion of the Project, Developer shall not voluntarily commence any act intended to dissolve or terminate the legal existence of Developer, provided District is not in uncured default under this Facilities Lease. Developer shall give District sixty (60) days written notice prior to dissolving or terminating the legal existence of Developer.

ARTICLE 3
CONSTRUCTION OF PROJECT

ARTICLE 3.1 Site Conditions and Construction Documents. Developer acknowledges that Developer has investigated the Site, and concluded that there are no currently known problems with respect to the site conditions.

ARTICLE 3.2 Construction of Project. Developer agrees to cause the Project to be developed, constructed, and installed in accordance with the terms hereof and the Construction Documents set forth in Exhibit D and the General Construction Provisions set forth in Exhibit E, including those things reasonably inferable from the Construction Documents as being within the scope of the Project and necessary to produce the stated result even though no mention is made in the Construction Documents. Developer shall cause construction of the Project to commence within five (5) days after receiving from District a written Notice to Proceed. Developer further agrees that it will cause the development, construction, and installation of the Project to be diligently performed. The District and Developer may also approve additional changes in the Construction Documents for the Project as provided in Exhibit D. District and Developer will cooperate at all times in bringing about the timely completion of the Project. Developer shall cooperate with the District's efforts to obtain State funding for the Project by complying with any State requirements as reasonably requested by District, including without limitation Section 1859.104 to 1859.106 of Title 2 of the California Code of Regulations, however, District shall be responsible for reimbursing Developer for any costs reasonably incurred by Developer, and approved in advance by District, associated with meeting those State funding requirements.

ARTICLE 3.3 Guaranteed Maximum Price. Developer will cause the Project to be constructed within the Guaranteed Maximum Price specified in Exhibit G as set forth and defined in the General Construction Provisions in Exhibit E and Exhibit D, the Construction Services Agreement. Developer will not seek additional compensation from District beyond the Tenant Improvement Payments, Modifications approved by the parties (as defined in Article 40 of Exhibit E hereto) or the Lease Payments and Additional Payments pursuant to this Facilities Lease. If the Division of the State Architect or other governmental agency having jurisdiction requires changes to the Construction Documents submitted by District, and such changes would increase the construction costs for the Project, then such increased costs will be provided as a Modification pursuant to Exhibit E.

A Construction Contingency for the benefit of the Developer is included in the Developer's Cost Breakdown Schedule attached as Exhibit G. The Construction Contingency may be drawn upon only to cover unforeseen costs and other unforeseen matters. Any savings to the GMP achieved by the Developer shall be returned to the Construction Contingency. Any balance remaining in the Construction Contingency at the end of the Project shall be returned to the District

All proposed Construction Contingency draws must be approved prior to payment by the District, and shall be supported by detailed Developer estimates or job cost records, including full documentation of the labor, material, equipment and subcontractor costs involved. The timing and processing of approval of requested Construction Contingency draws shall be the same as the timing of the approval of the Developer's application for normal progress payments.

Should the amount of the Construction Contingency be exceeded, the unfunded costs shall be borne by the Developer without increase to the total cost under the GMP.

When submitting the monthly request for payment, Contractor shall notify District of any savings to the GMP that occurred during that month so that such amount may be added to the contingency amount.

ARTICLE 3.4 Tenant Improvement Payments. District agrees to make the following

Tenant Improvement Payments

Tenant Improvement Payments shall not exceed estimates of the value of work completed which shall be prepared by Developer on a form approved by District and certified by Architect and the District's Project Inspector (as defined in Exhibit E hereto), and any other approved representative of the District, and filed before the fifth day of the month during which payment is to be made. Work completed as estimated shall be an estimate only and no inaccuracy or error in said estimate shall release Developer or any surety from responsibility for the satisfactory performance of such work or from enforcing each and every provision of the General Construction Provisions. District shall have the right subsequently to correct any error made in any estimate for payment. Developer shall not be entitled to have any payment estimates processed or be entitled to have any payment made for work performed so long as the District or any of the public agencies with jurisdiction has not accepted or waived compliance with any lawful or proper direction concerning non-complying

4.3.23

work or any portion thereof. District may withhold from the Tenant Improvement Payments One Hundred Fifty Percent (150%) of the estimated value of non-complying work as determined by the District unless corrected or remedied to the District's reasonable satisfaction. In regard to the payment schedule above referenced, to the extent a Tentative Improvement Payment is made that is less than the stated amount, then the balance may be added to the next scheduled Tentative Improvement Payment.

Payments for Tenant Improvements and retention on such payments shall be as set forth in Section 38, Payments and Retention, of Exhibit E.

Failure of District to make any Tenant Improvement Payments as set forth shall be a Default under this Facilities Lease unless otherwise excused by the terms of this Facilities Lease and shall entitle Developer to those remedies as referenced in Article 9.2.3.

ARTICLE 4
AGREEMENT TO LEASE; TERMINATION OF LEASE; LEASE PAYMENTS; TITLE TO THE SITE

ARTICLE 4.1 Lease of Project and Site; No Merger. Developer hereby leases the Project and the Site to the District, and the District hereby leases said Project and Site from Developer upon the terms and conditions set forth in this Facilities Lease. The leasing by Developer to the District of the Site shall not affect or result in a merger of the District's leasehold estate pursuant to this Facilities Lease and its fee estate as lessor under the Site Lease, and Developer shall continue to have and hold a leasehold estate in said Site pursuant to the Site Lease throughout the term thereof and the term of this Facilities Lease. As to the Site, this Facilities Lease shall be deemed and constitute a sublease.

ARTICLE 4.2 Term of Facilities Lease. The Term of this Facilities Lease for the purposes of District's obligation to make Lease Payments shall commence when Developer delivers possession of the Project to District with all improvements to be provided by Developer completed as set forth in Exhibits D and E (the "Commencement Date"), and shall terminate SIX (6) MONTHS later (the "Term") unless otherwise required by Education Code Section 17406 or applicable regulations. Developer and District shall execute the Memorandum of Commencement Date attached hereto as Exhibit F to memorialize the commencement and expiration dates of the Term.

ARTICLE 4.3 Termination of Term. The Term of this Facilities Lease shall terminate upon the earliest of any of the following events:

ARTICLE 4.3.1. An Event of Default by District and Developer's election to terminate this Facilities Lease pursuant to Section 9.2 hereof, or

ARTICLE 4.3.2. The arrival of the last day of the Term of this Facilities Lease and payment of all Lease Payments hereunder; provided, however, that if on the scheduled date for expiration of this Facilities Lease the Lease Payments and additional Payments shall not

have been fully paid by District, then the Term of this Facilities Lease and Site Lease shall be extended until the date upon which all such Lease Payments and Additional Payments shall be fully paid, notwithstanding anything to the contrary in this Facilities Lease and the Site Lease.

ARTICLE 4.3.3. Consummation of the District's Purchase pursuant to Section 10.1 below.

ARTICLE 4.4 Possession. The District may take possession of the Project hereunder upon completion and delivery by Developer upon completion of the Project, the District shall accept possession of the Project by Board action, which shall be evidenced by a Notice of Completion that shall be filed with the County Clerk at District's expense. District shall not unreasonably withhold, delay or condition the preparation and issuance of the Notice of Completion. In no event shall the District's obligation to make Lease Payments commence before District acceptance of the Project.

ARTICLE 4.5 Lease Payments.

ARTICLE 4.5.1. Obligation to Pay. Subject to the provisions of Articles 3, 6 and 10 hereof, the District agrees to pay to Developer, its successors and assigns, as rental for the use and occupancy of the Project and the Site, without deduction or setoff, except as provided for in Section 6.2.5 of this Facilities Lease, six (6) monthly Lease Payments commencing with the Commencement Date, during the Term in the amounts specified in the Lease Payment Schedule attached hereto as Exhibit C and incorporated herein by reference. Lease Payments shall be payable in arrears on the last day of each calendar month.

ARTICLE 4.5.2. Lease Payments to Constitute Current Expense of the District. The District and Developer understand and intend that the obligation of the District to pay Lease Payments and other payments, including, but not limited to, Tenant Improvement Payments and/or Additional Payments, hereunder constitute a current expense of the District and shall not in any way be construed to be a debt of the District in contravention of any applicable constitutional or statutory limitation or requirement concerning the creation of indebtedness by the District, nor shall anything contained herein constitute a pledge of the general tax revenues, funds or moneys of the District. Lease Payments due hereunder shall be payable only from current funds which are budgeted and appropriated or otherwise made legally available for such purpose. This Facilities Lease shall not create an immediate indebtedness for any aggregate payments which may become due hereunder. The District covenants to take all necessary actions to include the estimated Lease Payments and estimated Additional Payments due hereunder (as hereinafter defined) in each of its final approved annual budgets. The District shall notify Developer not later than July 1 in each year during the Term of this Facilities Lease of the amount of the Lease Payments and Additional Payments which are to be included in the final budget of the District for the next ensuing fiscal year of the District, and Developer shall have the right to review and approve the amount so included in such budget. The District further covenants to make all necessary appropriations (including any supplemental appropriations) from any source of

legally available funds of the District for the actual amount of Lease Payments and Additional Payments which come due and payable during the period covered by each such budget. Developer acknowledges that the District has not pledged the full faith and credit of the District, State of California or any state agency or state department to the payment of Lease Payments or any other payments due hereunder. The covenants on the part of District contained in this Facilities Lease constitute duties imposed by law and it shall be the duty of each and every public official of the District to take such action and do such things as are required by law in the performance of the official duty of such officials to enable the District to carry out and perform the covenants and agreements in this Facilities Lease agreed or be carried out and performed by the District. District shall comply with state laws in regards to the source and manner of payment; failure to so comply however will not result in any liability or additional obligation of Developer.

ARTICLE 4.6 Quiet Enjoyment. Upon completion of the Project's construction and its delivery by Developer to District for occupancy, Developer shall thereafter provide the District with quiet use and enjoyment of the Project, and the District shall during such Term peaceably and quietly have and hold and enjoy the Project, without suit, trouble or hindrance from Developer, except as otherwise may be set forth in this Facilities Lease. Developer will, at the request of the District and at Developer's cost, join in any legal action in which the District asserts its right to such possession and enjoyment to the extent Developer may lawfully do so. Notwithstanding the foregoing, Developer shall have the right to inspect the Project and the Site as provided in Section 7.1 hereof.

ARTICLE 4.7 Title. During the Term of this Facilities Lease, the District shall hold fee title to the Site and Developer shall hold title to the Project and any and all improvements thereto provided by Developer including, without limitation, fixtures, repairs, replacements or modifications thereof. During the Term of this Facilities Lease, Developer shall have a leasehold interest in the Site pursuant to the Site Lease.

Once the District pays all Lease Payments during the Term of this Facilities Lease pursuant to Article 4.5.1, all right, title and interest of Developer, its assigns and successors in interest in and to the Project and the Site shall be transferred to and vested in the District. Title shall be transferred to and vested in the District hereunder without the necessity for any further instrument of transfer; provided, however, that Developer agrees to execute any instrument requested by District to memorialize such termination of this Facilities Lease and transfer of title to the Project.

ARTICLE 4.8 Fair Rental Value. The Lease Payments and Additional Payments coming due and payable during each month of the Term constitute the total rental for the Project and shall be paid by the District in arrears on the last day of each month for and in consideration of the right to use and occupy, and the continued quiet use and enjoyment of, the Project during each month. District and Developer have agreed and determined that the total Lease Payments and Additional Payments do not exceed the fair rental value of the Project. In making such determination, consideration has been given to the obligations of the parties under the Facilities Lease and Site Lease, the uses and purposes which may be served by the Project, and the benefits therefrom which will accrue to the District and the general public.

4.3.26

ARTICLE 4.9 Additional Payments. In consideration of the lease of the Project by Developer to the District hereunder, the District shall pay the Lease Payments and shall also pay the following without deduction or offset, except as provide for in Section 6.2.5 of this Facilities Lease, all of which shall constitute additional rent (collectively the "Additional Payments") owing under this Facilities Lease:

(a) Fees, expenses and other amounts, if any, which may be payable by District to Developer under any of the provisions of Exhibits D and E to this Facilities Lease relating to the construction of the Project with the exclusion of Modifications;

(b) Any costs, fees and expenses, if any, incurred by Developer in connection with Section 5.3 of this Facilities Lease.

ARTICLE 4.10 Rate on Overdue Payments. If the District fails to make any of the payments required in this Facilities Lease when due, the payment in default will continue as an obligation of the District until the amount in default has been fully paid, and the District agrees to pay the same with interest thereon, to the extent permitted by law, from the date the payment was due to the date the payment is made. Interest shall be at the rate of 7 percent (7%) per annum, or the maximum legal rate of interest then allowed under California law, whichever is less.

ARTICLE 4.11 No Waiver By District. Nothing contained herein shall be deemed a waiver by the District of any rights that it may have to bring a separate action with respect to any default by Developer hereunder or under any other agreement to recover the costs and expenses, including attorneys' fees, associated with such separate action. The District covenants and agrees that it will remain obligated under this Facilities Lease in accordance with its terms, and following completion of the Project, that the District will not take any action to terminate, rescind or avoid this Facilities Lease, notwithstanding the bankruptcy, insolvency, reorganization, composition, readjustment, liquidation, dissolution, winding-up or other proceeding affecting Developer or any assignee of Developer in any such proceeding, and notwithstanding any action with respect to this Facilities Lease which may be taken by any trustee or receiver of Developer or of any assignee of Developer in any such proceeding or by any court in any such proceeding. Following completion of the Project, except as otherwise expressly provided in this Facilities Lease, District waives all rights now or hereafter conferred by law to quit, terminate or surrender this Facilities Lease or the Project or any part thereof.

ARTICLE 5
MAINTENANCE; TAXES; INSURANCE AND OTHER MATTERS

ARTICLE 5.1 Maintenance. Following delivery of possession of the Project by Developer to District, the repair, improvement, replacement and maintenance of the Project and the Site shall be at the sole cost and expense and the sole responsibility of the District, subject only to all warranties against defects in materials and workmanship provided in Exhibits D and E hereto, and the District shall pay for or otherwise arrange for the payment of the cost of the repair and replacement of the Project resulting from ordinary wear and tear. The District waives the benefits of subsections 1 and

2 of Section 1932 of the California Civil Code, but such waiver shall not limit any of the rights of the District under the terms of this Facilities Lease.

ARTICLE 5.2 Utilities. Following delivery of possession of the Project by Developer to District, the cost and expenses for all utility services, including, but not limited to, electricity, natural gas, telephone, water, sewer, trash removal, cable television, janitorial service, security, heating, water, Internet service and all other utilities of any type shall be paid by District.

ARTICLE 5.3 Taxes and Other Impositions. All ad valorem real property taxes, special taxes, possessory interest taxes, bonds and special lien assessments or other impositions of any kind with respect to the Project, the Site and the improvements thereon, charged to or imposed upon either Developer or the District or their respective interests or estates in the Project, shall at all times be paid by District. In the event any possessory interest tax is levied on Developer, its successors and assigns, by virtue of this Facilities Lease or the Site Lease, District shall pay such possessory interest tax directly, if possible, or shall reimburse Developer, its successors and assigns for the full amount thereof within thirty (30) days after presentation of proof of payment by Developer.

ARTICLE 5.4 Property Damage Insurance. District shall at all times from and after District's acceptance of the Project, carry and maintain in force a policy of property insurance, with coverage at least as broad as the ISO Basic Causes of Loss policy for 100% of the insurable replacement value with no coinsurance penalty, on the Site and the Project, together with all improvements thereon, under a standard "all risk" contract insuring against loss or damage by fire, lightning, vandalism, malicious mischief, earthquake, flood and any other reasonably foreseeable risks and hazards as Developer may deem necessary, including those ordinarily defined as "extended coverage", such insurance to include replacement cost endorsements. Developer shall be named as additional insured or co-insured thereon by way of endorsement. District shall not be relieved from the obligation of supplying any additional funds for replacement of the Project and the improvements thereon in the event of destruction or damage where insurance does not cover replacement costs. District shall have the right to procure the required insurance through a joint powers agency or to self-insure against such losses or portion thereof as is deemed prudent by District, upon providing a certificate of self insurance reasonably acceptable to Developer.

ARTICLE 5.5 Liability Insurance. After completion of the Project, District shall at all times during the Term of this Facilities Lease carry and maintain in force a policy of Commercial General Liability Insurance, including contractual liability, with coverage at least as broad as the most commonly available ISO Commercial General Liability policy or an equivalent program of self-insurance, in protection of the District and of Developer and its respective members, officers, directors, shareholders, agents, employees and assigns as additional insureds. Such insurance shall provide for indemnification of said parties against direct or contingent loss or liability for damages for bodily injury and personal injury, death or property damage occasioned by reason of the use and operation of the Project. Such insurance must provide coverage with minimum limits as follows:

Each Occurrence	$2,000,000
Products/Completed Operations Aggregate	$2,000,000

Personal and Advertising Injury	$1,000,000
General Aggregate	$2,000,000

If such insurance or self-insurance is written on a claims-made form, then following termination of this Facilities Lease, coverage shall be maintained for a period of not less than three (3) years. Coverage shall provide for a retroactive date of placement coinciding with the commencement of the Term of this Facilities Lease. One hundred percent (100%) of the above limits shall remain available at all times. If any of the limits has been paid or reserved, Developer may require additional coverage to be purchased by District to restore the required limits. The above insurance shall contain a Severability of Interest clause providing that the coverage applies separately to each insured, except with respect to limits of liability. Developer shall be named as additional insured on all such policies by way of endorsement. Any excess policy shall follow the form of the primary policy and include a drop down endorsement in event of aggregate exhaustion. If the District self-insures for the above required insurance coverage, it shall provide Developer with a certificate of self insurance with a fully funded reserve reasonably acceptable to Developer. Developer acknowledges that District may obtain insurance through a joint powers agency formed for the purpose of providing insurance to public agencies.

ARTICLE 5.6 [Reserved]

ARTICLE 5.7 Cancellations or Change of Coverage. District agrees that the insurance coverages required above in Sections 5.4 and 5.5 shall be in effect at all times after acceptance of the Project by District. After District's acceptance of the Project, all insurance required to be carried by District shall be primary. Insurance required in Sections 5.4 and 5.5 shall not be canceled or changed so as to no longer meet the specified insurance requirements without thirty (30) days' prior written notice of such cancellation or change being delivered to Developer. New certificates of insurance are subject to the approval of Developer. If District fails to maintain any insurance required of District under this Facilities Lease, Developer may take out such insurance of the required types and coverages. The cost of such required insurance shall be chargeable to District, and District shall reimburse Developer for the cost thereof within ten (10) days of receipt of an invoice therefore.

ARTICLE 5.8 Waiver of Subrogation. Developer and District each hereby waive any right of recovery and/or subrogation against the other due to loss of, or damage to, the property of either Developer or District, whether or not such perils have been insured, self-insured or are non-insured, and shall cause their respective insurance carriers to include such a waiver of subrogation in all applicable policies.

ARTICLE 5.9 Indemnification. District shall indemnify, defend and hold harmless Developer, its successors and assigns, their officers, members, agents and employees from and against any claims, damages, costs, expenses, including reasonable attorneys' fees, and liabilities arising from all negligent or intentional acts or omissions of District or its officers, agents, or employees with respect to District's use, operation, repair, alteration and occupancy of the Project and the performance of District's obligations herein. Developer shall indemnify, defend and hold harmless District, its officers, agents and employees from and against any claims, damages, costs, expenses,

including reasonable attorneys' fees, and liabilities arising from the negligent or intentional acts or omissions of Developer or its officers, agents, employees, contractors or subcontractors with respect to Developer's obligations in this Facilities Lease, including without limitation the General Construction Provisions.

ARTICLE 5.10 Not Used

ARTICLE 5.11 Insurance Proceeds; Form of Policies. Each policy of insurance required by Sections 5.4 and 5.5 must name Developer as a loss payee so as to provide that all proceeds thereunder are payable to the District (and to Developer for rental interruption insurance proceeds) and shall be utilized for the reconstruction of the Project and the payment of Lease Payments, as applicable. The District shall pay or cause to be paid when due the premiums for all insurance policies required by this Facilities Lease. Developer is not responsible for the sufficiency of any insurance herein required. Any insurance not provided through a policy of commercial insurance, with the exception of any insurance provided through a joint powers agency, shall be considered self-insurance and shall be subject to the consent of Developer, which shall not be unreasonably withheld.

ARTICLE 5.12 Modification of Project. The District has the right, at its expense, to make additions, modifications and improvements to the Project, provided, however, that during the one (1) year warranty period which will be provided by Developer's general contractor on defects in materials and workmanship for the Project following the Project's completion, the District shall first provide plans and specifications and obtain Developer's prior written consent to any additions, modifications and improvements to the Project which are not minor modifications. Developer agrees not to unreasonably withhold, delay or condition approval of the District's plans for any proposed additions, modifications and improvements. All additions, modifications and improvements to the project will thereafter comprise part of the Project and be subject to the provisions of this Facilities Lease. Such additions, modifications and improvements may not in any way damage the Project or cause the Project to be used for purposes other than those authorized under the provisions of State and federal law, and the District must file with Developer a written certificate stating that the Project, upon the completion of any additions, modifications and improvements made thereto has a value which is not substantially less than the value of the Project immediately prior to the making of any such additions, improvements and modifications. The District will not permit any mechanic's or other lien to be established or remain established against the Project for labor or materials furnished in connection with any remodeling, additions, modifications, improvements, repairs, renewals or replacements made by the District. If any such lien is established and the District first notifies Developer of the District's intention to do so, the District may in good faith contest any lien filed or established against the Project, and in such event may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom and shall provide Developer with full security (which may be provided in the form of a bond) against any loss or forfeiture which might arise from the nonpayment of any such item, in form and amount satisfactory to Developer. Developer will cooperate in any such contest upon the request and at the expense of the District. Notwithstanding anything to the contrary, District shall have the right, without Developer's consent, to place

relocatables or portables upon the Site, along with incidental site work, and such relocatables and portables shall not become part of the Project and shall remain the personal property of the District.

ARTICLE 5.13 Advances. If the District fails to perform any of its obligations under this Article 5, Developer may, but is not obligated to, after complying with the notice provision set forth in Section 9.1.4 of this Facilities Lease, take such action as may be necessary to cure such failure, including the advancement of money, and in such event the District shall be obligated to repay all such advances as soon as possible, with interest at the legal rate. Any such advances shall be considered to be costs and expenses owing to Developer as Additional Payments hereunder.

ARTICLE 5.14 Compliance with Laws, Regulations.

ARTICLE 5.14.1 The District has, after due inquiry, no knowledge and has not given or received any written notice indicating that the Site or the past or present use thereof or any practice, procedure or policy employed by it in the conduct of its business materially violates any applicable law, regulation, code, order, rule, judgment or consent agreement, including, without limitation, those relating to zoning, building, use and occupancy, fire safety, health, sanitation, air pollution, ecological matters, environmental protection, hazardous or toxic materials, substances or wastes, conservation, parking, architectural barriers to the handicapped, or restrictive covenants or other agreements affecting title to the Site (collectively "Laws and Regulations"). Without limiting the generality of the foregoing, neither the District nor to the best of its knowledge, after due inquiry, any prior or present owner, tenant or subtenant of the Site has, other than as set forth in this Section or as may have been remediated in accordance with Laws and Regulations, (i) used, treated, stored, transported or disposed of any material amount of flammable explosives, polychlorinated biphenyl compounds, heavy metals, chlorinated solvents, cyanide, radon, petroleum products, asbestos or any asbestos containing materials, methane, radioactive materials, pollutants, hazardous materials, hazardous wastes, hazardous, toxic or regulated substances or related materials, hazardous wastes, hazardous, toxic, or regulated substances as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), the Resource Conservation and Recovery act of 1976 ("RCRA"), the Clean Water Act of 1971("CWA"), the Clean Air Act of 1977 ("CAA"), the Toxic Substances Control Act of 1976 ("TSCA"), as they all have been or may be amended, and the regulations promulgated pursuant thereto, and in all other environmental regulations applicable to the District, the Site, or the operations conducted by the District thereon (collectively "Hazardous Materials") on, from or beneath the Site, (ii) pumped, spilled, leaked, disposed of, emptied, discharged or released (hereinafter collectively referred to as "Release") any material amount of Hazardous Materials on, from or beneath the Site, or (iii) stored any material amount of petroleum products at the Site in underground storage tanks.

ARTICLE 5.14.2. Excluded from the representations and warranties in subsection 5.14.1 above with respect to Hazardous Materials are those Hazardous Materials in those amounts ordinarily found in the inventory of, or used in the maintenance of, school buildings and facilities, the use, treatment, storage, transportation and disposal of which has been and shall be in compliance with all Laws and Regulations.

ARTICLE 5.14.3. The District has not received any notice from any insurance company which has issued a policy with respect to the Site or from the applicable state or local government agency responsible for insurance standards (or any other body exercising similar functions) requiring the performance of any repairs, alterations or other work, which repairs, alterations or other work have not been completed at the Site. The District has not received any notice of default or breach which has not been cured under any covenant, condition, restriction, right-of-way, reciprocal easement agreement, or other easement affecting the Site which is to be performed or complied with by it.

ARTICLE 5.15 Environmental Compliance by District.

ARTICLE 5.15.1. The District shall not use or permit the Project or the Site, or any part thereof, to be used to generate, manufacture, refine, treat, store, handle, transport or dispose of, transfer, produce or process Hazardous Materials, except, and only to the extent, if necessary to maintain the improvements at the Project and then, only in compliance with all Environmental Regulations, and any equivalent state laws and regulations, nor shall it permit, as a result of any intentional or unintentional act or omission on its part or by any tenant, subtenant, licensee, guest, invitee, contractor, employee and agent, the storage, transportation, disposal or use of Hazardous Materials or the Release or threat of Release of Hazardous Materials on, from or beneath the Project or onto any other property excluding, however, those Hazardous Materials in those amounts ordinarily found in the inventory of schools and school facilities, the use, storage, treatment, transportation and disposal of which shall be in compliance with all Environmental Regulations. Upon the occurrence of any release or threat of Release of Hazardous Materials, the District shall promptly commence and perform, or cause to be commenced and performed promptly, without cost to Developer, all investigations, studies, sampling and testing, and all remedial, removal and other actions necessary to clean up and remove all Hazardous Materials so released, on, from or beneath the Site and Project or other property, in compliance with all Environmental Regulations. Notwithstanding anything to the contrary contained herein, underground storage tanks shall only be permitted subject to compliance with subsection 5.15.4 below and only to the extent necessary to maintain the improvements at the Project.

ARTICLE 5.15.2. The District covenants that it shall use its best efforts to cause all tenants, subtenants, licensees, guests, invitees, contractors, employees and agents at the Project to comply with all Environmental Regulations, and shall keep the Project free and clear of any liens imposed pursuant to the Environmental Regulations; provided, however, that any such liens, if not discharged, may be bonded. The District shall cause each tenant under any lease to use its best efforts to cause all of such tenant's subtenants, agents, licensees, employees, contractors, guests and invitees to comply with all Environmental Regulations with respect to the Project; provided, however, that notwithstanding that a portion of this covenant is limited to the use of best efforts, the District shall remain solely responsible for ensuring such compliance and such limitation shall not diminish or affect in any way the District's obligations contained in subsection 5.15.3 below. Upon receipt of any notice from any person with regard to the Release of Hazardous Materials on, from or

beneath the project, the District shall give prompt written notice thereof to Developer prior to the expiration of any period in which to respond to such notice under any Environmental Regulations.

ARTICLE 5.15.3. The District shall, to the extent permitted by law, defend, indemnify and hold harmless Developer and any lender of Developer and their officers, members, managers, directors, trustees, successors and assigns from and against any claims, demands, penalties, fines, attorneys' fees (including attorneys' fees incurred to enforce this indemnification), consultants' fees, investigation and laboratory fees, liabilities and settlements, court costs, damages, losses, costs or expenses of whatever kind or nature, known or unknown, contingent or otherwise, occurring in whole or in part, arising out of, or in any way related to: (i) the presence, disposal, Release, threat of Release, removal, discharge, storage or transportation of any Hazardous Materials on, from or beneath the Project; (ii) any bodily injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Materials; (iii) any lawsuit brought or threatened, settlements or governmental orders relating to any Hazardous Materials on, from, or beneath the Project; (iv) any violation of Environmental Regulations by District or any of its agents, tenants, employees, contractors, licensees, guests, subtenants or invitees; and (v) the imposition of any governmental lien for the recovery of environmental cleanup or removal costs. To the extent the District is strictly liable under any Environmental Regulations, its obligation to Developer under the foregoing indemnification shall likewise be without regard to fault on its part with respect to the violation of any Environmental Regulation which results in liability to any indemnity.

ARTICLE 5.15.4. The District shall conform to and carry out a reasonable program of maintenance and inspection of all underground storage tanks, if any, and shall maintain, repair, and replace such tanks only in accordance with Laws and regulations, including but not limited to the Environmental Regulations.

ARTICLE 6
EMINENT DOMAIN; DAMAGE AND DESTRUCTION

ARTICLE 6.1 Eminent Domain.

ARTICLE 6.1.1. Total Taking. If, after completion of the Project, all of the Project and the Site shall be taken permanently under the power of eminent domain, the Term of this Facilities Lease shall cease as of the day possession shall be so taken. Developer shall receive an amount from the eminent domain award equal to the present value of the total of all remaining Lease Payments and Additional Payments for the remainder of the original term of this Facilities Lease, and District shall be entitled to the remaining proceeds, if any. For example, if all of the Project and the Site is taken at the end of the of the Term, Developer shall be entitled to receive from the eminent domain award the sum of all Lease Payments which would have been owing for the remainder of the Term had there been no

taking, plus any Additional Payments then owing, and the District would be entitled to the remainder of the eminent domain award.

ARTICLE 6.1.2. Partial Taking. If, after completion of the Project, less than all of the Project and the Site shall be taken permanently, or if all of the Project and the Site or any part thereof shall be taken temporarily, under the power of eminent domain, (1) this Facilities Lease shall continue in full force and effect and shall not be terminated by virtue of such taking and the parties waive the benefit of any law to the contrary, and (2) there shall be a partial abatement of Lease Payments as a result of the application of the net proceeds of any eminent domain award to the prepayment of the Lease Payments hereunder, and Developer shall receive an amount from the proceeds equal to the Purchase Price set forth in Section 10 multiplied by the rent abatement percentage, with the product thereof being further multiplied by a fraction, the numerator of which is the number of months remaining in the term of this Facilities Lease and the denominator of which is 6, and the District shall be entitled to the remaining proceeds of the award for the partial or temporary taking. The term "rent abatement percentage" as used above shall be the square footage of the Project so partially or temporarily taken compared to the square footage of the entire Project. For example, if 10% of the square footage of the Project were taken when there were 2 months left in the Term, Developer would be entitled to receive 10% of the Purchase Option Price multiplied by 2/6, with the District entitled to retain any remaining amount of the award for the partial taking. In the unlikely event there is a partial or temporary taking during the first six months of the Term, the dollar amount of the Purchase Option Price used for this calculation shall be deemed to be the sum of the entire remaining Lease Payments following the date of such taking, without any adjustment being made in the dollar amount of the Lease Payments, rather than the actual dollar amount of the Purchase Price set forth in Section 10.

ARTICLE 6.2. Damage and Destruction. If, after completion of the Project, the Project is totally or partially destroyed due to fire, acts of vandalism, flood, storm, earthquake, Acts of God, or other casualty beyond the control of either party hereto, the Lease Payments shall abate during the time that the Project or a portion of the Project is unusable for District's use. Developer and District agree that the obligation to repair or replace the Project shall be in accordance with the following provisions:

ARTICLE 6.2.1. Escrow. Any proceeds payable to Developer and District from property insurance policies shall be immediately deposited in an escrow (the "Escrow") to be designated by Developer. Developer and District shall provide escrow instructions consistent with this Section 6.2.

ARTICLE 6.2.2. Total Destruction. In the event that ninety percent (90%) or more of the Project is destroyed or damaged (a "Total Destruction"), then District, at District's option, may elect to terminate this Facilities Lease and the Site Lease, and shall use the insurance proceeds to pay an amount to Developer equal to Developer's costs including overhead and allocated profit, provided such does not exceed the maximum cost as referenced herein as of the date of destruction, with any remaining insurance proceeds to be

retained by District. In the alternative, District may elect to continue with the Facilities Lease in effect and have the Project rebuilt utilizing the insurance proceeds, which shall be exclusively used for that purpose. Developer shall have no obligation to contribute funds for the rebuilding of the Project should the cost of rebuilding exceed the insurance proceeds. Anything less than a Total Destruction of the Project shall be deemed a "Partial Damage or Destruction."

ARTICLE 6.2.3. Partial Damage or Destruction. In the event that the Project is partially damaged or destroyed, District shall repair or have repaired the Project utilizing the proceeds from insurance which were deposited into the Escrow. If District fails or refuses to repair or reconstruct as provided herein, then Developer shall have the right to repair and restore the Project, in which case Developer shall be entitled to a disbursement of the funds in the Escrow up to the amount of Developer's costs, including overhead for the repair or reconstruction, and allocated profit, and District shall pay Developer any excess amounts needed to pay the costs of repair or reconstruction. In the event the costs of repair or reconstruction do not exceed the amount held in the Escrow, the remaining funds shall be released to District.

ARTICLE 6.2.4. Deductibles; Self Insurance. Where any loss is covered by insurance required by this Facilities Lease which contains provisions for any deductible amount. District shall contribute to the cost of rebuilding any such deductible amount or the amount of any self-insurance maintained by District.

ARTICLE 6.2.5. Rent Abatement. If damage or destruction results in a loss of use of the Project, the Lease Payments shall abate to the extent such damage or destruction has resulted in a loss of use. The amount of abatement shall be a pro rata portion of the Lease Payment based upon the percentage of the square footage unavailable for occupancy in proportion to the total square footage of the Project. Notwithstanding the foregoing, to the extent that the proceeds of rental interruption insurance are available to pay the amount of any Lease Payments which would otherwise be due, it is hereby agreed that such proceeds constitute special funds for the payment of such Lease Payments.

ARTICLE 6.2.6. Personal Property. Any insurance proceeds payable to District for losses to personal property contents within the Project shall be for the exclusive use of District, and may be utilized in whatever manner District, in its sole discretion, may designate.

ARTICLE 7
ACCESS; DISCLAIMER OF WARRANTIES

ARTICLE 7.1 By Developer. Developer shall have the right at all reasonable times to enter upon the Site to construct the Project pursuant to this Facilities Lease. Following the acceptance of the Project by District, Developer may enter the Project at reasonable times with advance notice and arrangement with District for purposes of making any repairs required to be made by Developer

and for purposes of inspection to ascertain whether District is satisfying its obligation to maintain and repair the Project as required by this Facilities Lease, and to show the Project to any lender.

ARTICLE 7.2 By District. Prior to the acceptance of the Project by District, the District shall have the right to enter upon the Site at reasonable times for the purposes of inspection of the progress of the work on the Project and District shall comply with all safety precautions required by Developer and Developer's contractors. Following the acceptance of the Project by District, the District shall thereafter have the right at all times to enter upon the Site for the purposes of this Facilities Lease, so long as this Facilities Lease is in full force and effect and District is not in Default (as defined below in Article 9).

ARTICLE 7.3 Disclaimer of Warranties. District acknowledges that Developer is not a manufacturer of any portion of the Project or a dealer therein, and that the District is leasing the Project "AS IS". District further acknowledges that Developer makes no other warranties except as specifically set forth in this Facilities Lease or in Exhibit "E" hereto. Developer covenants and agrees that it shall cause its General Contractor to provide an express warranty against defects in materials and workmanship for a one year period following District's acceptance of the Project, unless otherwise provided in Exhibit "E", and that Developer hereby assigns all rights under said warranty to District. In addition, Developer agrees to use its best efforts to assist District in enforcing said warranty. In the event that assignment of the warranty is not effective or valid or the General Contractor fails to honor the warranty, Developer shall take all reasonable steps to enforce the warranty against the Contractor and District shall cooperate fully with Developer with respect to any proceeding or action brought to enforce such warranty.

ARTICLE 8
ASSIGNMENT, SUBLEASING; AMENDMENT

ARTICLE 8.1 Assignment and Subleasing by the District. This Facilities Lease may not be assigned by the District. Any sublease by District shall be subject to all of the following conditions:

ARTICLE 8.1.1. This Facilities Lease and the obligation of the District to make Lease Payments hereunder shall remain obligations of the District; and

ARTICLE 8.1.2. The District shall, within thirty (30) days after the delivery thereof, furnish or cause to be furnished to Developer a true and complete copy of such sublease; and

ARTICLE 8.1.3. No such sublease by the District shall cause the Project or the Site to be used for a purpose other than a governmental or proprietary function authorized under the provisions of the Constitution and laws of the State of California.

ARTICLE 8.2 Amendment of this Facilities Lease. Without the written agreement of the parties, neither party will alter or modify, or agree or consent to alter or modify this Facilities Lease.

ARTICLE 8.3 Assignment by Developer. Developer may assign its right, title and interest in this Facilities Lease, in whole or in part to one or more assignees with the written consent of District, such consent not to be unreasonably withheld, delayed or conditioned. No assignment shall be effective against the District unless and until the District has consented in writing. Notwithstanding anything to contrary contained in this Facilities Lease, no consent from the District shall be required in connection with any assignment by Developer to a lender for purposes of financing the Project so long as there are no additional costs to the District.

ARTICLE 9
EVENTS OF DEFAULT AND REMEDIES

ARTICLE 9.1 Events of Default by District Defined. The following shall be "Events of Default" under this Facilities Lease and the terms "Event of Default" and "Default" shall mean, whenever they are used in this Facilities Lease, any one or more of the following events:

ARTICLE 9.1.1. Failure by the District to make Tenant Improvement Payments required by this Facilities Lease at the times and in the amounts set forth in this Facilities Lease.

ARTICLE 9.1.2. Failure by the District to pay any Lease Payment required to be paid hereunder at the time specified herein.

ARTICLE 9.1.3. Failure by the District to pay any Additional Payment or other payment when due and payable hereunder, and the continuation of such failure for a period of fifteen (15) days.

ARTICLE 9.1.4. Failure by the District to observe and perform any covenant, condition or agreement in this Facilities Lease on its part to be observed or performed, other than as referred to in subsections 9.1.1 or 9.1.2, for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied has been given to the District by Developer; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, Developer shall not unreasonably withhold its consent to an extension of such time if corrective action is instituted by the District within the applicable period and diligently pursued until the default is corrected.

ARTICLE 9.1.5. The filing by the District of a voluntary petition in bankruptcy, or failure by the District promptly to lift any execution, garnishment or attachment, or adjudication of the District as a bankrupt, or an assignment by the District for the benefit of creditors, or the entry by the District into an agreement of composition with creditors, or the approval by a court of competent jurisdiction of a petition applicable to the District in any proceedings instituted under the provisions of the Federal Bankruptcy Code, as amended, or under any similar acts which may hereafter be enacted.

ARTICLE 9.2 Default and Remedies.

ARTICLE 9.2.1. Defaults.

ARTICLE 9.2.1.1. If Developer breaches any terms of this Agreement, District shall provide written notice of such Default and Developer shall have ten (10) days thereafter to cure such Default before District may elect to exercise remedies under paragraph 9.2.2 below.

ARTICLE 9.2.1.2. If District fails or refuses to make payments required hereunder when due, or otherwise materially breaches any terms of this Agreement, Developer shall provide written notice of such Default and District shall have ten (10) days thereafter to make any required payment or thirty (30) days thereafter to cure any non-monetary Default before Developer may elect to exercise remedies under paragraph 9.2.3 below.

ARTICLE 9.2.2. District's Remedies. In case of an event of Default by Developer under paragraph 9.2.1 without the same having been timely cured, District may terminate this Agreement in writing and (except as otherwise set forth herein) shall have no further obligation to Developer under this Agreement and shall be entitled to exercise any remedy available to District at law or in equity, including, without limitation, an action for specific performance (which specific performance right shall include, among other things, the right to require Developer to assign its interest, to the extent necessary, in any plans and specifications, construction documents, construction contracts, warranties, bonds, guarantees, contractor's payment and performance bond, architect contracts, consulting agreements and any other document or instrument necessary or appropriate to complete construction of the school improvements (collectively, the "Completion Documents") and/or an action for damages.

In addition to and not in lieu of any other remedies available to District at law or in equity, in case of an event of Default by Developer under this Agreement, Developer and District hereby agree that District shall have the right at any time following such event of default by Developer, to elect not to have Developer complete the school improvements. Within ten (10) business days following such election by District, Developer and District shall execute all documents and take all actions as required by this Agreement in connection with such election, including, without limitation, Developer assigning its interest in any Construction Documents. Notwithstanding the foregoing sentence, if Developer satisfies its obligations under the foregoing sentence, any final payments owed to Developer by District under this Agreement shall be paid by District in accordance with the timing and procedures set forth elsewhere in this Agreement. These provisions shall survive the termination of this Agreement. Under all circumstances, the school improvements will be conveyed to District in an lien free condition subject to no monetary liens whatsoever, other than a lien for real property taxes and assessments not yet delinquent. Upon such election by District, Developer shall have no rights to use the school or any associate improvements.

In the event that the completion of the school improvements does not occur on or prior to the Completion Date or any mutually agreed to written extension of the Completion Date, due to any reason whatsoever other than a Default by District, in addition to, and not in lieu of any other remedies afforded to District under this Agreement, the Development Price shall be reduced on a per diem basis in the amount of $ 250.00 per day of delay beyond the Completion Date. The damages set forth in this subparagraph are in addition to, and not in lieu of, any other remedies available to District.

ARTICLE 9.2.3. Developer's Remedies.

ARTICLE 9.2.3.1. Not Used.

ARTICLE 9.2.3.2. District and Developer agree that in the case of District's uncured Default, the actual damages, including, without limitation, any attorneys' fees, lost profits and opportunity costs, due to District's default hereunder would be extremely difficult to measure and that all of Developer's reasonable, unpaid, actual, documented out of pocket costs, including overhead costs incurred by Developer in connection with performance of its obligations under this Agreement pursuant to the Construction Documents, as well as allocated profit through the date of such Default ("Construction Funds") is a reasonable estimate of such damages. District shall within thirty (30) days after receipt of written demand therefore and of appropriate supporting documentation evidencing the Construction Funds, deliver to Developer the Construction Funds as Liquidated Damages and as Developer's sole right to damages or other relief.

In no event shall Developer pursue District for speculative damages, consequential damages, or specific performance.

ARTICLE 9.2.3.3. Developer's Remedies are also subject to the provisions of Sections 70 and 71 of the General Construction Provision attached hereto as Exhibit E.

Developer and District further acknowledge that they have read and understand the foregoing provisions of paragraphs 9.2.2 and 9.2.3 and by their signatures immediately below agree to be bound by its terms.

LANDMARK CONSTRUCTION	**WESTERN PLACER UNIFIED SCHOOL DISTRICT**
Developer	
By:_____	By:_____

Its:_____ Its:_____

Date: _____ Date: _____

ARTICLE 9.3 Agreement to Pay Attorneys' Fees and Expenses. In the event either party to this Facilities Lease should default under any of the provisions hereof, and the non-defaulting party should employ attorneys or incur other expenses for the collection of moneys or the enforcement or performance or observance of any obligation or agreement on the part of the defaulting party herein contained, the defaulting party agrees that it will on demand therefore pay to the non-defaulting party the reasonable fees of such attorneys and such other expenses so incurred by the non-defaulting party, including attorneys' fees and expenses incurred for any appeals. In the event of any legal proceedings brought to interpret or enforce the provisions or obligations of this Facilities Lease, the prevailing party therein shall be entitled to an award of its reasonable costs and attorneys' fees.

ARTICLE 9.4 No Additional Waiver Implied by One Waiver. In the event any agreement contained in this Facilities Lease should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

ARTICLE 9.5 Event of Default by Developer. The following shall be considered a default by Developer under the Facilities Lease: (1) Developer unreasonably refuses or fails to prosecute the work on the Project with such reasonable diligence as will accomplish its completion within the time specified or any extension thereof, or unreasonably fails to complete said work within such time; (2) prior to completion of Project, Developer should be adjudged a bankrupt, or file for bankruptcy or if it should make a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of its insolvency; (3) Developer persistently disregards Applicable Law as defined in the General Construction Provisions, or otherwise be in violation of the General Construction Provisions. In the event of a default by Developer which remains uncured for a period of thirty (30) days after District has given written notice specifying the failure and requesting that it be remedied, District may, without prejudice to any other right or remedy, terminate the Site Lease and Facilities Lease pursuant to Section 7.3 of the Site Lease.

ARTICLE 9.6 Termination.

ARTICLE 9.6.1. Notwithstanding anything to the contrary stated or implied in the Lease/Lease-Back Documents, the District may terminate this Facilities Lease (i) for convenience at any time (for any reason or no reason at all) upon ten (10) days' prior written notice to Developer or (ii) immediately upon the occurrence of a Default hereunder by Developer. Upon any termination of this Facilities Lease for convenience prior to the final completion of the Project, the termination provisions set forth in this Facilities Lease shall govern and control the rights and obligations of, the parties in connection with such termination. Upon any termination of this Facilities Lease as a result of a Default by

Developer prior to the final completion of the Project, the termination provisions set forth in the Site Lease shall govern and control the rights and of the parties in connection with such termination. Upon any termination for convenience of the District or Default by Developer after the final completion of the Project, then subject to all rights of the District at all law or in equity not limited herein, this Facilities Lease shall terminate and the District shall pay to Developer all amounts payable under the Lease/Lease-Back Documents, (including any Tenant Improvement Payments, Lease Payments and the Purchase Price payable under this Facilities Lease.

ARTICLE 9.6.2. Not used.

ARTICLE 9.6.3. Notwithstanding anything elsewhere in the Lease/Lease-Back Documents to the contrary, if any of the Lease/Lease-Back Documents is terminated, the remaining Lease/Lease-Back Documents shall automatically terminate concurrently therewith.

ARTICLE 9.6.4. Notwithstanding any provision herein to the contrary the parties hereto may mutually agree to terminate this Agreement. In such case, Developer shall be entitled to recover actual and overhead costs incurred to date as well as allocated profit.

ARTICLE 10
PURCHASE BY DISTRICT

ARTICLE 10.1 District's Purchase. If the District is not then in uncured Default hereunder, the District shall purchase not less than all of the Project in its "as-is, where-is" condition and terminate this Facilities Lease and the Site Lease within six (6) months after the commencement date and shall pay to Developer a purchase price of $1.00, plus all sums then due under the Site Lease and this Facilities Lease, plus applicable interest, if any. Upon payment as aforesaid, Developer shall deliver to District all reasonably necessary documents in recordable form to terminate this Facilities Lease and the Site Lease. District may record all such documents at District's cost and expense. All warranties provided for in this Facilities Lease and the General Construction Provisions, Exhibit E, shall not be modified by this provision.

ARTICLE 11
MISCELLANEOUS

ARTICLE 11.1 Notices. Any notice to either party shall be in writing and given by delivering the same to such party in person, or by sending the same by registered or certified mail, return receipt requested, with postage prepaid, or by delivering any notice by nationally recognized overnight delivery service (such as Federal Express) for next business day delivery, to the following addresses:

If to the District:

Western Placer Unified School District
600 6th Street, Fourth Floor
Lincoln, CA 95648
Attention: Heather Steer

With a copy to:

Heather M. Edwards
Girard & Edwards, Attorneys at Law
1121 L Street, Suite 510
Sacramento, CA 95814

If to Developer:

Joe Bittaker, President
Landmark Construction
5948 King Road
Loomis CA 95650

Any party may change its mailing address at any time by giving written notice of such change to the other parties in the manner provided therein. All notices under this Facilities Lease shall be deemed given, received, made or communicated on the date personal delivery is affected, or if mailed or sent by overnight delivery service, on the delivery date or attempted delivery date shown in the return receipt. No party shall refuse or evade delivery of any notice.

ARTICLE 11.2 Binding Effect. This Facilities Lease shall inure to the benefit of and shall be binding upon Developer and the District and their respective successors, transferees and assigns.

ARTICLE 11.3 Severability. In the event any provision of this Facilities Lease shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof, unless elimination of such invalid provision materially alters the rights and obligations embodied in this Facilities Lease or the Site Lease.

ARTICLE 11.4 Net-Net-Net Lease. This Facilities Lease shall be deemed and construed to be a "net-net-net lease" and the District hereby agrees that the Lease Payments shall be an absolute net return to Developer, free and clear of any expenses, charges or set-offs whatsoever. District covenants to make all Lease Payments without any set-off, counterclaim, suspension or deduction.

ARTICLE 11.5 Further Assurances and Corrective Instruments. Developer and the District agree that they will, from time to time, execute, acknowledge and deliver, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Site or the Project hereby leased or intended to be leased.

ARTICLE 11.6 Execution in Counterparts. This Facilities Lease may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

ARTICLE 11.7 Applicable Law. This Facilities Lease shall be governed by and construed in accordance with the laws of the State of California. The parties further agree that any action of proceeding brought to enforce the terms and conditions of this Facilities Lease shall be maintained in Placer County, California.

ARTICLE 11.8 Compliance With The Law. Developer and District covenant and agrees that they shall not use, or suffer or permit any person or persons to use, the Site or any part thereof, or any improvements thereon, for any use or purpose in violation of the laws of the United States of America, the State of California, or the ordinances, regulations or requirements of the local municipal or county governing body or other lawful authorities having jurisdiction over the Site or the Project, including, without limitation, any such laws, ordinances, regulations or requirements relating to Hazardous Materials.

ARTICLE 11.9 Other Provisions Of The Law. Each and every provision of law and clause related to such required to be inserted shall be deemed to be inserted herein and the Site Lease or Facility Lease shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted or is not currently inserted, that upon application of either party the contract shall forthwith be physically amended to make such insertion or correction.

ARTICLE 11.10 Developer and District Representatives. Whenever under the provisions of this Facilities Lease the approval of Developer or the District is required, or Developer or the District is required to take some action at the request of the other, such approval or such request shall be given for Developer by Developer's Representative and for the District by the District's Representative, and any party hereto shall be authorized to rely upon any such approval or request.

ARTICLE 11.11 Captions. The captions or headings in this Facilities Lease are for convenience only and in no way define, limit or describe the scope or intent of any provisions or Sections of this Facilities Lease.

ARTICLE 11.12 Interpretations. It is agreed and acknowledged by District and Developer that the provisions of this Facilities Lease and its Exhibits have been arrived at through negotiation, and that each of the parties has had a full and fair opportunity to revise portions of this Facilities Lease and its Exhibits and to have such provisions reviewed by legal counsel. Therefore, the normal rule of construction that any ambiguities are to be resolved against the drafting party shall not apply in construing or interpreting this Facilities Lease and its Exhibits.

ARTICLE 11.13 Time. Time is of the essence of each and all of the terms and provisions of this Facilities Lease and its Exhibits.

ARTICLE 11.14 Force Majeure. A party shall be excused from the performance of any obligation imposed in this Facilities Lease and the exhibits hereto for any period and to the extent that a party is prevented from performing such obligation, in whole or in part, as a result of delays caused by the other party or third parties, a governmental agency or entity, an act of God, war, terrorism, civil disturbance, forces of nature, fire, flood, earthquake, strikes or lockouts, and such nonperformance will not be a default hereunder or a grounds for termination of this Facilities Lease.

ARTICLE 11.15 Estoppel Certificates. Each party, within twenty (20) days after written notice from the other party, shall execute, acknowledge and deliver to the other party in recordable form an estoppel certificate certifying that this Facilities Lease is: (i) unmodified and in full force and effect, or if there have been modifications, that the same is in full force and effect as modified and stating the modifications; (ii) the amount of the Lease Payments and any Additional Payments then owing but currently unpaid; and (iii) stating whether or not the other party is in default in the performance of any provision of this Facilities Lease, and if so, specifying each such default of which the party may have knowledge. Each party shall only be required to certify the foregoing information to the extent that such information is truthful and accurate.

ARTICLE 11.16 Recitals Incorporated. The Recitals set forth at the beginning of this Facilities Lease are hereby incorporated into its terms and provisions by this reference.

ARTICLE 11.17 Lender Protection. If District receives notice from Developer's Lender (as defined below) requesting a copy of any notice of default given to Developer under this Facilities Lease and specifying the address for service thereof, then District shall deliver to such Lender, concurrently with service thereon to Developer, any notice being given to Developer with respect to any claim by District that Developer has committed a default or is otherwise in non-compliance with the terms of this Facilities Lease. Following receipt of District's notice, the Lender shall have the right, but not the obligation, to cure or remedy, on behalf of Developer, the default claimed or the areas of non-compliance set forth in the District's notice for a period of time equal to that time period provided for Developer to cure under this Facilities Lease. The terms "Lender" and "Developer's Lender" as used herein shall be defined as any person or entity which holds a mortgage or deed of trust or an assignment or other security interest in Developer's right, title and interest as the lessor under this Facilities Lease.

IN WITNESS WHEREOF, the parties hereto have caused this Facilities Lease to be executed by their respective duly authorized officers, to be effective as of the day and year first written above.

WESTERN PLACER UNIFIED SCHOOL DISTRICT,
a school district organized and existing under the laws of the State of California

By: _____ Date: _____
Superintendent

LANDMARK CONSTRUCTION

By: _____ Date: _____

Its: _____

Approved as to Form:

_____
Legal Counsel to District

END OF DOCUMENT

EXHIBIT "A"

THE PROJECT

The complete plans and specifications for Glen Edwards Middle School Fire Reconstruction shall be the full scope of The Project.

The Project shall be within the area designated as "Wing B" at Glen Edwards Middle School and be inclusive of the following components:

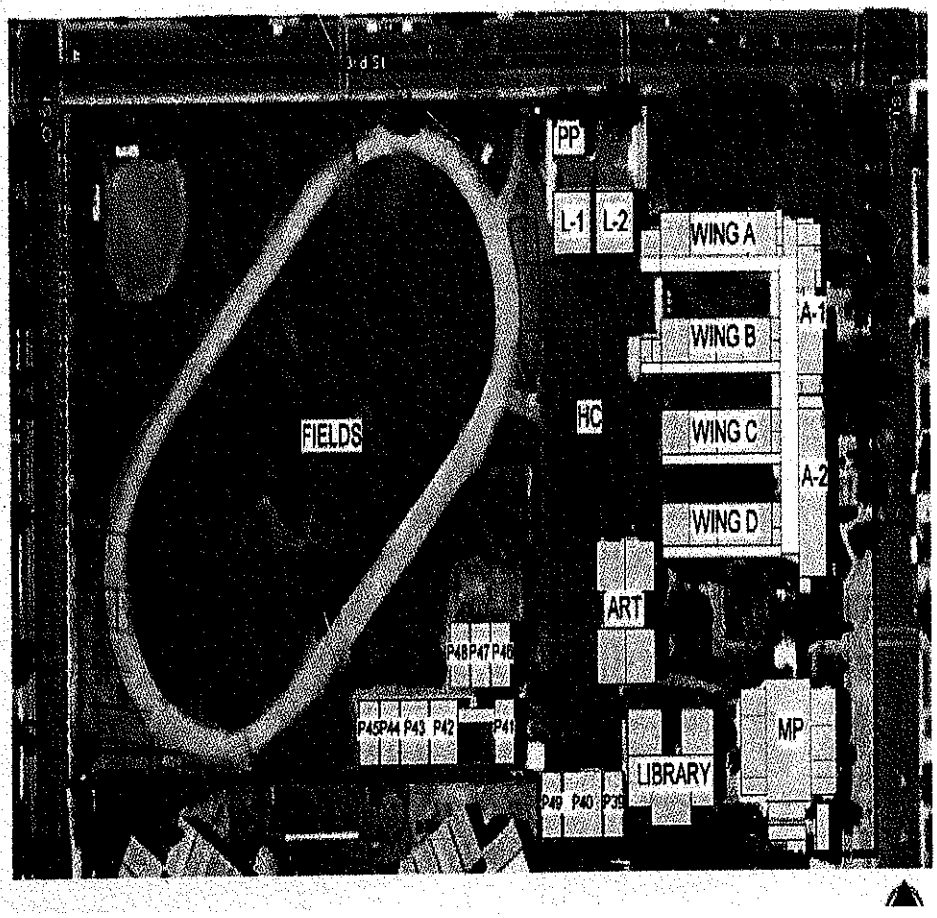
- Demolition and Reconstruction of interior and exterior of facilities and related areas
- All ADA compliance upgrades and code requirements inclusive of ADA parking area and path of travel
- Reconfiguration of Room 8 in Wing B to Science Wet Lab, and all work related

4.3.46

EXHIBIT B
PROPERTY DESCRIPTION AND LOCATION

Glen Edwards Middle School
Fire Restoration

Glen Edwards Fire Restoration will take place in the general area of Wing B and other required areas on the Glen Edwards Middle School site, located at 204 L Street in Lincoln, CA. The campus is generally bordered by 3rd Street to the North and 1st Street to the South. The East and West borders are defined by O Street and L Street respectively.



4.3.47

EXHIBIT C
TENANT IMPROVEMENT AND LEASE PAYMENT SCHEDULE

Tenant Improvement payments shall be made as monthly improvement payments and are based on the approved progress of work related to the schedule of values. An approved payment will contain the signatures of the contractor, architect, owner and the inspector of record.

Lease Payments shall begin upon project completion and shall consist of $1.00 per month for a period not to exceed six (6) months, payable in one (1) payment.

4.3.48

EXHIBIT D

Number 14 **WESTERN PLACER UNIFIED SCHOOL DISTRICT**
GENERAL CONSTRUCTION AGREEMENT

THIS contract (hereinafter called "AGREEMENT") is made on June 1, 2011 by and between the Western Placer Unified School District, a political subdivision of the State of California, hereinafter called the "District", and Landmark Construction, hereinafter called "Developer".

District and Contractor, for valuable consideration, hereby agree as follows:

1. THE CONTRACT DOCUMENTS: The Contract Documents consist of this General Construction Agreement and the following documents incorporated herein by this reference:

General Conditions (No. 3)
Subcontractor List (No. 7)
Employment Certification (No. 10)
Certification of Adherence to Dress/Deportment Policy (No. 12)
Asbestos / Lead-Based Paint Certification (No. 13)
General Construction Agreement (No. 14)
Payment Bond to Accompany Construction Agreement (No. 15)
Performance Bond to Accompany Construction Agreement (No. 16)
Escrow Agreement for Security in lieu of Retention (No. 17)
Developer's Workmanship and Materials Guarantee (No. 18)
Developer's Certification Regarding Worker's Compensation (No. 19)
Fingerprint/Criminal Background Certification (No. 20)
Acknowledgement of Child Support Compliance (No. 21)
Special Conditions (No. 22)
Facilities Lease dated August 15, 2009
Site Lease dated August 15, 2009

Any and all obligations of the District and the Developer are fully set forth and described therein.

All of the above documents are intended to cooperate so that any work called for in one and not mentioned in the other or vice versa is to be executed the same as if mentioned in all documents. The documents comprising the complete contract are sometimes referred to as the Contract Documents. In case of conflict between the plans and specifications on the one hand, and remaining contract documents on the other, the document shall be read and interpreted as a whole, and in a manner to give effect to the intent of the District and the Architect in the original design and construction scheme. If there is any conflict between General Conditions and Supplementary Conditions, the Supplementary Conditions shall govern. If there is conflict between the engineer's and architect's interpretations, the architect's interpretations shall govern. If there is any conflict between the plans and the specifications, the Developer will bring the conflict to the attention of the Architect/District, and the Architect in consultation with the District shall resolve the conflict, and the contractor shall follow the Architect/District's instructions.

2. THE WORK. Developer agrees to furnish all tools, equipment, apparatus, facilities, labor, transportation and material necessary to perform and complete in a good and workmanlike manner, the project as described as the Glen Edwards Middle School Fire Reconstruction as called for, and in the manner designated in, and in strict conformity with, the Plans and Specifications prepared Rainforth Grau Architects, 2407 J Street, Suite 202, Sacramento, California, which said Plans and Specifications are entitled, respectively, Glen Edwards Middle School Fire Reconstruction and which Plans and Specifications are identified by the signatures of the parties to this Agreement. It is understood and agreed that said tools, equipment, apparatus, facilities, labor, transportation, and material shall be furnished and said work performed and completed as required in said Plans and Specifications under the sole direction and control of the Developer, and subject to inspection and approval of the District, or its representatives. The District hereby designates as its representative for the purpose of this Agreement the following named person: Heather Steer.

3. GUARANTEED MAXIMUM PRICE: The District agrees to pay and the Developer agrees to accept, in full payment for the work above agreed to be done, the sum of $722,261.00 subject to any District requested change orders and further detailed in Exhibit G.

4. PREVAILING WAGE LAW AND LABOR COMPLIANCE REQUIREMENTS: The District operates a third party Initially Approved Labor Compliance Program. All contractors and subcontractors will comply with this Labor Compliance Program and the requirements of California Labor Code sections 1720-186, more particularly described in the General Conditions.

5. GOVERNING TERMS AND CONDITIONS: The documents identified in paragraph 1 above, constitute the entire Agreement between the District and Developer. Developer's performance, rights and obligations hereunder are governed by all contract documents and significant obligations and rights as set forth in the General Conditions and Supplemental Conditions, if any. By executing this Agreement, Developer acknowledges he has read and reviewed **all** of the contract documents including the General Conditions and Supplemental Conditions, if any, and that he is fully aware and understands the contents of the contract documents.

District:
Western Placer Unified School District
600 6th Street, Suite 400
Lincoln, CA 95648

Developer:
Landmark Construction
5948 King Road
Loomis CA 95650

IN WITNESS WHEREOF, identical counterparts of this Agreement, each of which shall for all purposes be deemed an original thereof, have been duly executed by the parties hereinabove named, on the day and year first herein written.

DISTRICT:

By _____
(Signature)

_____
(Title)

_____
(Date)

DEVELOPER:

_____
(Signature)

_____
(Title)

_____
(Date)

For _____
(Corporation or Partnership)

If corporation, seal below.

EXHIBIT E

WESTERN PLACER UNIFIED SCHOOL DISTRICT
GENERAL CONSTRUCTION PROVISIONS

GENERAL CONDITIONS, SPECIAL CONDITIONS, SUPPLEMENTAL CONDITIONS

GENERAL CONDITIONS

TABLE OF CONTENTS

Number 3 **GENERAL CONDITIONS**

1. ACCIDENT PREVENTION: Precaution shall be exercised at all times for the protection of persons (including employees) and property. The safety provisions of applicable laws, building and construction codes shall be observed. Machinery and equipment shall be guarded and other hazards shall be eliminated in accordance with the safety provisions of the Construction Safety Orders issued by the Industrial Accident Commission of the State of California.

2. ARBITRATION: This contract is subject to Public Contracts Code 20104. Specifically, claims for three hundred and seventy-five thousand ($375,000.00) dollars or less which arise between the Developer and the District shall be resolved as follows:

a. Definition: "Claim" means a separate demand by the Developer for:

1) a time extension;

2) payment of money or damages arising from work done by or on behalf of the Developer pursuant to the contract for a public work and payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled to; or

3) an amount the payment of which is disputed by the District.

b. For any claim subject to this article, the following requirements apply:

1) The claim shall be in writing and include the documents necessary to substantiate the claim. Claims must be filed on or before the date of final payment. This provision shall not extend the time limit or otherwise supercede notice requirements set forth in other provisions of the contract documents.

2) For claims of less than fifty thousand ($50,000.00) dollars, the District shall respond in writing to any written claim within forty-five (45) days receipt of the claim or may request, in writing, within thirty (30) days of receipt of the claim, any additional documentation supporting the claim or relating to defenses or claims the District may have against the claimant. If additional information is thereafter required, it shall be requested and provided upon mutual agreement by the District and the claimant. The District's written response to the claim, as further documented, shall be submitted to the claimant within fifteen (15) days after receipt of the further documentation or within a period of time no greater than that taken by the claimant in producing the additional information, whichever is greater.

3) For claims over fifty thousand ($50,000.00) dollars and less than or equal to three hundred and seventy-five thousand ($375,000.00) dollars, the District shall respond in writing to all written claims within sixty (60) days of receipt of the claim, or may request, in writing, within thirty (30) days receipt of the claim, any additional documentation supporting the claim or relating to defenses or claims the District may have against the claimant. If additional information is thereafter required, it shall be requested and provided upon mutual agreement of the District and the claimant. The District's written response to the claim as further documented shall be submitted to the claimant within thirty (30) days after receipt of the further documentation or within a period of time no greater than that taken by the claimant in producing the additional information or requested documentation, whichever is greater.

4) If the claimant disputes the District's written response, or if the District fails to respond within the time prescribed, the claimant may so notify the District in writing either within fifteen (15) days of receipt of the District's response or within fifteen (15) days of the District's failure to respond within the time prescribed, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon a demand, the District shall schedule a meet and confer conference within thirty (30) days.

5) If, following the meet and confer conference, the claim or any portion remains in dispute, the claimant may file a claim pursuant to Government Code 900 et seq.

6) If claimant's claim is not resolved pursuant to his/her filing of the claim pursuant to Government Code 900 et seq., claimant may proceed with a civil action which shall be governed by the provisions of Public Contracts Code 20104.4. Specifically, the court will submit the matter to non-binding mediation unless the District and claimant waive non-binding mediation and thereafter, if the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure.

3. ARCHITECT/ENGINEER: The District has retained Rainforth Grau Architects as Architect/Engineer for this project. The Architect/Engineer will advise and consult with the District, and all of the District's instructions to the Developer shall be issued through the Architect/Engineer. The Architect is responsible for the overall design of the project and the District shall have final authority, in consultation with the Architect/Engineer, in judgments of aesthetic consideration. The drawings, specifications, sketches and other data necessary to define the work covered by these contract documents have been prepared by the Architect. The Architect shall observe the construction to determine general compliance with the contract documents and the Architect shall interpret the drawings and specifications consistent with the intent of the drawings and specifications. The Architect shall evaluate and review shop drawings, samples and other submittals required and maintain an up-to-date log of all such items processed. The Architect shall consult with the District, Developer and any state or city agency having jurisdiction over the work whenever necessary to further the best interest of the project.

4. AS-BUILT DRAWINGS: The Developer will be given one extra set of Drawings and Specifications by the Architect which shall be kept at the site of the work at all times. Exact locations of all pipes and conduits and all changes in construction and details shall be indicated and dimensioned upon these drawings and all changes in materials and equipment installed shall be indicated in these Specifications. Upon completion of the work, the "as-built" Drawings and Specifications shall be returned to the District prior to final payment. Developer guarantees the accuracy of the "as-built drawings" and Developer shall indemnify District from any loss incurred as a result of inaccurately submitted "as-built drawings". The warranty of accuracy of the as-built drawings shall survive the completion of Developer's obligations hereunder and shall be in effect for the useful life of the completed project, excepting that destruction of the project or revision or reconstruction of the building after completion of the project shall relieve Developer of his/her obligation of accuracy in the as-built drawings regarding the portion(s) of systems or building change or altered by subsequent reconstruction. The District's Inspector of Record will examine "as-built drawings" prior to each weekly or otherwise regularly scheduled, site meeting and shall certify to the District at such meeting that said "as-built drawings" are accurate and up-to-date. Progress payments to the Developer may be delayed if "as-built drawings" are not certified by the Inspector of Record as accurate and complete-to-date.

5. ASSIGNMENT: Neither party to the Contract shall assign the Contract as a whole without the written consent of the other, nor shall the Developer assign any monies due or to become due to him/her hereunder, without the previous written consent of the District. Assignment of this contract or any part thereof without the prior written consent of the District shall constitute a material breach of this Agreement and entitle the District to exercise any and all rights provided for by this Agreement or by law for such material breach.

6. ATTORNEYS' FEES: In the event of any action or proceeding, brought by any party against any other party pursuant to this Agreement, the prevailing party shall be entitled to recover all costs and expenses, including the actual fees of its attorneys, incurred for prosecution, defense, consultation or advice in such action or proceeding, not limited to but including cost of expert witnesses, attorney preparation, and cost of discovery and investigation. In awarding attorney fees, the court will not be bound by any court fee schedule but shall, if it is in the interest of justice to do so, award the full amount of cost, expenses, attorney fees paid or incurred in good faith. This provision shall not be applicable to the alternative dispute resolution set forth in Public Contracts Code 20104 et seq., until such time as the case is assigned to judicial arbitration, by a court of competent jurisdiction or, if not assigned for judicial arbitration, when the case is heard before a court of competent jurisdiction.

7. AUDIT: The District may at all times review and audit Developer's cost accounting records and other job records and Developer will afford the District reasonable facilities for such audits. Developer shall preserve all job records for at least five (5) years after the completion of the project.

8. BINDING AGREEMENT: This Agreement, including all documents compromising the complete construction contract, shall be binding upon the District and Developer and upon their successors and assigns and shall endure to the benefit of the District and Developer and their successors and assigns.

9. BONDS: The Developer shall furnish the District with the following separate surety bonds:

a. Performance Bond: Said bond shall be in an amount equal to one hundred percent (100%) of the Contract price, shall be for the faithful performance of the Contract, shall be approved by the District, and shall be secured from an admitted surety or sureties satisfactory to the District. An admitted surety is an insurance organization authorized by the Insurance Commissioner to transact surety business in the State of California during this calendar year.

b. Payment Bond: Said bond shall be in an amount equal to one hundred percent (100%) of the Contract price, shall be approved by the District, and shall be secured from an admitted surety or sureties satisfactory to the District. An admitted surety is an insurance organization authorized by the Insurance Commissioner to transact surety business in the State of California during this calendar year.

c. Each bond shall be in the form set forth in these Contract documents.

10. CHANGES AND EXTRA WORK: The District, without invalidating contract, and as provided by law, may order extra work or make changes by altering, adding to, or deducting from work, contract sum being adjusted accordingly. All such work shall be executed under conditions of original contract. Developer shall increase the amounts of his payment and performance bonds in proportion to any increase in price.

In giving instructions, Architect, with the prior approval of the District, shall have authority to make minor changes in work not involving change in cost and not inconsistent with purposes of building. Otherwise, except in an emergency endangering life or property, no extra work or change shall be made except in pursuance of a written change order from the District, and no claim for addition to contract sum shall be valid unless so ordered.

If the Developer is delayed in completing the work by reason of any change made pursuant to this Article, the time for completion of the work shall be extended by the same change order for a period commensurate with such delay, without additional compensation, and Developer shall not be subject to liquidated damages for this extension. No extension of time will be granted for change orders that, in the opinion of the Architect, do not affect the critical path of the project.

All change orders shall be signed by the District and the Architect, and approved by DSA if applicable.

Value of any such extra work, change, or deduction shall be determined at the sole discretion of the District in either of the two following ways:

A. Acceptable lump sum proposal from Developer properly itemized and supported by sufficient substantiating data to permit evaluation with a combined mark-up for all overhead and profit based on the formula set forth in section B. (5) of this Article.

B. Time and Material: "Force Account" for direct costs for labor, material, and equipment rental plus markups for overhead and profit for Prime Contract, Subcontractor, and Sub-subcontractors as applicable. (Supervision is to be included in markup unless specifically agreed to in advance that special supervision is required.)

1) Labor: Attach itemized direct hourly rates in accordance with certified payroll records times total hours expended. Separately show dollar amount for employer-paid payroll taxes/insurance benefits.
Enter total as direct labor item.

2) Material: Attach receipts, invoices or itemized quantity units costs plus tax and delivery.
Enter total as material item.

3) Equipment: Attach receipts, invoices, or tear tickets indicating unit costs and total hours or loads charged. (Small tools with a value of less than $500.00 are to be included in markup.)
Enter total as rental item.

4) SUBTOTAL (Lines 1+2+3)

5) Combined Markup: FOR ALL OVERHEAD AND PROFIT SHALL BE BASED ON THE FOLLOWING:

a. For the Prime Contractor, for work performed by his forces, fifteen (15%) percent of his direct subtotal cost.

b. For the Prime Contractor, for work performed by a Subcontractor's forces, five (5%) percent of the direct subtotal cost due the Subcontractor.

c. For a Subcontractor or Sub-subcontractor, for work performed by their own forces, fifteen (15%) percent of their own direct subtotal costs.

d. For a Subcontractor, for work performed by a Sub-subcontractor, five (5%) percent of the direct subtotal cost due the Sub-subcontractor.

6) SUBTOTAL (Lines 4+5)

7) PRIME CONTRACTOR's BOND
(NTE 1% line 6)

8) TOTAL CHANGE ORDER REQUEST
(Lines 6+7)

If the Developer should claim that any instruction, request, drawing, specification, action, condition, omission, default or other situation obligates the District to pay additional compensation to the Developer or to grant an extension of time for the completion of the contract, or constitutes a waiver of any provision in the contract, Developer shall notify the District, in writing, of such claim within ten (10) days from the date Developer has actual or constructive notice of the factual basis supporting the claim. The Developer's failure to notify the District within such period shall be deemed a waiver and relinquishment of the claim against the District. If such notice be given within the specified time, the procedure shall be

as stated above in this Article.

11. CLEANUP: Developer shall at all times during the progress of the project, keep the site of the work and surrounding area free from debris, rubbish, and excess materials and equipment to the satisfaction of the District. Developer shall perform such cleanup and removal regularly and as often as necessary.

At completion of the project, and prior to requesting final inspection, the Developer shall thoroughly clean the site of the work of all waste materials, rubbish, excess material, and equipment, and all portions of the work shall be left in a neat and orderly condition.

12. COMMENCEMENT OF WORK AND TIMELY COMPLETION: Developer understands and acknowledges that **time is of the essence** for completion of this project. The Developer shall commence work on this project within ten (10) ten calendar days from and after the date of written notice by the District to the Developer to begin work. Upon receipt of such notice, Developer shall begin work and shall prosecute the work diligently to completion. No work shall be commenced before the contract is signed.

a. Completion Deadline: Final completion and all work required by the contract shall be completed no later than December 31, 2009 after written notice from the District or Architect to commence work except as noted in No. 22 Special Conditions.

b. Delays: If Developer is delayed in said work by the unforeseeable acts of the District, its officers, agents or employees, or by changes ordered in the work, or by unanticipatable strikes, fire, unusual and unanticipatable delay in transportation, unavoidable casualties, unusually adverse weather conditions which could not have been reasonably anticipated, or any cause which is not reasonably foreseeable and is beyond Developer's control, or by delay authorized by the District, or by any cause which the District shall decide to justify the delay, then the time of completion shall be extended for such reasonable time as the District may decide. In the event Developer is delayed by the acts of the District, its agents, officers or employees, Developer's sole remedy is an extension of time to perform his/her obligations and Developer shall not be entitled to recover damages unless the delay is unreasonable under the circumstances and was not within the reasonable contemplation of the Developer and/or the District. The Developer's right to an extension of time or to recover damages for delays indicated above is expressly subject to his/her giving ten (10) days notice of such claim from the day he/she knew or should have known of the delay. Failure to give such notice shall constitute a waiver of an extension of time, damages, or any other remedy Developer may have had if he/she provided proper notice pursuant to this provision. Failure to complete the project within the time specified, including extensions thereof, shall subject Developer to the imposition of liquidated damages as set forth in the contract documents.

c. Substantial Completion: For the purpose of determining substantial completion if applicable to, or necessary under this contract, substantial completion shall be defined as the stage in the progress of the work when the work or designated portion thereof is sufficiently complete in accordance with the contract documents so that the Architect can certify that the work is substantially complete, and so that the District can occupy or utilize the work for its intended purpose. When the Developer considers that the work or a portion thereof which the District agrees to accept separately is substantially complete, the Developer shall prepare and submit to the Architect the comprehensive list of items to be completed or corrected. The Developer shall proceed promptly to complete and correct items on the list. Failure to include an item on such list does not alter the responsibility of the Developer to complete all work in accordance with the contract documents. Upon receipt of the Developer's list, the Architect will make an observation to determine whether the work or designated portion thereof is substantially complete. When the work or designated portion thereof is substantially complete, the Architect will prepare a

certificate of substantial completion which shall establish the date of substantial completion, shall establish the responsibilities of the District and Developer for security, maintenance, heat, utilities, damage to the work, insurance, and shall fix the time, which shall not exceed thirty (30) days from the date of substantial completion, within in which the Developer shall finish all items on the list accompanying the certificate. The certificate of substantial completion shall be submitted to the District and Developer for their written acceptance of responsibilities assigned to them in such certificate. The District shall retain sufficient funds to compensate for unfinished items identified on Developer's "punch list", and funds encumbered by filed stop notices.

d. **Final completion** shall be deemed to have occurred when Developer has completed all items on his/her "punch list" and when Developer has fulfilled **all other** obligations set forth in the contract documents. Upon recommendation of the Architect and upon satisfactory completion of all punch list items, the District shall record a notice of completion. Final payment shall be made in accordance with the Payment provision contained in these General Conditions below.

e. **Rain Day:** Is defined as a day with 0.01 inch of measurable rain or more, as per the National Weather Service. Days exceeding the normal days of rain for the project area, which is 57 days per year, and exceeding 0.01 inch per day will be considered a rain day. However, notwithstanding the foregoing, rain day delay claims will only be approved if the Developer demonstrates to the satisfaction of the District that such rain days actually caused Developer to have to cease work on the project and actually caused a delay in completion of the project, and such delay claim is verified in writing by the Inspector of Record. The Inspector of Record will not be authorized to approve any rain day delay claims unless the Inspector of Record certifies that the rain day actually resulted in the delay of the prosecuting of the scope of work being performed on the project at the time of the rain day. Rain day delay claims will not be approved merely to afford an extension of time of completion of the contract.

13. COMPLETE AGREEMENT: This contract supercedes any and all agreements either oral or in writing, between the District and Developer with respect to the subject matter herein. The District and Developer acknowledge that no representation by any party which is not embodied herein or any other agreement, statement or promise not contained in the contract documents shall be valid and binding.

14. COMPLIANCE WITH LAWS AND REGULATIONS: Developer shall be familiar with, and comply with, the various federal, state and local laws affecting public works, including but not limited to the following:

a. Permits and Licenses: The Developer shall obtain and keep current (including his/her Developer's license) all permits and licenses that are required for the performance of his/hers work by all laws, ordinances, rules and regulations, or orders of any office and/or body lawfully empowered to make or issue the same.

In addition, Developer shall obtain and keep current all permits and licenses required for the work of improvement and pay all fees relating thereto, including, but not limited to, utility fees and shall provide the District with documentation of the actual costs expended by Developer with regard to these items.

b. Sales and Payroll Taxes: Each Developer, subcontractor and material supplier shall include all sales tax and payroll taxes required by law.

c. Responsibility for Compliance with CAL/OSHA: All work, materials, work safety procedures and equipment shall be in full accordance with the latest Cal/OSHA rules and regulations.

Developer warrants that he/she and each of his/hers subcontractors shall, in performance of this Contract, comply with each and every compliance order issued pursuant to Cal/OSHA. The Developer assumes full and total responsibility for compliance with Cal/OSHA standards by his/her subcontractors as well as himself/herself. The cost of complying with any compliance order and/or payment of any penalty assessed pursuant to Cal/OSHA shall be borne by the Developer. Developer shall defend, save, keep and hold harmless the District, and all officers, employees, and agents thereof, from all liabilities, costs, or expenses, in law or in equity, that may at any time arise or be set up because of Developer's or a subcontractor's non-compliance or alleged non-compliance with Cal/OSHA requirements. Nothing contained herein shall be deemed to prevent the Developer and his/her subcontractors from otherwise allocating between themselves responsibility for compliance with Cal/OSHA requirements; provided, however, that the Developer shall not thereby be, in any manner whatsoever, relieved of his/her responsibility to the District as hereinabove set forth.

d. Water Pollution Prevention Plan: This Project is not subject to the State Water Resources Control Board Order No. 99-08-DWQ, implementing provisions of the Clean Water Act relating to storm water discharges. However, Developer shall implement steps necessary to minimize the risk of storm water contamination and shall utilize Best Management Practices during construction to prevent pollution discharges such as spills, leaking, and dumping. Additional information regarding State Water Resources Control Board requirements can be obtained from State Water Resources Control Board, Division of Water Quality, Attention: Storm Water Section, P.O. Box 1977 Sacramento, CA 95812-1977. Telephone Number (916) 341-5536; Fax Number (916) 341-5543; Email: stormwater@swrcb.ca.gov

Any and all fines and/or penalties that may be assessed by an authorized governmental agency for illicit discharges shall be borne by the Developer at no additional cost to the District.

e. Codes and Regulations: All work and materials shall be in full accord with the latest codes, rules and regulations, including but not limited to the following:

Rules of Local Utilities	Title 20 CCR
Calif. Electrical Code	
National Board of Fire Underwriters	Title 19 CCR
State Fire Marshal or Applicable DSA Requirements	
State Codes and Ordinances	
State Industrial Accident Commission's Safety Orders	
Calif. Plumbing Code	
Calif. Building Code	

Developer shall hold the District harmless for Developer's failure to comply with any law or regulation affecting Developer's performance on this project. Certain provisions are set forth herein however, the existence of these provisions does not excuse the Developer from complying with other statutory requirements or provisions which are not set forth in these contract documents and it is Developer's responsibility to be, or become familiar with the various federal, state and local laws which govern Developer's performance.

15. CONCEALED CONDITIONS: Developer has examined the job site, the contract documents, and the applicable building codes, laws, and regulations that govern the conduct of the work and has made such investigation as he/she deems appropriate and therefore assumes all risk and expense in dealing with

subsequently discovered concealed conditions that could have been discovered through reasonable and diligent inspection and investigation. In the event Developer encounters rock, ground water, underground structures, or utilities or other underground or concealed conditions or any hazardous material or condition in the site or existing structures if any, unknown to Developer, Developer shall immediately notify the District and Architect of such condition in writing. Developer shall discontinue any work affected by the concealed conditions, shall immediately cover, barricade and protect the subject area and shall obtain further direction from the District and Architect prior to continuing any work affected by the discovered condition. Should Developer, his/her subcontractors, or officers, agents or employees proceed without further direction from the District and Architect, Developer does so at his/her own risk and expense.

16. CONDUCT OF WORK: The Developer shall permit the District to do other work in connection with the project by contract or otherwise, and Developer shall at all times conduct his/her work so as not to impose hardship on the District or others engaged in the work. Developer shall adjust, correct and coordinate his/her work with the work of others so that no discrepancies shall result in the whole work.

17. CONVICT MADE MATERIALS: No materials manufactured or produced in a penal or correctional institution shall be incorporated in the project under this Contract, except as permitted by California law.

18. DAYS: All references to "days" in the contract documents shall mean calendar days unless otherwise specified.

19. DIMENSIONS: All dimensions throughout the drawings are to be calculated. Where doubts as to a dimension exist, the Architect shall determine the correct dimensions.

20. DISTRICT'S REMEDIES FOR DEFECTIVE CONSTRUCTION AND/OR DEFICIENT PERFORMANCE: In addition to any other remedy afforded to the District by law, the District, may exercise, at its option, any remedy, or combination thereof, set forth herein as follows:

a. Faulty Labor and Materials: Neither final payment nor any provision in the Contract documents shall relieve the Developer of responsibility for faulty materials or workmanship, and unless otherwise specified, he/she shall remedy any defects due thereto and pay for any damages to other work, resulting therefrom which shall appear within the warranty period.

If it is necessary in order to protect persons or property or, in the alternative, if the District deems it expedient to correct work damaged or not done in accordance with the contract, the District may correct said work and deduct from monies otherwise due Developer, a sum sufficient to compensate the District for correction of the damage or improperly installed work.

b. Condemned Materials: The Developer shall promptly remove from the premises all work condemned by the Inspector or Architect as failing to conform to the Contract, whether incorporated or not, and the Developer shall promptly replace and re-execute the work in accordance with the Contract and without expense to the District and shall bear the expense of making good all work of other contractors destroyed or damaged by such removal or replacement.

If the Developer does not remove such condemned work within a reasonable time, fixed by written notice, the District may remove it and may store the material at the expense of the Developer. If the Developer does not pay the expense of such removal within ten (10) days time thereafter, the District may, upon ten (10) days written notice, sell such materials at auction or at private sale and shall account for the net proceeds thereof, after deducting all the costs and expenses that should have been borne by the Developer. In the event the net proceeds are not sufficient to compensate for the costs and expenses that should have been borne by Developer, the District may deduct from monies otherwise due Developer a sum

sufficient to compensate for the costs and expenses that should have been borne by the Developer.

c. The District's Right to Perform Work: If the Developer neglects to prosecute the work properly or fails to perform any provision of, or fails to correct work in accordance with the contract documents, the District, by written order, may order the Developer to stop the work or any portion thereof, until the cause for such order has been eliminated; however, if Developer fails to correct the cause, or fails to make satisfactory arrangements with the District to correct the cause for the order within seven (7) calendar days of the written order, the District may, without prejudice to any other remedy the District may have, correct such deficiencies or causes for said order and may deduct the cost thereof from the payment then or thereafter due the Contract. The right of the District to stop work shall not give rise to a duty on the part of the District to exercise its right for the benefit of the Developer or for any other person or entity and in times of such work stoppage, Developer shall be responsible for continuing job safety and job security.

d. Termination of Contract: If the Developer refuses or fails to prosecute the work or any separable part thereof with such diligence that will ensure its completion within the time specified, or any extension thereof, or fails to complete said work within such time, or withholds, or threatens to withhold continued work regardless of the reason for same, or if the Developer should be adjudged bankrupt or if he/she makes a general assignment for the benefit for his/her creditors, of if he/she shall make an assignment for any other reason without the express written consent of the District, or if a receiver should be appointed on account of Developer's insolvency or if Developer refuses or fails, except in cases for which an extension of time is provided, to supply enough properly skilled workers or proper material to complete the work at the time specified, or if Developer fails to make prompt payment to subcontractors or for material or labor, or disregards laws, ordinances, or instructions of the District, District's Architect or the District's Inspector, or if Developer or any of his/her subcontractors should otherwise violate a provision of the contract, or if Developer or any of his/hers subcontractors should perform work in a negligent or dangerous manner, or install or construct any portion thereof so that the work does not comply with the drawings and specifications, including any amendments thereto, or does not meet generally recognized industry standards for workmanlike quality, the District may, without prejudice to any other rights or remedy, serve written notice upon Developer of the District's intention to terminate Developer's control over the project, terminate Developer's right to complete the contract or terminate this contract. Such notice shall contain the reasons for such intention to terminate, and Developer shall immediately cease any and all violations of the terms of this contract, ordinances, or laws and shall correct to the District's satisfaction, or make satisfactory arrangements to correct to the District's satisfaction, within seven (7) days, from the date of said notice, any and all deficient conditions. If Developer, after proper notice, fails to cease and desist or fails to cure deficiencies within the said seven (7) day period, the District may terminate Developer's control over the project, terminate Developer's right to complete the contract or terminate this agreement by written notice to Developer, said termination shall be effective upon delivery of written notice to Developer, his/her officers, agents or employees, or notice by certified mail to Developer's business address. Thereafter, the District may exercise any and all remedies as provided for in this agreement or by law.

In the case of termination, Developer shall not be entitled to receive any further payment until the project is completed. In the event of termination, the District shall immediately serve written notice thereof upon the Surety consistent with the terms and conditions set forth in the performance bond incorporated within these contract documents. Surety shall not be entitled to reappoint or contract with Developer to

complete this project without the express written consent of the District. Upon termination, Developer shall be ejected from the project and the District may without liability for so doing, take possession of and utilize in completing the work, such materials, appliances, plant, and other property belonging to Developer as may be on the site of the work and necessary therefore.

If the unpaid balance of the contract price exceeds the expense of finishing the work, including compensation to the District for additional architectural, managerial, legal, and administrative services, such excess shall be paid to Developer. If such expense shall exceed such unpaid balance, Developer shall pay the difference to the District. Notwithstanding the foregoing provision, this contract may not be terminated or modified where a trustee in bankruptcy has assumed the contract pursuant to 11 U.S.C., Section 365 of the Federal Bankruptcy Act.

e. Additional Remedies: The foregoing provisions are in addition to and not in limitation of any other rights and remedies available to the District. The District may, at any time Developer's performance or any subcontractor's performance is such to call into question Developer's or the subcontractor's ability or capacity to properly, and in good workmanlike manner, perform his/her obligations in accordance with the plans and specifications and within the stated time for completion, demand assurances from the Developer in any form acceptable to the District (i.e., additional bond, written addendum, modification of the contract, additional staffing, etc.) and Developer's failure to provide adequate assurance shall constitute a material breach of the contract and the District may suspend its performance and exercise any other right or remedy provided within the contract documents or by law.

21. FALSE CLAIMS: California Penal Code section 72 provides that any person, who presents for payment with intent to defraud any county, city or district board or officer, any false or fraudulent claim, bill, account, voucher, or writing, is punishable by fines not exceeding ten thousand dollars ($10,000.00) and/or imprisonment in the state prison.

Government Code sections 12650, et seq., pertains to civil penalties that may be recovered from persons (including corporations, etc.) for presenting a false claim for payment or approval, presents a false record or statement to get a false claim paid or approved, or other acts, to any officer or employee of any political subdivision of the State of California. Any person or corporation violating the provisions of Government Code sections 12650, et seq., shall be liable for three times the amount of the damages of the political subdivision, plus a civil penalty, plus costs.

All Claims by Developer shall include the following certification, properly completed and executed by Developer or an officer of Developer:

I, _____, BEING THE _____ (MUST BE AN OFFICER) OF _____ (DEVELOPER), DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA, AND DO PERSONALLY CERTIFY AND ATTEST THAT: I HAVE THOROUGHLY REVIEWED THE ATTACHED CLAIM FOR ADDITIONAL COMPENSATION AND/OR EXTENSION OF TIME, AND KNOW ITS CONTENTS, AND SAID CLAIM IS MADE IN GOOD FAITH; THE SUPPORTING DATA IS TRUTHFUL AND ACCURATE; THAT THE AMOUNT REQUESTED ACCURATELY REFLECTS THE CONTRACT ADJUSTMENT FOR WHICH THE DEVELOPER BELIEVES THE OWNER IS LIABLE; AND, FURTHER, THAT I AM FAMILIAR WITH CALIFORNIA PENAL CODE SECTION 72 AND CALIFORNIA GOVERNMENT CODE SECTION 12650, ET SEQ, PERTAINING TO FALSE CLAIMS, AND FURTHER KNOW AND UNDERSTAND THAT SUBMISSION OR CERTIFICATION OF A FALSE CLAIM MAY LEAD TO FINES, IMPRISONMENT AND/OR OTHER SEVERE LEGAL CONSEQUENCES.

Submission of a Claim, in conformance with all of these requirements of this Contract, and rejection of all or part of said Claim by the District, is a condition precedent to any action by Developer against the District,

including but not limited to, the filing of a lawsuit or making demand for arbitration, if arbitration is expressly provided for in this Contract.

22. FINGERPRINTING: If the District determines based on the totality of the circumstances concerning the Project that the Developer and Developer's employees are subject to the requirements of Education Code section 45125.2 pertaining to Contracts for Construction, Reconstruction, Rehabilitation or Repair of a School Facility because they will have more than limited contact with pupils, by execution of the Contract, the Developer shall, at Developer's own expense, ensure the safety of the pupils by one or more of the following: (a) install a physical barrier to limit contact with students by Developer and/or Developer's employees, or (b) provide for the continuous supervision and monitoring of the Developer and/or Developer's employees by an employee of the Developer who has received fingerprint clearance from the California Department of Justice. Developer shall execute a declaration under penalty of perjury that these obligations will be met. A form for this purpose is attached to these Contract documents as Form No. 20.

23. GUARANTEES:

a. Developer's Guarantee During Construction: The District shall not, in any way or manner, be answerable or suffer loss, damage, expense or liability for any loss or damage that may happen to said building, work, or equipment or any part thereof, or in, on, or about the same during its construction and before acceptance. Developer assumes the risk of loss from destruction of, or damage to the project and in the event the work is damaged or destroyed in whole or in part by fire, earthquake, flood, or other peril, the time for the completion of the contract will be extended, and Developer shall rebuild at no expense to the District. This obligation shall not replace Developer's obligation to carry insurance as set forth in the contract documents.

b. Developer's Guarantee of Quality: Developer unqualifiedly guarantees the "first-class" quality of all workmanship and of all materials, apparatus, and equipment used or installed by him/her or by any subcontractor or supplier in the project which is the subject of this Contract unless a lesser quality is expressly authorized in the Drawings and Specifications, in which event Developer unqualifiedly guarantees such lesser quality and that the work as performed by Developer will conform with the Plans and Specifications or any written authorized deviations therefrom.

c. Workmanship and Material Guarantee: The Developer shall execute and deliver a written guarantee in the form set forth in these contract documents, to the District **prior to final payment**. A form for this purpose is included in this bid packet as Form No. 18. Besides guarantees required elsewhere, per the executed Developer's Guarantee and this provision, Developer shall and does agree to guarantee all workmanship and material for a period of **one (1) year** from the date of filing the Notice of Completion by the District (special or extended guarantees as noted shall be honored as specified under specific items) and shall repair or replace any or all material and workmanship (together with any other work which may be damaged in so doing) that is or becomes defective during the period of said guarantees without expense whatsoever to the District. In the event the Developer fails to comply with the requirements of any guarantee required by this Contract within seven (7) days after being notified in writing, the District is authorized to proceed to have the defects repaired and made good at the expense of Developer who shall pay the costs and charges therefore immediately on demand. In the event the defective condition giving rise to repairs pursuant to this warranty endangers persons or property, or otherwise substantially interferes with the District's ability to conduct its business or provide services for which the District is responsible, The District may immediately make repairs after reasonable attempts to notify Developer and Developer shall pay the costs and charges of said repairs immediately upon demand. Early occupancy by the District or early use of a guaranteed item or system by the District, Developer, subcontractor or any other person or agency shall not modify the period of guarantee

which shall commence as set forth above.

24. INDEPENDENT CONTRACTOR: Developer and the District agree that there is no agency or employment relationship between the District and Developer, or any of Developer's officers, agents or employees or subcontractors and that Developer in performing its contractual obligations acts entirely as an independent contractor.

25. INSPECTION BY DISTRICT: The Developer shall at all times maintain proper facilities and provide safe access for inspection by the District to all parts of the work, and to the shops wherein the work is in preparation. Where the Specifications require work to be specially tested or approved, it shall not be tested or covered up without timely notice to the District of its readiness for inspection and without the approval thereof or consent thereto by the latter. Should any such work be covered up without such notice, approval, or consent, it must, if required by the District, be uncovered at Developer's expense for examination. Developer shall pay for any necessary retesting and/or reinspection required because of work that fails to comply with the requirements of the contract documents.

26. INSURANCE: The Developer shall not commence work under this Contract until he/she has obtained all insurance required by these General Conditions and which insurance has been approved by the District and copies of certificates of such insurance are filed with the District. The Developer shall not allow any subcontractor to commence work on a subcontract until such insurance has been obtained. Three (3) copies of insurance certificates evidencing the required coverage shall be furnished to the District. Certificates of insurance must indicate that the coverage cannot be reduced or canceled until THIRTY (30) days written notice has been furnished to the District. Such insurance shall name the District, its officers, agents, and employees as additional insured. Developer's liability insurance policy shall be endorsed as primary insurance.

a. Liability Insurance: The Developer shall carry Bodily Injury Liability Insurance in an amount not less than $1,000,000 combined single limit, per occurrence. Developer's insurance SHALL BE ENDORSED AS PRIMARY. **The District, its officers, agents, Architects, and employees shall be named as ADDITIONAL INSUREDS.**

b. Workers' Compensation Insurance: The Developer shall comply with the Workers' Compensation Insurance requirements of the State of California. The Developer shall take out and maintain during the life of this Contract, Workers' Compensation Insurance and Employer's Liability Insurance for all of his/her employees employed at the site of the project and, in case any work is sublet, the Developer shall require all subcontractors to provide Workers' Compensation Insurance and Employer's Liability Insurance for all of the latter's employees unless such employees are covered by protection afforded by the Developer.

c. Fire Insurance: The Developer will, at its expense, maintain Builder's Risk Fire Insurance, including Extended Coverage and Vandalism and Malicious Mischief endorsements, jointly in the names of the District and Developer, payable as their respective interest may appear, such insurance at all times to be of sufficient amount to cover fully all loss or damage to the work under this agreement. Coverage and Vandalism and Malicious Mischief Endorsement shall be in an amount not less than one hundred percent (100%) of the Contract price.

   In addition, Developer will, prior to commencement of work on the project, have all fire protection mechanisms in place as required by the local Fire Marshall.

d. All policies and certificates of insurance of the Developer shall contain the following clauses:

   1) Insurers have no right of recovery or subrogation against the District (including its agents and agencies as aforesaid), it being the intention of the

parties that the insurance policies so effected shall protect both parties and be the primary coverage for any and all losses covered by the above-described insurance.

2) The clause "other insurance provisions" in a policy in which the District is named as an insured, shall not apply to the District.

3) The insurance companies issuing the policy or policies shall have no recourse against the District (including its agents and agencies as aforesaid) for payment of any premiums or for assessments under any form of policy.

4) Any and all deductibles in the above described insurance policies shall be assumed by and be the account of, the Developer.

e. Indemnification: Developer will indemnify and hold harmless the Western Placer Unified School District, its governing board, and its/his/her officers, agents, employees, and the Architects, from and against all claims, damages, losses, demands, liability, costs and expenses including attorney fees arising out of or resulting from the performance of this Contract or the prosecution of work under it, whether such claims, damages, losses, demands, liabilities, costs and expenses are caused by the Developer, Developer's agents, servants or employees or subcontractors employed on the project, the agents, servants or employees or any person or persons or products installed on the project by the Developer or subcontractors.

Developer at his/hers own expense and risk shall defend any and all actions, suits, or other legal proceedings that may be brought or instituted against the Western Placer Unified School District, the members of its governing body, its officers, agents, employees, and the Architects for any such claims, damages, losses, demands, liabilities, costs or expenses.

The indemnification obligations hereunder shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Developer or any subcontractors under workers' compensation acts, disability benefit acts or other employee benefits acts; however, the obligations of the Developer hereunder shall not extend to the liability of the Architect, his/her agents or employees arising out of (a) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications or (b) the giving of directions or instructions by the Architect, his/her agents or employees, provided such giving is the primary cause of the injury or damage. Developer shall not be obligated to the District hereunder if such injury, harm or damage is caused solely and exclusively by the Architect's negligence.

This indemnification provision shall be applicable to any infringement or alleged infringement of the patent rights of any person or persons, firm or corporation in consequence of the use thereof by the Developer. Notwithstanding any of the above, the Developer shall whenever it is necessary keep and maintain at his/her sole cost and expense during the course of his/her operations under this Contract such warnings, signs, and barriers as may be required to protect the public. The provisions of the preceding sentence shall not impose any liability upon the Western Placer Unified School District or the Architect or the members of the Western Placer Unified School District governing body or the officers, agents and employees of either of them.

This indemnification provision shall also extend to claims, damages, losses, demands, liabilities, costs and expenses for injury, harm, or damages occurring after completion of the project as well as during the work's progress. In each and every

instance in which the Contract is required to indemnify or hold the District harmless, that obligation includes the obligation to defend the District.

27. INTERPRETATION OF CONTRACTS/DRAWINGS/SPECIFICATIONS: The contract documents, including the drawings and specifications are to be read as an integrated document. The Developer shall immediately report to the Architect any discrepancies or errors which are contained within the documents. Figured dimensions shall be followed and the Developer shall make all additional measurements necessary for the work and shall be responsible for their accuracy. Before ordering any material or doing any work, the Developer shall verify all measurements and shall be responsible for the correctness of same. It is the intent of the drawings and specifications to show and describe complete installations. Items shown but not specified or specified but not shown shall be included unless specifically omitted. The contract documents, including the drawings and specifications, shall be deemed to include and require everything necessary and reasonably incidental to the completion of all work described and indicated on the drawings whether particularly mentioned or shown or not. Work indicated on the drawings and not mentioned in the specifications, or vice versa, shall be furnished as though fully set forth in both. In case of disagreement or conflict between or within standards, specifications, and drawings, the most stringent, higher quality and greater quantity of work shall be included in the bid.

If an error(s) appear(s) in the drawings or specifications or in work done by others affecting this work, the Developer shall immediately notify the Architect in writing. If the Developer proceeds with the work so affected without having given such written notice and without receiving the necessary approval, decision or instructions in writing from Architect, then he/she shall not have a valid claim against the District for the cost of so proceeding and shall make good any resulting damage or defect. No oral approval, decision, or instruction shall be valid or be the basis for any claim against the District, its officers, employees or agents. The foregoing includes typographical errors in the specifications or notational errors in the drawings where the interpretation is doubtful or where an error exists, and the error is sufficiently apparent as to place a reasonably prudent contractor on notice that should he/she elect to proceed, he/she is doing so at his/her own risk.

28. LABOR COMPLIANCE AND OTHER LEGAL REQUIREMENTS

a. Applicability of Section:

This Section applies to all contracts.

Nothing contained herein shall be deemed to supersede any applicable laws, orders or regulations issued by competent authority governing wages, hours of work of the employment of labor, nor to condone any violation of such laws, orders or regulations.

b. Labor Compliance Program: The District operates a third party Initially Approved Labor Compliance Program initially approved March 11, 2003. All contractors and subcontractors will comply with this program and the requirements of California Labor Code sections 1720-1861. The District will have an LCP provider in place by commencement date.

c. Pre-Construction Meeting: Prior to start of construction, a conference will be called for the purpose of reviewing the construction program and the Labor Compliance program Requirements with the Developer's representative. The purpose of this conference will be to review the requirements of the District's Labor Compliance program and the California Labor Code. Each contractor or subcontractor awarded a contract under this project must have an agent of that firm sign the LCP pre-construction checklist.

Each contractor or subcontractor awarded a contract under this project that does not attend the mandatory pre-construction conference must have an agent of that firm appear at the Labor Compliance Representative office or a location specified by the Labor Compliance Representative to sign documents required by the California Labor Code and to receive proper state forms for the reporting of certified payroll. Except as may be otherwise required by law, all claims and disputes

pertaining to the classification of labor employed on the Project under the Contract Documents shall be decided by the Labor Compliance Representative or the Director of the California Department of Industrial Relations.

d. Posting Requirements: The Developer shall post at appropriate conspicuous weatherproof points on the site of the Project a schedule showing the Prevailing Wage Determinations published by the Director of the California Department of Industrial Relations which are applicable to the Project or directions where these documents are held on site for review.

e. Labor Compliance Site Visit: The Labor Compliance representative will conduct random site visits and will interview Developer employees on a random basis to verify compliance with the labor codes. These interviews and site visits will be brief in nature and with minimal disruption to the workers efforts. And as such, the Developers shall not be entitled to any additional time or costs for this activity.

f. Developer Maintenance and Labor Records: The Developer shall maintain detailed labor records on a daily basis. Such records shall include an itemized count of the actual labor forces on site, listed by the Developer, by labor classification and shall identify the hours worked in that classification that day in connection with the performance of any Work. These labor records are to include all of the prime contractors and any subcontractor, of any tier, that performs any portion of work that requires the payment of prevailing wage as determined by the Director of the Department of Industrial Relations.

These labor records requirements may be combined with any other daily record keeping reports required by the contract documents as long as the specific information identified above is included in each report. These reports must be submitted to the District's representative on a weekly basis

Each daily record maintained hereunder shall be signed by Developer's Superintendent or Developer's authorized representative; such signature shall be deemed Developer's representation and warranty that all information contained therein is true, accurate, and complete.

In the event that Developer shall fail or refuse, for any reason, to maintain or submit such records the District may, in addition to the penalties provided in the labor code, withhold one-hundred dollars ($100) per report that is either not submitted or incomplete from any progress or final payment to the Contract amount until compliance has been made. The Developer's obligation to maintain records hereunder is in addition to, and not in lieu of, any other Developer obligation under the Contract Documents.

g. Prevailing Wage Rates, Travel, and Subsistence: Pursuant to the provisions of Division 2, Part 7, Chapter 1, Article 2 of the California Labor Code at §§1770, et seq., the District has obtained from the Director of the California Department of Industrial Relations the general prevailing rate of per diem wages and the prevailing rate for straight time, holiday time 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 the contract. Contact the Labor Compliance Representative for current prevailing wage rates. Per Diem wages shall be deemed to include employer payments for health and welfare, pensions, vacation, travel time and subsistence pay as provided in California Labor Code §1773.1 and as shown in the Director's determinations. For apprenticeship or other training programs authorized by California Labor Code §3093, and similar purposes, when the term "per diem wages" is used herein it shall have the meaning as defined in the Prevailing Wage Determinations as Published by the Director of the California Department of Industrial Relations and California Labor Code. Holiday and overtime work, when permitted by law, shall be paid for at the rate identified in the Prevailing Wage Determinations Issued by the Director of the California Department of Industrial Relations or at least one and one-half (1 1/2) times the specified basic rate of per diem wages, plus employer payments, unless otherwise specified in the contract documents or authorized by the California Code of

Regulations, *Title 8* §16200 (a) (3) (F). Any worker employed to perform work on the Project, which work is not covered by any classification listed in the published general prevailing wage rate determinations of per diem wages determined by the Director of the California Department of Industrial Relations, shall be paid not less than the minimum rate of wages specified therein for the classification which most nearly corresponds to the work to be performed, and such minimum wage rate shall be retroactive to time of initial employment of such person in such classification. Each worker needed to execute the Work on the Project shall be paid travel and subsistence payments, as such travel and subsistence payments are defined in the prevailing wage determinations published by the Director of the California Department of Industrial Relations.

h. Payment of Prevailing Wages:

(1) There shall be paid to each worker of the Developer, or any Subcontractor, of any tier, engaged in the Work, not less than the general prevailing wage rate, regardless of any contractual relationship which may be alleged to exist between the Developer or any Subcontractor, of any tier, and such worker. The Developer and Subcontractors will be required to pay all workers on a weekly basis and to submit the certified payrolls to the Labor Compliance Program Representative weekly.

(2) The Developer shall forfeit Fifty Dollars ($50.00) to the District for each calendar day or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of the California Department of Industrial Relations for such work or craft in which such worker is employed by the Developer or by any subcontractor, of any tier, in connection with the Work. Pursuant to California Labor Code §1775, the difference between such 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 prevailing wage rate, shall be paid to each worker in addition to the penalties. The amount of forfeiture shall be determined by the Labor Commissioner and shall be based on consideration of the Developer's mistake, inadvertence, or neglect in failing to pay the correct rate of prevailing wages. The Developer's previous record in meeting his prevailing wage obligations or the Developer's willful failure to pay the correct rates of prevailing wages may influence the amount of penalty.

(3) California Labor Code §1742.1 makes the Developer, any Subcontractor and the payment bond insurer jointly and severally liable for Liquidated Damages equal to the total underpayment of wages remaining uncorrected for sixty (60) days after receipt of the first notice of the underpayment. The underpaid employee will receive both the Liquidated Damages and the underpayment amount. The District may also request imposition of penalties equal to Fifty Dollars ($50.00) per day per worker in addition to the Liquidated Damages and underpayment.

i. Apprentices:

1) Per California Labor Code §1777.5(e) the Developer and all Subcontractors shall notify an approved training program that can supply apprentices to the area of the Public Works project. All apprentices employed by the Developer to perform any of the Work shall be paid the prevailing wages identified by the Director of the California Department of Industrial Relations. Only apprentices, as defined in California Labor Code §3077 who are in training under apprenticeship standards and written apprenticeship agreements under California Code §§3070, et seq. are eligible to be employed for the Work. The employment and training of each apprentice shall be in accordance with the provisions of the apprenticeship standards and apprentice agreements under which such apprentice is training or the Standards established by the Division of Apprenticeship Standards.

2) When the Developer or any Subcontractor, of any tier, in performing any of the Work employs workers in any Apprenticeable Craft or Trade, the Developer and such Subcontractor shall

apply to the Joint Apprenticeship Committee administering the apprenticeship standards of the craft or trade in the area of the site of the Work for a certificate approving the Developer or such Subcontractor under the apprenticeship standards for the employment and training of apprentices in the area or industry affected; provided, however, that the approval as established by the Joint Apprenticeship Committee or Committees shall be subject to the approval of the Administrator of the Division of Apprenticeship Standards. The Joint Apprenticeship Committee or Committees, subsequent to approving the Developer or Subcontractor, shall arrange for the dispatch of apprentices to the Developer or such Subcontractor in order to comply with California Labor Code §1777.5. The Developer and Subcontractors shall submit contract award information to the applicable Joint Apprenticeship Committee which shall include an estimate of journeyman hours to be performed under the Contract, the number of apprentices to be employed, and the approximate dates the apprentices will be employed.

3) The ratio of work performed by apprentices to journeymen, who shall be employed in the Work, may be the ratio stipulated in the apprenticeship standards under which the Joint Apprenticeship Committee operates, but in no case shall the ratio be less than one hour (1) of apprentice work for each five (5) hours of labor performed by a journeyman, except as otherwise provided in California Labor Code §1777.5. Any ratio shall apply during any day or portion of a day when any journeyman, or the higher standard stipulated by the Joint Apprenticeship Committee, is employed at the site of the Work and shall be computed on the basis of the hours worked during the day by journeymen so employed, except when an exemption is granted per California Labor Code §1777.5 subdivision k. The Developer shall employ apprentices for the number of hours computed as above before the completion of the Work. The Developer shall, however, endeavor, to the greatest extent possible, to employ apprentices during the same time period that the journeymen in the same craft or trade are employed at the site of the Work. Where an hourly apprenticeship ratio is not feasible for a particular craft or trade, the Division of Apprenticeship Standards, upon application of a Joint Apprenticeship Committee, may order a minimum ratio of not less than one apprentice for each five journeymen in a craft or trade classification. This Section shall not apply to contracts of general contractors, or to contracts of specialty contractors not bidding for work through a general or prime contractor *or those specialty contractors*, involving less than Thirty Thousand Dollars ($30,000).

4) The Developer or any Subcontractor, of any tier, who performs any of the Work by employment of journeymen or apprentices in any Apprenticeable Craft or Trade and who is not contributing to a fund or funds to administer and conduct the apprenticeship program in any such craft or trade in the area of the site of the Work, to which fund or funds other contractors in the area of the site of the Work are contributing, shall contribute to the fund or funds in each craft or trade in which it employs journeymen or apprentices in the same amount or upon the same basis and in the same manner as the other contractors do, but where the trust fund administrators are unable to accept such funds, contractors not signatory to the trust agreement shall pay a like amount to the California Apprenticeship Council. The contractors shall provide proof of such contributions when requested, including checks, check stubs, receipts, or other records required to prove that all required payments where made.

5) In the event the Developer willfully fails to comply with the provisions of this Article or California Labor Code §1777.5, and pursuant to California Labor Code §1777.7, the Developer shall: (i) be denied the right to bid on any public works contract for a period of one (1) year from the date the determination of non-compliance is made by the Administrator of Apprenticeship; and (ii) forfeit, as a civil penalty, One Hundred Dollars ($100.00) and up to Three Hundred Dollars ($300.00) for each calendar day of noncompliance. The District shall withhold such amount from the Contract Price then due or to become due upon request of the Division of Apprenticeship Standards.

j. Payroll Records: Pursuant to California Labor Code §1776, the Developer and every Subcontractor, of any tier, shall keep accurate payroll records, showing the name, address, social

security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker or other employee employed by them in connection with the Work. The payroll records shall be certified and submitted weekly to the LCP Provider (sec. 27.b) and shall be available for inspection at all reasonable hours at the principal office of the Developer on the following basis: (1) a certified copy of an employee's payroll record shall be made available for inspection or furnished to such employee or his/her authorized representative on request; (2) a certified copy of all payroll records shall be made available for inspection or furnished upon request to the District, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards of the Department of Industrial Relations; (3) a certified copy of payroll records shall be made available upon request to the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through either the District, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. The Developer shall have ten (10) days in which to completely comply, subsequent to receipt of written notice specifying in what respects the Developer must comply herewith. Should noncompliance be evident after such 10-day period, the Developer shall, as a penalty to the District, forfeit Twenty-Five Dollars ($25.00) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated.

k. Hours of Work:

1) Pursuant to California Labor Code §1810, eight (8) hours of labor shall constitute a legal day's work. Pursuant to California Labor Code §1811, the time of service of any worker employed at any time by the Developer or by a Subcontractor, of any tier, upon the Work or upon any part of the Work, is limited and restricted to eight (8) hours during any one calendar day and forty (40) hours during any one calendar week, except as hereafter provided. Notwithstanding the foregoing provisions, Work performed by employees of Developer or any Subcontractor, of any tier, in excess of 8 hours per day and 40 hours during any one week, shall be permitted upon compensation for all hours worked in excess of 8 hours per day or 40 hours per week at not less than one and one-half ($1^1/_2$) times the basic rate of pay.

2) The Developer shall pay to the District a penalty of Twenty-Five Dollars ($25.00) for each worker employed on the Work by the Developer or any Subcontractor, of any tier, for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any calendar day and forty (40) hours in any one calendar week, in violation of the provisions of the California Labor Code, unless compensation to the worker so employed by the Developer is not less than one and one-half ($1^1/_2$) times the basic rate of pay for all hours worked in excess of eight (8) hours per day.

3) Any work necessary to be performed after regular working hours and/or at night and/or on Sundays and/or other holidays and/or any time when work is conducted other than the normal forty (40) hour week and/or to vary the period during which work is carried on each day, shall be performed without additional expense to DISTRICT. DEVELOPER shall give DISTRICT a minimum of forty-eight (48) hours notice so that inspection may be provided. Any additional inspection costs incurred shall be paid by the DISTRICT and back charged to the DEVELOPER.

l. Withholding of Contract Payments:

1) The District will delay Tenant Improvement payments from the prime contractor and or any sub-contractor if: (a) prevailing wages have not been paid to all workers employed on the project; (b) contractors have failed to submit certified weekly payroll records on a weekly basis; (c) inadequate or incomplete payroll records are submitted; (d) the contractors fails to comply with the labor code requirements concerning apprentices. The delay of payments will equal the amount of under payment, the penalty of $50.00 per day per worker under paid, the amount of Liquidated Damages that may become due if the underpayments are not corrected within 60 days and other penalties available to the District. Additionally, the District will notify the bond insurer who is jointly and severally liable for the underpayments and Liquidated Damages.

2) The District will withhold Tenant Improvement payments, after investigation and/or approval or request of the Division of Labor Standards Enforcement, in amounts equal to identified worker under payments and/or penalties as authorized by the California Labor Code or these contract General Conditions; if: (a) prevailing wages have not been paid to all workers employed on the project; (b) contractors have failed to submit certified weekly payroll records on a weekly basis; (c) inadequate or incomplete payroll records are submitted; (d) the contractors fails to comply with the labor code requirements concerning apprentices.

3) The District will delay or withhold the value of Liquidated Damages to all identified worker underpayments. The prime contractor, any sub-contractor of any tier and the bond insurer may become liable for the underpayments and Liquidated Damages if the responsible employer fails to correct identified under payments within 60 days of any issued notice of under payment. The prime contractor and or any responsible subcontractor of any tier and the bond insurer will be jointly and severally liable for liquidated damages. Liquidated Damages are equal to the total underpayment of wages remaining uncorrected sixty. (60) days after receipt of the first notice. The underpaid employee will receive both the liquidated damages and the underpayment amount. The District may also impose penalties equal to fifty, ($50.00) dollars per day per worker in addition to the liquidated damages and underpayment.

m. Compliance with State and Anti-Discrimination Laws: The Developer shall comply with Section 1735 of the Labor Code, which provides as follows:

> A contractor shall not discriminate in the employment of person upon public work because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age or sexual orientation except as otherwise provided in Section 12940 of the Government Code. Every contractor for public works who violates this section is subject to all the penalties imposed for a violation of (Chapter 1 of part 7, Division 2 of the Labor Code)

29. LAYING OUT OF WORK: The Developer shall, immediately upon entering the Project Site to begin work, locate all reference points and bench marks and take all necessary precautions to prevent their destruction; layout all work and be responsible for all lines, elevations and measurements of buildings, utilities, and other work executed under the Contract. He/she shall verify figures and elevations shown on the Drawings before laying out work, and will be held responsible for any error resulting from his/her failure to do so. Cost of surveying services required to establish and check property elevations and to correctly locate and establish property and construction lines, streets, sidewalks, curbs, etc., shall be included in the Guaranteed Maximum Price. Developer shall be responsible for encroachments on the rights or property of the public or surrounding property, and for encroachments on easements noted and required set backs, and he/she shall, without cost to the District, take down, and rebuild in an approved manner any portion of a building, wall, fence or any other item that is constructed over the property lot easement or setback line.

Where work of one trade joins or is on other work, there shall be no discrepancy when said is completed. In engaging one kind of work with another, marring or damaging same will not be permitted. Should improper work of any trade be covered by another that results in damage or defects, the whole work affected shall be made good by the Developer without expense to the District.

The Developer shall consult the other contractors on the project, if any, and the Architect, regarding the installation of such other contractor's work before starting the various phases of his/her work, in order to avoid the possibility of the removal of his/her work to permit others to install their work.

Assistance required by the Architect in obtaining measurements or information on the work shall be furnished fully and efficiently by the Developer.

30. LIQUIDATED DAMAGES: The District and Developer understand and agree that if the work is not completed within the time of completion required by this Agreement, the District will suffer damage. The

parties agree that it will be impractical and infeasible to determine the amount of actual damage and, therefore, it is agreed that Developer shall pay to the District as fixed and liquidated damages, and not as a penalty, the sum of one hundred dollars ($100.00) for each calendar day of delay until all work is completed and accepted. Developer and the District agree that the sum fixed as liquidated damages is a reasonable and good faith estimate of the actual amount necessary to compensate the District for damages incurred as the result of delay when viewed prospectively upon the making of this Contract. Developer and his/her surety shall be liable for the amount thereof, which shall be deducted from any payments due to or to become due to Developer.

31. MANUFACTURER'S MAINTENANCE INSTRUCTIONS, MANUALS AND WARRANTIES: Notwithstanding Developer's warranties as identified in these contract documents, ***prior to release of retention payment***, Developer shall provide to District all relevant manuals, instructions and manufacturer warranties for all equipment, systems, and appliances installed in the project, including, but not limited to, automatic sprinklers, kitchen appliances, heating, air conditioning, and ventilation systems, climate control systems, energy monitoring/ control systems, alarms, automatic lighting systems, elevators, etc., prior to receiving final payment. In addition, Developer or his/her manufacturer, representative or other agent shall provide the District designee(s) with initial, basic instruction in the operation of any installed equipment/system(s).

32. MATERIALS:

a. New Materials: Materials shall be new and of quality equal to that specified. When not particularly specified, materials shall be the best of their class or kind. The Developer shall, if required, submit satisfactory evidence as to the kind and quality of material. Price, fitness and quality being equal, preference shall be given to products made in California. If a conflict(s) exists in the drawings or specifications regarding the type, kind or quality of materials to be used, the conflict shall be resolved in favor of using the superior type, kind or quality material unless use of the inferior type, kind or quality of material is authorized in writing by the District.

b. No Asbestos or Asbestos Containing Materials: No asbestos or asbestos containing materials shall be utilized in this construction or in any tools, devices, clothing or equipment used to affect this construction. Asbestos and/or asbestos containing products shall be defined as all items but not limited to chrysotile, crocidolite, amosite, anthophylite, tremolite and actinolite. Any and all material containing greater than one tenth of one percent (>.1%) asbestos shall be defined as asbestos-containing material. Any disputes involving the question of whether or not material contains asbestos shall be settled by electron microscopy. The costs of any such tests shall be paid by the Developer. All work or materials found to contain asbestos or work or material installed with asbestos containing equipment will be immediately rejected and this work will be removed at no additional cost to the District.

Decontamination and removal of work found to contain asbestos or work installed with asbestos containing equipment shall be done only under the supervision of a qualified consultant, knowledgeable in the field of asbestos abatement and accredited by the Environmental Protection Agency. The asbestos removal contractor shall be an EPA accredited contractor qualified in the removal of asbestos and shall be chosen and approved by the asbestos consultant who shall have the sole discretion and final determination in this matter. The asbestos consultant shall be chosen and approved by the Architect or the District who shall have sole discretion and final determination in this matter. The work will not be accepted until asbestos contamination is reduced to levels deemed acceptable by the asbestos consultant.

Costs of all asbestos removal, including but not necessarily limited to the cost of the asbestos removal Contractor, time delays, and additional costs as may be incurred by the District and/or his agent(s) shall be borne entirely by the Developer.

The cost of the asbestos consultant, analytical and laboratory fees shall be borne by the District.

Developer shall execute a declaration under penalty of perjury that no asbestos or asbestos containing products shall be utilized in the project. In addition, Developer shall certify that no lead-based paint, lead plumbing or solders, or other potential sources of lead contamination shall be utilized in the project.

c. Equals: Wherever in the contract documents any material or process is indicated or specified by patent or by proprietary name or by name of manufacturers, and except where any material or product is expressly specified for the purpose of maintaining uniformity of design, function, or use and designated as no substitutes allowed, such specifications are used for the purpose of facilitating the description of the materials or processes desired and are in no way intended to restrict bidding. Such specifications shall be deemed to be followed by the words "or equal", and the Developer may offer any material or process which shall be equal in every respect to that indicated or specified; provided, however, that if the material, process or article offered by the Developer is deemed to not be equal in every respect to that specified by the District, at the District's discretion, then the Developer must furnish the material or article specified, or one that in the opinion of the Architect is the quality thereof in every respect. The burden of persuasion of the equality to the satisfaction of the Architect shall be solely upon the Developer. Requests for equals shall be submitted not later than 20 days after the date of the Construction Agreement so as to avoid delay, and in no event will the time for completion of the project be extended on account of request for an equal. Failure to submit requests for equals in accordance with this article shall constitute a wavier of the right to substitute equals for specified items. Requests shall be made on a form provided by the Architect.

The Developer shall submit for approval to the Architect/Engineer and the District, a list of all materials proposed to be used which differ in any respect from materials specified. This list shall include all materials which are proposed by the subcontractors as well as by the Developer, for use in work under the Construction Agreement, whether or not specifically mentioned in the specifications.

The list must also include the cost figures received by the Developer for the material or materials which are submitted for approval as an equal, together with the cost figures of the specified material or materials for which equals are proposed. Failure to propose any item prior to the commencement of work, and within the time specified after the signing of the Construction Agreement, will be deemed sufficient cause for denial of the request for use of a proposed equal.

If, after the Architect has favorably reviewed materials or equipment, it is found that the materials or equipment presented and favorably reviewed for use are not justifiably equal in quality and performance to the product originally specified, the District, in consultation with the Architect, retains the right to revoke said favorable review, and to reject the materials or equipment without any additional cost.

All materials shall be delivered so as to insure a speedy and uninterrupted progress of the work. Materials shall be stored so as to cause no obstruction and so as to prevent overloading of any portion of the structure on work site, and the Developer, regardless of whether he/she stores materials on or off the site, shall be entirely responsible for damage or loss by weather, theft, vandalism, or other cause.

After the Construction Agreement has been executed, the District and the Architect will consider a formal request for the substitution of products in place of those specified only under the conditions set forth in the contract documents.

By making requests for equals or substitutions, the Developer:

1) represents that the Developer has personally investigated the proposed substitute or equal product and determined that it is equal or superior in all respects to that specified;

2) represents that the Developer will provide the same warranty for the equal or the substitution that the Developer would for that specified;

3) certifies that the cost data presented is complete and includes all related costs under this Construction Agreement except the Architect's redesign costs, and waives all claims for additional costs related to the equal or the substitution which subsequently became apparent; and

4) will coordinate the installation of the acceptable equal or substitute, making such changes as may be required for the work to be complete in all respects.

5) early occupancy shall not in anyway affect the warranties provided pursuant to this contract;

6) all requests for substitution of proposed equals shall be accompanied by a substitution request form as provided by the Architect;

7) represents that the proposed substitution does not affect dimensions unless shown on drawings and does not require design changes in the Contract Documents;

8) represents that the Developer will pay for changes to the building design, including engineering design, detailing, and construction costs caused by the requested substitution;

9) represents that the proposed substitution will have no adverse affect on the work, the schedule, or specified warranty requirements; and

10) represents that maintenance and service parts will be readily available for the proposed substitution.

33. MODIFICATION: The Construction Agreement, including all contract documents therein, may be modified by mutual consent and in writing only.

34. NON-CONFORMING WORK: Developer shall, upon request and without delay, remove from the site of the work, all work identified by the District and/or Architect as failing to conform to the Contract documents. All work which has been identified as non-conforming shall be remedied, removed, and replaced, by the Developer in an acceptable manner at Developer's expense.

Upon failure of Developer to comply within forty-eight (48) hours with a written order of the District made under this section, or to make satisfactory progress in so doing, the District may cause such non-conforming work to be removed, or remedied, or removed and replaced, and deduct and retain the costs from any sums due or to become due to the Developer.

The District reserves the right to accept non-conforming work, in consultation with the Architect, and in such case, acceptance of non-conforming work shall result in an equitable adjustment in the total contract price reflecting the reduced value of the non-conforming work as determined by mutual agreement between the District and Developer. Acceptance of non-conforming work shall be approved by the Division of the State Architect as applicable.

35. NOTICE AND SERVICE THEREOF: Any notice from one party to the other under the Construction Agreement shall be in writing and shall be dated and signed by the party giving such notice or by a duly authorized representative of such party. Any such notice shall not be effective for any purpose whatsoever unless served in the following manner, (a) if the notice is given to the District, by personal delivery thereof to the Assistant Superintendent, Facilities & Maintenance Services of said District, or by depositing the same in the United States mail, enclosed in a sealed envelope, addressed to the District, postage prepaid and registered; (b) If the notice is given to the Developer, by personal delivery thereof to said Developer or to his/her duly authorized representative at the site of the project, or by depositing the same in the United States mail, enclosed in a sealed envelope, addressed to Developers business address, postage prepaid and registered; and (c) if the notice is given to the surety or any other person, by personal delivery to such surety or other person, or by depositing same in the United States mail, enclosed in a sealed envelope, postage prepaid and registered.

36. OCCUPANCY PRIOR TO COMPLETION:

a. The District reserves the right to occupy, on written notice, any portion of the work at any time before completion and while work is in progress. In the event of such occupancy, the Developer shall provide, without additional cost to the District, suitable protection by means of fencing, barriers, posted signs or other methods as required to prevent persons other than those directly connected with the work from entering remaining areas where continuing work is being conducted, vehicles are operating, or materials are stored.

1) Such occupancy by the District prior to final acceptance shall not be construed by the Developer as being an acceptance of that part of the project so occupied, nor shall the Developer be entitled to, or make demand for, additional compensation or extension of time because of such occupancy.

2) Such occupancy by the District prior to final acceptance shall not be deemed to constitute a waiver of existing claims on behalf of the District or Developer against each other.

3) The metered cost of electricity, water, fuel, etc., for the occupied portions will be borne by the District from the start of such occupancy.

4) The Developer shall not be held responsible for any damage to the occupied portions of the project resulting from such occupancy by the District, unless attributed to the Developer's failure to comply with subdivision a. above.

b. Use and occupancy by the District prior to final acceptance shall not relieve the Developer of his/her responsibility to provide and maintain all insurance and bonds required of the Developer under the Contract until the work is completed and accepted by the District.

37. OVERLOADING:

a. If the Developer shall cause, permit, or allow any part of the building or buildings to be overloaded by storing, piling or setting thereon any material or equipment, or by performing thereon any of his/her work, he/she shall do so at his/her sole risk, and he/she shall be solely responsible for any and all loss, damage, and/or injury arising or resulting therefrom.

b. All materials brought onto the site shall be stacked up in an orderly manner in a designated area not in conflict with the area where work is being performed.

38. PAYMENT:

a. Tenant Improvement Payments: Subject to other applicable conditions included in these specifications, including, but not limited to, Section 38(h) below, Tenant Improvement Payments will be as specified in Article 3.4 of the Facilities Lease dated August 15, 2009. If the District fails to make a Tenant Improvement Payment within thirty (30) days after receipt of an undisputed and properly submitted payment request from Developer, as certified by the Architect, the District shall pay interest to Developer in the amount set forth in subdivision (a) of Section 685.010 of the California Code of Civil Procedure.

(i) Any payment request determined not to be a proper request suitable for payment shall be returned to the Developer as soon as practical, but not later than seven (7) days after receipt. A request returned pursuant to this paragraph shall be accompanied by a document setting forth the reasons in writing why the payment request is not proper.

(ii) A properly submitted payment request shall be defined as the date upon which the District receives a Tenant Improvement payment request, certified in accordance with the Construction Agreement and Facilities Lease.

b. Proof of Value: Refer to Article 3.4 of the Facilities Lease dated August 15, 2009.

c. Inspector's Confirmation: Refer to Article 3.4 of the Facilities Lease dated August 15, 2009.

d. Final Tenant Improvement Payment: When the work is ready for acceptance by the District, Developer shall submit a request for final Tenant Improvement payment, the Architect upon acceptance, shall so certify in writing to the Assistant Superintendent, Facilities & Maintenance Services, and a certificate of acceptance will be issued to the Developer which will bring his/her Tenant Improvement payments up to ninety percent (90%) of the Contract Price, less sums withheld for liquidated damages, if any.

e. Final Payment: A Notice of Completion will be filed by the District upon completion and acceptance of the work. Thirty five (35) days after filing of such notice of completion payment due under the Contract, less amounts in satisfaction of stop notices and incomplete punch list items, will become due the Developer and the Architect shall so certify to the District authorizing the final payment. District may withhold any reasonable sums payable to Developer for any work that was not completed on said date or that is defective and ordered to be replaced, or that is subject to a stop notice, final payment for withholdings to be made when certified by the Architect in writing to the District. A reasonable sum shall be defined as 150% of the amount of monies necessary to complete or correct the work.

f. Stop Notices: The District shall withhold, from the next following payment to Developer, 150% of any amount claimed in a stop notice timely filed with the District. Amounts withheld shall only be paid upon a valid release of stop notice or other resolution pursuant to governing law. Disputes regarding the validity of stop notices shall be resolved pursuant to governing law and shall not be subject to the dispute resolution provisions set forth in Public Contracts Code 20104 and these contract documents. Neither the final payment nor any part of the retained percentage shall become due until the Developer delivers to the District a complete release of all stop notices arising out of this Contract, but the Developer may, if any subcontractor refuses to furnish a release, furnish a bond satisfactory to the District, to indemnify the District against any stop notice. Developer understands and acknowledges that public property may not be liened but that a subcontractor may file a stop notice with

the District. Developer shall inform all subcontractors regarding the invalidity of liens on public property and in the event a subcontractor erroneously records a lien against public property, Developer shall remove or bear the expense incurred by the District in removing the invalid lien, including all costs and reasonable attorney fees.

g. Payments Withheld: The District may withhold or, on account of subsequently discovered evidence, nullify the whole or a part of any certificate of payment to such extent as may be necessary to protect the District from loss on account of:

1) Defective work not remedied;

a. Payment for defective work shall not be made unless and until Developer provides written notice from its surety that surety waives the right to claim exoneration based on payment for defective work.

2) Claims filed or reasonable evidence indicating probable filing of claims;

3) Failure of the Developer to make payments properly to subcontractors or for material or labor;

4) Conditions indicating that the Contract cannot be completed for the balance then unpaid;

5) Damage to another Contractor.

6) Delays in progress toward completion of the work, with the stipulated amount of liquidated damages being withheld for each day of delay for which no extension is granted.

7) As-built drawings and operations/maintenance manuals delivered and accepted by the District.

h. Substitution of Securities: Upon the Developer's request, the District will make payment of funds withheld from Tenant Improvement payments pursuant to the requirements of Public Contracts Code Section 22300, if the Developer deposits in escrow with the District's treasurer or with a bank acceptable to the District, securities eligible for the investment under Government Code Section 16430 or bank or savings and loan certificates of deposit, upon the following conditions:

1) The Developer shall bear the expense of the escrow account including the expense of the District and the escrow agent, either the District's Treasurer or the bank, in connection with the escrow deposit made;

2) Securities or certificates of deposit to be placed in escrow shall be of a value at least equivalent to the amounts of retention to be paid to the Developer pursuant to this section;

3) The Developer shall enter into an escrow agreement in the form set forth in Public Contracts Code 22300 and satisfactory to the District, which agreement shall include provisions governing inter alia;

(i) the amount of securities to be deposited;

(ii) the providing of powers of attorney or other documents necessary for the transfer of the securities to be deposited;

(iii) conversion to cash to provide funds to meet defaults by the

Developer, including, but not limited to, termination of the Developer's control over the work, stop notices filed pursuant to law, assessment of liquidated damages or other amounts to be kept or retained under the provisions of the Contract;

(iv) decrease in value of securities on deposit;

(v) the termination of the escrow upon completion of the Contract.

4.) The Developer shall obtain the written consent of the surety to such agreement.

i. Off-Setting Obligations: The District may off-set against payments required under this contract any monetary obligation from Developer to the District whether the obligation arises out of this project or otherwise.

39. PRE-CONSTRUCTION CONFERENCE: Prior to start of construction a conference may be called for the purpose of reviewing the construction program with the Developer's representative. At the conference, detailed program, sequence of work, and methods of access to work site shall be reviewed.

40. PROGRESS SCHEDULE: This section includes the preparation and submission of the schedules and reports specified herein, including the up to date maintenance thereof as required.

Construction Schedule General Requirements: Developer shall prepare and submit a detailed critical path method (CPM) schedule within twenty-one (21) calendar days of the formal notice to proceed. General requirements of the schedule shall include:

a. a construction sequence that does not exceed the contract completion date.

b. submittal/approval/fabrication and delivery sequences for all key materials and equipment on the project.

c. activities to reflect major inspections and testing of equipment.

d. utilize computerized software, such as Primavera, Promus, Aldegraph, or equal computerized CPM scheduling software.

e. use conventional critical path methods, principles, and definitions to satisfy the requirements of this specification.

f. use Precedence Diagramming Method (PDM) format.

Cost loading of all work activities shall be required. The cumulative amount of all cost loaded work activities shall equal the total contract price. Prorate overhead profit and general conditions on all activities for the entire project.

Procurement activities must be cost loaded to determine payment amounts for materials stored on site. If materials stored on site are not to be submitted for payment as such, cost loading of procurement items will not be required.

Original CPM Schedule Submittal: The project CPM schedule shall have a level of detail sufficient to reflect the various construction activities and monitor the project in a usable and readable manner. A minimum number of activities, including procurement activities, shall be required as determined by the Architect in accordance with the scope of the project.

The Developer may elect to supply the services of a CPM scheduling consultant, and shall do so if adequate scheduling capabilities do not exist in-house.

The original submittal shall include the following:

a. time scaled logic network diagram in order by building.

b. bar chart in order by building, by early start.

c. bar chart in order by trade, by early start.

d. eight and one-half inch by eleven and one-half inch (1-1/2" x 11-1/2") textural reports for a), b) and c) above.

e. a cost loaded report, including individual activity cost and estimated month projected payments for the entire length of the project, sorted by: 1) early start, 2) late start. the cost loading totals must equal the contract sum.

Schedule Maintenance and Updating: The project CPM schedule shall be updated on a monthly basis with the project status date (data date) being no more than ten (10) working days to the prior periodic submittal due date.

Tenant Improvement payment requests must include the current CPM schedule update at the time payment requests are submitted for processing.

Each update submittal shall include the current time scaled logic network diagram and bar charts.

Select reports yielding the following sort of orders will be required.

a. activity listing sorted by building (including site), by total float, by early start.

b. activity listing sorted by building (including site), by early start.

c. during the report sorted by building, by total float; comparing current update with prior update.

d. variance report sorted by building by total float; comparing current update with original schedule.

e. value of work performed for current period, sorted by building, by trade.

f. value of work performed to date, sorted by building, by trade.

Included in the CPM schedule update shall be a written narrative report detailing the following:

a. a general discussion of progress since the prior update, including areas of work being accomplished earlier or later than scheduled. Include a discussion of any delay reflected by the CPM schedule.

b. a listing of the critical path only, sorted by early start, and a narrative addressing all critical path changes for the current update, the projected completion date, and the Developer's plan of action to maintain the contract completion date.

c. a listing of all near-critical activities (activities having less than sixteen (16) working days total float) with a narrative discussion of the Developer's plan of action to keep these activities from becoming critical.

d. a detailed listing and narrative of all logic changes, activity additions and deletions, duration modifications, and other scheduled alterations that were completed during the update.

e. each schedule update shall include floppy disks containing the CPM schedule files for that update.

f. the Developer shall provide the District, upon the District's request, access to the scheduling software and hardware used to produce the original CPM schedule and monthly updates and an electronic copy of the schedule.

A copy of the most recent CPM construction schedule shall be posted in the Developer's job office and copies of all out of date schedules shall be kept at the job office at all times for perusal by the District.

In addition to the CPM schedule update and reports submitted with each Tenant Improvement payment request, one copy of CPM schedule updates and required report shall be submitted to the architect and the District. Such submittal shall be required within five (5) working days of the CPM schedule status date (data date).

Upon project closeout, the Developer shall provide the District and the architect with one copy each of the completed as-built schedule and applicable reports.

Submittal Schedule: The Developer shall also furnish before first application for Tenant Improvement payment, a separate schedule along with the construction schedule specified above showing the proposed dates for submittal of all shop drawings, product data and samples.

Submit two (2) copies of the submittal schedule to the architect.

41. PROTECTION OF WORK AND PROPERTY: The Developer shall continuously maintain adequate protection of all his/her work from damage and shall protect the District's property from injury or loss arising in connection with this Contract. Developer shall make good any such damage, injury or loss, except such as may be directly due to errors in the Contract documents or caused by agents or employees of the District. Developer shall adequately protect adjacent property as provided by law and the Contract documents.

Damage to existing facilities or to adjoining property shall be the responsibility of the Developer. Should damage occur, such facilities or property shall be restored to original condition at no additional cost to the District.

The Developer shall arrange for the protection of the existing buildings at all times. The Developer shall install, maintain and remove at completion of the work all necessary barricades, temporary coverings, etc. required. At the completion of the work the premises shall be renovated and returned to a condition equal to that which existed prior to temporary protection installation.

Housekeeping: The premises shall be kept in a clean, safe condition at all times. Rubbish shall be removed as fast as it accumulates.

Burning: The use of burning at the Project site for the disposal of refuse and debris will not be permitted.

Any plants which must be removed for proper execution of the work shall be removed without damage in a manner necessary for transplanting. The Developer shall aid in this work and shall complete the transplanting and be responsible for watering and cultivation. The Developer shall be responsible for damage to plants in a manner described in the foregoing paragraph.

42. QUALIFICATIONS FOR EMPLOYMENT: No person under the age of 16 years of age shall be employed to perform any work under this Contract.

43. ROYALTIES AND PATENTS: The Developer shall pay all royalties and license fees. Developer shall defend all suits or claims for infringement of any patent rights and shall save the District harmless from loss on account thereof, except that the District shall be responsible for all such loss when a particular process or the product of a particular manufacturer or manufacturers is specified, but if the Developer has information that the process or articles specified is an infringement of a patent he/she shall be responsible for such loss unless he/she promptly gives notice of such infringement in writing to the District.

44. SANITARY FACILITIES: In accordance with applicable Cal-OSHA regulations, Developer shall supply and maintain at his/her expense such toilets and other sanitary facilities as are necessary for use by workers employed at the job site. Such facilities shall be approved by the District.

45. SCHEDULE OF VALUES: Within ten (10) days after the execution of the contract, Developer shall supply the District and Architect with a schedule of values that will break down the contract price into its component parts. The schedule of values will accurately reflect the comparative cost of the various portions of the work. If the District and/or the Architect questions the accuracy of any item, Developer shall supply detailed breakdown of the item(s) cost. Percentages of completion may be applied to the schedule of values by the District and/or Architect to compute progress payments.

46. SEPARATE CONTRACTS: The District reserves the right to let other contracts in connection with the work. The Developer shall afford other contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work, and shall properly connect and coordinate his/her work with theirs.

47. SEVERABILITY: In the event any provision(s) of the contract documents is deemed to be invalid or unenforceable, that (those) provision(s) shall be severable from the remainder of the contract documents and shall not cause the invalidity or unenforceability of the remainder of the contract.

48. SUBCONTRACTORS: The Developer agrees that he/she is as fully responsible to the District for the acts and omissions of his/her subcontractors and of persons either directly or indirectly employed by them, as he/she is for the acts and omissions of persons directly employed by him. Nothing contained in the Contract documents shall create any contractual (including third party beneficiary) relation between any subcontractor and the District.

a. A subcontractor is a person or organization who has a direct contract with the Developer to perform any of the work at the site. Subcontractor shall be listed in the Contract Documents according to the instructions contained therein.

b. The Developer agrees to bind every subcontractor to the terms of this contract, including the General Conditions, Special Conditions, the Drawings and Specifications as far as applicable to the Developer's work.

c. **The following provisions shall be included in the Developer's contracts with his/her/its subcontractors, unless specifically noted to the contrary in a subcontract approved in writing as adequate by the District. Developer shall hold the District harmless and defend and indemnify the District from damages, if any, incurred as a result of Developer's failure to include the following required conditions in Developer's subcontracts.**

The subcontractor agrees:

(a) To be bound to the Developer by the terms of the Agreement, General Conditions, Special Conditions, Drawings and Specifications, and to assume toward him/her all the obligations and responsibilities that he/she, by those documents, assumes toward the District.

(b) To submit to the Developer, applications for payment, in such reasonable time as to enable the Developer to apply for payment under terms of the General Conditions.

(c) To make all claims for extras, for extensions of time and for damages to the Developer in the manner provided in the contract documents for claims by the Developer upon the District.

d. Developer shall:

(1) Pay the subcontractor, upon the payment of certificates, the amount allowed to the Developer on account of the subcontractor's work to the extent of the subcontractor's interest therein.

(2) Pay the subcontractor to such extent as may be provided by the Contract documents or the subcontract, if either of these provides for earlier or larger payments than the above.

e. Pursuant to the provisions of Sections 4100 et seq., of the Public Contracts Code of the State of California, the Developer shall not without the consent of the District, either:

(1) Substitute any persons as subcontractors in place of the subcontractors designated in his/her original bid; or

(2) Permit any subcontractor to be assigned or transferred or allow any work to be performed by anyone other than the original subcontractor listed in his/her bid; or

(3) Other than in the performance of change orders, sublet or subcontract any portion of the work in excess of one-half of one percent of his/her bid for which his/her original bid did not designate a subcontractor.

Developer's violation of any of the provisions of sections 4100 et seq., of the Public Contracts Code, shall be deemed a material breach of this Contract, and the District may terminate the Contract, or may assess the Developer a penalty in the amount of not more than ten percent (10%) of the amount of the subcontract involved, or may both cancel the Contract and assess the penalty.

49. SUBMITTALS, SHOP DRAWINGS, CUTS AND SAMPLES: Shop drawings, brochures, catalogue cuts and samples in quantities specified by Architect shall be submitted to the Architect for all items for which they are required by the technical specifications. The Developer shall examine all submittals for accuracy and completeness, including those submittals provided by subcontractors at any tier, in order to verify their suitability for the work and compliance with the contract documents and shall sign and date each submittal. Specific submittals requirements are identified in the individual specification Sections.

a. Submittal Requirements:

1. General: Conform to specified procedures in submission of all required submittals.

2. Specified Products: Where submittals are identified in individual specification Sections with the statement "None required for specified product", only the named manufacturers product and model numbers are exempt from submittal requirements.

3. Approved Equals and Substitutions: Where submittals are identified in

individual specification Sections with the statement "None required for specified product", and Developer is requesting an approved equal or substitution, all submittal requirements shall be in effect and will be required. Submittals shall identify all changes required in plan, detail and specification, and shall show or describe in detail, how proposed product will be incorporated, without altering the design or appearance of the Project in any way.

4. Deferred Approvals: Items identified on the cover sheet of the Drawings that are not approved by DSA because the exact design or manufacturer are not known at the time of approval and which require submittals be made through the Architect to DSA for review and acceptance after the Contract is signed.

b. Submission Procedures:

1. General: Schedule submissions a minimum three (3) weeks before required for use.

2. Submissions: After issuance of Notice to Proceed make submissions as follows:

(a) Deferred Approval Items: 21 calendar days.

(b) Early Start and/or Long Lead-Time Items: 20 calendar days.

(c) Color Selection Items: 20 calendar days.

(d) Electrical, Mechanical and Equipment Items: 30 calendar days.

(e) All other items: 30 calendar days.

c. Cover Sheet:

1. General: All submittals shall be accompanied by a Submittal Cover Sheet as provided by the Architect. Developer shall follow the format as follows:

(a). Developer: Provide company name, mailing address, telephone number and name of the contact person responsible for work on this project.

(b) Sub-contractor: Provide company name, mailing address, telephone number and name of the contact person responsible for work on this project.

(c) Submittal Description:

General: Describe contents of submittal completely; identify if material is a resubmittal, and give previous submittal number.

Submittal Index: Provide index of all items included in submittal; properly identify with drawing numbers, etc.

(d) Specification Section Number: Identify submitted work with Section number and name shown in the Project Manual. Provide separate submittals for each specification Section, as required.

(e) Submittal Number: Identify first submittal as number one (1); number re-submittals, if required, with succeeding numbers.

3. Submittals Identification:

Provide the following on each submittal.

(a) Date: Submission date and revision dates.

(b) Project: Project title and number; names of Architect, Developer, and Sub-contractor.

(c) Product or Material: Name of manufacturer; product name or model number; supplier, and Material Safety Data Sheet (MSDS) if applicable.

(d) Developer's stamp: Initialed or signed, certifying to review of submittal, verification of field requirements and compliance with contract documents.

d. Number of Copies Required:

1. Submit following number of copies:

(a) Progress Schedule: Two (2) copies.

(b) Schedule of Values: Two (2) copies.

(c) Certifications: One (1) copies.

(d) Shop Drawings: One (1) reproducible transparency and one (1) print of each original drawing.

(e) Product Data/Material Lists: Four (4) copies.

(f) Samples:

(1) General: As identified in individual specification Section.

(2) Color/Pattern Section: One set of manufacturer's complete range for initial selection; additional samples as requested of selected color/pattern for final color schedule.

(g) Substitutions: Four (4) copies.

(h) Maintenance/Operating Manuals: Two (2) copies.

(i) Record Drawings: Reproducible transparencies.

(j) Record Survey: Reproducible transparencies.

(k) Guarantees: One (1) copy.

e. Submittal Review:

1. General: Make submittals as required to cause no delay in the orderly

progress of work, layout or fabrication under the Construction Agreement, due allowance being made for checking by the Architect and for such corrections, resubmissions and rechecking as may be necessary. Do not commence any work requiring submittals until review and approval by Architect has been completed.

2. Review: Review of submittals will be general and only for general conformance with the Contract Documents. Review does not relieve Developer from responsibility for coordinating work with other trades and compliance with requirements of Contract Documents for lengths, fit and other details, or from furnishing materials and work required by contract which may not be indicated on submittals when reviewed. Review does not authorize changes from the Construction Agreement requirements. Efforts will be made by Architect to identify errors and omissions, but Developer is responsible for the accuracy and correctness of all submittals. This provision shall not authorize any extension of time for performance of this Construction Agreement.

3. Color Selections: Architect will make no selections until all submittals related to color have been received and materials reviewed.

50. PROJECT SUPERINTENDENT; PROJECT SUPERVISOR:

a. The Developer shall keep a full-time Project Superintendent physically on the project site at all times that work is being performed on the project and shall keep during the progress of the project any necessary assistants to the Project Superintendent, all of whom must be satisfactory to the District. The Project Superintendent shall not be changed except with the consent of the District, unless the Project Superintendent proves to be unsatisfactory to the Developer and ceases to be in his/her employ. The District and Architect shall be notified immediately of any new Project Superintendent appointed to be physically on-site during any time that work is being performed on the project. The Project Superintendent shall represent the Developer in his/her absence and all directions given to him/her shall be as binding as if given to the Developer.

b. The Developer shall give efficient supervision to the work, using his/her best skill and attention. Developer shall carefully study and compare all drawings, specifications and other instructions and shall at once report to the Architect any error, inconsistency, or omission which he/she may discover but he/she shall not be held responsible for their existence or discovery, unless there is a situation in which interpretation is doubtful or the error is sufficiently apparent as to place a reasonably prudent contractor on notice that an error exists.

c. Any time Developer's personnel or personnel of subcontractors or materialmen are on the project site, Developer shall have a designated person on site to be responsible for the work.

51. THIRD PARTY BENEFICIARIES: This Construction Agreement is by and between the District and Developer and/or their successors or assigns and no third party is intended expressly or by implication to be benefited by this Agreement.

52. UNFAVORABLE WEATHER OR OTHER UNFAVORABLE CONDITIONS: During unfavorable weather or other unfavorable conditions, the Developer shall pursue only such portions of the work that will not be damaged thereby. No portions of the work of which the satisfactory quality or efficiency will be affected by any unfavorable conditions shall be constructed while these conditions remain. The Developer may continue to work, if, by special means or precautions approved by the District, the Developer is able to work without the risk of damage caused by such unfavorable

conditions.

53. UTILITIES:

a. Unless otherwise provided for under separate sections, Developer shall arrange for and provide continuously until acceptance of work, all water, gas and electricity required. Developer shall pay for such services unless specifically otherwise noted.

b. Developer shall send proper notices, make necessary arrangements, perform other services required in care and maintenance of all public utilities and assume all responsibility concerning same. Notify proper utility if damage occurs. Observe all rules and regulations of the respective utilities in executing the work.

c. Developer shall carefully check areas where operations of the Project are to be performed and observe any existing overhead wires, equipment and other obstructions. Any such work shall be moved, replaced or protected, as required, whether or not shown or specified.

d. Locations of existing underground lines shown on Drawings are based on information from best available sources, but are to be regarded as approximate only. Deviations necessary to conform with actual locations and conditions shall be made without extra cost. Developer shall exercise extreme care in locating and identifying said underground lines before starting work.

e. Developer shall exercise all reasonable precautions to preserve and protect any existing underground improvements whether or not shown or specified. Active utilities shown on Drawings shall be adequately protected from damage and removed or relocated only as indicated or specified. Where active utilities are encountered but are not shown on Drawings, Architect shall be advised; work shall be adequately protected, supported, or relocated as directed by Architect; contract sum will be adjusted for such additional work.

f. Developer shall repair, to the satisfaction of Architect and without additional cost to the District, any damage to utility lines that occur as a result of operations of this work whether or not such utility lines are indicated.

Number 5

DISABLED VETERAN BUSINESS ENTERPRISE INSTRUCTIONS AND CERTIFICATION DOCUMENTS

A. Pursuant to Education Code Section 170706.11, the full text of which is stated paragraph B below, this District has a participation goal for disabled veteran business enterprises of at least three (3) percent of the amount of funds expended each year by the School District for construction. Prior to, and as a condition precedent for final payment under this Contract, the Developer shall provide documentation to the District identifying the amount paid to disabled veteran business enterprises in conjunction with the contract, so that the District can assess its success at meeting this goal.

B. Education Code Section 17076.11: Any school district using funds allocated pursuant to this chapter for the construction or modernization of a school building shall have a participation goal of at least three (3) percent, per year, of the overall dollar amount expended each year by the school district, for disabled veteran business enterprises.

Number 10 **EMPLOYMENT CERTIFICATION**

I certify that I, the undersigned contractor, have not been convicted in the preceding five (5) years of the date established for receipt of bids of violating a State or federal law respecting the employment of undocumented aliens.

I certify under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this _____day of _____, 20____, in _____, California

_____
Signature

_____
Print Name

_____
Title

Number 11

SITE VISIT CERTIFICATION

I certify that I have visited the site of the proposed work and have fully acquainted myself with the conditions relating to construction and labor, and I fully understand the facilities, difficulties, and restrictions attending the execution of the work under the Contract.

I am a duly authorized representative of _____ for the purpose of providing this certification and declare under penalty of perjury and the laws of the State of California that the foregoing is true and correct.

Executed this _____day of _____, 20____, in _____, California

_____
Signature

_____
Print Name

_____
Title

Number 12

CERTIFICATION OF ADHERENCE TO DRESS/DEPORTMENT POLICY

The Western Placer Unified School District requires each contractor to adhere to the District's Dress/Deportment Policy and as such, each contractor is required to sign and submit with the contract documents the following acknowledgment:

I have read and am sufficiently familiar with the provisions of the District's Dress /Deportment Policy which requires that the following rules of conduct and dress be adhered to at all times by Contractor, Contractor's officers, agents, employees and subcontractors:

1. Dress: All construction employees and contracted employees of the District will dress in a manner that is respectful of students attending school. District regulations require that employees not wear articles of clothing that display drugs, alcohol, or tobacco. Any logos or statements which could be considered obscene or suggestive shall not be worn on school campuses. Employees will be fully clothed and wear appropriate safety equipment and/or clothing as required for their job (shirtless employees will be banned from campuses). Sleeveless shirts are not allowed.

2. Deportment: Use of alcohol, tobacco, and controlled substances or products are completely banned from all school sites. Use of profane or obscene language on the school site may result in an employee or subcontractor being asked to leave. Use of radios, stereo equipment, or other audible sound devices will not be allowed on school campuses. All vehicles will remain in marked parking areas unless permission is received from the principal or the principal's designee. Any work done on the school sites during school hours must be scheduled and approved through the District Superintendent or his/her designee prior to commencement of work. Work hours will be established during the pre-construction meeting. All employees are responsible for a safe and clean environment. Individuals working on school sites during instructional hours must provide barricades or markings acceptable to the District.

By execution of this Certification, I understand and agree that the above rules of dress and deportment will be adhered to at all times during the performance of the work on this contract by Contractor, Contractor's officers, agents, employees and subcontractors and that the District can demand the removal from the project of any individual who fails to comply with the terms of the Dress/ Deportment policy.

Executed this _____day of _____, 20____, in _____, California

_____
Signature

_____
Print Name

_____
Title

Number 13

CONTRACTOR'S CERTIFICATION REGARDING NON-ASBESTOS CONTAINING MATERIALS AND LEAD-BASED PAINT

We hereby certify that no Asbestos, or Asbestos Containing Materials, or lead-based paint, lead plumbing and solders, or other potential sources of lead contamination shall be utilized in this construction, or in any tools, devices, clothing or equipment used to affect this construction under the Glen Edwards Middle School Fire Reconstruction, Project No. 11-9689-1

(a) The Contractor further certifies that he/she has instructed his/her employees, subcontractors, and agents, with respect to the above mentioned standards, hazards, risks, and liabilities.

(b) Asbestos and/or asbestos containing material shall be defined as all items containing but not limited to chrysotile, crocidoite, amosite, anthophyllite, trmolite, and actinolite.

(c) Any or all material containing greater than one-tenth of one percent (.1%) asbestos shall be defined as asbestos containing material.

(d) Any disputes involving the question of whether or not material contains asbestos shall be settled by electron microscopy; the cost of any such tests shall be paid by the Contractor.

(e) All work or materials found to contain asbestos or work or material installed with asbestos containing equipment will be immediately rejected and this work will be removed at no additional costs to the District.

I am a duly authorized representative of _____ for the purpose of providing this certification and declare under penalty of perjury and the laws of the State of California that the foregoing is true and correct.

Executed this _____day of _____, 20____, in _____, California

_____
Signature

_____
Print Name

_____
Title

Number 15 **PAYMENT BOND TO ACCOMPANY CONTRACT**

Know All Men by These Presents:

THAT WHEREAS, The Western Placer Unified School District has awarded to Landmark Construction, as principal, hereinafter designated as the "Developer", an Agreement for the work described as follows: Glen Edwards Middle School Fire Reconstruction.

AND WHEREAS, Developer is required by the provisions of Chapter 7, Title 15, Part 4, Division 3, Section 3247 et seq., Civil Code, to furnish a bond in connection with the Agreement;

NOW, THEREFORE, We the undersigned Developer and surety are held and firmly bound unto the Western Placer Unified School District in the sum of $722,261.00, including contingencies and said sum is consistent with the provisions of Section 3248 of the Civil Code, for which payment well and truly to be made we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH,

That if Developer, his/her/its heirs, executors, administrators, successors or assigns, or subcontractors, shall fail to pay any materials, provisions, provender, or other supplies or teams, implements or machinery used in, upon, for, or about the performance of the work contracted to be done, or for any work or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to such work or labor, as required by the provisions of Chapter 7, Title 15, Part 4, Division 3, Section 3247 et seq. of the Civil Code, and provided that the claimant shall have complied with the provisions of said Code, the surety or sureties hereon will pay for the same in an amount not exceeding the sum specified in this bond, otherwise the above obligation shall be void. In case suit is brought upon this bond the surety or sureties will pay all court costs, expenses and the reasonable attorneys' fees fixed by the court and the application and interpretation of the rights and obligations hereunder shall be pursuant to California law. Surety's obligation to the Western Placer Unified School District pursuant to this bond is subject to the covenant of good faith and fair dealing.

This bond shall inure to the benefit of any and all persons, companies or corporations entitled to file claims under Section 3181 of the Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the work to be performed thereunder or the specifications accompanying the same or payment for defective work or materials, except for final payment upon Agreement completion, shall in any way affect Surety's obligations or exonerate Surety on this bond, and Surety hereby waives notice of any such change, extension of time, alteration or addition to the terms of the Agreement or to the work or to the specifications of, or payment for defective work or materials and waives the provisions of California Civil Code 2819.

IN WITNESS WHEREOF, we have hereunto set our hands and seals on this _____ day of _____, 200___, the name and corporate seal of each corporate party being hereto affixed and duly signed by its undersigned authorized representative.

(Corporate Seal of Principal,
if Corporation)

DEVELOPER, as principal:

_____

By: _____
(Signature)

_____
(Print Name)

Title: _____

(Corporate Seal of Surety)

SURETY COMPANY:

_____

By: _____
(Attorney-in-Fact Signature)

_____
(Print Name)

_____
(Address)

_____
(Telephone No.)

NOTE: Notary acknowledgement for Surety and Surety's Power of Attorney must be attached.

Number 16 **PERFORMANCE BOND TO ACCOMPANY AGREEMENT**

KNOW ALL MEN BY THESE PRESENTS: that whereas, the Western Placer Unified School District (hereinafter designated as "District") has awarded to Landmark Construction (hereinafter designated as "Developer ") a Construction Agreement for the work described as follows: the Glen Edwards Middle School Fire Reconstruction Project;

WHEREAS, Developer is required to furnish a bond in connection with the Construction Agreement, guaranteeing the faithful performance of the Construction Agreement;

NOW, THEREFORE, we, the undersigned Developer and _____ as Surety are held and firmly bound unto the District in the sum of Seven hundred twenty-two thousand two hundred and sixty one dollars ($722,261.00) lawful money of the United States of America, for payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severely, firmly by these present.

The **condition** of this obligation is such,

That if the Developer, his/her/its heirs, executors, administrators, successors or assigns, shall abide by and in well and truly keep and perform the covenants, conditions and agreements in the foregoing Construction Agreement and any alteration thereof as therein provided, on his/her/their part to be kept and performed at the time and in the manner therein specified, the Surety shall have no obligation pursuant to this bond except to participate in conferences provided in subparagraph 1.1, otherwise, the Surety's obligation under this bond shall arise after:

1. The Surety's obligation:

1.1 The District has notified the Developer and the Surety that the District is considering declaring the Developer in default and has requested and attempted to arrange a conference with the Developer and the Surety to be held not later than seven (7) calendar days after receipt of such notice to discuss methods of performing the Construction Agreement. If the District, the Developer and the Surety agree, the Developer shall be allowed a reasonable time to perform the Construction Agreement, but such agreement shall not waive the District's right to subsequently declare the Developer in default; and

1.2 The District has declared the Developer in default and formally terminated the Developer's right to complete the Construction Agreement. Default shall not be declared earlier than seven (7) calendar days after the Developer and the Surety have received notice as provided in subparagraph 1.1; and

1.3 The District has agreed to pay the balance of the Construction Agreement price to the Surety in accordance with the terms of the Construction Agreement or to a contractor selected to perform the Construction Agreement in accordance with the terms of the Construction Agreement with the District.

2. When the District has satisfied the conditions of paragraph 1, the Surety shall immediately and at the Surety's expense take the following actions:

2.1 Undertake to perform and complete the Construction Agreement itself, through its agents or through independent contractors. Surety shall not undertake to perform and complete the Construction Agreement by employing, authorizing or utilizing the services of the principal contractor or affiliated organization without the written consent of the District; or

2.2 Retain a qualified contractor acceptable to the District for performance and completion of the Construction Agreement. The contractor shall be selected with the District's concurrence and his/her/its performance shall be secured with performance and payment bonds executed by a qualified Surety equivalent to the bonds issued for the original Construction Agreement, and sufficient to pay to District the amount of damages as described in paragraph 4 et seq. resulting from the Developer's default; or

2.3 Waive its right to perform and complete, arrange for completion, or obtain a new

4.3.94

contractor by determining the amount of which it may be liable to the District and as soon as practicable after the amount is determined, tender payment thereof to the District.

2.4 Surety shall proceed in accordance with paragraph 2 not later than fifteen (15) calendar days after written notice that Developer is declared to be in default. In an emergency situation, or if time is of the essence in the underlying Construction Agreement, the District may take all reasonable actions necessary to protect the work of improvement and/or to continue the construction process pending Surety's investigation and action pursuant to paragraph 2. Cost incurred by the District in protecting the work of improvement or continuing the construction process pending Surety action shall be the joint and several responsibility of Surety and Developer.

3. If Surety does not proceed as provided in paragraph 2 et seq., Surety shall be in default on this bond and the District shall be entitled to enforce any remedy available to the District. In the event suit is brought upon this bond, Surety or Sureties will pay all court costs, expenses, and reasonable attorney fees fixed by the court.

4. After the District terminates the Developer's right to complete the Construction Agreement, the responsibilities of the Surety to the District shall not be greater than those of the Developer under the Construction Agreement, and responsibilities of the District to the Surety shall not be greater than those of the District under the Construction Agreement. To the limit of the amount of this bond, but subject to commitment by the District of the balance of the Construction Agreement price to mitigation of costs and damages on the Construction Agreement, the Surety is obligated without duplication for:

4.1 The responsibilities of the Developer for correction of defective work and completion of the Construction Agreement.

4.2 Additional legal, design professional, and delay costs resulting from the Developer's default, and resulting from the actions or failure to act as required in paragraphs 2 and 3.

4.3 Liquidated damages, or if no liquidated damages are specified in the Construction Agreement, then actual damages caused by the delayed performance or non-performance of the Developer.

5. Surety hereby waives notice of any change, including changes of time, to the Construction Agreement or to related subcontracts, purchase orders and other obligations.

6. Notice to the Surety, the District or the Developer shall be mailed or delivered to the address shown on the signature page.

7. This bond, the rights and obligations hereunder and the interpretation of any provision contained herein, shall be governed by the laws of the State of California and Surety, by submission of this bond to the District, shall be deemed to have submitted to the jurisdiction of California courts. Surety's obligations to the District pursuant to this bond are subject to the covenant of good faith and fair dealing and Surety's breach of said covenant shall give rise to a cause of action by the District for damages caused by Surety's breach of said covenant.

8. For the purposes of this bond, the Construction Agreement shall be defined as all of the documents in the agreement between the District and Developer.

9. Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Construction Agreement or to the work to be performed thereunder or the specifications accompanying the same or payment for non-conforming or defective work or materials, except for final payment upon Construction Agreement completion shall in any way affect Surety's obligations or exonerate Surety on this bond, and Surety hereby waives notice of any such change, extension of time, alteration or addition to the terms of the Construction Agreement or to the work or to the specifications, or of payment for defective work or non-conforming work or materials and waives the provisions of California Civil Code 2819.

DEVELOPER (Name and Address):

Landmark Construction
5948 King Road
Loomis CA 95650

WESTERN PLACER UNIFIED SCHOOL DISTRICT:

600 6TH Street, Suite 400
Lincoln, CA 95648

SURETY (Name and Principal place of business):

_____
_____
_____

IN WITNESS WHEREOF, we have hereunto set our hands and seals on this _____ day of _____, 200___, the name and corporate seal of each corporate party being hereto affixed and duly signed by its undersigned authorized representative.

(Corporate Seal of Principal,
if Corporation)

DEVELOPER, as principal:

_____

By: _____
(Signature)

_____
(Print Name)

Title: _____

(Corporate Seal of Surety)

SURETY COMPANY:

_____

By: _____
(Attorney-in-Fact Signature)

_____
(Print Name)

_____
(Address)

_____
(Telephone No.)

NOTE: Notary acknowledgement for Surety and Surety's Power of Attorney must be attached.

Number 17

ESCROW AGREEMENT FOR SECURITY DEPOSITS IN LIEU OF RETENTION

This Escrow Agreement is made and entered into by and between the Western Placer Unified School District whose address is 600 6th Street, Suite 400, Lincoln, CA 95648 hereinafter called "District", and Landmark Construction, whose address is 5984 King Road, Loomis CA 95650 called "Developer", and _____, whose address is hereinafter called "Escrow Agent". This Agreement relates to the Western Placer Unified School District Project commonly referred to as the Glen Edwards Middle School Fire Reconstruction.

For the consideration hereinafter set forth, the District, Developer, and Escrow Agent agree as follows:

(1) Pursuant to Section 22300 of the Public Contracts Code of the State of California, Developer has the option to deposit securities with Escrow Agent as a substitute for retention earnings required to be withheld by the District pursuant to the Construction Agreement entered into between the District and Developer for the Glen Edwards Middle School Fire Reconstruction Project in the amount of $722,261.00 dated June 1. 2011 (hereinafter referred to as the "Construction Agreement"). When Developer deposits the securities as a substitute for Construction Agreement earnings, the Escrow Agent shall notify the District within 10 days of the deposit. The market value of the securities at the time of the substitution shall be at least equal to the cash amount then required to be withheld as retention under the terms of the Construction Agreement between the District and Developer. Securities shall be held in the name of the Western Placer Unified School District and shall designate the Developer as the beneficial owner.

(2) The District shall make tenant improvement payments to the Developer for such funds which otherwise would be withheld from tenant improvement payments pursuant to the Construction Agreement provisions, provided that the Escrow Agent holds securities in the form and amount specified above.

(3) When the owner makes payment of retentions earned directly to the Escrow Agent, the Escrow Agent shall hold them in benefit of the Developer until such time as the escrow created under this Construction Agreement is terminated. The Developer may direct the investment of the payments into securities. All terms and conditions of this Agreement and the rights and responsibilities of the parties shall be equally applicable and binding when the District pays the Escrow Agent directly.

(4) Developer shall be responsible for paying all fees for the expenses incurred by Escrow Agent in administering the escrow account and all expenses of the District. These expenses and payment terms shall be determined by the District, Developer and Escrow Agent.

(5) The interest earned on the securities or the money market accounts held in escrow and all interest earned on that interest shall be for the sole account of Developer and shall be subject to withdrawal by Developer at any time and from time to time without notice to the District.

(6) Developer shall have the right to withdraw all or any part of the principal in the Escrow Account only by written notice to Escrow Agent accompanied by written authorization from the District to the Escrow Agent that the District consents to the withdrawal of the amount sought to be withdrawn by Developer.

(7) The District shall have the right to draw upon the securities in the event of default by the Developer. Upon seven days' written notice to the Escrow Agent from the District of the default, the Escrow Agent shall immediately convert the securities to cash and shall distribute the cash as instructed by the District.

(8) Upon receipt of written notification from the District certifying that the Construction Agreement is final and complete, and that the Developer has complied with all requirements and procedures applicable to the Construction Agreement, Escrow Agent shall release to Developer all securities and interest on deposit less escrow fees and charges of the Escrow Account. The escrow shall be closed immediately upon disbursement of all monies and securities on deposit and payments of fees and charges.

(9) Escrow Agent shall rely on the written notifications from the District and the Developer pursuant to Sections (4) to (6) inclusive, of this agreement and the District and Developer shall hold Escrow Agent harmless from Escrow Agent's release and disbursement of the securities and interest as set forth above.

(10) The names of the persons who are authorized to give written notice or to receive written notice on behalf of the District and on behalf of Developer in connection with the foregoing, and exemplars of their respective signatures are as follows:

On behalf of the Western Placer Unified School District

Title: _____

Name: _____

Signature: _____

Address: _____

_____

On behalf of Developer:

Title: _____

Name: _____

Signature: _____

Address: _____

_____

On behalf of Escrow Agent:

Title: _____

Name: _____

Signature: _____

Address: _____

_____

At the time the Escrow Account is opened, the District and Developer shall deliver to the Escrow Agent a fully executed counterpart of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement by their proper officers on the date first set forth above.

Western Placer Unified School District

Title: _____

Name: _____

Signature: _____

Address: _____

_____

Developer

Title: _____

Name: _____

Signature: _____

Address: _____

_____

Number 18

DEVELOPER'S WORKMANSHIP AND MATERIALS GUARANTEE
TO
WESTERN PLACER UNIFIED SCHOOL DISTRICT

The undersigned hereby guarantees that the workmanship and materials used and installed in the Glen Edwards Middle School Reconstruction Project have been provided and installed in accordance with the drawings, specifications and project manual and that the work as installed fulfills requirements of warranties contained within the project manual, and is suitable for its intended purpose. The undersigned hereby guarantees, and agrees to repair or replace all workmanship and material, for a period of one (1) year from the date of filing the Notice of Completion by the Western Placer Unified School District (excepting special or extended guarantees as noted in the Construction Agreement documents and honored as specified therein) and the undersigned shall repair and/or replace all material or workmanship together with any other work which may be damaged in so doing that is or becomes defective during the period of said guarantee without expense whatsoever to the District. In the event the undersigned fails to comply with the requirements of this guarantee within seven (7) days after being notified in writing, of a defective condition, the District may proceed to have the defects repaired and made good at the expense of the undersigned who shall pay the costs and charges therefore immediately upon demand. All warranties and/or guarantees provided for by this Agreement or by State law shall remain in effect.

In the event the defective condition giving rise to repair/replacement pursuant to this guarantee endangers persons or property, or otherwise substantially interferes with the District's ability to conduct its business or provide services for which the District is responsible, the District may immediately make repairs after reasonable attempts to notify the undersigned and the undersigned shall pay the costs and charges of said repairs immediately upon demand. Early occupancy by the District or early use of a guaranteed item or system by the District, Developer, subcontractor, or any other person or agency shall not modify the period of guarantee which shall commence as set forth above.

In any litigation between the District and the undersigned regarding the interpretation of, or performance of obligations pursuant to this warranty, the prevailing party shall be entitled to costs of suit, including, reasonable attorney fees, court fees, and expenses of investigation and case preparation.

Date	Signed
Name	Title
Developer	License No.
Address	

Number 19

CONTRACTOR'S CERTIFICATION REGARDING WORKERS' COMPENSATION

In accordance with the provisions of Section 3700 of the Labor Code, every contractor is required to secure payment of compensation to his employees.

Each contractor to whom a public works contract is awarded is required to sign and file with the awarding body the following certification prior to performing the work of the contract.

> I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work on this contract.

I am a duly authorized representative of _____ for the purpose of providing this certification and declare under penalty of perjury and the laws of the State of California that the foregoing is true and correct.

Executed this _____day of _____, 20____, in _____, California

_____
Signature

_____
Print Name

_____
Title

WESTERN PLACER
UNIFIED SCHOOL DISTRICT
600 SIXTH ST, SUITE 400, LINCOLN CA 95648
PH: 916-645-6350

EXHIBIT F

MEMORANDUM OF COMMENCEMENT DATE

This MEMORANDUM OF COMMENCEMENT DATE is dated _____, and is made by and between Landmark Construction ("Developer"), as Lessor, and the Western Placer Unified School District ("District"), as Lessee.

1. Developer and District have previously entered into a Facilities Lease dated as of _____ (the "Lease") for the leasing by Developer to District of the Site and Project in the City of Lincoln, Placer County, California, referenced in the Lease.
2. District hereby confirms the following:
   a. That all construction of the Project required to be performed pursuant to the Facilities Lease shall be completed by Developer in all respects;
   b. That District has accepted and entered into possession of the Project and now occupies same; and
   c. That the term of the Facilities Lease commenced on _____ and will expire at 11:59 P.M. on _____.

IN WITNESS WHEREOF, Developer and District have signed this Memorandum of Commencement Date as set forth below to confirm the foregoing.

Western Placer Unified School District Landmark Construction

By: _____ By: _____

4.3.101

EXHIBIT G

May 24, 2011

Ms. Heather Steer
Western Placer Unified School District
600 6th Street Suite 400
Lincoln, CA 95648

Re: Glenn Edwards Middle School and Lincoln High School

Dear Ms. Steer,

We are pleased to present this proposal for the Fire Damage Repair at Glenn Edwards Middle School, with an additive alternate for the Re-Roof of the Old Gym at Lincoln High School.

We propose to complete the Fire Damage Repair at Glenn Edwards Middle School for the sum of $722,261. We propose to complete the Re-Roof of the Old Gym at Lincoln High School for an additional $93,810. We have attached to this proposal fully detailed, open-book pricing worksheet for both projects. We will also provide copies of all subcontract bids received for your use and information.

Our proposal is based upon the plans and specifications provided by Rainforth Grau Architects and Marcher Covington Architects, as amended by RFI responses during the GMP development process. In addition, we would like to offer the following clarifications of our GMP scope:

Exclusions:

We do not include asbestos abatement of any kind
We do not include any structural repair not shown on drawings
We do not include any architectural exterior trim not shown (there's some burned up ext trim not shown for replacement)
We do not include replacement of sunshades at clerestory
We do not include lining of ductwork for sound
We do not include gas piping to the water heater (per RFI 08)
We do not include the PTAC-1 (deleted via RFI)
We do not in include any moisture barrier at (n) slab in Classroom 8

4.3.102

Value Engineering Suggestions:

Potential window VE of 10k (per McCumbers - who is not low)
Ceiling tile substitute to a standard Armstrong Cortega or USG Radar ($1200 savings)
Bryant HVAC units with programmable thermostats in lieu of Carrier units. (Potential savings of 15k)
Title 24 approved cap sheet in lieu of coating (potential savings of 5k-10k)

Conditions

Movie screens were shown but not specified. We have included DA-LITE, model B70 x70 MW with 6" extension brackets
Projector mounts were shown but not specified. We have included Peerless, model PRJ-UNV with CMJ455 ceiling plate and 18" extension.
No new plumbing fixtures, toilet accessories or partitions at boys bathroom
We have included a Insta- Hot type water heater in our bid, not the water heater specified
The extra stock for the floor base calls for a 500lf minimum. Because this is more than the amount installed, we have only included the one percent.

Add alt

Epoxy tops at classroom 8 (add 13k)

Thank you again for the opportunity to submit this proposal. We are honored to trusted with your work.

Best Regards,
Landmark Construction

Joe Bittaker
President

4.3.103

Representative:	Heather Steer							
Architect:	**Rainforth Grau Architects**							
Representative:	Anthony							
Delivery Method:	LLB							
Bid Date:	Tuesday, May 24, 2011							
Bid Time:	2pm							

Bid Worksheet

Revised:	5/20/2011 11:40am							
DIVISION	**DESCRIPTION**	**NOTES**	**SUBCONTRACTOR**	**Part 1 Base Scope Repair Fire Damage**	**Part 2 Code Required Upgrades (access)**	**Part 3 District Upgrades (Room 8)**	**Lincoln HS Old Gym Re-Roof**	
DIVISION 1	**GENERAL REQUIREMENTS**							
	Project Manager			4,500			1,500	
	Project Superintendent			18,000			6,000	
	Clerical			2,200				
	Saftey			400			200	
	Job Office/Trailer			none				
	Communications			450			100	
	Office Equipment/Supplies			200				
	Security			none				
	Temporary Utilities			200				
	Toilets / Wash Stations / Etc.			2,100			500	
	Fencing/Barricades			1,200				
	Waste Disposal			3,250			1,100	
	County/City/Ect. Fees			none				
	Progress Cleanup			5,600			650	
	Final Cleanup			1,800			400	
	Owner's Allowances			50,000			10,000	
DIVISION 2	**SITEWORK -**							
02072	**Minor Demolition & Clearing**							
	Hard Demo		**Austerman, Inc**	2,935	1,380	1,380		
	Abatement	**roofing only**	**West Coast Env**	not incl			3,300	
	Soft Demo	(2) lifts (2) 40 yard c&d	**LMC**	18,000				
	Roofing Removal		**see roofing**	incl			included in roofing	
	Roof Structure Demo			2,700				
	Repave HC ramps	Grinding	**LMC**	200				
	Demo girls bathroom tile floor (lead?)			3,900				
	Striping							
02210	**Trenching and Backfill**							
DIVISION 3	**CONCRETE**							
	Exterior Flat Work		Foothill		19,775			
	Interior Slab and Plumbing Trenches		Foothill	incl		3,525		
	Handicap Ramp				inc			
	Rebar				inc			
	Epoxy Dowels		LMC		500			
	Regrade Walk After Demo		LMC		2,900			
03305	**Miscellaneous Concrete Patching, Repair & Grouting**							

4, 3, 104

DIVISION 4	MASONRY							
	Not Used							
DIVISION 5	METALS							
DIVISION 6	CARPENTRY							
06100	Rough Carpentry		J lussier	41,582				
	Reframe Roof			incl				
	Soffit Framing			incl				
	Structural Retro Fit	Detail 9/S5.1		incl				
	620 SqFt 2x6 T&G sheathing replacement	Unit Price	LMC				4,900	
	Install New 4x12 sleepers at swamp cooler		LMC				300	
	Raise up Skylights		LMC				1,400	
	new fascia						2,800	
	temporary window and door closures			800				
	Cut and Patch, Blocking for accessories, partitions, screens, etc.			2,000				
06200	Finish Carpentry & Millwork		LMC	2,500				
	Cabinets		RR Laminates	24,136		7,685		
	Window Trim		R&R laminates	3,026				
DIVISION 7	THERMAL AND MOISTURE PROTECTION							
07210	Building Insulation		Alcal Arcade	6,015				
07550	Built up Roofing		Clark	60,300				
	Roofing Removal		Clark	incl				
07600	Sheet Metal		Clark	incl			3,000	Gudgel Yar
07900	Joint Sealants		LMC	500				
	TPO Roffing at Lincoln HS		Gudgel Yancey				46,010	
	Roofing Removal at Lincoln HS		Gudgel Yancey				incl	
DIVISION 8	DOORS AND WINDOWS							
08100	Metal Doors & Frames		Midstate	14,928				
08400	FRP Flush Doors			incl				
08520	Aluminum Windows		Sac Glazing	36,904				
08710	Finish Hardware			incl				
	Door/Frame/Hardware Install		LMC	4,100				
08800	Glazing			incl				
08921	Translucent Panel System			incl				
DIVISION 9	FINISHES							
09200	Lath & Plaster		Strack	11,575				
09500	Gypsum Wall Board		Decorators	20,474				
09300	Ceramic Tile		Norther Cal	5,760				
09510	Accoustical Ceiling		Golden State	9,529				
09650	Resilient Flooring		Capitol Commercial	14,770				
09654	Linoleum Floor Covering			incl				
09680	Carpeting			incl				
09900	Painting		Sunset	16,870				
09950	Wall Covering		Commercial	2,360				
09965	Elastomeric Coatings							
DIVISION 10	SPECIALTIES							
10100	Chalkboards, Dry Marker Boards and Tack Boards		KD	4,565				
	Installation of Boards			incl				
10170	Composite Toilet Partitions			5,500				
10445	Signs	Installed by super		1,461				
10520	Fire extingulshers & Cabinets	Installed by super		902				
10800	Toilet Accessories			incl				
DIVISION 11	EQUIPMENT							
	No Spec							

4, 3, 10S

	Projection Screens			436				
	Projector Mounts	Shown on sheet A3.1.1		1,485				
		Shown on sheet A6.1.1						
DIVISION 12	FURNISHINGS							
12304	Prefinished Plastic Laminate Casework	See Division 6200		incl				
12512	Horizonal Blinds		Decorator Draperies	1,799				
DIVISION 13	SPECIAL CONSTRUCTION							
	Not Used							
DIVISION 14	CONVEYING SYSTEMS							
	Not Used							
DIVISION 15	MECHANICAL							
15010	Basic Mechanical Requirements							
15020	Electrical Requirements For Mechanical Work							
15060	Hangers and Supports							
15070	Mechanical Vibration and Seismic Control							
15075	Mechanical Identification							
15080	Mechanical Insulation							
15090	Mechanical Restoration and Retrofit							
15105	Pipe and Pipe Fittings							
15110	Valves							
15140	Domestic Water Systems							
15150	Sanitary Waste Systems							
15410	Plumbing Fixtures		Buss	38,755				
15732	Packaged Roof-Mounted Airconditioning Units	T-Stats Only	MSI	114,275				
15810	Ducts			incl				
15815	Duckwork Cleaning			incl				
15820	Ductwork Accessories			incl				
15951	Adjusting and Balancing Mechanical Systems			incl				
15952	Testing of Piping Systems			incl				
DIVISION 16	ELECTRICAL							
16010	Electrical Work General Requirements		Vanden Bos	63,200				
16730	Sound/Communication Systems			incl				
16735	Telecommunication Systems			Incl				
16745	Data Structured Cabling System			incl				
16750	Tlevevision Distribution System			incl				
16770	Fire Alarm System			Incl				
16790	Intrusion Alarm System							
	Safe Off Electrical	Lincoln HS	twppp				500	
	Test systems, raise and re-set conduits, etc.						3,750	
	Owner's Allowance							

Construction Cost Total	628,142	24,555	12,590	86,410
Bonds - 0.0125	7,852	307	157	1,080
Insurance - .005 liab + .002 bldrs risk	5,025	196	101	691
COST TOTAL	641,019	25,058	12,848	88,181
Home Office Operations, Overhead & Fee	40,916	1,599	820	5,629
BID PRICE	**681,935**	**26,658**	**13,668**	**93,810**
Allowance -	0	0	0	0
Allowance -	0	0	0	0
GMP Total	**681,935**	**26,658**	**13,668**	**93,810**
GMP Total Parts 1, 2 & 3	**722,261**			

4.3.106

EXHIBIT H

SITE LEASE

By and Between

WESTERN PLACER UNIFIED SCHOOL DISTRICT
as Lessor

and

Landmark Construction
as Lessee

Dated as of June 1, 2011

SITE LEASE

4.3.107

THIS SITE LEASE (the "Site Lease") is dated as of May 19, 2009, for reference purposes only, and is made by and between the **WESTERN PLACER UNIFIED SCHOOL DISTRICT** (the "District"), a school district duly organized and validly existing under the laws of the State of California, as lessor, and **LANDMARK CONSTRUCTION.** ("Developer"), a [Type of Entity], as lessee.

RECITALS

WHEREAS, District currently owns a parcel of land located in Lincoln, California as more particularly described in Exhibit A to this Site Lease ("Site"), which Site the District has determined to be adequate to accommodate the construction of the **GLEN EDWARDS MIDDLE SCHOOL FIRE RESTORATION**; and

WHEREAS, the Board of Trustees of the District (the "Board") has determined that it is in the best interests of the District and for the common benefit of the citizens residing in the District to develop the Project by leasing the Site to Developer and by immediately entering into the Facilities Lease (as defined below) under which District will lease back the Project from Developer; and

WHEREAS, the District is authorized under Section 17406 of the Education Code of the State of California to lease the Site to Developer and to have Developer develop and cause the construction of the Project thereon and lease the Project and Site back to the District by way of the Facilities Lease, and the Board has duly authorized the execution and delivery of this Site Lease in order to effectuate the foregoing, based upon a finding that it is in the best interest of the District to do so; and

WHEREAS, Developer is authorized to lease the Site from District as lessee and to develop and cause the construction of the Project on the Site, and has duly authorized the execution and delivery of this Site Lease; and

WHEREAS, District has performed all acts, conditions and things required by law to exist, to have happened and to have been performed precedent to and in connection with the execution and entering into of this Site Lease, and those conditions precedent do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the parties hereto are now duly authorized to execute and enter into this Site Lease;

WHEREAS, Developer has had adequate opportunities to review any soils reports concerning the Site and to make its own independent investigation of the Site;

WHEREAS, the District has a substantial need for the Glen Edwards Middle School Fire Restoration to be provided by the Project under the Facilities Lease and has entered into this Site Lease and the Facilities Lease under the authority granted to District by Section 17406 of the Education Code of the State of California in order to fill that need. The option to purchase provisions contained in the Facilities Lease have been designed to enable the District to comply with all applicable federal and state requirements, including but not limited to, the requirements

4.3.108

and policies of the California State Office of Public School Construction and the State Allocation Board pertaining to school facilities funding and the District's expenditure of any funding for school facilities it may receive from the State Allocation Board; and

WHEREAS, the District and Developer further acknowledge and agree that they have entered into this Site Lease and the Facilities Lease pursuant to as the best available and most expeditious means for the District to satisfy its substantial need for restoration on fire damaged areas of Glen Edwards Middle School facility to accommodate and educate current and new students served by the District.

NOW, THEREFORE, in consideration of the promises and of the mutual agreements and covenants contained herein, and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto do hereby agree as follows:

ARTICLE 1
DEFINITIONS

1.1 Unless the context clearly requires otherwise, all words and phrases defined in Section 1.1 of that certain Facilities Lease dated as of June 8, 2011 by and between District and Developer (the "Facilities Lease") shall have the same meanings when used in this Site Lease.

ARTICLE 2
DEMISING CLAUSES

2.1 Lease of the Site. The District hereby leases to Developer, and Developer hereby leases from District, the Site, subject only to the Permitted Encumbrances, in accordance with the terms and provisions of this Site Lease, to have and to hold for the term of this Site Lease. This Site Lease shall only take effect if the Facilities Lease is executed by District and Developer within three (3) calendar days of execution of this Site Lease.

2.2 Rental. In consideration for the leasing of the Site by District to Developer, and for other good and valuable consideration, Developer shall pay District rent of One Dollar ($1.00) per year.

2.3 No Merger. The leasing of the Site by Developer to the District pursuant to the Facilities Lease shall not effect or result in a merger of the estates of the District in the Site, and Developer shall continue to have a leasehold estate in the Site pursuant to this Site Lease throughout the term as described hereinafter below.

ARTICLE 3
QUIET ENJOYMENT

4.3.109

3.1 Possession. The parties intend that the Site will be leased back to the District pursuant to the Facilities Lease for the term thereof. Subject to any rights the District may have under the Facilities Lease (in the absence of an Event of Default) to possession and enjoyment of the Site, the District hereby covenants and agrees that it will not take any action to prevent Developer from having quiet and peaceable possession and enjoyment of the Site during the term hereof and will, at the request of Developer, to the extent that it may lawfully do so, join in any legal action in which Developer asserts its right to such possession and enjoyment.

3.2 Access to Site. Prior to the acceptance of the Project by District, the District shall have the right to enter upon the Site at reasonable times for the purposes of inspection of the progress of the work on the Project and District shall comply with all safety precautions required by Developer and Developer's contractors.

3.3 District's Title. In the event District's fee title to the Site is ever challenged so as to interfere with Developer's rights to occupy, use and enjoy the Site under this Site Lease, the District will use all reasonable efforts at its disposal to obtain fee title to the Site and to defend Developer's rights to occupy, use and enjoy the Site.

ARTICLE 4
SPECIAL COVENANTS AND PROVISIONS

4.1 Waste. Developer 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 that it will not willfully or knowingly use or permit use of the Site for any illegal purpose or act.

4.2 Further Assurances and Corrective Instruments. The District and Developer agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, any such further instruments as may be reasonably required for correcting any inadequate or incorrect description of the Site hereby leased or intended so to be leased or for carrying out the expressed intention of this Site Lease and the Facilities Lease.

4.3 Right of Entry. The District reserves the right for any of its duly authorized representatives to enter upon the Site at any reasonable time to inspect the same, subject to all reasonable safety precautions required by Developer.

4.4 Representations of the District. The District represents and warrants to Developer, to the best of District's knowledge without any duty to investigate, as follows:

4.4.1 Due Organization and Existence. The District is a school district, duly organized and existing under the Constitution and laws of the State of California.

4.4.2 Title. District has good and merchantable fee title to the Site and there are no liens on the Site other than Permitted Encumbrances.

4.4.3 Authorization. The District has the full power and authority to enter into, to execute and to deliver this Site Lease, and to perform all of its duties and obligations hereunder, and has duly authorized the execution of this Site Lease.

4.4.4 No Violations. Neither the execution and delivery of this Site Lease and the Facilities Lease, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the District is now a party or by which the District is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the District, or upon the Site, except Permitted Encumbrances.

4.4.5 Taxes and Impositions. All general and special taxes, assessments or impositions of any kind with respect to the Site have been paid current and District covenants to pay any and all future taxes, assessments and impositions of any kind levied or assessed upon the Site, the improvements thereon and this Site Lease, including any possessory interest taxes imposed upon Developer as a result of this Site Lease.

4.4.6 Zoning. The Site is properly zoned for its intended purpose and utilization as a middle school site and related facilities.

4.4.7 Compliance. District is in compliance with all laws, regulations, ordinances and orders of government authorities applicable to the Site, including, but not limited to, the requirements of the California Environmental Quality Act (Public Resources Code section 21000 et seq.) ("CEQA").

4.4.8 No Litigation. District is not aware of any litigation of any kind currently pending or threatened regarding the Site or the District's use of the Site for the school purposes contemplated by this Site Lease and the Facilities Lease.

4.4.9 No Contamination. To the District's actual knowledge, the District has not received notice that: (I) the Site contains any dangerous, toxic or hazardous pollutants, contaminants, chemicals, waste, materials or substances, as defined in or governed by the provisions of any local, state or federal laws relating thereto (hereinafter collectively called "Environmental Regulations"), or that it contains any asbestos, asbestos containing materials, urea-formaldehyde, polychlorinated byphenyls, nuclear fuel or nuclear waste, radioactive materials, explosives, lead-based paint, carcinogens and petroleum products, or any other waste, material, substance, pollutant or contaminant which would subject the owner or operator of the Site to any damages, penalties or liabilities under any applicable Environmental Regulation (hereinafter collectively called "Hazardous Substances"), that 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) a threat exists of a discharge, release or emission of a Hazardous Substance upon or from the site into the environment; (iii) the Site has been used as or for a

mine, a dump or other disposal facility, industrial or manufacturing facility, or a gasoline service station; (iv) any underground storage tank is now located in the Site or has previously been located therein but has been removed therefrom; (v) any violation of any Environmental Regulation now exists relating to the Site, that there is any such violation or any alleged violation thereof has been issued or given by any governmental entity or agency, and that there is any investigation or report involving the site by any governmental entity or agency which in any way relates to Hazardous Substances; (vi) any 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 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 listed in the United States Environmental Protection Agency's National Priorities List of Hazardous Waste Sites or any other list of Hazardous Substances sites maintained by any federal, state or local governmental agency; and (ix) the Site is subject to any lien or claim of 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.

4.4.10 Abandonment. To the extent permitted by law, the District shall not abandon the Site for the school use for which it is currently intended by the District for the Term of this Site Lease and the Facilities Lease and further, the District shall not seek to substitute or acquire other property to be used as a substitute for the uses for which the Site and Project are to be maintained under the Site Lease and Facilities Lease.

4.5 Representations of Developer. Developer represents covenants and warrants to the District as follows:

4.5.1 Due Organization and Existence. Developer is a California Corporation duly organized and existing under the laws of the State of California, has the power to enter into this Site Lease and the Facilities Lease; is possessed of full power to own and hold real and personal property, and to lease and sell the same; and has duly authorized the execution and delivery of all of the aforesaid agreements.

4.5.2 Authorization. Developer has the full power and authority to enter into, to execute and to deliver this Site Lease, and to perform all of its duties and obligations hereunder, and has duly authorized the execution of this Site Lease.

4.5.3 No Violations. Neither the execution and delivery of this Site Lease and the Facilities Lease, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which Developer is now a party or by which Developer is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of Developer, or upon the Site, except Permitted Encumbrances.

4.5.4 No Bankruptcy. Developer is not now nor has it ever been in bankruptcy or receivership.

ARTICLE 5
ASSIGNMENT, SUBLEASING, MORTGAGING AND SELLING

5.1 Assignment and Subleasing. Developer shall not assign or otherwise dispose of or encumber the Site or this Site Lease without the prior written consent of District.

5.2 Restrictions on District. The District agrees that it will not mortgage, sell, encumber, assign, transfer or convey the Site or any portion thereof during the term of this Site Lease.

5.3 Liens. Developer agrees to keep the Site and every part thereof free and clear of any and all liens, including without limitation, pledges, charges, encumbrances, claims, materialmen liens, mechanic liens and other liens for or arising out of or in connection with work or labor done, services performed, or materials or appliances used or furnished for or in connection with the Site or the Project. Developer further agrees to pay promptly and fully discharge any and all claims on which any such lien may or could be based, and to save and hold harmless District from any and all such liens, mortgages, judgments and claims of liens and suits or other proceedings pertaining thereto.

ARTICLE 6
IMPROVEMENTS

6.1 Improvements. Title to all improvements made on the Site during the term of this Site Lease shall vest in Developer until conveyance to the District at the end of the Facility Lease's Term pursuant to Section 7.1, 7.2 or 7.3 below.

ARTICLE 7
TERM AND TERMINATION

7.1 Term. The term of this Site Lease shall commence as of June 8, 2011, and shall terminate at 11:59 PM on the last day of the original Term of the Facilities Lease, whereupon all improvements made on the Site during the term of this Site Lease shall vest in District, notwithstanding the fact that the Facilities Lease may have been terminated earlier due to a default of the District. Notwithstanding the foregoing, that if on the date scheduled for the expiration or termination of this Site Lease the Lease Payments and Additional Payments owing to Developer under the Facilities Lease have not been fully paid to Developer by District, then the term of this Site Lease shall be extended until the date upon which all such Lease Payments and Additional Payments shall be fully paid, and Developer shall continue to have the right of possession of the Site during such time period.

7.2 Termination Upon Purchase of Project. If the District exercises its option to purchase the Project pursuant to the Facilities Lease, then this Site Lease shall terminate concurrently with the close of escrow for District's purchase of the Project.

7.3 Termination Due to Default by Developer. If Developer defaults under Section 9.2.1 of the Facilities Lease, District shall give Developer a thirty (30) day notice to cure ("Notice to Cure"). If Developer has failed to cure the default by the end of the thirty (30) days, or, in the event of a default which will take longer to cure than thirty (30) days, and Developer fails to commence to cure prior to the expiration of the period and diligently prosecute the cure thereafter, then District may terminate the Site Lease and the Facilities Lease upon seven (7) days' written notice to Developer. If District terminates the Site Lease and the Facilities Lease pursuant to this section, the Site and any improvements built upon the Site shall vest in District, upon payment by District of any outstanding amounts owed to Developer based upon the percentage of completion of the Project at the time of termination of the Site Lease and Facilities Lease. If there is any credit owing to District by Developer based upon the percentage of completion of the Project and sums received by Developer from District by virtue of payments made for tenant improvements, Developer shall pay the amount of such credit to District within thirty (30) days of District's demand for payment. In no event shall District be obligated to pay Developer any amount in excess of the sum set forth above."

7.4 Not Used.

7.5 Termination by District.

7.5.1 Notwithstanding anything to the contrary stated elsewhere in the Lease/Lease-Back Documents, the District may terminate this Site Lease (i) for convenience at anytime (for any reason or no reason at all) upon ten (10) days' prior written notice to Developer and (ii) immediately upon the occurrence of a Default hereunder by Developer. Upon any termination of this Site Lease for convenience prior to the final completion of the Project pursuant to the Facilities Lease, the termination provisions set forth in the Facilities Lease

4.3.114

shall govern and control the rights and obligations of the parties, in connection with such termination. Upon any termination of this Site Lease as a result of a Default by Developer prior to the final completion of the Project, the termination provisions of the Facilities Lease shall govern the rights and obligations of the parties in connection with such termination. Upon any termination for convenience by the District or Default by Developer after the final completion of the Project, then subject to the District's offset and withholding rights set forth in the Facilities Lease, its rights to indemnity under the Lease/Lease-Back Documents, its right to damages resulting from, or to pursue its equitable remedies arising from any Developer Default hereunder or Developer Default under any of the other Lease/Lease-Back Documents, and its right to attorneys' fees, costs and expenses if it is the prevailing party in any dispute under the Lease/Lease-Back Documents, this Site Lease shall terminate and the District shall pay to Developer all amounts payable under the Lease/Lease-Back Documents (including any "Facilities Lease payments" payable under the Facilities Lease and any "Project Purchase Price" payable under the Services Agreement). Upon termination of this Site Lease for any reason, and in addition to any other obligations of Developer in connection with any such termination set forth elsewhere in the Lease/Lease-Back Documents, Developer shall be obligated to:

7.5.1.1 Quit and, subject to the terms and provisions of 7.5.1.3 below, surrender the Site in good order and condition, reasonable wear and tear excepted;

7.5.1.2 Release or reconvey to the District any liens and encumbrances created or caused by Developer or anyone claiming by, under or through Developer; and

7.5.1.3 Leave in place on the Site any and all improvements and structures existing upon the Site at the time of the termination of this Site Lease (including, without limitation, any improvements and structures constructed by Developer pursuant to the Facilities Lease) and transfer and vest title thereto to the District in accordance with the terms of Section 4.7 of the Facilities Lease.

7.5.2 If the Facilities Lease is terminated pursuant to the provision therein, this Site Lease shall immediately terminate concurrently therewith.

ARTICLE 8
MISCELLANEOUS

8.1 Binding Effect. This Site Lease shall inure to the benefit of and shall be binding upon the District, Developer and their respective successors, transferees and assigns.

8.2 Severability. In the event any provision of this Site Lease shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof, unless elimination of such invalid provision materially alters the rights and obligations embodied in this Site Lease or the Facilities Lease.

4.3.11S

8.3 Amendments, Changes and Modifications. This Site Lease may not be effectively amended, changed, modified, or altered without the written agreement of both parties hereto.

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

8.5 Applicable Law. This Site Lease shall be governed by and construed in accordance with the laws of the State of California. The parties further agree that any action or proceeding brought to enforce the terms and conditions of this Site Lease shall be maintained in Placer County, California.

8.6 Recitals. The recitals set forth at the beginning of this Site Lease are hereby incorporated herein by reference and each party stipulates and agrees that such recitals are true and correct.

8.7 Captions. 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 or sections of this Site Lease.

8.8 Time of Essence. Time is of the essence of every portion of this Site Lease that specifies a time for performance.

8.9 Remedies. The parties shall have any and all legal and equitable remedies available under applicable California law, except that the District shall have no right to terminate this Site Lease as a remedy for default by Developer or any assignee of Developer separate and apart from a concurrent termination of the Facilities Lease due to a material breach by Developer or its assignee. The remedies of the parties under this Site Lease are cumulative and shall not exclude any other remedies to which either party may be lawfully entitled.

8.10 Notices. Any notice to either party shall be in writing and given by delivering the same to such party in person or by sending it by nationally recognized overnight delivery service for next business day delivery, such as Federal Express, or by mailing the same by certified mail, return receipt requested, with postage fully prepaid, to the following addresses:

If to District:

Western Placer Unified School District
600 6th Street, Fourth Floor
Lincoln, CA 95648
Attn: Heather Steer

4.3.16

With a copy to:

Heather Edwards
Girard & Edwards, Attorneys at Law
1121 L Street, Suite 510
Sacramento, CA 95814

If to Developer:

Joe Bittaker, President
Landmark Construction
5948 King Road
Loomis CA 95650

Any party may change its mailing address at any time by giving written notice of such change to the other party in the manner provided herein for notices. All notices under this Site Lease shall be deemed given, received, made or communicated on the date personal delivery is affected, or if mailed or sent by overnight delivery service, on the delivery date or attempted delivery date shown on the return receipt or delivery record. No party shall evade or refuse delivery of any notice.

8.11 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 Developer shall be recognized and is hereby determined to be the amount of all Lease Payments and Additional Payments then due or past due together with all remaining and succeeding installments of Lease Payments and Additional Payments for the remainder of the original Term of the Facilities Lease, as more fully stated in the Facilities Lease. The balance of the award, if any, shall be paid to the District.

8.12 Indemnification by District. The District covenants and agrees to defend, indemnify and hold Developer harmless from and against any and all losses, claims, suits, damages and expenses (including reasonable attorneys' fees and costs) arising out of any unforeseen or unforeseeable condition of the Site, including but not limited to, all costs required to be incurred by Developer as a result of any condition described in Section 4.4.9, whether or not known to District; provided, however, that the District shall not be required to indemnify Developer in the event that such liability or damage is caused by the negligent or intentional act or omission of Developer.

8.13 Indemnification by Developer. Developer covenants and agrees to defend, indemnify and hold District harmless from and against any and all losses, claims, suits, damages, and expenses (including reasonable attorneys' fees and costs) arising out of any unforeseen condition of the Site if caused by Developer, including, but not limited to, all costs required to be incurred by District as a result of any condition described in Section 4.4.9 if caused by Developer, provided, however, that Developer shall not be required to indemnify the District in the event such liability or damage is caused by the District. All liabilities under this Site Lease on the part of Developer are solely liabilities of Developer, and District

4.3.17

hereby releases each and every member, director, shareholder and officer of Developer of and from any personal liability or individual liability under this Site Lease, provided, however, that the District does not release any member, director, shareholder or officer of Developer of and from personal or individual liability arising from such person's intentional act or intentional omission. Except as otherwise provided in this section, no member, director, shareholder or officer of Developer shall at any time or under any circumstances be individually or personally liable for anything done or omitted to be done by Developer under this Site Lease.

8.14 Further Assurances and Corrective Instruments. To the extent permissible under California law and as long as there are no additional costs to the District, the District agrees that it will execute and deliver estoppel certificates, financing statements or other assurances as may be reasonably necessary or requested by Developer to carry out assignments of this Site Lease and the Facilities Lease, including without limitation, to perfect and continue any security interests herein intended to be created or to correct any inadequate or incorrect description of the Site being leased or intended to be leased.

8.15 Interpretation. It is agreed and acknowledged by the parties hereto that the provisions of its Site Lease and its exhibits have been arrived at through negotiation, and that each of the parties has had a full and fair opportunity to revise portions of this Site Lease and its exhibits and to have such provisions reviewed by legal counsel. Therefore, the normal rule of construction of documents that any ambiguities are to be resolved against the drafting party shall not apply in construing or interpreting this Site Lease and its exhibits.

8.16 Estoppel Certificates. Each party, within twenty (20) days after written notice from the other party, shall execute, acknowledge and deliver to the other party in recordable form an estoppel certificate certifying that this Site Lease is: (I) unmodified and in full force and effect, or if there have been modifications, that the same is in full force and effect as modified and stating the modifications; and (ii) stating whether or not the other party is in default in the performance of any provision of this Site Lease, and if so, specifying each such default of which the party may have knowledge. Each party shall only be required to certify the foregoing information to the extent that such information is truthful and accurate.

8.17 Lender Protection. If District receives notice from Developer's Lender (as defined below) requesting a copy of any notice of default given to Developer under this Site Lease and specifying the address for service thereof, then District shall deliver to such Lender, concurrently with service thereon to Developer, any notice being given to Developer with respect to any claim by District that Developer has committed a default or is otherwise in non-compliance with the terms of this Site Lease. Following receipt of District's notice, the Lender shall have the right, but not the obligation, to cure or remedy, on behalf of Developer, the default claimed or the areas of non-compliance set forth in the District's notice for a period of time equal to that time period provided for Developer to cure under this Site Lease. The terms "Lender" and "Developer's Lender" as used herein shall be defined as any person or entity which holds a mortgage or deed of trust or an assignment or other security interest in Developer's right, title and interest as the tenant under this Site Lease.

4.3.18

8.18 Insurance. At all times during the term of this Site Lease, Developer, the Site and Project shall be insured pursuant to, and in accordance with, the applicable terms and provisions of Articles 5 and Exhibit E to the Facilities Lease (General Construction Provisions) to the Facilities Lease.

8.19 Compliance With The Law. Developer covenants and agrees that Developer shall not use, or suffer or permit any person or persons to use, the Site or any part thereof, or any improvements thereon, for any use or purpose in violation of the laws of the United States of America, the State of California, or the ordinances, regulations or requirements of the local municipal or county governing body or other lawful authorities having jurisdiction over the Site or the Project, including, without limitation, any such laws, ordinances, regulations or requirements relating to Hazardous Materials.

8.20 Other Provisions Of The Law. Each and every provisions of law and clause required to be inserted shall be deemed to be inserted herein and the Site Lease or Facility Sublease shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted or is not currently inserted, that upon application of either party the contract shall forthwith be physically amended to make such insertion or correction.

IN WITNESS WHEREOF, the parties hereto have executed this Site Lease by their authorized officers as of the dates so indicated below.

DISTRICT:

Western Placer Unified School District,
a school district organized and existing under the laws
of the State of California

By: _____ Date: _____

_____, Superintendent

DEVELOPER:

Landmark Construction

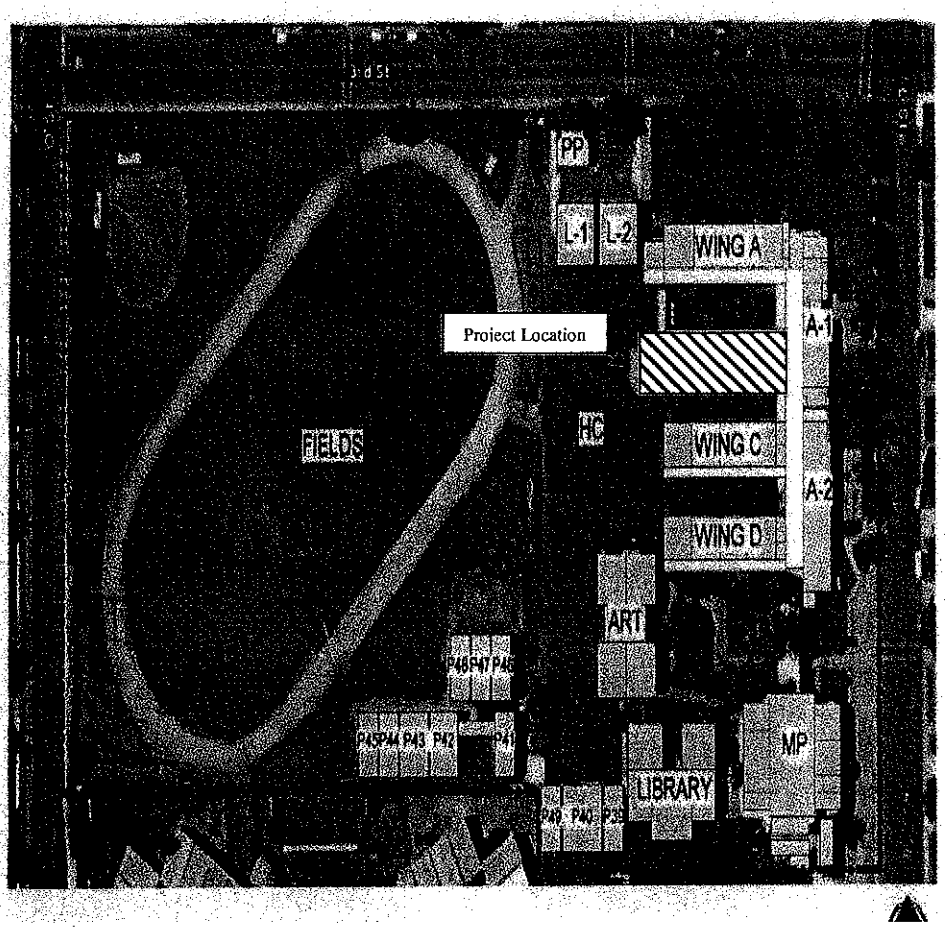
By: _____ Date: _____

Its: _____

4.3.119

EXHIBIT A

The property is known as Glen Edwards Middle School and located at 204 L Street in Lincoln, California. The campus is generally bordered by 3rd Street to the North and 1st Street to the South. The East and West borders are defined by O Street and L Street respectively. The fire damage was primarily located in Wing B of the campus, with minor damage to surrounding areas. The project location is shown pictorially below:



4.3.120

INFORMATION

DISCUSSION

ACTION

ITEMS

WESTERN PLACER UNIFIED SCHOOL DISTRICT
BOARD OF TRUSTEE MEETING FACT SHEET

MISSION STATEMENT: Empower Students with the skills, knowledge, and attitudes for Success in an Ever Changing World.

DISTRICT GLOBAL GOALS

1. **Develop and continually upgrade a well articulated K-12 academic program that challenges all students to achieve their highest potential, with a special emphasis on students**
2. **Foster a safe, caring environment where individual differences are valued and respected.**
3. **Provide facilities for all district programs and functions that are suitable in terms of function, space, cleanliness and attractiveness.**
4. **Promote the involvement of the community, parents, local government, business, service organizations, etc. as partners in the education of the students.**
5. **Promote student health and nutrition in order to enhance readiness for learning.**

SUBJECT:
Consider Adopting the
Early Retirement Incentive Program
Through the Public Agency Retirement Services
(PARS) Thereby Implementing the Retirement
of 33 District Employees.

AGENDA ITEM AREA:

Discussion/Action

REQUESTED BY:
Scott Leaman, Superintendent, Joyce Lopes,
Assistant Superintendent of Business Services &
Ryan Davis
Director of Human Services

ENCLOSURES:

PARS Summary Analysis

DEPARTMENT:
Personnel

FINANCIAL INPUT/SOURCE:
General Fund Savings

MEETING DATE:
May 31, 2011

ROLL CALL REQUIRED:
No

BACKGROUND:

The Western Placer Unified School District has worked with Public Agency Retirement Services (PARS) to design a Supplementary Retirement Plan (SRP), a retirement incentive that has encouraged senior Certificated and senior Classified employees to potentially retire early. The goal of the program is to generate savings, or at a minimum, no cost to the District by increasing the numbers of retirements in the 2010-2011 school year. Based on the best estimates of replacement and non-replacement savings the PARS early retirement incentive is projected to save the District approximately $779,325 or more in 2011-2012 and approximately $3,614,000 or more cumulative over 5 years.

PARS administers the third largest multiple employer public retirement system in California. Currently, there are over 350 member agencies representing over a quarter of a million public employees. Over 125 California school districts such as the Los Angeles Unified School District, Long Beach Unified School District, Pasadena Unified School District, Oakland Unified School District, Tracy USD, Stockton School District and others are members of PARS.

HOW THE PROGRAM WORKS

The Supplementary Retirement Plan (SRP) would provide participating senior Certificated & Classified employees with a monthly benefit provided by 75% of their final year salary; paid into the plan over a five-year period. The program requires all employees to retire from the District on June 30, 2011. To be eligible for the program, all employees must be:

1) Employed by the District as of April 5, 2011 (Date of Board Adoption);
2) Certificated employees must be at least 55 years of age with 5 years of District service or 50 years of age with 30 years of service;
3) Classified employees must be 50 years of age with 5 years of District service; and
4) Employees must be at least a .65 full time equivalent (FTE)
5) The Superintendent and Assistant Superintendents were excluded from participation

The following is the implementation timeline the District has followed:

1) Board adopted resolution to approve Plan (April 5, 2011);
2) Enrollment window opened (April 6, 2011);
3) Employee orientation meetings took place;
5) Enrollment window closed (May 20, 2011);
6) District announces whether Supplementary Retirement Plan (SRP) goes forward (at Special Board Meeting on May 31, 2011);
7) Employees resign from District employment (on or before, June 30, 2011);
8) Employees retire under STRS/PERS (July 1, 2011)(although not a specific requirement to participate); and
9) PARS Benefits commence (August 1, 2011).
10) Employees who resign/retire under this program would not be eligible to be reemployed as permanent or probationary employees of the District in the future. These employees would however, be eligible to apply for and be considered for substitute positions, but the District would be under no obligation to reemploy these employees.

FINANCIAL IMPACT

Based on the fiscal analysis considering the best estimate of replacement and non-replacement savings known to the District at this time, if the District implements the PARS supplemental early retirement incentive, the plan is projected to save the District approximately $779,325 or more in 2011-2012 and approximately $3,614,000 or more cumulative over 5 years. The ultimate savings or cost of the program over time will be determined based on the actual number and savings captured by replacing employees at a lower cost and the actual number and savings garnered from non-replacement positions. A final summary analysis based on the actual enrolled employees is enclosed as an attachment. If the District determines not to move forward with adopting the PARS plan and cancels the plan due to insufficient participation, a one-time fee of $5,000 will apply.

RECOMMENDATION:

Administration recommends the Board of Trustees Adopt the Early Retirement Incentive Program Through the Public Agency Retirement Services (PARS) for All Enrolled Employees Thereby Implementing the Retirement of 33 District Employees and Allowing the District to Capture a Significant Savings.

Western Placer Unified School District
Post Analysis Report: Revised May 25, 2011

PARS SUPPLEMENTARY RETIREMENT PLAN

The primary objective of a retirement incentive is to increase and accelerate the retirement rate over and above natural attrition in order to facilitate specific District objectives such as personnel restructuring, fiscal savings, etc. Fiscal savings are achieved by replacing the retiring employee, who is typically at the top of the salary schedule, with a replacement employee at the bottom of the salary schedule. With retirement incentives involving teachers, the resulting salary differential is sufficient to pay for the costs of the plan and generate additional savings over and above natural attrition.

ANALYSIS METHOD OF CALCULATION

The analysis compares the savings projected over a five-year period from offering the PARS Supplementary Retirement Plan (SRP) during the 2010-11 school year to the savings expected over the same period if natural attrition runs its normal course. The analysis examines current and future costs and compensation differentials, including projections of all compensation and benefit increases. This analysis has been used nationwide for well over one thousand plans, and is a well-accepted model of calculation.

The basic model of calculation is as follows:

	Total Compensation Differential between Retiring Employee and Replacement Employee
-	Retirement Health Care Cost
-	Retirement Incentive Cost
-	Current Natural Attrition
-	Future Loss in Natural Attrition
+	Savings due to Non-Replacements
=	***NET SAVINGS (COST)***

6.1.2

The following assumptions were used for the analysis performed for the Western Placer Unified School District:

Assumptions	
Eligibility Requirements	*Certificated and Classified Employees* *Certificated: Age 55 with 5 years of District service, or age 50 with 30 years of service* *Classified: Age 50 with 5 Years of Service,* ***and at least .65 FTE*** *Resignation from District employment and retirement under STRS/PERS effective June 30, 2011*
Benefit Level	*75% of Final Pay Spend Amount** * *2010-11 Contract Salary multiplied by current FTE.*
Replacement Salaries	*Certificated Non-Management: $53,117 (PARS New Hire Study – 3 Years)* *Certificated Management: 93.40% (Step 3)* *Classified Non-Management: 87.51% (Step 2)*
Health Care Costs	*Active Employee: $12,223* *Retired Certificated Employee: $8,600* *Retired Classified Employee: $2,775* *Health Care COLA: 5.00%*
PARS Plan Funding	*5 years*
Non-Replacement of Positions	*Certificated Non-Management: 9.5* *Certificated Management: 0* *Classified Non-Management: 3*

PARS has provided non-replacement figures in this proposal with the District's understanding that these non-replacement numbers represent position cuts obtained through the offering of a retirement incentive plan. The District should be sure not to budget a similar number of position cuts, thereby double counting savings within this retirement incentive analysis and the budget.

The following summarizes the results of the analysis:

PARS Retirements

Employee Group	Number of Eligible Employees	Retirements with PARS SRP	Percentage Retirements
Certificated Non-Management	64	19	29.69%
Certificated Management	9	4	44.44%
Classified Non-Management	67	10	14.93%
Classified Management	2	-	0.00%
TOTAL	**142**	**33**	**23.24%**

Projected Fiscal Impact

Employee Group	Non-Replaced Positions	Projected Savings in Year 1	Projected Savings over 3 Years	Projected Savings over 5 Years
Certificated Non-Management	9.5	$739,096	$2,138,204	$3,519,761
Certificated Management	0	($64,377)	($219,861)	($363,816)
Classified Non-Management	3	$104,606	$286,571	$458,055
Classified Management	-	-	-	-
TOTAL	**12.5**	**$779,325**	**$2,204,915**	**$3,614,000**

6.1.4

Notice

This analysis attempts to quantify in economic terms, not budgetary terms, the fiscal impact of a retirement incentive program at the District. This analysis is entirely driven by the assumptions set forth by the District. If the assumptions are changed or modified by the District the results shall vary from what is set forth in this analysis. The accuracy of any results and/or analysis will depend entirely upon the accuracy of the information provided and the assumptions used.

The information, data and assumptions used in this analysis have been provided to Public Agency Retirement Services (PARS) by the District. It shall be the responsibility of the District to certify the accuracy, content and completeness of the information, data and assumptions so that PARS may rely on such information without further audit. PARS shall be under no duty to question the information, data and assumptions received from the District including, but not limited to, inquiries about how the analysis, information, data and assumptions work in conjunction with the District's budget.

PARS shall not be liable for non-performance of Services if such non-performance is caused by or results from erroneous and/or late delivery of information, data and assumptions.