Part II

of Board

Packet

April 20, 2004

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.
BOARD OF TRUSTEES/GLOBAL DISTRICT 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.

AGENDA ITEM:

Approve the Facility Sublease Agreement, Site Lease, and Services Agreement Between the Western Placer Unified School District and NTD-EDGE Design Builders for the Construction of the Lincoln High School Stadium and Athletics Field.

SUBJECT AREA:

Discussion/Action

REQUESTED BY:

Jay M. Stewart
Assistant Superintendent, Business Services

ENCLOSURES:

Yes

BOARD MEETING DATE:

April 20, 2004

BACKGROUND:

The attached agreements support the construction of the Lincoln High School stadium and athletics field. The Guaranteed Maximum Price (GMP) for this project is $5,828,753.

SUPERINTENDENT'S RECOMMENDATION:

Administration recommends the Board of Trustees approve the Facility Sublease Agreement, Site Lease, and Services Agreement Between the Western Placer Unified School District and NTD-EDGE Design Builders for the construction of the Lincoln High School stadium and athletics field.

8.3

FACILITY SUBLEASE AGREEMENT

Dated as of April 7, 2004
Between

WESTERN PLACER UNIFIED SCHOOL DISTRICT

and

NTD-EDGE
Design Builders

FACILITY SUBLEASE AGREEMENT

This FACILITY SUBLEASE AGREEMENT (Sublease) is dated as of April 7, 2004 and is by and between the Western Placer Unified School District, a school district duly organized and existing under the laws of the State of California (District), and NTD-EDGE Design Builders, a corporation organized and operating under the laws of the State of California (Sub-Lessor) with its principal place of business located at 4719 Viewridge Avenue, Suite 200, San Diego, Ca. 92123.

RECITALS:

WHEREAS, pursuant to Section 17406 et seq. of the Education Code, the District may enter into leases and agreements relating to real property and buildings used by the District; and

WHEREAS, the District deems it essential for its own governmental purpose, to finance the construction and installation of certain improvements described in the Approved Plans (the Project) and situated on the Lincoln High School Stadium site described in SECTION 1 of this document; and

WHEREAS, pursuant to Section 17406 of the Education Code, the District is leasing the Site to Sub-Lessor under a lease agreement (the Site Lease) dated April 7, 2004 in consideration of Sub-Lessor leasing and subleasing the Project and the Site to the District pursuant to the terms of this Sublease; and

WHEREAS, the District owns the Site and pursuant to that certain Services Agreement entered into by and between the District and Sub-Lessor dated as of April 7, 2004, (the Services Agreement) the District has prepared and adopted plans and specifications for the completion of the Project which have been approved pursuant to law as required by Section 17402 of the Education Code; and

WHEREAS the District and Sub-Lessor agree to mutually cooperate now or hereafter, to the extent possible, in order to sustain the intent of this Sublease and the bargain of both parties hereto, and to provide Sublease Payments to be made in the amount and in the manner set forth herein.

NOW THEREFORE, in consideration of the covenants hereinafter contained, District and Sub-Lessor agree as follows:

SECTION 1. **DEFINITIONS**. Unless the context otherwise requires, the terms defined in this Section shall, for all purposes of this Sublease, have the meanings as herein specified.

A. **Approved Plans** means the final working drawings as approved by the District and the Division of State Architect (DSA)

B. **Services Agreement** means the Services Agreement Between District and NTD/EDGE Design Builders, Inc. for construction of improvements on the Lincoln High School Stadium site by and between the District and the Sub-Lessor dated as of April 7, 2004.

C. **Contract Documents** means the Services Agreement, this Sublease and the Site Lease.

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

E. **Effective Date** shall mean the day on which the District issues a notice to proceed on the Project pursuant to the provisions of the Services Agreement.

F. **Event of Default** means one or more events of default as defined in Sections 19 and 20 of this Sublease.

G. **Guaranteed Maximum Price or GMP** means the Guaranteed Maximum Price established pursuant to the Services Agreement.

H. **Sub-Lessor** shall mean NTD-EDGE Design-Builders, Inc., and its successors and assigns.

I. **Prepayment Price** means the price to be paid by the District to exercise its option to purchase the Site and the Project prior to the natural termination of this Sublease, in accordance with the provisions of Section 25 herein.

J. **Project** means the improvements and equipment to be constructed and installed by the Lessee, as more particularly described in the Approved Plans.

K. **Site** means that certain parcel of real property and improvements thereon (if any) more particularly described as:

Attachments A & B (Legal Descriptions)

L. **Site Lease** means the Site Lease dated as of April 7, 2004, by and between the District and the Sub-Lessor, together with any duly authorized and executed amendment thereto under which the District leases the Site to the Sub-Lessor.

M. **Sublease** means this Facility Sublease Agreement together with any duly authorized and executed amendment hereto.

N. **Sublease Payment** means any payment required to be made by the District pursuant to Section 7 of this Sublease. Such Sublease Payment shall not utilize state bond funds or the District's matching funds for this Project

O. **Sublease Prepayment** means any payment may be made by the District pursuant to Section 25 of this Sublease which is, in the District's opinion, consistent with applicable law related to the use of state bond funds.

P. **Term of this Sublease or Term** means the time during which this Sublease is in effect, as provided for in Section 3 of this Sublease .

SECTION 2. **SUBLEASE**

Sub-Lessor hereby leases and subleases to District, and District hereby leases and subleases from Sub-Lessor the Project and the Site, including any real property improvements now or hereafter affixed thereto in accordance with the provisions herein for the full term of this Sublease. The leasing by the Sub-Lessor to the District of the Site shall not effect or result in a merger of the District's leasehold estate pursuant to this Sublease and its fee estate as Sub-Lessor under the Site Lease, and the Sub-Lessor 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 Sublease.

SECTION 3. **TERM OF THE SUBLEASE**

A. The terms and conditions of this Sublease shall become effective upon the authorized execution of this Sublease and after the District issues a notice to proceed on the Project pursuant to the provisions of the Services Agreement. The term of the Sublease commences on the Effective Date, and terminates two (2) months following filing of Notice of Completion, as adjusted per Article 15 of the Services Agreement, unless sooner terminated as hereinafter provided. If on the scheduled

date of termination of this Sublease the Sublease Payments shall not be fully paid, or provision therefore made, or if such Sublease Payments shall have been abated at any time and for any reason, then the term of this Sublease shall be extended until the date upon which all such Sublease Payments shall be fully paid in a manner consistent with Education Code Section 17406.

B. Termination of Term. The Term of this Sublease shall terminate upon the earliest of any of the following events:

1. An Event of Default by District and the Sub-Lessor's election to terminate this Sublease pursuant to the provisions of Sections 19 and 21, hereof;

2. The arrival of the last day of the Term of this Sublease and payment of all Sublease Payments hereunder; or

3. The exercise of the District's option under Section 27 hereof.

SECTION 4. **REPRESENTATIONS, WARRANTIES AND COVENANTS OF DISTRICT.** The District represents and warrants to Sub-Lessor that:

A. District is a political subdivision, duly organized and existing under the Constitution and laws of the State of California with authority to enter into this Sublease and to perform all of its obligations hereunder;

B. District's governing body has duly authorized the execution and delivery of this Sublease and further represents and warrants all requirements have been met and procedures followed to ensure its enforceability.

C. The execution, delivery and performance of this Sublease does not and will not result in any breach of or constitute a default under any indenture, mortgage, contract, agreement or instrument to which District is a party by which it or its property is bound;

D. To the actual knowledge of the District there is no pending or, to the knowledge of District, threatened action or proceeding before any court or administrative agency which will materially adversely affect the ability of District to perform its obligations under this Sublease;

E. The Project and the Site are essential to District in the performance of its governmental functions and their estimated useful life to the District exceeds the term of this Sublease;

F. District shall use reasonable good faith efforts to take such action as may be necessary to include all Sublease Payments in its annual budget and annually to appropriate an amount necessary to make such Sublease Payments;

G. District shall not abandon the Site for the use for which it is currently required by District and, to the extent permitted by law, District shall not seek to substitute or acquire property to be used as a substitute for the uses for which the site is maintained under the Sublease; and

H. District shall not allow any Hazardous Substances (as such term is defined in the Site Lease) to be used or stored on, under or about the Site.

SECTION 5. **REPRESENTATIONS AND WARRANTIES OF SUB-LESSOR.** Sub-Lessor represents and warrants to District that:

A. Sub-Lessor is duly organized, validly existing and in good standing as a corporation under the laws of the State of California, with full corporate power and authority to lease and own real and personal property;

B. Sub-Lessor has full power, authority and legal right to enter into and perform its obligations under this Sublease, and the execution, delivery and performance of this Sublease has been duly authorized by all necessary corporate actions on the part of Sub-Lessor and does not require any further approvals or consents;

C. The execution, delivery and performance of this Sublease does not and will not result in any breach of or constitute a default under any indenture, mortgage, contract, agreement or instrument to which Sub-Lessor is a party by which they or their property is bound;

D. There is no pending or, to the knowledge of Sub-Lessor, threatened action or proceeding before any court or administrative agency which will materially adversely affect the ability of Sub-Lessor to perform their obligations under this Sublease; and

E. Sub-Lessor will not mortgage or encumber the Site or the Sublease or assign this Sublease or their rights to receive Sublease Payments hereunder, except as permitted herein.

SECTION 6. **CONSTRUCTION/ACQUISITION**

A. District has entered into a Services Agreement and a Site Lease with Sub-Lessor in order to acquire and construct the Project. The cost of the construction and installation of the Project is determined by the Final GMP as set forth in the Services Agreement. The Sub-Lessor shall construct the Project in accordance with the Contract Documents.

B. In order to ensure that moneys sufficient to pay all costs will be available for this purpose when required, District shall use reasonable good faith efforts to maintain on deposit in its general fund, and shall annually appropriate funds sufficient to make all Sublease Payments which become due to Sub-Lessor under this Sublease Agreement.

SECTION 7. **SUBLEASE PAYMENTS.**

A. District shall pay Sub-Lessor lease payments (the Sublease Payments) in conformance with and subject to the terms and conditions for payment for the project as set forth in the Services Agreement. In no event shall the sum of the Sublease Payments due hereunder exceed the Final GMP as it may be revised by the District from time to time in accordance with the provisions set forth in the Services Agreement. The Sublease Payments shall be adjusted to reflect any adjustment to the Final GMP agreed to in writing by the District and the Contractor.

B. SUB-LESSOR agrees that satisfactory progress pursuant to the time schedule required pursuant to the Services Agreement shall be conditions precedent to the making of Sublease Payments by the District. The determination of whether the Schedule has been adequately adhered to shall be made by the inspector hired by the District as provided in the Lease Build Services Agreement and as herein stated. If the District's inspector determines that pursuant to the Schedule, the work required to be performed prior to a given Sublease Payment has not been met, the District shall not be required to make that scheduled Sublease Payment. Once the District's inspector has notified the District that the work scheduled to be completed prior to the Sublease Payment in question has been completed, the District shall make the Sublease Payment corresponding to completion of such work.

C. The District shall retain an amount equal to ten percent (10%) of each Sublease Payment. However, at any time after fifty percent of the work has been completed, if the governing board of the District finds that satisfactory progress is being made, it may make any of the remaining

Sublease Payments in full. The final Sublease Payment shall be made in the manner described in the Lease Build Services Agreement.

D. Should the District fail to pay any part of the Sublease Payments not otherwise excused pursuant to this Section or Section 9 hereof, within twenty-one (21) business days from the due date thereof, the District shall, upon Sub-Lessor's written request, pay interest on such delinquent payment from the date said payment was due until paid at the rate of **six percent (6%)** per annum or two percent (2%) over the prime interest rate, whichever is less, or in no event greater than the legal rate of interest allowable. The obligation of the District to pay Sublease Payments hereunder shall 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 limitations or requirements 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.

E. In the event that the District exercises its option under Section 25(B) below, and purchases the Project by paying the Prepayment Price, the District's obligations under this Lease, including but not limited to the District's obligation to pay Sublease Payments under this Section, shall thereupon cease and terminate.

F. Except as specifically provided in this Section and in Section 9 hereof, or as otherwise provided by law, the obligation of the District to make Sublease Payments when due and payable hereunder will be absolute and unconditional in all events and will not be subject to any set-off, defense, counterclaim, abatement or recoupment for any reason whatsoever.

SECTION 8. **FAIR RENTAL VALUE**

Sublease Payments shall be paid by District in consideration of the right of possession of, and the continued quiet use and enjoyment of, the Project and the Site during the lease. The parties hereto have agreed and determined that such total rental is not in excess of the fair rental value of the Project and the Site. In making such determination, consideration has been given to the fair market value of the Project and the Site, other obligations of the parties under this Sublease (including but not limited to costs of maintenance, taxes and insurance), the uses and purposes which may be served by the Project and the Site and the benefits therefrom which will accrue to the District and the general public, the ability of the District to make additions, modifications and improvements to the Project and the Site which are not inconsistent with the Services Agreement and which do not interfere with the Sub-Lessor's work on the Project and the Site.

SECTION 9. **TERMINATION**

A. Notwithstanding anything to the contrary stated or implied elsewhere in the Contract Documents, the District may terminate this Sublease (i) for convenience at any time (for any reason or no reason at all) upon twenty-one (21) days' prior written notice to SUB-LESSOR and (ii) immediately upon the occurrence of a Default hereunder by Sub-Lessor. Upon any termination of this Sublease for convenience prior to the final completion of the Project pursuant to the Services Agreement, the termination provisions set forth in Article 13 of the Services Agreement shall govern and control the rights and obligations of, and sets forth the exclusive remedies available to, the parties in connection with such termination. Upon any termination of this Sublease as a result of a Sub-Lessor Default prior to the final completion of the Project, the termination provisions set forth in Article 13 of the Services Agreement shall govern and control the rights and obligations of, and sets forth the exclusive remedies available to, the parties in connection with such termination. Upon any termination for convenience of the District or Default by Sub-Lessor after the final completion of the Project, then subject to the District's offset and withholding rights set forth in the Services Agreement, and its rights to indemnity under the Contract Documents, its right to damages resulting from, or to pursue its equitable remedies

arising from, any Sub-Lessor Default hereunder or Sub-Lessor default under any of the other Contract Documents, and its right to attorneys' fees, costs and expenses if it is the prevailing party in any dispute under the Contract Documents, this Sublease shall terminate and the District shall pay to Sub-Lessor all amounts payable under the Contract Documents (including any "Sublease Payments" payable hereunder and any "Project Purchase Price" payable under the Services Agreement).

B. Notwithstanding anything elsewhere in the Contract Documents to the contrary, if any of the Contract Documents is terminated, the remaining Contract Documents shall automatically terminate concurrently therewith.

SECTION 10. **SUBLEASE PAYMENT ABATEMENT**

A. In addition to delay of Sublease Payments provided in Section 7, above, Sublease Payments due hereunder with respect to the Project and the Site shall be subject to abatement prior to the commencement of the use of the Project and the Site by the District or during any period in which, by reason of material damage to or destruction of the Project or the Site, there is substantial interference with the use and right of possession by the District of the Project and the Site or any substantial portion thereof. For each potential incident of substantial interference, decisions to be made on i) whether or not abatement shall apply; ii) the date upon which abatement shall commence; iii) the applicable portion of Sublease Payments to be abated and; iv) the concluding date of the particular abatement shall all be subject to determinations by the District in concert with the provider of the insurance issued pursuant to Section 18 herein. The amount of Sublease abatement shall be such that the Sublease Payments paid by the District during the period of Project and Site restoration do not exceed the fair rental value of the usable portions of the Project and Site. In the event of any damage or destruction to the Project or the Site, this Sublease shall continue in full force and effect.

B. Notwithstanding the foregoing, nothing contained herein will limit or otherwise modify the rights and obligations of the parties set forth elsewhere in the Contract Documents with respect to the insurance proceeds payable upon any casualty and/or any necessary repairs or restoration resulting from such casualty.

SECTION 11. **USE OF SITE AND PROJECT**

During the term of this Sublease, Sub-Lessor shall provide the District with quiet use and enjoyment of the Site without suit, or hindrance from Sub-Lessor or their assigns, provided District is in compliance with its duties under this Sublease. District will not use, operate or maintain the Site or Project improperly, carelessly, in violation of any applicable law, or in any other manner contrary to that contemplated by this Sublease. Except as may be required by the Services Agreement, District shall provide all permits and licenses, if any, necessary for the operation of the Project and Site. In addition, the District agrees to comply in all respects (including, without limitation, with respect to the time, maintenance and operation of the Project and Site) with laws of all jurisdictions in which its operations involving the Project and Site may extend and any legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Site or the Project. The District also agrees to comply with Sub-Lessor's dictated safety practices. Upon substantial completion of the Project or severable portions hereof, the Sub-Lessor shall provide the District with quiet use and enjoyment of the Site without suit or hindrance from the Sub-Lessor or its assigns, subject to reasonable interference from ongoing construction operations on any remaining portion of the Site under construction by the Sub-Lessor. Upon Final Completion, Sub-Lessor shall provide the District with quiet use and enjoyment of the Site without suit or hindrance from Sub-Lessor or its assigns, subject to reasonable interference from ongoing construction operations (if any) on the Site that are reasonably necessary to permit Sub-Lessor to perform and satisfy its obligations under the

Services Agreement (including, without limitation, its warranty obligations thereunder). The foregoing shall in no event be construed as limiting any of Sub-Lessor's obligations set forth elsewhere in the Contract Documents, including those obligations requiring Sub-Lessor to (a) comply with all applicable laws relating to the Project and the Site, including the District's policies, rules and regulations, (b) maintain, and assume the responsibility for, proper safety practices and procedures on the Site, (c) assume responsibility for, and the risk of loss with respect to, the Site during the time set forth in, and in accordance with, the Services Agreement, and (d) satisfy Sub-Lessor's other obligations under the Services Agreement.

SECTION 12. **SUB-LESSOR'S INSPECTION/ACCESS TO THE SITE**

District agrees that Sub-Lessor and any of Sub-Lessor's representatives shall have the right at all reasonable times to enter upon the Site or any portion thereof to construct and improve the Project, to examine and inspect the Site and the Project and to exercise its remedies pursuant to the section in this Sublease entitled "Remedies on Default." District further agrees that Sub-Lessor and any of Sub-Lessor's representatives shall have such rights of access to the Site as may be reasonably necessary to cause the proper maintenance of the Site and the Project in the event of failure by District to perform its obligations hereunder.

SECTION 13. **PROJECT ACCEPTANCE**

District shall acknowledge final inspection and completion of the Project by executing a Certificate of Acceptance and recording a Notice of Completion. The validity of this Sublease will not be affected by any delay in or failure of completion of the Project.

SECTION 14. **ALTERATIONS AND ATTACHMENTS**

All permanent improvements and additions that are made to the Project shall belong to and become the property of Sub-Lessor, subject to the provisions of the Site Lease and Sections 26 and 27 hereof. Separately identifiable attachments added to the Project by the District shall remain the property of the District. At Sub-Lessor's request, the District agrees to remove the attachments and restore the Project to substantially as good condition as when acquired and constructed, normal wear and tear excepted, in the event of failure by the District to perform its obligations hereunder.

SECTION 15. **MAINTENANCE**

District, at its own cost and expense, shall maintain the Project and the Site in good repair throughout the term of the Sublease upon completion of the Project.

SECTION 16. **UTILITIES**

Prior to Final Completion, Sub-Lessor shall be responsible for, and shall contract for and pay the expenses of, all utilities and other services for the Project and the Site required to be provided by Sub-Lessor during performance of the Work pursuant to the Services Agreement, and the District shall be responsible for, and shall, in its own name, contract for and pay the expenses of, all other utilities and other services required for the operation of the Project and the Site. Unless otherwise so specified in the Services Agreement, District shall, in its own name, contract for and pay the expenses of all utility services required for the Project and Site once constructed. Such utilities include but are not limited to, all air conditioning, heating, electrical, gas, water, and sewer services. The District shall be liable for payment as well as maintenance of all utility services received.

SECTION 17. **DAMAGE DESTRUCTION OR CONDEMNATION**

Unless otherwise so specified in the Services Agreement, with the exception of acts resulting from misconduct or negligence by Sub-Lessor, its agents and representatives, upon acceptance or taking occupancy of the Project the District assumes all risk of loss of, damage to or condemnation of the Project or the Site from any cause or for any reason whatsoever, and no such loss of, damage to or condemnation of the Project or the Site shall relieve the District of (i) the obligation to make the Sublease Payments hereunder subject to the provisions in Sections 7 and 9 hereof, or (ii) to perform any other obligation under this Sublease. The District waives the benefit of Civil Code sections 1932(2) and 1933(4) and any and all other rights to terminate this Sublease by virtue of any damage or destruction to the Project or the Site.

SECTION 18. **TAXES**

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

SECTION 19. **DEFAULT BY THE DISTRICT; REMEDIES**

A. It shall be a **"Default"** by the District hereunder if the District has substantially failed to perform its obligations under this Sublease for a period in excess of twenty-one (21) days following delivery of written notice from Sub-Lessor to the District of such failure, which written notice must include a description of the District's substantial failure to perform and the status of the Work completed under the Services Agreement as of the date of such notice, together with a description and a cost estimate of the effort necessary to complete Work in progress.

B. Upon the occurrence of any Default by the District, Sub-Lessor may terminate this Sublease by delivery of written notice of such election to the District (in which event the Site Lease and the Services Agreement shall automatically terminate concurrently therewith). If the District cures such failure to perform within the above-described 21 day period or prior to the effective date of termination, then none of the Contract Documents may be terminated by Sub-Lessor by reason of such failure to perform. Upon any such termination of this Sublease by Sub-Lessor prior to Final Completion, the termination provisions set forth in Article 13 of the Services Agreement shall govern and control the rights and obligations of, and sets forth the exclusive remedies available to, the parties in connection with such termination.

C. If Sub-Lessor does not elect to terminate this Sublease pursuant to the foregoing, the District agrees to and shall remain liable for the payment of Sublease Payments, and, if applicable, Sublease Prepayments, and the performance of all conditions and obligations of the District set forth herein, in accordance with the terms and provisions of this Sublease and the other Contract Documents.

D. Notwithstanding any provision to the contrary elsewhere in the Contract Documents, the remedies expressly provided for herein and in the other Contract Documents supersede any and all remedies that may be available to Sub-Lessor at law or in equity (including, without limitation, any remedies of a landlord or Sub-Lessor under the California Civil Code), and, upon a Default by the District, Sub-Lessor shall not have the right to exercise any remedy other than the right to terminate this Sublease (and the other Contract Documents), and collect those amounts payable to Sub-Lessor pursuant to the express terms of the Contract Documents. In furtherance of and not in limitation of the foregoing, and notwithstanding any provision to the contrary elsewhere in the Contract Documents, Sub-Lessor shall not under any circumstances have the right to accelerate the

Sublease Payments that fall due in future Sublease periods or otherwise declare any Sublease Payments not then due and payable pursuant to the express terms and provisions of this Sublease to be immediately due and payable, and Sub-Lessor hereby waives its rights, if any, under any statutory provisions or other laws to the contrary.

SECTION 20. **DEFAULT BY SUB-LESSOR; REMEDIES**

A. The occurrence of any of the following events shall constitute a **"Default"** hereunder by Sub-Lessor: (a) Sub-Lessor fails in the performance of any obligation on its part to be performed under the terms of this Sublease, and such default continues for twenty-one (21) days following the delivery of written notice thereof from the District to Sub-Lessor, (b) a "Default" by Sub-Lessor occurs under the Services Agreement and/or the Site Lease, (c) Sub-Lessor commences a voluntary action under any chapter of the United States Bankruptcy Code as now or hereafter in effect or Sub-Lessor takes any equivalent or similar action by filing a petition or otherwise under any other Federal or State law in effect at such time relating to bankruptcy or insolvency, (d) a petition is filed against Sub-Lessor under any chapter of the United States Bankruptcy Code as now or hereafter in effect at the time of filing or a petition is filed seeking any such equivalent or similar relief against Sub-Lessor under any other Federal or State law in effect at the time relating to bankruptcy or insolvency and such petition or filing is not dismissed within 60 days after being filed, (e) Sub-Lessor makes a general assignment for the benefit of creditors, or (f) a trustee, receiver, custodian or agent of Sub-Lessor is appointed under applicable law or under contract whose appointment of authority to take charge of property of Sub-Lessor is for the purpose of enforcing a lien against such property or for the purpose of general administration of such property for the benefit of Sub-Lessor's creditors.

B. Upon the occurrence of a Default by Sub-Lessor hereunder, the District may exercise all of its rights and remedies under this Sublease, in addition to any of its rights and remedies under the Site Lease and the Services Agreement, except that no merger of this Sublease and of the Site Lease shall be deemed to occur as a result thereof.

SECTION 21. **REMEDIES**

Except as otherwise expressly set forth herein or in any of the other Contract Documents, no right or remedy herein conferred upon or reserved to Sub-Lessor or the District is exclusive of any other right or remedy herein or under the other Contract Documents, but each such remedy shall be cumulative of every other right or remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise, and may be enforced concurrently therewith or from time to time.

SECTION 22. **NON-WAIVER**

No covenant or condition to be performed by District or Sub-Lessor under this Sublease can be waived except by the written consent of the other party. Forbearance or indulgence by District or Sub-Lessor in any regard whatsoever shall not constitute a waiver of the covenant or condition in question. Until complete performance by the District or Sub-Lessor of said covenant or condition, the other party shall be entitled to invoke any remedy available to it under this Sublease or by law or in equity despite said forbearance or indulgence.

SECTION 23. **ASSIGNMENT**

Without the prior written consent of the Sub-Lessor, which consent shall not be unreasonably withheld, the District shall not (a) assign, transfer, pledge, or hypothecate this Sublease, the Project and the Site, or any part thereof, or any interest therein, or (b) sublet or lend the use of the Project or any part thereof, except as authorized by the provisions of the California Civic Center

Act, Education Code section 38130 et seq. Consent to any of the foregoing prohibited acts applies only in the given instance and is not a consent to any subsequent like act by the District or any other person. The Sub-Lessor shall not assign its obligations under this Sublease with the exception of their obligation to issue default notices and to convey or reconvey their interest in the Project and Site to the District upon full satisfaction of the District's obligations hereunder; however, the Sub-Lessor may assign their right, title and interest in this Sublease, the Sublease Payments and other amounts due hereunder and the Project in whole or in part to one or more assignees or subassignees at any time upon written notice to the District. No assignment shall be effective as against the District unless and until the District is so notified in writing and the District consents, which consent shall not be reasonably withheld. The District shall pay all Sublease Payments due hereunder pursuant to the direction of Sub-Lessor or the assignee named in the most recent assignment or notice of assignment. During the Sublease term, the District shall keep a complete and accurate record of all such assignments. Subject always to the foregoing, this Sublease inures to the benefit of, and is binding upon, the heirs, legatees, personal representatives, successors, and assigns of the parties hereto.

SECTION 24. **OWNERSHIP; TRANSFER OF TITLE**

A. The Project is and shall at all times be and remain the sole and exclusive property of the Sub-Lessor, and the District shall have no right, title, or interest therein or thereto except as expressly set forth in the Contract Documents.

B. All right, title and interest of Sub-Lessor to the Project shall be transferred to and shall vest in the District, without the necessity for any further instrument of transfer, upon the expiration or earlier termination of this Sublease. Sub-Lessor hereby agrees to execute, acknowledge, deliver, and record such instruments as the District may reasonably request to evidence such transfer of title to the District.

SECTION 25. **SUBLEASE PREPAYMENTS/PURCHASE OPTION**

A. **Sublease Prepayments.** At any time during the term of this Sublease, the District may, upon the request of the Sub-Lessor or on upon its own initiative, make Sublease Prepayments to the Sub-Lessor. No Sublease Prepayments requested by the Sub-Lessor may be made by the District in an amount exceeding the aggregate true cost to the Sub-Lessor of the work on the Project completed to the date the Sub-Lessor submits the request for a Sublease Prepayment less the aggregate amount of: (1) all Sublease Payments previously made by the District to the Sub-Lessor; (2) all Sublease Prepayments previously made by the District to the Sub-Lessor; (3) all amounts previously retained, pursuant to Section 25(A)(3) below, from Sublease Prepayments previously made by the District to the Sub-Lessor (unless the Sub-Lessor shall have previously substituted securities for such retained amounts pursuant to Section 25(A)(3)); and (4) the retention for such Sublease Prepayment pursuant to Section 25(A)(3). Sub-Lessor must submit evidence that the conditions precedent set forth in Section 25(A)(1), below, have been met. In the event District elects to make Sublease Prepayments, the Prepayment Price, contemplated in Section 25(B), below, shall be adjusted accordingly.

1. The following are conditions precedent to any Sublease Prepayments made to the Sub-Lessor pursuant to a request of the Sub-Lessor:

   a. Satisfactory progress of the Construction pursuant to the time schedule required pursuant to the Services Agreement (the Time Schedule) shall have been made as determined in Section 25 (A)(2), below.

   b. Sub-Lessor shall also submit to the District (i) duly executed conditional lien releases and waivers (in the form provided in California Civil Code Section 3262) from the Sub-Lessor, (ii) duly executed unconditional lien releases and waivers (in the form provided in California Civil Code Section 3262)

from the Sub-Lessor, and (iii) any other items that the Sub-Lessor may be required to collect and distribute to the District pursuant to the terms and provisions of the Services Agreement. Sub-Lessor shall promptly pay all amounts due to each subcontractor, consultant and other person retained by Sub-Lessor in connection with the Project after Sub-Lessor's receipt of a Sublease Prepayment from the District, but in no event later than thirty (30) days after Sub-Lessor's receipt of an undisputed and properly submitted payment request from such subcontractor, consultant or other person retained by Sub-Lessor in connection with the Project.

2. The determination of whether satisfactory progress of the Construction pursuant to the Time Schedule has occurred shall be made by the inspector hired by the District pursuant to the Services Agreement. If the District's inspector determines that pursuant to the Time Schedule, the work required to be performed, as stated in the Sub-Lessor's Sublease Prepayment request has not been substantially completed, the Sub-Lessor shall not be eligible to receive the requested Sublease Prepayment.

3. The District shall retain an amount equal to **ten percent (10%)** of each Sublease Prepayment (retention) made at Sub-Lessor's request. Sub-Lessor shall have the right, as delineated in the Services Agreement, to substitute securities for any retention withheld by the District, pursuant to the provisions of Public Contract Code section 22300.

B. **Purchase Option.** If the District is not in default hereunder, the District shall be granted an option to purchase not less than all of the Project. The Prepayment Price at any given time shall be an amount equal to the GMP, as it may be revised from time to time, less the sum of any Sublease Payments and/or Sublease Prepayments made by the District prior to the date on which the District elects to exercise its option under this Section.

SECTION 26. **RELEASE OF LIENS**

A. Notwithstanding any other provisions, upon District executing a Certificate of Acceptance and filing a Notice of Completion on the Project, as such term is defined herein and in the Services Agreement, Sub-Lessor or its assignee and the District shall release Sub-Lessor's leasehold interest in Project and the Site.

B. Sub-Lessor shall authorize, execute and deliver to the District all documents reasonably requested by the District to evidence (i) the release of any and all liens created pursuant to the provisions of this Sublease and the Site Lease, and (ii) any other documents required to terminate the Site Lease and this Sublease.

C. Nothing in this Sublease precludes the Sub-Lessor from utilizing the provisions of Civil Code Section 3196 et seq. related to releases from stop notices.

SECTION 27. **TERMINATION OF SERVICES AGREEMENT**

In the event the Services Agreement and or Site Lease is terminated pursuant to the provisions contained therein, this Sublease shall immediately terminate.

SECTION 28. **SEVERABILITY**

If any provision of this Sublease shall be held invalid or unenforceable by a court of competent jurisdiction, such holdings shall not invalidate or render unenforceable any other provision of this

8.3.12

Sublease, unless elimination of such provision materially alters the rights and obligations embodied in this Sublease.

SECTION 29. **NOTICES**

Any notices or filings required to be given or made under this Sublease shall be served, given or made in writing upon the District or the Sub-Lessor, as the case may be, by personal delivery or registered mail to the respective addresses given below. Any change in the addresses noted shall not be binding upon the other party unless preceded by no less than **ten (10)** days prior written notice. Any such notices shall be deemed to have been received by the addressee if delivered to the person for whom they are intended or if sent by registered mail, return receipt requested, or by telex, telegram, or fax followed by regular mail, addressed as follows

If to Sub-Lessor:

Jon Alan Baker, AIA, Principal
NTD-EDGE Design-Builders
4719 Viewridge Avenue, Suite 200
San Diego, CA. 92123

If to District:

Roger Yohe, Superintendent
Western Place Unified School District
810 J Street
Lincoln, CA 95648

SECTION 30. **BINDING EFFECT**

This Sublease shall inure to the benefit of and shall be binding upon the District, the Sub-Lessor and their respective successors in interest and assigns.

SECTION 31. **EXECUTION IN COUNTERPARTS**

This Sublease 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.

SECTION 32. **LAWS, VENUE**

The terms and provisions of this Sublease shall be construed in accordance with the laws of the State of California. If any action is brought in a court of law to enforce any term of this Sublease, the action shall be brought in a state court situated in the County of the Project's location.

SECTION 33. **INTEGRATION/MODIFICATION**

This Sublease constitutes the entire agreement between Sub-Lessor and the District as to those matters contained herein, and supersedes and cancels any prior oral or written understanding, promises or representations with respect to those matters covered herein, and it shall not be amended, altered, or changed except by a written agreement signed by the parties hereto.

SECTION 34. **OTHER PROVISIONS OF THE LAW**

8.3.13

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.

SECTION 35. **TITLES**

The titles to the sections of this Sublease are solely for the convenience of the parties and are not an aid in the interpretation thereof, and in no way define, limit or describe the scope or intent of any provisions of sections of this Sublease.

SECTION 36. **TIME**

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

IN WITNESS WHEREOF, the parties hereto have executed this Sublease by their authorized officers as of the day and year first written above.

WESTERN PLACER UNIFIED SCHOOL DISTRICT	NTD-EDGE DESIGN-BUILDERS SUB-LESSOR
BY: _____	BY: _____ Jon Alan Baker, AIA
ITS:	ITS: Principal
	BY: _____ Dayne Wagoner
	ITS: Principal

8.3.14

LINCOLN HIGH SCHOOL
EXHIBIT A

All that certain real property situate in the City of Lincoln, County of Placer, State of California, in the original town of Lincoln as filed in Book "A" of Maps at Page 22 in the Western Addition as filed in Book "A" of Maps at Page 23, and the Western Addition No. 2 as filed in Book "C" of Maps at Page 59 in the Recorder's Office of said County, described as follows:

Beginning at the southwesterly corner of Parcel "B" as shown on that certain Parcel Map filed in Book 23 of Parcel Maps at Page 7 of said Western Addition; thence on the westerly line of said Lot 1 North 00°05'56" West 98.64 feet; thence North 89°54'58" West 170.10 feet; to the westerly line of the alley between "L" and "M" Streets as shown on said Western Addition No. 2; thence on said westerly line North 00°19'18" East 98.59 feet; thence North 89°33'46" West 20.00 feet to the westerly line of said alley; thence on said westerly line North 00°19'18" East 123.48 feet; thence South 89°56'44" West 110.00 feet; thence on the easterly line of "M" Street South 00°19'18" West 122.53 feet; thence North 89°33'46" West 80.00 feet to the westerly line of "M" Street; thence on said westerly line North 00°19'18" East 232.88 feet to the southerly line of Ninth Street; thence on said southerly line of the alley between "M" and "N" Streets; thence on said easterly line South 00°19'18" West 232.08 feet; thence North 89°54'58" West 130.00 feet to the northwesterly corner of Lot 14 Block 17 of the said Western Addition No. 2; thence on the westerly line of Blocks 30, 31, and 32 South 00°08'11" East 743.70 to the southwesterly corner of Lot 9 Block 30 of said Western Addition No. 2; thence on the southerly line of Blocks 9 and 30 North 89°54'40" East 626.11 feet; thence North 22°59'15" East 97.77 feet; thence North 66°56'01" West 21.78 feet; thence North 22°24'51" West 101.61 feet; thence North 11.68 feet; thence East 4.41 feet; thence South 67°34'26" East 20.92 feet; thence North 22°25'34" East 12.00 feet; thence North 66°01'36" West 21.88 feet; thence West 7.34 feet; thence North 25.04 feet; thence North 45°28'05" East 33.74 feet; thence North 59°59'49" East 263.18 feet to a non-tangent curve whose radius point bears North 60°12'35" East 92.63 feet; thence northerly on the arc of said curve a distance of 32.42 feet through a central angle of 20°03'17" the long chord bears North 19°45'56" West 32.26 feet; thence North 80°46'13" East 20.48 to a non-tangent curve whose radius point bears North 08°36'49" West 2.56 feet; thence northeasterly on the arc of said curve a distance of 4.54 feet through a central angle of 101°39'33" the long chord bears North 30°33'24" East 3.96 feet to a non-tangent curve whose radius point bears North 82°14'26" East 67.17 feet; thence northeasterly on the arc of said curve a distance of 86.29 feet through a central angle of 73°36'10" the long chord bears North 29°02'30" East 80.48 feet; thence North 27°09"07" West 8.77 feet; thence North 89°46'55" West 76.15 feet; thence North 59°58'47" West 68.19 feet; thence North 190.76 feet to the southerly line of said Parcel "B"; thence North 89°33'46" West 91.47 feet to the point of beginning.

The described tract consists of 13.853 acres, more or less.

Prepared by: Sheldon Land Surveying, Inc.
1005 Persifer Street
Folsom, CA 95630
April 6, 2004

8.3.15

EXHIBIT "B"
LINCOLN HIGH SCHOOL

All that tract of real property situated within the Plats of Original Town of Lincoln as filed for record in Book A of Maps at Page 22, and Western Addition as filed for record in Book A of Maps at Page 23, Recorder's Office of Placer County, in the City of Lincoln, Placer County, State of California, and described as follows:

All of Blocks 76 and 85 of the said Original Town and Block 8 of said Western Addition.

Prepared by: Sheldon Land Surveying, Inc.
1005 Persifer Street
Folsom, CA 95630

April 6, 2004

8.3.16

SITE LEASE

Dated as of April 7, 2004

Between

WESTERN PLACER UNIFIED SCHOOL DISTRICT

and

NTD-EDGE
Design Builders

8.3.17

SITE LEASE

This SITE LEASE is dated as of April 7, 2004 and is by and between the Western Placer Unified School District, a school district duly organized and existing under the laws of the State of California (the District) as lessor and NTD-EDGE Design-Builders, Inc., a corporation organized and operating under the laws of the State of California (the Lessee) with its principal place of business located at 4719 Viewridge Avenue, Suite 200, San Diego, Ca. 92123.

WHEREAS, the District desires to provide for the construction of certain public improvements at the Lincoln High School Stadium site (the Project); and

WHEREAS, the District's governing board has determined that it is in the best interests of the District and for the common benefit of the citizens it serves to construct the Project by leasing to the Lessee the Lincoln High School Stadium site at which the public improvements are to be constructed, as more specifically described under SECTION 1 of this document and subleasing from the Lessee the Site and the Project under a Sublease Agreement (Sublease) dated April 7, 2004 and by this reference incorporated herein; and

WHEREAS, the District and the Lessee have entered into the Services Agreement dated April 7, 2004 by this reference incorporated herein, to ensure that the Project will meet the District's expectations; and

WHEREAS, the District is authorized under Section 17406 of the California Education Code to lease the Site and its governing body has duly authorized the execution of this Site Lease; and

WHEREAS, the Lessee is authorized to lease the Site and to construct the Project on the Site, and has duly authorized the execution and delivery of the Sublease and this Site Lease.

NOW THEREFORE, in consideration of the covenants hereinafter contained, District and Lessee agree as follows:

SECTION 1. **Definitions** Unless the context otherwise requires, the terms defined in this Section shall, for all purposes of this Lease, have the meanings as herein specified.

A. **Approved Plans** means the final working drawings as approved by the District and the Division of State Architect (DSA)

B. **Services Agreement** means the Services Agreement Between District and Lessee as Builder for construction of improvements on the Lincoln High School Stadium site by and between the District and the Lessee dated as of April 7, 2004.

C. **Contract Documents** means the Services Agreement, the Facility Sublease and this Site Lease.

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

E. **Effective Date** shall mean the day on which the District issues a notice to proceed on the Project pursuant to the provisions of Article 4 of the Services Agreement.

F. **Lessee** shall mean NTD-EDGE Design-Builders, Inc., and its successors and assigns.

G. **Project** means the improvements and equipment to be constructed and installed by the Lessee, as more particularly described in the Approved Plans as defined in the Services Agreement.

H. **Site** means that certain parcel of real property and improvements thereon (if any) more particularly described as:

See Exhibits A & B for Legal Descriptions

I. **Site Lease** means this Site Lease together with any duly authorized and executed amendment hereto under which the District leases the Site to the Lessee.

J. **Sublease** means the Facility Sublease Agreement dated as of April 7, 2004, by and between the District and the Lessee together with any duly authorized and executed amendment thereto.

K. **Sublease Payment** means any payment required to be made by the District pursuant to Section 7 of the Sublease. Such Sublease Payment shall not utilize state bond funds or the District's matching funds for this Project

L. **Sublease Prepayment** means any payment which may made by the District pursuant to Section 25 of the Sublease which is, in the District's opinion, consistent with applicable law related to the use of state bond funds

M. **Term of this Lease or Term** means the time during which this Lease is in effect, as provided for in Section 3 of this Lease.

SECTION 2. **SITE LEASE**

The District leases to the Lessee, and the Lessee leases from the District, on the terms and conditions set forth herein, the Site situated in the County of Placer, State of California, more specifically described in Exhibit A attached hereto, including any real property improvements now or hereafter affixed thereto.

SECTION 3. **TERM**

The term of this Site Lease shall become effective upon the authorized execution of this Site Lease and after the District issues a notice to proceed on the Project pursuant to the provisions of Article 4 of the Services Agreement. The term of this Site Lease commences on the Effective Date and terminates two (2) months following the filing of the Notice of Completion unless sooner terminated as hereinafter provided. If on the scheduled date of termination of this Site Lease, Sublease Payments shall have been abated at any time and for any reason, then the term of this Site Lease shall be extended until the date upon which all such Sublease Payments shall be fully paid. At the termination of this Lease, natural or otherwise, title to the Site, and any improvements constructed thereon by the Lessee, shall vest in the District in accordance with Education Code section 17406.

SECTION 4. **REPRESENTATIONS, COVENANTS, AND WARRANTIES OF THE DISTRICT.** The District represents, covenants and warrants to the Lessee that:

A. The District has good and merchantable fee title to the Site and has authority to enter into and perform its obligations under this Site Lease;

B. There are no liens on the Site other than Permitted Encumbrances;

C. All taxes, assessments or impositions of any kind levied against the District with respect to the Site, if applicable, except current taxes, have and shall be paid for by the District;

D. The Site is properly zoned for the intended purpose and utilization of the Site or the District intends to render zoning inapplicable pursuant to Government Code section 53094.

E. The District is in compliance with all laws, regulations, ordinances and orders of public authorities applicable to the Site;

F. There is no litigation of any kind currently pending or threatened regarding the Site or the District's use of the Site for the purposes contemplated by this Site Lease;

G. To the best of the District's knowledge, without duty of investigation:

(1) no dangerous, toxic or hazardous pollutants, contaminants, chemicals, waste, materials or substances, as defined in or governed by the provisions of any State or Federal Law relating thereto (hereinafter collectively called Environmental Regulations), and also including, but not limited to, urea-formaldehyde, polychlorinated biphenyls, asbestos, asbestos containing materials, nuclear fuel or waste, radioactive materials, explosives, carcinogens and petroleum products, or any other waste, material, substance, pollutant or contaminant which would subject the owner of the Site or the Lessee or the Lessee's subcontractors to any damages, penalties or liabilities under any applicable Environmental Regulation (hereinafter collectively called Hazardous Substances), are now or have been stored, located, generated, produced, processed, treated, transported, incorporated, discharged, emitted, released, deposited or disposed of in, upon, under, over or from the Site; and District has provided Lessee copies of all reports in its possession pertaining to Site conditions

(2) no threat exists of a discharge, release or emission of a Hazardous Substance upon or from the Site into the environment;

(3) the Site has not been used as or for a mine, a landfill, a dump or other disposal facility, industrial or manufacturing facility, or a gasoline service station;

(4) no underground storage tank is now located in the Site or has previously been located therein;

(5) no violation of any Environmental Regulation now exists relating to the Site, no notice of any such violation or any alleged violation thereof has been issued or given by any governmental entity or agency, and there is not now any investigation or report involving the Site by any governmental entity or agency which in any way relates to Hazardous Substances;

(6) no person, party or private or governmental agency or entity has given any notice of or asserted any claim, cause of action, penalty, cost or demand for payment or compensation, whether or not involving any injury or threatened injury to human health, the environment or natural resources, resulting or allegedly resulting from any activity or event described in (1) above;

(7) there are not now any actions, suits, proceedings or damage settlements relating in any way to Hazardous Substances, in, upon, under over or from the Site;

(8) the Site is not listed in the United States Environmental Protection Agency's National Priorities List of Hazardous Waste Sites or any other list of Hazardous Substance sites maintained by any federal, state or local governmental agency; and

(9) the Site is not subject to any lien or claim for lien or threat of a lien in favor of any governmental entity or agency as a result of any release or threatened release-of any Hazardous Substance.

H. To the extent permitted by law, the District shall not abandon the Site for the use for which it is currently required by the District and further, shall not seek to substitute or acquire property to be used as a substitute for the uses for which the Site and Project are to be maintained under the Site Lease.

I. The term Permitted Encumbrances as used herein shall mean, as of any particular time:

(1) liens for general ad valorem taxes and assessments, if any, not then delinquent;

(2) this Site Lease; the Sublease; any right or claim of any mechanic, laborer, materialman, supplier, or vendor, if applicable, not filed or perfected in the manner prescribed by law; easements, rights of way, mineral rights, drilling rights, and other rights, reservations, covenants, conditions, or restrictions which exist of record as of the date of this Site Lease and which will not materially impair the use of the Site; and District has provided Lessee a copy of a current title report pertaining to the Site.

(3) easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions, or restrictions established following the date of recordation of this Site Lease and to which the Lessee and the District consent in writing which will not impair or impede the operation of the Site.

SECTION 5. **REPRESENTATIONS AND WARRANTIES OF THE LESSEE.** The Lessee represents and warrants to the District that:

A. The Lessee is duly organized, validly existing and in good standing under the laws of the State of California, with full corporate power and authority to lease and own real and personal property;

B. The Lessee has full power, authority and legal right to enter into and perform its obligations under this Site Lease, and the execution, delivery and performance of this Site Lease has been duly authorized by all necessary corporate actions on the part of the Lessee and does not require any further approvals or consents;

C. Execution, delivery and performance of this Site Lease does not and will not result in any breach of or constitute a default under any indenture, mortgage, contract, agreement or instrument to which the Lessee is a party or by which it or its property is bound;

D. There is no pending or, to the best knowledge of the Lessee, threatened action or proceeding before any court or administrative agency which will materially adversely affect the ability of the Lessee to perform its obligations under this Site Lease; and

SECTION 6. **RENTAL**

The Lessee shall pay to the District as and for advance rental hereunder $1.00 per year or part thereof, on or before the date of commencement of the term of this Site Lease.

SECTION 7. **PURPOSE**

The Lessee shall use the Site solely for the purpose of constructing the Project thereon and for subleasing the Site and the Project to the District. All other uses of the Site, including, but not limited to, any use that is inconsistent with the policies, rules and regulations of the District by Lessee or anyone claiming under Lessee are expressly prohibited without the prior written consent of the District.

SECTION 8. **TERMINATION BY LESSEE.** The Lessee agrees, upon termination of this Site Lease:

A. To quit and surrender the Site in the same good order and condition as it was in at the time of commencement of the term hereunder, reasonable wear and tear excepted;

B. To release and reconvey to the District any liens and encumbrances created or caused by the Lessee; and

C. That any and all permanent improvements and structures existing upon the Site at the time of the termination of this Site Lease shall remain thereon and title thereto shall vest in the District.

Notwithstanding the District's foregoing rights in the event of termination, the Lessee shall retain the right to full compensation for all services rendered prior to the termination, including all rights they have under the Services Agreement and the Sublease for the value of the work performed on the Site and/or the Project.

In the event the Services Agreement is terminated pursuant to the provisions therein, this Site Lease shall immediately terminate.

SECTION 9. **TERMINATION BY DISTRICT**

A. Notwithstanding anything to the contrary stated elsewhere in the Contract Documents, the District may terminate this Site Lease (i) for convenience at any time (for any reason or no reason at all) upon twenty-one (21) days' prior written notice to Lessee or (ii) immediately upon the occurrence of a Default hereunder by Lessee. Upon any termination of this Site Lease for convenience prior to the final completion of the Project pursuant to the Services Agreement, the termination provisions set forth in Article 13 of the Services Agreement shall govern and control the rights and obligations, and sets forth the exclusive remedies available to, the parties in connection with such termination. Upon any termination of this Site Lease as a result of a Lessee Default prior to the final completion of the Project, the termination provisions set forth in Article 13 of the Services Agreement shall govern and control the rights and obligations, and sets forth the exclusive remedies available to, the parties in connection with such termination. Upon any termination for convenience of the District or Default by Lessee after the final completion of the Project, then subject to the District's offset and withholding rights set forth in the Services Agreement, its rights to indemnity under the Contract Documents, its right to damages resulting from, or to pursue its equitable remedies arising from, any Lessee Default hereunder or Lessee Default under any of the other Contract Documents, and its right to attorneys' fees, costs and expenses if it is the prevailing party in any dispute under the Contract Documents, this Site Lease shall terminate and the District shall pay to Lessee all amounts payable under the Contract Documents (including any "Sublease Payments" payable under the Sublease 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 Lessee in connection with any such termination set forth elsewhere in the Contract Documents, Lessee shall be obligated to:

(1) quit and, subject to the terms and provisions of clause (3) immediately below, surrender the Site in the same good order and condition as it was in at the time of commencement of the term hereunder, reasonable wear and tear excepted;

(2) release and reconvey to the District any liens and encumbrances created or caused by Lessee or anyone claiming by, under or through Lessee; and

(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 Lessee pursuant to the Services Agreement) and transfer and vest title thereto to the District in accordance with the terms of Section 24 of the Sublease.

B. If the Services Agreement or the Sublease is terminated pursuant to the provisions therein, this Site Lease shall immediately terminate concurrently therewith.

SECTION 10. **QUIET ENJOYMENT**

The District covenants and agrees that it will not take any action to prevent the Lessee's quiet enjoyment of the Site during the term hereof; and, that in the event District's fee title to the Site is ever challenged so as to interfere with the Lessee's right to occupy, use and enjoy the Site, the District will use all governmental powers at its disposal, including the power of eminent domain, to obtain unencumbered fee title to the Site and to defend the Lessee's right to occupy, use, and enjoy the Site. The District, however, retains the right, throughout the Site Lease Term, to use the Site for District purposes, pursuant to the terms of the Sublease, subject to the approval of the Lessee, which shall not be unreasonably withheld.

SECTION 11. **NO LIENS**

The District shall not mortgage, sell, assign, transfer or convey the Site or any part thereof to any person during the term of this Site Lease, without the written consent of the Lessee. Nothing herein shall preclude the District from granting utility easements across the Site to facilitate the use and operation of the Project for which it is intended.

SECTION 12. **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 or to make any repairs, improvements or changes necessary for the preservation thereof, but in doing so shall not interfere with the Lessee's operations and safety on the Project.

SECTION 13. **ASSIGNMENT AND SUBLEASING**

The Lessee will not assign or otherwise dispose of or encumber the Site or this Site Lease without the written consent of the District.

SECTION 14. **NO WASTE**

The Lessee agrees that at all times that it is in possession of the Site it will not commit, or suffer, or permit any waste on the Site, and it will not willfully or knowingly use or permit the use of the Site for any illegal act or purpose.

SECTION 15. **NOT USED**

SECTION 16 **DEFAULT BY LESSEE; REMEDIES**

A. The occurrence of any of the following events shall constitute a "Default" hereunder by Lessee: (a) Lessee fails in the performance of any obligation on its part to be performed under the terms of this Site Lease and such default continues for twenty-one (21) days following the delivery of written notice thereof from the District to Lessee, (b) a "Default" by Lessee occurs under the Services Agreement or the Sublease, (c) Lessee commences a voluntary action under any chapter of the United States Bankruptcy Code as now or hereafter in effect or Lessee takes any equivalent or similar action by filing a petition or otherwise under any other Federal or State law in effect at such time relating to bankruptcy or insolvency, (d) a petition is filed against Lessee under any chapter of the United States Bankruptcy Code as now or hereafter in effect at the time of filing or a petition is filed seeking any such equivalent or similar relief against Lessee under any other Federal or State law in effect at the time relating to bankruptcy or insolvency and such petition or filing is not dismissed within 60 days after being filed, (e) Lessee makes a general assignment for the benefit of creditors or (f) a trustee,

receiver, custodian or agent of Lessee is appointed under applicable law or under contract whose appointment of authority to take charge of property of Lessee is for the purpose of enforcing a lien against such property or for the purpose of general administration of such property for the benefit of Lessee's creditors.

B. Upon the occurrence of a Default by Lessee hereunder, the District may exercise all of its rights and remedies under this Site Lease (including, without limitation, its right to terminate this Site Lease pursuant to Section 9 above), in addition to any of its rights and remedies under the Sublease and the Services Agreement.

SECTION 17. **DEFAULT BY DISTRICT; REMEDIES**

A. It shall be a "Default" by the District hereunder if the District has substantially failed to perform its obligations under this Site Lease for a period in excess of twenty-one (21) days following delivery of written notice from Lessee to the District of such failure, which written notice must include a description of the District's substantial failure to perform and the status of the Work completed under the Services Agreement as of the date of such notice, together with a description and a cost estimate of the effort necessary to complete Work in progress.

B. Upon the occurrence of any Default by the District, Lessee may terminate this Site Lease by delivery of written notice of such election to the District (in which event the Sublease and the Services Agreement shall automatically terminate concurrently therewith). If the District cures such failure to perform within the above-described 21-day period or prior to the effective date of termination, then none of the Contract Documents may be terminated by Lessee by reason of such failure to perform. In the event of any such termination by Lessee for Default by the District, Lessee may pursue, as its exclusive remedies for such District Default, its rights and remedies under the Sublease and/or Services Agreement.

C. Notwithstanding any provision to the contrary elsewhere in the Contract Documents, the remedies expressly provided for herein and in the other Contract Documents supersede any and all remedies that may be available to Lessee at law or in equity (including, without limitation, any remedies of a landlord, lessor or tenant under the California Civil Code), and upon a Default by the District, Lessee shall not have the right to exercise any remedy other than the right to terminate this Site Lease (and the other Contract Documents) and collect those amounts payable to Lessee pursuant to the express terms of the Contract Documents.

SECTION 18. **EMINENT DOMAIN**

In the event the whole or any part of the Site or the improvements thereon, including but not limited to the Project, is taken by eminent domain, the financial interest of the Lessee shall be recognized and is hereby determined to be the amount of all Sublease Payments then due or past due, the next succeeding Sublease Payment and the purchase option price as set forth in Section 27 of the Sublease less any unearned interest as of the date the Lessee receives payment in full. The balance of the award in such eminent domain action, if any, shall be paid to the District.

SECTION 19. **TAXES**

The terms of this Lease may result in the creation of a possessory interest. If such a possessory interest is vested in a private party to this document, the private party may be subjected to the payment of personal property taxes levied on such interest.

SECTION 20. **INDEMNIFICATION**

A. The District covenants and agrees to indemnify, defend and hold the Lessee harmless from and against any and all losses, claims, suits, damages and expenses (including reasonable attorneys fees) arising out of the unforeseen or unforeseeable condition of the Site, including but not limited to, all costs required to be incurred by the Lessee as a result of any condition described in Section 4, paragraph G hereof, unless the condition is caused or created by Lessee, whether or not known to the District on the date of execution of this Site Lease, or unless such cost is contemplated to be paid by the Lessee pursuant to the provisions of the Services Agreement. All other indemnification issues related to this Site Lease, the Site or the progress and prosecution of the Project shall be governed by the Services Agreement and Sublease.

B. Lessee shall assume the defense of and indemnify, and hold harmless DISTRICT (including its trustees, officers, agents, members, employees), and each of them, of and from any and all claims, demands, damages, costs, expenses, attorneys' fees, losses or liability, in law or in equity, of every kind and nature whatsoever arising out of, or in connection with Lessee's negligent acts, errors, or omissions in performing Work under this Contract including, but not limited to:

(i) Personal injury (including, but not limited to, bodily injury, emotional injury, or distress, sickness, or disease) or death to persons, including, but not limited to, any employees or agents of DISTRICT, Lessee, or any subcontractor, or damage to property of anyone including the Work itself (including loss of use thereof), caused in whole or in part by any negligent act of omission of DISTRICT, or Lessee, or anyone directly or indirectly employed by them, or anyone for whose acts they may be liable.

(ii) Penalties imposed on account of the violation of any law, order, citation, rule, regulation, standard, ordinance, or stature, caused by the action or inaction of Lessee;

(iii) Infringement of any patent rights which may be brought arising out of Lessee's design;

(iv) Lessee's failure to fulfill any of the covenants set for the in this Agreement;

(v) Failure of Lessee to comply with the provision of this Agreement relating to insurance, provided that such Insurance is available at reasonable terms; and

(vi) Any violation or infraction by Lessee of any law, order, citation, rule, regulation, standard, ordinance, or statute in any way relating to the occupation, health, or safety of employees of DISTRICT, Lessee, or any subcontractor.

(b) It is understood and agreed that such indemnity shall survive the termination of this Agreement. The indemnities set forth in this section shall not be limited by the insurance requirements set forth in this Agreement.

(c) Lessee's indemnification of DISTRICT will not include indemnification for claims which arise as the result of the active negligence of DISTRICT, or the sole negligence or willful misconduct of DISTRICT, it's agents, servants or independent contractors who are directly responsible to DISTRICT, or for defects in design furnished by such persons, other than Lessee and its agents, consultants and sub-consultants.

C. In claims against any person or entity indemnified under this Paragraph by an employee of Lessee, anyone directly or indirectly employed by Lessee or anyone for whose acts Lessee may be liable, the indemnification obligation under this Paragraph shall not be restricted by a limitation on amount or type of damages, compensation or benefits payable by or for Lessee under workers' compensation acts, disability benefit acts or other employee benefit acts.

SECTION 21. **SEVERABILITY**

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

SECTION 22. **INSURANCE**

At all times during the term of this Site Lease, Lessee, the Site and project shall be insured pursuant to, and in accordance with, the applicable terms and provisions of Article 7 of the Services Agreement.

SECTION 23. **COMPLIANCE WITH THE LAW**

Lessee covenants and agrees that Lessee 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.

SECTION 24. **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.

SECTION 25. **NOTICES**

Any notices or filings required to be given or made under this Site Lease shall be served, given or made in writing upon the District or the Lessee, as the case may be, by personal delivery or registered mail to the respective addresses given below. Any change in the addresses noted shall not be binding upon the other party unless preceded by no less than ten (10) days prior written notice. Any such notices shall be deemed to have been received by the addressee if delivered to the person for whom they are intended or if sent by registered mail, return receipt requested, or by telex, telegram, or fax followed by regular mail, addressed as follows:

If to Lessee:

Jon Alan Baker, AIA, Principal
NTD-EDGE Design-Builders
4719 Viewridge Avenue, Suite 200
San Diego, CA. 92123

If to District:

Roger Yohe, Superintendent
Western Placer Unified School District
810 J Street
Lincoln, CA 95648

SECTION 26. **BINDING EFFECT**

This Site Lease shall inure to the benefit of and shall be binding upon the District, the Lessee and their respective successors in interest and assigns.

SECTION 27. **EXECUTION IN COUNTERPARTS**

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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.

SECTION 28. **LAWS, VENUE AND ATTORNEYS' FEES**

The terms and provisions of this Site Lease shall be construed in accordance with the laws of the State of California. If any action is brought in a court of law to enforce any term of this Site Lease, the action shall be brought in a state court situated in the County of Placer, State of California.

SECTION 29. **INTEGRATION/MODIFICATION**

This Site Lease represents the entire understanding of the District and Lessee as to those matters contained herein, and supersedes and cancels any prior oral or written understanding, promises or representations with respect to those matters covered herein, and shall not be amended, altered, or changed except by a written agreement signed by the parties hereto.

SECTION 30. **TITLES**

The titles to the sections of this Site Lease are solely for the convenience of the parties and are not an aid in the interpretation thereof, and in no way define, limit or describe the scope or intent of any provisions of sections of this Site Lease.

SECTION 31. **TIME**

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

IN WITNESS WHEREOF, the parties hereto have executed this Site Lease by their authorized officers as of the day and year first written above.

WESTERN PLACER UNIFIED SCHOOL DISTRICT DISTRICT@	NTD-EDGE DESIGN-BUILDERS LESSEE@
BY: _____	BY: _____ Jon Alan Baker, AIA
ITS:	ITS: Principal
	BY: _____ Dayne Wagoner
	ITS: Principal

8.3.27

ORIGINAL

SERVICES AGREEMENT

PREAMBLE

This Agreement ("Agreement") is made by and between the Western Placer Unified School District, a California School District organized and existing under the laws of the State of California (hereinafter called the "District"), and NTD-EDGE Design-Builders, Inc., a corporation organized and operating under the laws of the State of California ("NTD/EDGE").

RECITALS

WHEREAS, the District has determined that it is necessary to retain the services of NTD/EDGE to provide for the construction of the project known as Lincoln High School Stadium (the "Project"), and

WHEREAS, California Education Code section 17406 permits the governing board of a school district, without advertising for bids, to lease to any person, firm, or corporation any real property owned by the District if the instrument by which such property is leased requires the lessee to construct on the leased premises, or provide for the construction thereon, of a building for the use of the school district, during the term of the lease, and provides that title to that building or buildings (collectively, the "Facilities") shall vest in the District at the expiration of the lease; and

WHEREAS, the District has the legal power, right and authority to enter into this Agreement and the instruments referenced herein, and to consummate the transaction contemplated hereby; and

WHEREAS, all requisite action has been taken by the District in connection with the execution of this Agreement, the instruments referenced herein, and the consummation of the transaction contemplated hereby; and

WHEREAS, in accordance with California Education Code section 17402, the District has adopted plans and specifications for the buildings that have been approved pursuant to the provisions of Education Code sections 17280 to 17316; and

WHEREAS, the District's representative executing this Agreement and the instruments referenced herein on behalf of the District has the legal power, right, and actual authority to bind the District to the terms and conditions of this agreement; and

WHEREAS, Builder is experienced in the design and construction of the type of improvements included in the Project that are desired by the District and is willing to perform architecture, engineering and construction services and work for the Project improvements (the "Work"), and

WHEREAS, in connection with the approval of this Agreement, which shall be attached to the Facility Sublease Agreement, the District will simultaneously enter into a site lease with Builder (the "Site Lease"), under which it will lease to the Builder the Project site as described in the Site Lease (the "Site") in order for Builder to construct improvements specified herein; and

WHEREAS, the Builder will lease the Site and the Project back to the District pursuant to a Facility Sublease Agreement (the "Sublease"), under which the District will make lease payments to the Builder for the use of the Project; and

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WHEREAS, at the expiration of the Lease and Sublease terms, title in the Project improvements shall vest in the District upon payment in exchange for Builder's title of the Facilities and upon such payment all leases shall be terminated; provided, that payment for the Facilities shall not be consideration for termination of the leases which will expire by virtue of the payment to the Builder to acquire Builder's title to the Facilities.

NOW, THEREFORE, in consideration of the covenants hereinafter contained, District and Builder agree as follows:

1. ARTICLE 1 - GENERAL PROVISIONS

1.1. BASIC DEFINITIONS

1.1.1 The term "Basic Definitions" includes those definitions contained in the Site Lease and Facility Sublease Agreements.

1.1.2 The term "Work" means the construction and services provided by provided by NTD/EDGE to fulfill NTD/EDGE's obligations for the construction of the Project known as "Lincoln High School Stadium".

1.2. EXECUTION, CORRELATION AND INTENT

1.2.1 It is the intent of the District and NTD/EDGE that the Contract Documents include all items necessary for proper execution and completion of the Work. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by NTD/EDGE shall be required only to the extent consistent with and reasonably inferable from the Contract Documents as being necessary to produce the intended results. Words that have well known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

1.2.2 If NTD/EDGE believes or is advised by the Architect, Contractor, and Inspector or by another professional retained to provide services on the Project that implementation of any instruction received from the District would cause a violation of any applicable law, NTD/EDGE shall notify the District in writing. NTD/EDGE shall not be obligated to perform any act, which either believes will violate any applicable law.

1.2.3 Except where required by the provisions of this agreement, nothing contained in this Agreement shall create a contractual relationship between the District and any person or entity other than NTD/EDGE.

1.3. OWNERSHIP AND USE OF DOCUMENTS

1.3.1 Pursuant to Education Code section 17316, all Documents, including drawings, specifications, and estimates, prepared pursuant to this Agreement shall be and remain the property of the District for the purposes of repair, maintenance, renovation, modernization, or other purposes, only as they relate to the Project for which NTD/EDGE was retained. Nothing in this Section shall preclude the District from using the plans, record drawings, specifications, or estimates related to the Project for the purposes of additions, alignments, or other development on the Project site. This Section shall not be construed to transfer or waive the Architect's copyrights over these documents, including but not limited to, all common law, statutory, and other reserved rights.

2. ARTICLE 2 - DISTRICT

2.1. The District shall designate a representative authorized to act on the District's behalf with respect to the Project. The District or such authorized representative shall examine documents submitted by NTD/EDGE and shall render decisions in a timely manner and in accordance with the schedule accepted by the District. The District may obtain independent review of the Contract Documents by a separate plan review consultant under contract to or employed by the District. Such independent review shall be undertaken at the District's expense in a timely manner and shall not delay the orderly progress of the Work.

2.2. The District may appoint an on-site project representative to observe the Work and to have such other responsibilities as the District and NTD/EDGE agree in writing.

2.3. The District shall assist with NTD/EDGE in securing building and other permits, licenses and inspections, including permits and inspections made necessary by modifications during construction. The District shall pay the costs for such permits, licenses and inspections.

2.4. The District shall furnish services of land surveyors, geotechnical engineers and other consultants for subsoil, air and water conditions, in addition to those provided under the Part 1 Agreement, when such services are deemed necessary by NTD/EDGE to properly carry out the services required by this Agreement. The District has provided NTD/EDGE with their geotechnical report prepared by Blackburn Consulting dated October 10, 2003.

2.5. The District shall disclose, to the extent known to the District, the results and reports of prior tests, inspections or investigations conducted for the Project including but not limited to: all existing building systems, on-site, off-site utility and service systems; chemical, air and water pollution; hazardous and toxic materials; or other environmental and subsurface conditions. The District shall disclose all information known to the District regarding the presence of pollutants and/or hazardous materials at the Project's site.

2.5.1 Following NTD/EDGE notification to the District that NTD/EDGE has encountered material that NTD/EDGE believes is hazardous, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law, District shall promptly investigate the conditions. If the District finds that such materials exist, and cause a decrease or increase in NTD/EDGE's cost of, or the time required for, performance of any part of the work, the District shall issue a change order.

2.5.2 If asbestos, lead or hazardous substance removal is required, such work shall be performed under separate contract as required by Section 25914.2 of the Health and Safety Code, as may from time to time be amended.

2.6. The District shall furnish all legal, accounting and insurance counseling services as may be necessary at any time on the District's behalf for the Project, including such auditing services as the District may require to verify NTD/EDGE's Applications for Payment.

2.7. The District shall appoint and pay a full-time on-site Inspector as required by State Law. Said Inspector shall be qualified and approved by the Division of State Architect and shall be under direction of the Architect of Record in general responsible charge of the project. The Inspector shall be responsible to, and act in accordance with the policies of the District. The administration by Architect of Record and his or her engineers shall be in addition to the continuous personal inspection of the District's Inspector.

2.8. The District shall furnish services of Testing Laboratories, Special Inspectors and other quality control services as required by DSA.

2.9. The District shall pay for all fees and assessments for utility and service systems assessed by agencies as a part of the approval process.

2.10. District shall file and pay for the State Water Resources Control Board (State Water Board) National Pollutant Discharge Elimination System General Permit for Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activity (the "Permit"), including the Notice of Intent. District shall provide a copy of such permit to NTD/EDGE.

2.11. Those services, information, surveys and reports required of the District by this Section shall be furnished at the District's expense, and NTD/EDGE shall be entitled to rely upon the accuracy and completeness thereof, except to the extent the District advises NTD/EDGE to the contrary in writing.

2.12. If the District requires NTD/EDGE to maintain any special insurance coverage, policy, amendment, or rider, the District shall pay the additional cost thereof, except as otherwise stipulated in this Agreement.

2.13. If the District observes or otherwise becomes aware of a fault or defect in the Work or nonconformity with NTD/EDGE's Proposal or the Construction Documents, the District shall give prompt written notice thereof to NTD/EDGE.

2.14. The District shall, at the request of NTD/EDGE, prior to execution of this Agreement and promptly upon request thereafter, furnish to NTD/EDGE evidence that financial arrangements have been made to fulfill the District's obligations under the Contract such as a letter of financial commitment from Lendor or Bond Agent.

2.15. The District shall, at the request of NTD/EDGE, and prior to execution of the Agreement and promptly upon request thereafter, certify to NTD/EDGE that the District is the legal owner of the Project site and has full title and control.

2.16. The District shall communicate with persons or entities employed or retained by NTD/EDGE through NTD/EDGE, unless otherwise directed by NTD/EDGE.

3. ARTICLE 3 - NTD/EDGE

3.1. SERVICES AND RESPONSIBILITIES

3.1.1 Design services required by this Agreement shall be performed by qualified Architects and other design professionals retained by NTD/EDGE. The District shall have the right to approve any change in the lead Architect herein identified as Jordan S. Knighton, Principal, NTD/EDGE.

3.1.2 Construction services required by this Agreement shall be performed by qualified Contractors and other construction professionals retained by NTD/EDGE.

3.1.3 NTD/EDGE shall be responsible to the District for acts and omissions of NTD/EDGE employees, subcontractors and their agents and employees, and other persons, including the Architect, Contractor, and other design professionals, performing any portion of NTD/EDGE's obligations under this Agreement.

3.2. BASIC SERVICES

3.2.1 NTD/EDGE Basic Services are described below and in Article 15.

3.2.2 NTD/EDGE shall designate a representative authorized to act on NTD/EDGE behalf with respect to the Project.

3.2.3 NTD/EDGE shall be responsible for all construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work under this Agreement.

3.2.4 NTD/EDGE shall keep the District informed of the progress and quality of the Work in the following manner:

(a) **CPM Master Schedule.** NTD/EDGE shall submit to District a detailed CPM (Critical Path Method) Master Schedule for the construction.

(b) **Pre-Construction Orientation/Construction Meetings.** NTD/EDGE shall conduct pre-construction orientation conferences to orient the Contractors, Sub-Contractors, Inspectors, Design Professionals, and District Representatives to the various reporting procedures and site rules prior to the commencement of actual construction. NTD/EDGE shall also conduct construction and progress meetings as requested by the District with District Representatives and other interested parties, to discuss such matters as procedures, construction progress, problems and scheduling. NTD/EDGE shall prepare and promptly distribute official minutes of such meetings to all parties in attendance including Architect, Contractor, District and Inspector.

(c) **Budget/Cash Flow Reports.** NTD/EDGE shall incorporate approved changes as they occur, and develop cash flow reports and forecasts for submittal to the District on a monthly basis. NTD/EDGE shall provide regular monitoring of the approved estimates of Construction Costs, showing actual costs for activities in progress, and estimates for uncompleted tasks. NTD/EDGE shall identify variances between actual and budgeted or estimated costs, and advise the District whenever Project costs exceed budgets or estimates. NTD/EDGE shall maintain cost accounting records on authorized additional services or work performed under unit costs, additional work performed on the basis of actual costs of labor and materials, or other work requiring accounting records.

(d) **Scheduling.** NTD/EDGE shall complete the construction pursuant to the CPM and approved Construction Documents, subject to DSA approval and approved modifications in scope.

(e) **Progress Reports.** NTD/EDGE shall record the progress of the Project, and shall submit monthly written progress reports to the District including information on the entire Project, showing percentages of completion. Reports shall include the number and amounts of proposed Extra Work/Modifications and their effect on the Construction Costs and Schedule as of the date of the report. NTD/EDGE shall also keep a daily log containing a record of weather, Contractors and sub-Contractors working on the site, number of workers, work accomplished, problems encountered, and other similar relevant data as the District may require. NTD/EDGE shall make the log available to the District. The District shall be promptly informed in writing of all anticipated delays. In the event that NTD/EDGE determines that a schedule modification is necessary, NTD/EDGE shall promptly submit a revised Schedule for approval by the District.

3.2.5 NTD/EDGE shall be responsible for correcting work, which, does not conform to the District, approved Contract Documents.

3.2.6 NTD/EDGE warrants to the District that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the construction will be free from faults and defects, and that the construction will conform with the requirements of the Contract Documents. Construction not conforming to these requirements, including substitutions not properly approved by the District, shall be corrected in accordance with Article 9.

3.2.7 NTD/EDGE shall pay all sales, consumer, use and similar taxes, which had been legally enacted at the time NTD/EDGE's Proposal was first submitted to the District.

3.2.8 NTD/EDGE shall provide all temporary utility hook-ups and connections, and pay for all use of utilities during construction.

3.2.9 NTD/EDGE shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities relating to the Project.

(a) NTD/EDGE shall comply with all conditions of the State Water Resources Control Board (State Water Board) National Pollutant Discharge Elimination System General Permit for Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activity required by the permit issued on behalf of the District (the "Permit").

(b) NTD/EDGE shall prepare project specific documents as required to comply with all requirements of the State Water Resources Control Board, including the Storm Water Pollution Prevention Plan

3.2.10 NTD/EDGE shall pay royalties and license fees for patented designs, processes or products. NTD/EDGE shall defend suits or claims for infringement of patent rights and shall hold the District harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer is required by the District. However, if NTD/EDGE has reason to believe the use of a required design, process or product is an infringement of a patent, NTD/EDGE shall be responsible for such loss unless such information is promptly furnished to the District.

3.2.11 NTD/EDGE shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under this Agreement. At the completion of the Work, NTD/EDGE shall remove from the site waste materials, rubbish, tools, construction equipment, machinery, and surplus materials.

3.2.12 NTD/EDGE shall notify the District when NTD/EDGE believes that the Work or an agreed upon portion thereof is substantially completed. NTD/EDGE shall inspect the work with the District to confirm work is substantially complete. If the District concurs, NTD/EDGE shall issue a Certificate of Substantial Completion which shall establish the Date of Substantial Completion, shall state the responsibility of each party for security, maintenance, heat, utilities, damage to the Work and insurance, shall include a list of items to be completed or corrected, (referred to as the Punch-List) and shall fix the time within which NTD/EDGE shall complete items listed therein. Disputes between the District and NTD/EDGE regarding the Certificate of Substantial Completion shall be resolved in accordance with provisions of Article 10.

3.2.13 NTD/EDGE shall maintain at the site for the District one record copy of the drawings, specifications, product data, samples, shop drawings, Change Orders and other modifications, in good order and regularly updated to record the completed construction, (referred to as the Record Drawings). These shall be delivered to the District upon completion of construction and prior to final payment.

3.2.14 NTD/EDGE shall be responsible for providing District with a set of reproducible record documents showing significant changes in the Work made during construction.

3.2.15 NTD/EDGE shall provide assistance in obtaining final agency approvals, including filing of final reports and certifications required as the Architect of Record.

3.2.16 NTD/EDGE shall be responsible for orientation of District regarding the utilization of equipment or systems, including preparation of operation and maintenance manuals and in training personnel for operation and maintenance.

3.3. ADDITIONAL SERVICES

3.3.1 The services described in this Paragraph 3.3 are not included in Basic Services unless so identified in Article 15, and they shall be paid for by the District as provided in this Agreement, in addition to the compensation for Basic Services. The services described in this Paragraph 3.3 shall be provided only if authorized or confirmed in writing by the District.

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3.3.2 Making revisions in drawings, specifications, and other documents or electronic data when such revisions are required by the enactment or revision of codes, laws or regulations subsequent to the preparation of such documents or electronic data.

3.3.3 Providing consultation concerning replacement of Work damaged by fire or other cause during construction beyond NTD/EDGE control, and furnishing services required in connection with the replacement of such Work.

3.3.4 Providing services in connection with a public hearing, mediation proceeding or legal proceeding, except where NTD/EDGE is a party thereto.

3.3.5 Providing coordination of construction performed by the District's own forces or separate contractors employed by the District, and coordination of services required in connection with construction performed and equipment supplied by the District.

3.3.6 Providing District with electronic copies of NTD/EDGE CAD files, cost estimates or other project specific documentation.

4. ARTICLE 4 - TIME

4.1. Unless otherwise indicated, the District and NTD/EDGE shall perform their respective obligations expeditiously in accordance with the standards of its professions.

4.2. Time limits stated in the Contract Documents are of the essence. The Work to be performed under this Agreement shall commence upon receipt of a written Notice to Proceed unless otherwise agreed and, subject to authorized Modifications, Substantial Completion shall be achieved on or before the date established in Article 15 as modified by District approved changes.

4.3. Substantial Completion is the stage in the progress of the Work when the Work or designated portion there of is sufficiently complete in accordance with the Contract Documents so the District can occupy or utilize the Work for its intended use.

4.4. If NTD/EDGE is delayed at any time in the progress of the Work by an act or neglect of the District, District's Representatives, or separate contractors employed by the District, or by changes ordered in the Work, or by labor disputes, fire, unavoidable delay in deliveries, adverse weather conditions not reasonably anticipatable, unavoidable casualties, or other causes beyond NTD/EDGE's control, or by delay authorized by the District pending mediation, or by other causes which the District and NTD/EDGE agree may justify delay, then the Contract Time shall be reasonably extended by Change Order.

5. ARTICLE 5 - PAYMENTS

5.1. PROGRESS PAYMENTS

5.1.1 District shall pay NTD/EDGE Sublease Prepayments pursuant to the terms and conditions set forth in the Sublease and this Section. NTD/EDGE shall provide for the cost of construction of the Project which costs shall not exceed the Guaranteed Maximum Price (GMP) per Article 14, except as otherwise provided in this Agreement. The District shall retain and release such retention pursuant to Public Contract Code sections 7107 and 9203, as those sections may be amended from time to time.

5.1.2 Substitution of Security

(a) Upon the Contractor's request, the District will make payment of funds withheld from progress payments to ensure performance under the contract pursuant to the requirements of Public Contract Code section 22300 if the

Contractor deposits in escrow with the District or with a bank acceptable to the District, securities eligible for investment under Government Code section 16430, bank or savings and loan certificates of deposit, or other security mutually agreed to by the Contractor and the District, subject the following conditions:

- The Contractor shall bear the expense of the District and the escrow agent, either the District or the bank, in connection with the escrow deposit made.
- 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 Contractor pursuant to this section.
- The Contractor shall enter into an escrow agreement satisfactory to the District, which agreement shall include provisions governing inter alia:
  (a) The amount of securities to be deposited,
  (b) The providing of powers of attorney or other documents necessary for the transfer of the securities to be deposited,
  (c) Conversion of cash to provide funds to meet defaults by the Contractor, including, but not limited to, termination of the Contractor'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.
  (d) Decrease in value of securities on deposit.
  (e) The termination of the escrow upon completion of the contract.
- The Contractor shall obtain the written consent of the surety to such agreement.
- As an alternative to Contractor depositing into escrow securities of a value equivalent to the amounts of retention to be paid to the Contractor, upon Contractor's request, District will make payment of retentions earned directly to the escrow agent at the expense of Contractor pursuant to and in accordance with Public Contract Code section 22300.

5.2. FINAL PAYMENT

5.2.1 Neither final payment nor amounts retained, if any, shall become due until NTD/EDGE submits to the District:

(a) An affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the District or District's property might be responsible or encumbered (less amounts withheld by the District) have been paid or otherwise satisfied;

(b) A certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the District;

(c) Consent of surety, if any, to final payment;

(d) If required by the District, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the District. If a NTD/EDGE or other person or entity entitled to assert a lien against the District's property refuses to furnish a release or waiver required by the District, NTD/EDGE may furnish a bond satisfactory to the District to indemnify the District against such lien. If such lien remains unsatisfied after payments are made, NTD/EDGE shall indemnify the District for all loss and cost, including reasonable attorneys' fees incurred as a result of such lien.

5.2.2 Upon Districts determination that the work is complete as defined by Public Contract code 7107, District shall file and have properly recorded a Notice of Completion within 10 days in accordance with Government Code.

5.2.3 When the Work has been completed, the Notice of Completion filed, and the contract fully performed, NTD/EDGE shall submit a final application for payment to the District, who shall make final payment within 35 days of the date of completion.

5.2.4 The making of final payment shall constitute a waiver of claims by the District except those arising from:

(a) liens, claims, security interests or encumbrances arising out of the Contract and unsettled;

(b) failure of the Work to comply with the requirements of the Contract Documents; or

(c) terms of special warranties required by the Contract Documents.

5.2.5 Acceptance of final payment shall constitute a waiver of all claims by NTD/EDGE except those previously made in writing and identified by NTD/EDGE as unsettled at the time of final Application for Payment.

5.3. INTEREST PAYMENTS

5.3.1 Payments due NTD/EDGE under this Agreement which are not paid when due shall bear interest from the date due at the rate specified in Article 14.3, or in the absence of a specified rate, at the legal rate prevailing where the Project is located.

6. ARTICLE 6 - PROTECTION OF PERSONS AND PROPERTY

6.1. NTD/EDGE shall be responsible for initiating, maintaining and providing supervision of all safety precautions and programs in connection with the performance of this Agreement.

6.2. NTD/EDGE shall take reasonable precautions for the safety of, and shall provide reasonable protection to prevent damage, injury or loss to: (1) employees on the Work and other persons who may be affected thereby; (2) the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of NTD/EDGE or NTD/EDGE contractors; and (3) other existing property at or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

6.2.1 By execution of this Agreement, NTD/EDGE acknowledges that NTD/EDGE, its employees and contractors are required to comply with the fingerprinting requirements set forth in Education Code Sections 45125.1.

6.2.2 In lieu of complying with Section 45125.1, NTD/EDGE may comply with the provisions of Education Code Section 45125.2 which requires that NTD/EDGE, at its own expense (1) install a physical barrier to limit contact with students by NTD/EDGE, NTD/EDGE employees and subcontractors, or (2) provide for the continuous supervision and monitoring of NTD/EDGE, NTD/EDGE employees and subcontractors by an employee of NTD/EDGE who has received fingerprint clearance from the California Department of Justice, or (3) provide for the surveillance of NTD/EDGE, NTD/EDGE employees and subcontractors by a District employee. Prior to, and as a condition to commencement of NTD/EDGE's performance under this Construction Services Agreement, NTD/EDGE shall complete the Fingerprint Certification attached to hereto as *Exhibit G* and by this reference incorporated herein.

6.2.3 For those portions of the project that are constructed without the presence of students on the site, the requirements of paragraphs 6.2.1 and 6.2.2 shall not apply

6.3. NTD/EDGE shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on the safety of persons or property or their protection from damage, injury or loss.

6.4. NTD/EDGE shall promptly remedy damage and loss (other than damage or loss insured under property insurance provided or required by the Contract Documents) to property at the site caused in whole or in part by NTD/EDGE, a contractor of NTD/EDGE or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable.

7. ARTICLE 7 - INSURANCE AND BONDS

7.1. NTD/EDGE LIABILITY INSURANCE

7.1.1 NTD/EDGE shall purchase from and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, such insurance as will protect NTD/EDGE from claims set forth below which may arise out of or result from operations under this Agreement by NTD/EDGE or by a contractor of NTD/EDGE, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

(a) claims under workers' compensation, disability benefit and other similar employee benefit laws that are applicable to the Work to be performed;

(b) claims for damages because of bodily injury, occupational sickness or disease, or death of NTD/EDGE employees;

(c) claims for damages because of bodily injury sickness or disease, or death of persons other than NTD/EDGE employees;

(d) claims for damages covered by usual personal in jury liability coverage which are sustained (1) by a person as a result of an offense directly or indirectly related to employment of such person by NTD/EDGE or (2) by another person;

(e) claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting there from;

(f) claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle; and

(g) claims involving contractual liability insurance applicable to NTD/EDGE obligations under Paragraph 11.5.

7.1.2 The insurance required by Subparagraph 7.1.1 shall be written for not less than limits of liability specified in this Agreement under Article 15.5 or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from date of commencement of the Work until date of final payment and termination of any coverage required to be maintained after final payment. Insurance obtained pursuant to this article shall remain in effect for a minimum of 3 years.

7.1.3 Certificates of insurance acceptable to the District shall be delivered to the District immediately after execution of this Agreement. These certificates and the insurance policies required by this Paragraph 7.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the District. If any of the foregoing insurance coverages are required to remain in force after final payment, an additional certificate evidencing continuation of such coverage shall be submitted with the application for final payment. Information concerning reduction of coverage shall be furnished by NTD/EDGE with reasonable promptness in accordance with NTD/EDGE information and belief.

7.2. DISTRICT'S LIABILITY INSURANCE

7.2.1 The District shall be responsible for purchasing and maintaining the District's usual liability insurance. Optionally, the District may purchase and maintain other insurance for self-protection against claims, which may arise from operations under this Agreement.

7.3. PROPERTY INSURANCE

7.3.1 NTD/EDGE shall procure and maintain during the life of this contract and for such other period as may be required herein, at its sole expense, such comprehensive general liability insurance or commercial general liability and property damage insurance as shall protect NTD/EDGE and District from all claims for bodily (personal) injury, including accidental death, as well as claims for property damage arising from operations under this contract, and other covered loss, however occasioned, occurring during the policy term. Such policy shall comply with all the requirements of this article, and shall be in the form and amounts as set forth in Article 15.6.1 hereof.

7.4. GENERAL INSURANCE PROVISIONS

7.4.1 NTD/EDGE shall make certain that any and all subcontractors hired by NTD/EDGE are insured in accordance with this contract. If any subcontractor's coverage does not comply with the foregoing provisions, NTD/EDGE shall indemnify and hold District harmless from any damage, loss, cost, or expense, including attorneys' fees, incurred by District as a result thereof.

7.3.3 Company or companies providing insurance coverage shall be acceptable to the District and authorized to conduct business in the State of California. Insurance shall have a rating of "A" or better.

7.4.2 Any general liability policy provided by NTD/EDGE hereunder shall contain an endorsement which applies its coverage to District, members of District's board of trustees, and the officers, agents, employees and volunteers of District, the State Allocation Board, if applicable, as additional insureds using form CG2010 11-85 or equivalent which must include products and completed operations coverage, broad form property damage coverage, coverage for collapse, explosion and underground, and include independent contractor coverage.

7.4.3 The coverage afforded by the additional insured endorsement described in paragraph 7.4.2 above, shall apply as primary insurance, and any other insurance maintained by District, the members of District's Board of Trustees, or its officers, agents, employees and volunteers, or any self-funded program of District, shall be in excess only and not contributing with such coverage.

7.4.4 NTD/EDGE shall notify District in writing of the amount, if any, of self-insured retention provided under the General Liability coverage, with a maximum limit of $25,000. District may approve higher retention amounts, based upon review of documentation submitted by NTD/EDGE. Such review shall take into consideration NTD/EDGE net worth and reserves for payment of claims of liability against NTD/EDGE, which must be sufficient to adequately compensate for the lack of other insurance coverage required hereunder.

7.4.5 All general liability policies shall be written to apply to all bodily injury, including death, property damage, personal injury and other covered loss, however occasioned, occurring during the policy term, and shall specifically insure the performance by NTD/EDGE of that part of the indemnification contained in Article 12 hereof, relating to liability for injury to or death of persons and damage to property. If the coverage contains one or more aggregate limits, a minimum of 50% of any such aggregate limit must remain available at all times; if over 50% of any aggregate limit has been paid or reserved, District may require additional coverage to be purchased by NTD/EDGE to restore the required limits. NTD/EDGE may combine primary, umbrella, and as broad as possible excess liability coverage to achieve the total limits indicated above. Any umbrella or excess liability policy shall include the additional insured endorsement, products and completed operations coverage and broad form property damage described above. To the extent that the umbrella insurer requires notice of changes to the primary policy, notice will be considered to be given and not prejudice the District's rights to recover under the umbrella policy.

7.4.6 NTD/EDGE and District release each other, and their respective authorized representatives, from any Claims but only to the extent that the proceeds received from any policy of liability insurance carried by District or NTD/EDGE, other than any self-insurance, covers any such Claim or damage. Included in any policy or policies of liability insurance provided by NTD/EDGE hereunder shall be a standard waiver of rights of subrogation against District by the insurance company issuing said policy or policies.

7.4.7 If coverage is written on a "claims made" basis, the Certificate of Insurance shall clearly so state. In addition to the coverage requirements specified above, such policy shall provide that:

(a) The policy retroactive date coincides with or precedes NTD/EDGE commencement of work under the Agreement (including subsequent policies purchased as renewals or replacements).

(b) NTD/EDGE will make every effort to maintain similar insurance during the required extended period of coverage following expiration of the Agreement, including the requirement of adding all additional insured's.

(c) If insurance is terminated for any reason, NTD/EDGE shall purchase an extended reporting provision of at least three years to report claims arising in connection with the Agreement.

(d) The policy allows for reporting of circumstances or incidents that might give rise to future claims.

7.4.8 NTD/EDGE's failure to procure the insurance specified herein, or failure to deliver certified copies or appropriate certificates of such insurance, or failure to make the premium payments required by such insurance, shall constitute a material breach of the contract, and District may, at its option, terminate the Agreement for any such default by NTD/EDGE.

7.4.9 The requirements as to the types and limits of insurance coverage set forth herein and in the Special Conditions to be maintained by NTD/EDGE, and any approval of said insurance by the District or its insurance Contractor(s), are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by NTD/EDGE pursuant to the Agreement, including, but not limited to, the provisions concerning indemnification.

7.4.10 District shall retain the right at any time to review the coverage, form, and amount of insurance required herein and may require NTD/EDGE to obtain insurance reasonably sufficient in coverage, form and amount to provide adequate protection against the kind and extent of risk, which exists at the time a change in insurance is required. The cost of insurance required by this provision shall be paid by NTD/EDGE.

7.4.11 All deviations from the contractual insurance requirements stated herein must be approved in writing by District's risk manager.

7.5. BUILDER'S RISK/APPLICABLE INSTALLATION/FIRE INSURANCE

7.5.1 It is NTD/EDGE's responsibility to maintain or cause to be maintained builder's risk insurance or applicable installation coverage on all work, material, equipment, appliances, tools, and structures which are a part of the contract and subject to loss or damage by fire, extended coverage, and vandalism and malicious mischief. District accepts no responsibility until the Governing Board formally accepts the Project. NTD/EDGE is required to file with the District a certificate evidencing builder's risk.

7.5.2 Provide insurance coverage on completed value form, all-risk or special causes of loss coverage.

(a) Insurance policies shall be so conditioned as to cover the performance of any extra work performed under the contract.

(b) Coverage shall include all materials stored on site and in transit.

(c) Coverage shall include NTD/EDGE tools and equipment.

(d) Insurance shall include boiler, machinery and material hoist coverage.

(e) Insurance policies shall be so conditioned as to cover the performance of any extra work performed under the contract.

(f) Coverage shall include all materials stored on site and in transit.

(g) Coverage shall include NTD/EDGE tools and equipment.

(h) Insurance shall include boiler, machinery and material hoist coverage.

7.4.3 Company or companies providing insurance coverage shall be acceptable to the District and authorized to conduct business in the State of California.

7.6. LOSS OF USE INSURANCE

7.5.1 The District, at the District's option, may purchase and maintain such insurance as will insure the District against loss of use of the District's property due to fire or other hazards, however caused.

7.7. BONDS

7.7.1 A "Payment Bond" (material and labor bond) from a California admitted surety and in the form attached hereto, shall be provided by NTD/EDGE for the Project within five (5) business days after entering into this Agreement and prior to the effective date of the District's Notice to Proceed for the Project. The Payment Bond shall be for One Hundred Percent (100%) of the Final GMP of the Project, to satisfy claims of materials suppliers and of mechanics and laborers employed on the Project. The Payment Bond shall be maintained by NTD/EDGE in full force and effect for the Project until the Project is fully completed and accepted and until all claims for materials and labor are paid, and shall otherwise comply with California law. The Payment Bond, once obtained, shall be attached to this Agreement as *Exhibit E*. In the event the Final GMP is increased in accordance with the provisions set forth in Section 8, NTD/EDGE must increase the Payment Bond to equal the revised GMP.

7.7.2 A "Performance Bond" from a California admitted surety and in the form attached hereto shall be provided by NTD/EDGE for the Project within five (5) business days after entering into this Agreement and prior to the effective date of the District's Notice to Proceed on the Project. The Performance Bond shall be for One Hundred Percent (100%) of the Final GMP for the Project to guarantee faithful performance of all work, within the time prescribed, in a manner satisfactory to the District, and that all materials and workmanship shall be free from original or developed defects.

The Performance Bond shall be in the form attached hereto as *Exhibit F* and shall be maintained by NTD/EDGE in full force and effect until the Project is fully completed and accepted and until all claims for materials and labor are paid, and shall otherwise comply with California law. The Faithful Performance Bond shall name the District as the entity to which the Principal and Surety, as defined in the Faithful Performance Bond, are bound. In the event the GMP is increased, NTD/EDGE shall increase the Performance Bond to equal the revised GMP.

8. ARTICLE 8 - CHANGES IN THE WORK

8.1. CHANGES

8.1.1 Changes in the Work may be accomplished after execution of this Agreement, without invalidating this Agreement, by Change Order, Construction Change Directive, or order for a minor change in the Work, subject to the limitations stated in the Contract Documents.

8.1.2 A Change Order shall be based upon agreement between the District, NTD/EDGE and the Architect of Record; a Construction Change Directive may be issued by the District and the Architect of Record without the agreement of NTD/EDGE; an order for a minor change in the Work may be issued by the Architect of Record through NTD/EDGE.

8.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and NTD/EDGE shall proceed promptly, unless other wise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work.

8.1.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are so changed in a proposed Change Order or Construction Change Directive that application of such unit prices to quantities of Work proposed will cause substantial inequity to the District or NTD/EDGE, the applicable unit prices shall be equitably adjusted.

8.2. CHANGE ORDERS

8.2.1 A Change Order is a written instrument prepared by NTD/EDGE and signed by the District, NTD/EDGE and the Architect of Record, stating their agreement upon all of the following:

(a) a change in the Work;

(b) the amount of the adjustment, if any, in the Contract Sum; and

(c) the extent of the adjustment, if any, in the Contract Time.

8.2.2 If the District requests a proposal for a change in the Work from NTD/EDGE and subsequently elects not to proceed with the change, a Change Order shall be issued to reimburse NTD/EDGE for any costs incurred for estimating services, design services or preparation of proposed revisions to the Contract Documents.

8.2.3 Change order mark up: In case of a change in the Contract Sum, the cost shall include a reasonable allowance for overhead and profit. In such case, NTD/EDGE shall provide an itemized accounting together with appropriate supporting data.

(a) Value of any such extra work, change or deduction shall be determined at the discretion of District in one or more of the following ways:

- By acceptable lump sum proposal from Contractor with itemization as required by District.
- By unit prices contained in Contractor's original bid and incorporated in contract documents or fixed by subsequent agreement between District and Contractor.
- By the cost of material and labor and a percentage for overhead and profit. The form shall be followed as applicable for additions and deductions to contract:

	EXTRA/(CREDIT)
1. Material and equipment costs, including rental equipment (attach itemized quantity and nit cost per sales tax)	_____
2. Labor (attach itemized hours and base rates from identified prevailing wage schedules)	_____
3. additional costs of supervision and field office personnel directly attributable to the change; and fees paid to the Architect and other professionals	_____
4. General Liability and **Builder's Risk** Insurance, Workers' Compensation Insurance, Social Security, Pension and Unemployment Taxes at actual and verified costs	_____
5. Subtotal	_____
6. Subcontractor's overhead and profit not to exceed 10% of item (5)	_____
7. Subtotal	_____
8. NTD/EDGE's Overhead and Profit, including extended home office overhead, not to exceed 15% of item (7)	_____
9. Subtotal	_____
10. Bond Premium, not to exceed 1% of item (9)	_____
11. Total	_____

8.3. CONSTRUCTION CHANGE DIRECTIVES

8.3.1 A Construction Change Directive is a written order prepared and signed by the District and the Architect of Record, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both.

(a) Except as otherwise agreed by the District and NTD/EDGE, the adjustment to the Contract Sum shall be determined on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including the expenditures for design services and revisions to the Contract Documents. In case of an increase in the Contract Sum, the cost shall include overhead and profit as determined by Paragraph 8.2.3(a). In such case, NTD/EDGE shall keep and present an itemized accounting together with appropriate supporting data for inclusion in a Change Order.

8.3.2 Pending final determination of cost to the District, amounts not in dispute may be included in Applications for Payment, The amount of credit to be allowed by NTD/EDGE to the District for deletion or change which results in a net decrease in the Contract Sum will be actual net cost. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of the net increase, if any, with respect to that change.

8.3.3 Pending final determination of cost to the District, amounts not in dispute may be included in Applications for Payment. The amount of credit to be allowed by NTD/EDGE to the District for deletion or change, which results in a net decrease in the Contract Sum, will be actual net cost. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of the net increase, if any, with respect to that change.

8.3.4 When the District and NTD/EDGE agree upon the adjustments in the Contract Sum and Contract Time, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.

8.4. MINOR CHANGES IN THE WORK

8.4.1 The Architect of Record, acting through NTD/EDGE, shall have authority to make minor changes in the Construction Documents and construction consistent with the intent of the Contract Documents when such minor changes do not involve adjustment in the Contract Sum or extension of the Contract Time. NTD/EDGE shall promptly inform the District, in writing, of minor changes in the Construction Documents and construction.

8.5. CONCEALED CONDITIONS

8.5.1 If conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents, or (2) unknown physical conditions of an unusual nature which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then notice by the observing party shall be given to the other party promptly before conditions are disturbed. The Contract Sum shall be equitably adjusted for such concealed or unknown conditions by Change Order upon claim by either party after the claimant becomes aware of the conditions.

8.6. REGULATORY CHANGES

8.6.1 NTD/EDGE shall be compensated for changes in the construction necessitated by the enactment or revision of codes, laws or regulations subsequent to the establishment of the Final GMP.

9. ARTICLE 9 - CORRECTION OF WORK

9.1. NTD/EDGE shall promptly correct Work rejected by the District or known by NTD/EDGE to be defective or failing to conform to the requirements of the Contract Documents, whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. NTD/EDGE shall bear costs of correcting such rejected Work, including additional testing and inspections necessitated by such correction.

9.2. If, within one (1) year after the date of Substantial Completion of the Work or, after the date for commencement of warranties established in a written agreement between the District and NTD/EDGE, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, NTD/EDGE shall correct it promptly after receipt of a written notice from the District to do so unless the District has previously given NTD/EDGE a written acceptance of such condition.

9.3. Nothing contained in this Article 9 shall be construed to establish a period of limitation with respect to other obligations, which NTD/EDGE might have under the Contract Documents. Establishment of the time period of one (1) year as described above relates only to the specific obligation of NTD/EDGE to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish NTD/EDGE liability with respect to NTD/EDGE obligations other than specifically to correct the Work.

9.4. If NTD/EDGE fails to correct nonconforming Work as required or fails to carry out Work in accordance with the Contract Documents, the District, by written order signed personally or by an agent specifically so empowered by the District in writing, may order NTD/EDGE to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the District's right to stop the Work shall not give rise to a duty on the part of the District to exercise the right for benefit of NTD/EDGE or other persons or entities.

9.5. If NTD/EDGE defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within seven (7) days after receipt of written notice from the District to commence and continue correction of such default or neglect with diligence and promptness, the District may give a second written notice to NTD/EDGE and, seven (7) days following receipt by NTD/EDGE of that second written notice and without prejudice to other remedies the District may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter-due NTD/EDGE, the costs of correcting such deficiencies. If the payments then or thereafter-due NTD/EDGE are not sufficient to cover the amount of the deduction, NTD/EDGE shall pay the difference to the District. Such action by the District shall be subject to dispute resolution procedures as provided in Article 10.

10. ARTICLE 10 - DISPUTE RESOLUTION-MEDIATION AND ARBITRATION

10.1. Claims, disputes or other matters in question between the parties to this Agreement arising out of or relating to this Agreement or breach thereof shall be subject to mediation. Such mediation shall be conducted in accordance with the Construction Industry Mediation.

10.2. Demand for mediation shall be filed in writing with the other party to this Agreement. A demand for mediation shall be made within a reasonable time after the claim, dispute or other matter in question has arisen, In no event shall the demand for mediation be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statutes of repose or limitations.

11. ARTICLE 11 – WAGE RATES AND HOURS

11.1. Pursuant to the provisions of article 2 (commencing at section 1770), chapter 1, part 7, division 2 of the Labor Code of California, the Director of Industrial Relations has ascertained the general prevailing rate of per diem wages in the locality in which this public work is to be performed for each craft, classification, or type of worker needed to execute the contract. Copies of said determination are on file at District's principal office and are available to any interested party on request.

11.2. Holiday and overtime work, when permitted by law, shall be paid for at a rate of at least one and one-half times the general prevailing rate of per diem wages as determined by the Director of Industrial Relations, unless otherwise specified.

11.3. Each construction worker of NTD/EDGE or any of his subcontractors engaged in work on the project shall be paid not less than the general prevailing rate of per diem wages determined by the Director of Industrial Relations, regardless of any contractual relationship which may be alleged to exist between NTD/EDGE or any subcontractor and such workers.

11.4. NTD/EDGE shall, as a penalty to the District, forfeit not more than fifty dollars ($50) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of Industrial Relations for the work or craft in which the worker is employed for any public work done under the contract by him or her or by any subcontractor under him or her. Prevailing wage rates shall also be used when determining wages paid for change order items. The amount of this forfeiture shall be determined by the Labor Commissioner and shall be based on consideration of NTD/EDGE mistake, inadvertence, or neglect in failing to pay the correct rate of prevailing wages, or the previous record of NTD/EDGE in meeting his or her prevailing wage obligations, or NTD/EDGE willful failure to pay the correct rates of prevailing wages. The difference between the 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 by NTD/EDGE, and NTD/EDGE shall be bound by the provisions of Labor Code section 1775.

11.5. Any worker employed to perform work on the project, which work is not covered by any classification listed in the general prevailing rate of per diem wages determined by the Director of Industrial Relations, shall be paid not less than the minimum rate of wages specified therein for the classification which most nearly corresponds to work to be performed by him. Such minimum wage rate shall be retroactive to the time of initial employment of such person in such classification.

11.6. Pursuant to Labor Code section 1773.1, per diem wages are deemed to include employer payments for health and welfare, pension, vacation, travel, subsistence, apprenticeship or other specified training programs and similar purposes.

11.7. NTD/EDGE shall post at appropriate conspicuous points on the site of project, a schedule showing all determined minimum wage rates and all authorized deductions, if any, from unpaid wages actually earned.

11.8. NTD/EDGE and each subcontractor shall keep an accurate payroll record, 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 him or her in connection with the public work.

11.9. The payroll records required above shall be certified and shall be available for inspection at all reasonable hours at the principal office of NTD/EDGE on the following basis:

11.9.1 A certified copy of an employee's payroll record shall be made available for inspection or furnished to such employee or his or her authorized representative on request.

11.9.2 A certified copy of all payroll records shall be made available for inspection or furnished upon request to a representative of District, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the Department of Industrial Relations.

11.9.3 A certified copy of all 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 public shall not be given access to such records at the principal office of NTD/EDGE.

11.10. NTD/EDGE shall file a certified copy of the records required above with the District or entity that requested such records within ten days after receipt of a written request.

11.11. Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the District, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address, and social security number. The name and address of NTD/EDGE shall not be marked or obliterated.

11.12. NTD/EDGE shall inform the District of the location of the records required above, including the street address, city and county, and shall, within five working days, provide a notice of a change of location and address.

11.13. In the event of noncompliance with the requirements of this article regarding maintenance of records, NTD/EDGE shall have ten days in which to comply subsequent to receipt of written notice specifying in what respects NTD/EDGE must comply with this article. Should noncompliance still be evident after such ten-day period, NTD/EDGE shall, as a penalty by the District, forfeit twenty-five dollars ($25) for each calendar day, or portion thereof, for each worker until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, such penalty shall be withheld from progress payments then due. NTD/EDGE is not subject to a penalty assessment pursuant to this section due to the failure of a subcontractor to comply with this section.

11.14. Apprentices

11.14.1 Apprentices of any crafts or trades may be employed and, when required by Labor Code section 1777.5, shall be employed provided they are properly indentured to NTD/EDGE in full compliance with provisions of the Labor Code.

11.15. Hours of Work

11.15.1 As provided in article 3 (commencing at section 1810), chapter 1, part 7, division 2 of the Labor Code, eight (8) hours of labor shall constitute a legal day's work. The time of service of any worker employed at any time by NTD/EDGE or by any subcontractor on any subcontract under this contract upon the work or upon any part of the work contemplated by this contract is limited and restricted to eight (8) hours during any one-calendar day and forty (40) hours during any one-calendar week, except as hereinafter provided. Notwithstanding the provisions herein above set forth, work performed by employees of NTD/EDGE in excess of eight (8) hours per day, and forty (40) hours during any one week, shall be permitted upon this public work upon compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half times the basic rate of pay.

11.15.2 NTD/EDGE and every subcontractor shall keep an accurate record showing the name of and actual hours worked each calendar day and each calendar week by each worker employed by him in connection with the work or any part of the work contemplated by this contract. The record shall be kept open at all reasonable hours to the inspection of the District and to the Division of Labor Law Enforcement, Department of Industrial Relations of the State of California.

11.15.3 NTD/EDGE shall pay to the District a penalty of twenty-five dollars ($25) for each worker employed in the execution of this contract by NTD/EDGE or by any subcontractor 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 article 3 (commencing at section 1810), chapter 1, part 7, division 2 of the Labor Code

11.16. Labor Compliance

11.16.1 District to address and provide a Labor Compliance Program in compliance with current state law at their expense.

12. ARTICLE 12 - MISCELLANEOUS PROVISIONS

12.1. Unless otherwise provided, this Agreement shall be governed by the law of the place where the Project is located.

12.2. SUBCONTRACTS

12.2.1 NTD/EDGE, shall furnish to the District in writing the names of the persons or entities that NTD/EDGE has selected as contractors for the Project for District's information only.

12.3. WORK BY DISTRICT OR DISTRICT'S CONTRACTORS

12.3.1 The District reserves the right to perform construction or operations related to the Project with the District's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under conditions of insurance and waiver of subrogation identical to the provisions of this Agreement. If NTD/EDGE claims that delay or additional cost is involved because of such action by the District, NTD/EDGE shall assert such claims as provided in this Article.

12.3.2 NTD/EDGE shall afford the District's separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities and shall connect and coordinate NTD/EDGE construction and operations with theirs as required by the Contract Documents.

12.3.3 Costs caused by delays or by improperly timed activities or defective construction shall be borne by the party responsible therefore.

12.4. CLAIMS FOR DAMAGES

12.4.1 If either party to this Agreement suffers injury or damage to person or property because of an act or omission of the other party, of any of the other party's employees or agents, or of others for whose acts such party is legally liable, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time. The notice shall provide sufficient detail to enable the other party to investigate the matter. If a claim of additional cost or time related to this claim is to be asserted, it shall be filed in writing providing sufficient documentation supporting the factual basis of the claim.

12.5. INDEMNIFICATION

12.5.1

(a) NTD/EDGE shall assume the defense of and indemnify, and hold harmless DISTRICT (including its trustees, officers, agents, members, employees), and each of them, of and from any and all claims, demands, suits, causes of action, damages, costs, expenses, attorneys' fees, losses or liability, in law or in equity, of every kind and nature whatsoever arising out of, or in connection with NTD/EDGE's negligent acts, errors, or omissions in performing Work under this Contract including, but not limited to:

(i) Personal injury (including, but not limited to, bodily injury, emotional injury, or distress, sickness, or disease) or death to persons, including, but not limited to, any employees or agents of NTD/EDGE, DISTRICT, or any subcontractor, or damage to property of anyone including the Work itself (including loss of use thereof), caused in whole or in part by any negligent act of omission of DISTRICT, or NTD/EDGE, or anyone directly or indirectly employed by them, or anyone for whose acts they may be liable;

(ii) Penalties imposed on account of the violation of any law, order, citation, rule, regulation, standard, ordinance, or stature, caused by the action or inaction of NTD/EDGE;

(iii) Infringement of any patent rights which may be brought arising out of NTD/EDGE's design;

(iv) NTD/EDGE's failure to fulfill any of the covenants set for the in this Agreement;

(v) Failure of NTD/EDGE to comply with the provision of this Agreement relating to insurance, provided that such Insurance is available at reasonable terms; and

(vi) Any violation or infraction by NTD/EDGE of any law, order, citation, rule, regulation, standard, ordinance, or statute in any way relating to the occupation, health, or safety of employees of NTD/EDGE, DISTRICT, or any subcontractor.

(b) It is understood and agreed that such indemnity shall survive the termination of this Agreement. The indemnities set forth in this section shall not be limited by the insurance requirements set forth in this Agreement.

(c) NTD/EDGE's indemnification of DISTRICT will not include indemnification for claims which arise as the result of the active negligence of DISTRICT, or the sole negligence or willful misconduct of DISTRICT, it's agents, servants or independent contractors who are directly responsible to DISTRICT, or for defects in design furnished by such persons, other than NTD/EDGE and its agents, consultants and subconsultants.

12.5.2 In claims against any person or entity indemnified under this Paragraph by an employee of NTD/EDGE, anyone directly or indirectly employed by NTD/EDGE or anyone for whose acts NTD/EDGE may be liable, the indemnification obligation under this Paragraph shall not be restricted by a limitation on amount or type of damages, compensation or benefits payable by or for NTD/EDGE under workers' compensation acts, disability benefit acts or other employee benefit acts.

12.6 SUCCESSORS AND ASSIGNS

12.6.1 The District and NTD/EDGE, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors and assigns of such other party with respect to all covenants of this Agreement. Neither the District nor NTD/EDGE shall assign this Agreement without the written consent of the other. The District may assign this Agreement to any institutional lender providing construction financing, and NTD/EDGE agrees to execute all consents reasonably required to facilitate such an assignment. If either party makes such an assignment, that party shall nevertheless remain legally responsible for all obligations under this Agreement, unless otherwise agreed by the other party.

12.7 EXTENT OF AGREEMENT

12.7.1 The contract Documents represent the entire agreement between the District and NTD/EDGE and supersedes prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument and signed by both the District and NTD/EDGE.

13. ARTICLE 13 - TERMINATION OF THE AGREEMENT

13.1. TERMINATION BY THE DISTRICT

13.1.1 This Agreement may be terminated by the District upon 14 days' written notice to NTD/EDGE in the event that the Project is abandoned by NTD/EDGE. If such termination occurs, the District shall pay NTD/EDGE for Work completed as of the effective date of said suspension and for proven loss sustained upon labor, materials, equipment, tools, and machinery including reasonable profit, overhead, and applicable damages including costs associated with demobilization and suspension.

13.1.2 If NTD/EDGE persistently fails or neglects to carry out the Work in accordance with the Contract Documents or fails to perform the provisions of this Agreement, the District may give written notice that the District intends to terminate this Agreement. If NTD/EDGE fails to correct the failure or neglect within twenty-One (21) days after being given notice, the District may without prejudice to any other remedy terminate the employment of NTD/EDGE and take possession of the site and of all materials, equipment, tools and construction equipment and machinery there on owned by NTD/EDGE and finish the Work by whatever method the District may deem expedient. If the unpaid balance of the Contract Sum exceeds the expense of finishing the Work and all damages incurred by the District, such excess shall be paid to NTD/EDGE. If the expense of completing the Work and all damages incurred by the District exceeds the unpaid balance, NTD/EDGE shall pay the difference to the District. This obligation for payment shall survive termination of this Agreement.

13.1.3 Termination for Convenience: notwithstanding anything to the contrary stated in this Agreement, the District may terminate this Agreement for convenience at any time upon twenty-one (21) days' prior written notice to NTD/EDGE. If the District terminates the Agreement as provided herein, the District, in its sole and absolute discretion, may require NTD/EDGE to complete any services required hereunder to facilitate the transfer of NTD/EDGE's responsibilities to another architect or other person. Upon termination, the District's total obligation to NTD/EDGE shall be limited to the payment for all services already provided by NTD/EDGE in accordance with this Agreement prior to the effective date of the "termination", plus any services rendered to facilitate the transfer of responsibilities.

13.2. TERMINATION BY NTD/EDGE

13.2.1 If the District fails to make payment of undisputed amounts when due, NTD/EDGE may give written notice of NTD/EDGE intention to terminate this Agreement. If NTD/EDGE fails to receive payment within thirty (30) days after receipt of such notice by the District, NTD/EDGE may terminate this Agreement and recover from the District

8.3.48

payment for Work executed and for proven losses sustained upon labor, materials, equipment, tools, and machinery, including reasonable profit, overhead, and applicable damages including costs associated with demobilization and suspension.

14. ARTICLE 14 - BASIS OF COMPENSATION

The District shall compensate NTD/EDGE in accordance with Article 5, Payments, and the other provisions of this Agreement as described below.

14.1. COMPENSATION

14.1.1 For NTD/EDGE performance of the Work, as described in Article 3 and including any other services listed in Article 15 as part of Basic Services, the District shall pay NTD/EDGE in current funds the Contract Sum as follows:

(a) Guaranteed Maximum Price (GMP) for the overall Project is -(including Owner Requested Add Items **$6,367,783.00** (six million three hundred sixty-seven thousand seven hundred eighty-three and 00/100 dollars) per Exhibit A.

(b) NTD/EDGE reserves the right to withdraw , or modify to an amount acceptable to both parties, the above Guaranteed Maximum Price in the event this Agreement is not executed by April 28, 2004.

(c) Purchase Price shall be equal to the Guaranteed Maximum Price (GMP) per Sublease Agreement.

(d) Sublease Payments; Monthly in accordance with the Sublease Agreement, in the amount of **$20,000.00**

(e) Sublease Prepayments; Per Sublease Agreement

14.1.2 For Additional Services, as described in Article 3 and including any other services listed in Article 15 as Additional Services, compensation shall be as follows:

(a) To be determined, subject to mutual agreement between District and NTD/Edge.

(b) Allowances for Owner Requested Add Items have been provided per Exhibit A. Owner understands that these are allowances only and not bid numbers. In the event the cost of the Work of these items varies from the Allowances, the GMP shall be adjusted per actual costs incurred. Any remaining Allowance sums shall be credited back to the Owner; costs in excess of Allowances shall be added to the GMP by change order.

14.2. REIMBURSABLE EXPENSES

14.2.1 Reimbursable Expenses are in addition to the compensation for Basic and Additional Services, and include actual expenditures made by NTD/EDGE and NTD/EDGE employees and contractors in the interest of the Project, as follows:

- Costs incurred for reproduction of documents for Agency review and approval.
- Expense of additional insurance coverage or limits, including professional liability insurance, requested by the District in excess of that stipulated above and normally carried by NTD/EDGE
- Expense of reproduction of District provided Record Drawings and As-Builts of existing facilities if required by NTD/EDGE in the performance of this contract.

14.2.2 FOR REIMBURSABLE EXPENSES, compensation shall be a multiple of 1.20 times the amounts expended.

14.3. INTEREST PAYMENTS

14.3.1 The rate of interest for past due payments shall be as follows:

(a) Non-disputed payments due the Builder under this Part 1 Agreement which are not paid when due shall bear interest from the date due at the rate of 6 % or in the absence of a specified rate, at the legal rate against a public agency allowed under California law.

15. ARTICLE 15 - OTHER CONDITIONS AND SERVICES

15.1. The Basic Services to be performed under Increment 1 shall be commenced upon receipt of Notice to Proceed and, subject to authorized adjustments and to delays not caused by NTD/EDGE, Substantial Completion of Increment 1 shall be achieved in the Contract Time of one hundred-eighty (180) calendar days.

15.2. The Basic Services beyond those described in Article 3 are as follows:

15.2.1 N/A

15.3. Additional Services beyond those described in Article 3 are as follows:

15.3.1 N/A

15.4. NTD/EDGE shall submit an Application for Payment on the First (1st) day of each month.

15.5. Insurance coverage required by Article 7.1 shall be provided in the following amounts:

15.5.1 $1,000,000.00

15.6. Insurance coverage required by Article 7.3 and 7.5 shall be provided in the following amounts:

15.6.1 Article 7.3 - $1,000,000.00

15.6.2 Article 7.5 – Full Replacement Cost

15.7. This Agreement includes the following documents:

(List the documents by specific title and date; include any required performance and payment bonds.)

Guaranteed Maximum Price & Contract Qualifications List per Exhibit A

Drawings and Specifications per Exhibits B & C

Addenda 1 is hereby included by reference.

Payment Bond per Exhibit E

Performance Bond per Exhibit F

This Agreement entered into as of April 7, 2004, 2004.

WESTERN PLACER UNIFIED SCHOOL DISTRICT	**NTD/EDGE, Design Builders, Inc.**
_____	_____
(Signature)	*(Signature)*
_____	_____
(Printed name and title)	*(Printed name and title)*
	_____
	(Signature)
	_____
	(Printed name and title)

END OF AGREEMENT

EXHIBIT A

NTD | EDGE
DESIGN • BUILDERS

	Western Placer Unified School District Lincoln High School Stadium and Athletics Field Guaranteed Maximum Price	April 12, 2004
	Direct Costs of Construction	5,685,978
	OH & P @ 3.00%	170,579
	Subtotal	5,856,557
	Construction Contingency @ 2.00%	117,131
	Subtotal/Construction	5,973,688
	Bonds @ 1.00%	59,737
	Builder's Risk Insurance (Provided by Owner)	NIC
	Subtotal	6,033,425
	A & E Fees	334,358
	GMP	**6,367,783**
	Anticipated City Contribution Base (Credit)	(350,000)
	Anticipated City Contribution Escalation (10.886 increase)	(38,100)
	Anticipated Community Contribution	(150,930)
	Total Anticipated City & Community Contribution	(539,030)
	Anticipated Cost After Applying City/Community Contributions	**5,828,753**
	Optional Owner Requested Add Items	
1	Provide Fire Sprinkler Sys. for Modular Buildings Sta. Press Box (allowance)	31,833
2	Builder's Risk Insurance (Provided by Design-Builder @ .45%)	27,150

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Lincoln HS Football Stadium and Athletic Fields
GMP QUALIFACTIONS & CLARIFCATIONS
April 13, 2004

Unless noted otherwise (below), all work will be provided per plans and specifications and within the guidelines of the previous paragraph.

01500 Construction Facilities and Temporary Controls

Paragraph 1.20.1. is not included in our proposal. It is assumed that the District has campus security guard and systems in place that would be able to monitor this project. In case the District desires EDGE Development to provide the specified securities that an additional amount of $28,859 would need to be added to the base GMP.

02510 Water Distribution Systems

Proposal excludes relocating any existing utilities or providing temporary provisions for utilities.

02530 Sanitary Sewer Systems

Proposal excludes relocating any existing utilities or providing temporary provisions for utilities.

02630 Storm Drainage Systems

Proposal excludes relocating any existing utilities or providing temporary provisions for utilities.

02791 Baseball Infield Mix

- Proposal includes a packing material called Hilltopper that is made especially for baseball mounds and around the home plate.

02815 Landscape Irrigation Control System

- The proposal is based on the following clarifications. Due to the design-build nature of this segment of the work the proposal includes two alternative methods for providing irrigation controls. In either case, there the system requires two Central Control Units ("Master-Slave"). Communication between these can be provided by either of the following at the Architect's option:
  - By individual modems and dedicated telephone line.
  - By direct communication cable.

- As the locations of these controllers are unspecified the proposal include a$ 15,000.00 Allowance for either option.

Relocatable Concession Building

- "Pending County Health Department Approval"

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EXHIBIT B
LINCOLN HIGH SCHOOL STADIUM
LIST OF SPECIFICATIONS
April 13, 2004

SPEC NO.	DESCRIPTION
GENERAL DOCUMENTS	
Cover	
Flyleaf	
Table of Contents	
Directory	
BIDDING/CONTRACT REQUIREMENTS	
00220	Geotechnical Report
00700	General Conditions
DIVISION 01- GENERAL REQUIREMENTS	
01110	Summary of Work
01250	Contract Considerations Modifications Request for Information Form
01310	Coordination and Meetings
01330	Submittals
01350	Alteration Project Procedures
01420	References and Definitions
01430	Quality Control
01450	Testing Laboratory Services
01500	Construction Facilities and Temporary Controls
01570	Storm Water Pollution Protection Plan
01600	Product Requirements
01610	Substitutions/ Substitution Request Form
01730	Cutting and Patching
01770	Contract Closeout
DIVISION 02- SITE WORK	
02235	Site Clearing, Demolition and Renovation
02310	Grading and Excavation
02320	Trenching
02373	Soil Cement Treatment
02510	Water Distribution Systems
02530	Sanitary Sewer Systems
02620	Subsurface Drainage Systems
02615	Geocomposite Subsurface Drainage Systems

EXHIBIT B
LINCOLN HIGH SCHOOL STADIUM
LIST OF SPECIFICATIONS
April 13, 2004

SPEC NO.	DESCRIPTION
02630	Storm Drainage Systems
02741	Asphalt Concrete Paving
02751	Portland Cement Concrete Paving
02760	Pavement Making
02796	Synthetic Turf and Pad
02790	Tennis Courts
02791	Baseball Infield Mix
02792	Resilient All Weather Track Surfacing
02810	Landscape Irrigation
02815	Landscape Irrigation Control System - Maxicom
02820	Chain Link Fencing and Gates
02870	Miscellaneous Site Furnishings
02880	Athletic Equipment
02900	Landscape Planting

DIVISION 14- Conveying System

14421	Inclined Wheelchair Lift

DIVISION 15- Mechanical

NOT INCLUDED IN THIS PROJECT MANUAL

DIVISION 16- ELECTRICAL

16010	Electrical

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EXHIBIT C
LINCOLN HIGH SCHOOL STADIUM

LIST OF DRAWINGS
April 13, 2004

SHEET NO.	DESCRIPTION	DATE
G0.1	Cover Sheet	02/16/04
G0.2	General Notes	02/16/04
C0.1	Partial Topographic Survey	02/05/04
C0.2	Partial Topographic Survey	02/05/04
C1.1	Partial Demolition Plan	02/05/04
C1.2	Partial Demolition Plan	02/05/04
C1.3	Partial Engineered Plan	02/05/04
C1.4	Partial Engineered Plan	02/05/04
C2.1	Partial Horizontal Control Plan	02/05/04
C2.2	Partial Horizontal Control Plan	02/05/04
C3.1	Partial Grading Plan	02/05/04
C3.2	Partial Grading Plan	02/05/04
C3.3	Partial Grading Plan	02/05/04
C3.4	Partial Grading Plan	02/05/04
C3.5	Partial Grading Plan	02/05/04
C4.1	Partial Utility Plan	02/05/04
C4.2	Partial Utility Plan	02/05/04
C4.3	Partial Utility Plan	02/05/04
C4.4	Partial Utility Plan	02/05/04
C4.5	Partial Utility Plan	02/05/04
C5.1	Partial Domestic Water and Fire Protection Plan	02/05/04
C5.2	Partial Domestic Water and Fire Protection Plan	02/05/04
C6.1	Partial Paving Plan	02/05/04
C6.2	Partial Paving Plan	02/05/04
C7.1	Erosion Control Plan	02/05/04
C8.1	Details	02/05/04
C8.2	Details and Sections	02/05/04
L1.0	North Site Layout Plan	02/13/04
L1.1	South Site Layout Plan	02/13/04
L1.2	Construction Details	02/13/04
L1.3	Construction Details	02/13/04
L1.4	Construction Details	02/13/04
L1.5	Construction Details	02/13/04
L1.6	Construction Details	02/13/04
L2.0	North Site Irrigation	02/13/04

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LINCOLN HIGH SCHOOL STADIUM AND ATHLETIC FIELDS

LIST OF DOCUMENTS
MARCH 17, 2004

SHEET NO.	DESCRIPTION	DATE
L2.1	South Site Irrigation	02/13/04
L2.2	Irrigation Details	02/13/04
L3.0	North Site Planting	02/13/04
L3.1	South Site Planting	02/13/04
L3.2	Planting Details	02/13/04
A1.0	Fire and Life Safety Site	02/16/04
D1.1	Demo N. Site Plan	02/16/04
D1.2	Demo S. Site Plan	02/16/04
A1.1	North Site	02/16/04
A1.2	South Site	02/16/04
A1.3	Site Details	02/16/04
A1.4	Site Details	02/16/04
A1.5	Site Details	02/16/04
S1.1	Notes and Details	12/10/03
S2.1	CMU Retaining Wall Foundation Plan	12/10/03
E1.0	Electrical Site Plan	12/10/03
E1.1	One Line Diagram	12/10/03
E1.2	Electrical Emergency Lighting Plan	12/10/03
E2.0	Details, Schedules and Symbols	12/10/03
E2.1	Fire Alarm System Site Plan	12/10/03
E3.1	Details	12/10/03
MT1	Notes, Foundation Detail	12/04/03
MS1	Pole Detail	12/04/03
MS2	Pole Detail	12/04/03
MS3	Pole Detail	12/04/03
MD1	Details	12/04/03
A	Index and Test Inspection Sheet	12/03/03
A1	General Notes, Ramp & Landing Layouts	04/09/03
A1.1	12'x32' Exterior Elevations	12/03/03
A1.2	24'x32' Exterior Elevations	12/03/03
A2.1	12'x32' Floor and Reflected Ceiling Plans	12/03/03
A2.2	12'x32' Floor and Reflected Ceiling Plans	12/03/03
A3	Standard Details	04/09/03
A4	General and Variable Specifications	04/09/03

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LINCOLN HIGH SCHOOL STADIUM AND ATHLETIC FIELDS

LIST OF DOCUMENTS
MARCH 17, 2004

SHEET NO.	DESCRIPTION	DATE
P1	Standard Plumbing Specifications And Details	04/09/03
S0.1	General Notes and Typical Details	04/09/03
S0.2	Typical Details	04/09/03
S2.1S	12'x32' Wood Pad and Concrete Foundation Plans	04/09/03
S2.1C	Concrete Foundation Plans	04/09/03
S2.2S	12'x32' Floor and Roof Framing Plans	04/09/03
S2.2M	Multi-Wide Floor and Roof Framing Plans	04/09/03
S3.1S	12'x32' Shearwall Elevations	04/09/03
S3.1M	Multi-Wide Shearwall Elevations	04/09/03
S5.1C	Concrete Foundation Details	04/09/03
S8.1	Framing Details	04/09/03
S8.2	Framing Details	04/09/03
A	Title and Test Inspection Sheet	12/03/03
A1	General Notes, Ramp and Landing Layouts	04/01/03
A1.1	12'x40' Exterior Elevations	12/03/03
A2.1	12'x40' Floor and Reflected Ceiling Plans	12/03/03
A3	Standard Details	04/01/03
A4	General Specifications	04/01/03
P1	Standard Plumbing Specifications And Details	04/02/03
S0.1	General Notes and Typical Details	04/03/03
S0.2	Typical Details	04/04/03
S2.1S	12'x40' Wood Pad & Concrete Foundation Plans	04/04/03
S2.2S	12'x40' Floor and Roof Framing Plans	04/04/03
S3.1S	12'x40' Shearwall Elevations	04/04/03
S5.1C	Concrete Foundation Details	04/04/03
S8.1	Framing Details	04/04/03

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LINCOLN HIGH SCHOOL STADIUM

LIST OF DOCUMENTS
MARCH 17, 2004

SHEET NO.	DESCRIPTION	DATE
S8.2	Framing Details	04/04/03
1	Footing Layout-Home Side	12/11/03
2	Understructure Layout-Home Side	12/11/03
3	Side View-Home Side	12/11/03
4	Side View-Home Side	12/11/03
5	Sight Lines-Home Side	12/11/03
6	Seating Layouts-Home Side	12/11/03
7	Bracket Layout-Home Side	12/11/03
8	8'-0"x30'-0' Press Box	12/11/03
9	Pressbox Structural Layout	12/11/03
10	Pressbox Details	12/11/03
11	Footing Layout-Visitor Side	12/11/03
12	Understructure-Visitor Side	12/11/03
13	Side View-Visitor Side	12/11/03
14	Sight Lines-Visitor Side	12/11/03
15	Seating Layouts	12/11/03
16	Bracket Layout-Visitor Side	12/11/03
17	Exit Step Details	12/11/03
18	Additional Exit Step Details	12/11/03
19	Exit Ramp Details	12/11/03
20	Notes	12/11/03
21	Aluminum Details	12/11/03
22	Details	12/11/03
23	Additional Details	12/11/03

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EXHIBIT E

PAYMENT BOND

(Labor and Material)

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, Western Placer Unified School District and NTD-EDGE, Inc., hereinafter designated as the "Principal", have entered into a series of agreements including a Services Agreement, a Site Lease, and a Facilities Sublease (collectively "the Agreement") for the furnishing of all construction, materials and labor, services and transportation, necessary, convenient, and proper to construct the Lincoln High School Stadium, located at _____, which said Agreement is dated on or about _____, 2004, and all of the contract documents are hereby referred to and made a part hereof;

and

WHEREAS, the Principal is required, before entering upon the performance of the work, to file a good and sufficient bond with the body by whom the Agreement is awarded to secure the claims arising under said agreement.

NOW, THEREFORE, THESE PRESENTS WITNESSETH:

That the said Principal and the undersigned _____ (Surety) are held and firmly bound unto all laborers, material men, and other persons referred to in Civil Code section 3248, subdivision (b), in the sum of _____ Dollars ($_____) which sum well and truly be made, we bind ourselves, our heirs, executors, administrators, successors, or assigns, jointly and severally, by these presents.

The condition of this obligation is that if the said Principal or any of its subcontractors, or the heirs, executors, administrators, successors, or assigns of any, all, or either of them, shall fail to pay any of the persons named in Civil Code section 3181, or any of the amounts due as specified in Civil Code section 3248, subdivision (b), to pay for any materials, provisions, provender or other supplies, or teams, used in, upon, for, or about the performance of the work contracted to be done, that said Surety will promptly pay the same in an amount not exceeding the amount hereinabove set forth, and also in case suit or other legal proceeding is brought upon this bond, will pay costs and reasonable attorney's fees to be awarded and fixed by the Court, and to be taxed as costs and to be included in the judgment therein rendered.

It is hereby expressly stipulated and agreed that this bond shall inure to the benefit of any and all persons, companies, and corporations entitled to file claims so as to give a right of action to them or their assigns in any suit brought upon this bond.

Should the condition of this bond be fully performed, then this obligation shall become null and void, otherwise it shall be and remain in full force and effect.

And the said Surety, for value received, thereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of said Agreement or the specifications accompanying the same shall in any manner affect its obligations on this bond, and it does hereby waive notice of any such change, extension, alteration, or addition.

Surety represents that it is a duly qualified surety in good standing under the laws of the state of California.

IN WITNESS WHEREOF, this instrument has been duly executed by the Principal and Surety this _____ day of _____, _____.

(To be signed by)
(Principal and Surety,)
(and acknowledged and)
(Notarial Seal attached)

_____
Principal

_____

_____
Surety

_____

By:_____
Attorney-in-Fact

_____

The above bond is accepted and approved this _____ day of _____, 2003.

EXHIBIT F

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS that we NTD-EDGE, Inc. as Principal, and _____ as Surety, are held and firmly bound unto **Western Placer Unified School District**, in the County of Placer, State of California, hereinafter called the "District," in the sum of _____ Dollars ($_____) for the payment of which sum well and truly made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

The condition of this obligation is such, that whereas the Principal entered into a series of Agreements regarding the construction of improvements, including a Servicese Agreement between the District and NTD-EDGE, a Site Lease, and a Facility Sublease Agreement, dated _April 7, 2004 (the "Agreements") in connection with which the Principal agreed to construct facilities for the project known as the Lincoln High School Stadium and related improvements ("Improvements") at _____in Placer County, California, on the real property described in the attached legal description and to lease the Improvements to the District with option to purchase.

NOW, THEREFORE, if the Principal shall well and truly perform and fulfill all the undertakings, covenants, terms, conditions, and Agreements referenced above during the original term of said Agreements and any extensions thereof that may be granted by the District, with or without notice to the Surety, and during the life of any warranty required under the Agreements, and shall also well and truly perform and fulfill all the undertakings, covenants, terms, conditions of any and all duly authorized modifications of said Agreements that may hereafter be made, then this obligation is to be void, otherwise to remain in full force and virtue. In case suit or other proceeding is brought upon this bond, Surety will pay costs and reasonable attorney's fees to be awarded and fixed by the Court, and to be taxed as costs and to be included in the judgment therein rendered.

And the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Agreements or to the work to be performed thereunder or the specifications accompanying the same, shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Agreements, or to the work, or to the specifications.

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The Surety's obligation shall be promptly rendered without further demand or Agreement, to perform the obligations with respect to the Agreements referenced herein.

Surety represents that it is a duly qualified Surety in good standing under the laws of the state of California.

IN WITNESS WHEREOF, the above-bound parties have executed this instrument under their several seals this _____ day of _____, 2004 hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

(To be signed by)
(Principal and Surety,)
(and acknowledged and)
(Notarial Seal attached)

(Affix Corporate Seal)

NTD-EDGE, Inc.

By: _____
Its:

By: _____
Its:

The rate of premium on this bond is _____ per thousand.

The total amount of premium charged is _____.

The above must be filled in by Corporate Surety.

8.363

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.
BOARD OF TRUSTEES/GLOBAL DISTRICT 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.

AGENDA ITEM:

Approve the Facility Sublease Agreement, Site Lease, and Services Agreement Between the Western Placer Unified School District and NTD-EDGE Design Builders for the Construction of the New Middle School Located in the Twelve Bridges Subdivision.

SUBJECT AREA:

Discussion/Action

REQUESTED BY:

Jay M. Stewart
Assistant Superintendent, Business Services

ENCLOSURES:

Yes

BOARD MEETING DATE:

April 20, 2004

BACKGROUND:

The attached agreements encompass both increments regarding the construction of the new middle school located in the Twelve Bridges subdivision. The Board of Trustees previously approved the GMP for the first increment, which addresses the site work for the new school. The PGMP for second increment of the project, which includes the remainder of the project, was also approved by the Board of Trustees for a total estimated cost of $32,000,000. Once the GMP for the second increment is finalized, an amendment to the agreements will be brought before the Board of Trustees for consideration. The District's legal counsel reviewed and approved the attached agreements.

SUPERINTENDENT'S RECOMMENDATION:

Administration recommends the Board of Trustees approve the Facility Sublease Agreement, Site Lease, and Services Agreement Between the Western Placer Unified School District and NTD-EDGE Design Builders for the Construction of the new middle school located in the Twelve Bridges Subdivision.

8.4

FACILITY SUBLEASE AGREEMENT

Dated as of March 25, 2004
Between

WESTERN PLACER UNIFIED SCHOOL DISTRICT

and

NTD-EDGE
Design Builders

8.4.1

FACILITY SUBLEASE AGREEMENT

This FACILITY SUBLEASE AGREEMENT (Sublease) is dated as of March 25, 2004 and is by and between the Western Placer Unified School District, a school district duly organized and existing under the laws of the State of California (District), and NTD-EDGE Design Builders, a corporation organized and operating under the laws of the State of California (Sub-Lessor) with its principal place of business located at 4719 Viewridge Avenue, Suite 200, San Diego, Ca. 92123.

RECITALS:

WHEREAS, pursuant to Section 17406 et seq. of the Education Code, the District may enter into leases and agreements relating to real property and buildings used by the District; and

WHEREAS, the District deems it essential for its own governmental purpose, to finance the construction and installation of certain improvements described in the Approved Plans (the Project) and situated on the 12 Bridges Middle School site described in SECTION 1 of this document; and

WHEREAS, pursuant to Section 17406 of the Education Code, the District is leasing the Site to Sub-Lessor under a lease agreement (the Site Lease) dated March 25, 2004 in consideration of Sub-Lessor leasing and subleasing the Project and the Site to the District pursuant to the terms of this Sublease; and

WHEREAS, the District owns the Site and pursuant to that certain Services Agreement entered into by and between the District and Sub-Lessor dated as of March 25, 2004, (the Services Agreement) the District has prepared and adopted plans and specifications for the completion of the Project which have been approved pursuant to law as required by Section 17402 of the Education Code; and

WHEREAS the District and Sub-Lessor agree to mutually cooperate now or hereafter, to the extent possible, in order to sustain the intent of this Sublease and the bargain of both parties hereto, and to provide Sublease Payments to be made in the amount and in the manner set forth herein.

NOW THEREFORE, in consideration of the covenants hereinafter contained, District and Sub-Lessor agree as follows:

SECTION 1. **DEFINITIONS**. Unless the context otherwise requires, the terms defined in this Section shall, for all purposes of this Sublease, have the meanings as herein specified.

A. **Approved Plans** means the final working drawings as approved by the District and the Division of State Architect (DSA)

B. **Services Agreement** means the Services Agreement Between District and NTD/EDGE Design Builders, Inc. for construction of improvements on the 12 Bridges Middle School site by and between the District and the Sub-Lessor dated as of March 25, 2004.

C. **Contract Documents** means the Services Agreement, this Sublease and the Site Lease.

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

E. **Effective Date** shall mean the day on which the District issues a notice to proceed on the Project pursuant to the provisions of the Services Agreement.

F. **Event of Default** means one or more events of default as defined in Sections 19 and 20 of this Sublease.

G. **Guaranteed Maximum Price or GMP** means the Guaranteed Maximum Price established pursuant to the Services Agreement.

H. **Sub-Lessor** shall mean NTD-EDGE Design-Builders, Inc., and its successors and assigns.

I. **Prepayment Price** means the price to be paid by the District to exercise its option to purchase the Site and the Project prior to the natural termination of this Sublease, in accordance with the provisions of Section 25 herein.

J. **Project** means the improvements and equipment to be constructed and installed by the Lessee, as more particularly described in the Approved Plans.

K. **Site** means that certain parcel of real property and improvements thereon (if any) more particularly described as:

Attachment A (Legal Description)

L. **Site Lease** means the Site Lease dated as of March 25, 2004, by and between the District and the Sub-Lessor, together with any duly authorized and executed amendment thereto under which the District leases the Site to the Sub-Lessor.

M. **Sublease** means this Facility Sublease Agreement together with any duly authorized and executed amendment hereto.

N. **Sublease Payment** means any payment required to be made by the District pursuant to Section 7 of this Sublease. Such Sublease Payment shall not utilize state bond funds or the District's matching funds for this Project

O. **Sublease Prepayment** means any payment which may be made by the District pursuant to Section 25 of this Sublease which is, in the opinion of the District, consistent with applicable law related to the use of state bond funds.

P. **Term of this Sublease or Term** means the time during which this Sublease is in effect, as provided for in Section 3 of this Sublease .

SECTION 2. **SUBLEASE**

Sub-Lessor hereby leases and subleases to District, and District hereby leases and subleases from Sub-Lessor the Project and the Site, including any real property improvements now or hereafter affixed thereto in accordance with the provisions herein for the full term of this Sublease. The leasing by the Sub-Lessor to the District of the Site shall not effect or result in a merger of the District's leasehold estate pursuant to this Sublease and its fee estate as Sub-Lessor under the Site Lease, and the Sub-Lessor 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 Sublease.

SECTION 3. **TERM OF THE SUBLEASE**

A. The terms and conditions of this Sublease shall become effective upon the authorized execution of this Sublease and after the District issues a notice to proceed on the Project pursuant to the provisions of the Services Agreement. The term of the Sublease commences on the Effective Date, and terminates two (2) months following filing of Notice of Completion, as adjusted per Article 15 of the Services Agreement, unless sooner terminated as hereinafter provided. If on the scheduled date of termination of this Sublease the Sublease Payments shall not be fully paid, or provision therefore made, or if such Sublease Payments shall have been abated at any time and for any

reason, then the term of this Sublease shall be extended until the date upon which all such Sublease Payments shall be fully paid in a manner consistent with Education Code Section 17406.

B. Termination of Term. The Term of this Sublease shall terminate upon the earliest of any of the following events:

1. An Event of Default by District and the Sub-Lessor's election to terminate this Sublease pursuant to the provisions of Sections 19 and 21, hereof;

2. The arrival of the last day of the Term of this Sublease and payment of all Sublease Payments hereunder; or

3. The exercise of the District's option under Section 27 hereof.

SECTION 4. **REPRESENTATIONS, WARRANTIES AND COVENANTS OF DISTRICT.** The District represents and warrants to Sub-Lessor that:

A. District is a political subdivision, duly organized and existing under the Constitution and laws of the State of California with authority to enter into this Sublease and to perform all of its obligations hereunder;

B. District's governing body has duly authorized the execution and delivery of this Sublease and further represents and warrants all requirements have been met and procedures followed to ensure its enforceability.

C. The execution, delivery and performance of this Sublease does not and will not result in any breach of or constitute a default under any indenture, mortgage, contract, agreement or instrument to which District is a party by which it or its property is bound;

D. To the actual knowledge of the District there is no pending or, to the knowledge of District, threatened action or proceeding before any court or administrative agency which will materially adversely affect the ability of District to perform its obligations under this Sublease;

E. The Project and the Site are essential to District in the performance of its governmental functions and their estimated useful life to the District exceeds the term of this Sublease;

F. District shall use reasonable good faith efforts to take such action as may be necessary to include all Sublease Payments in its annual budget and annually to appropriate an amount necessary to make such Sublease Payments;

G. District shall not abandon the Site for the use for which it is currently required by District and, to the extent permitted by law, District shall not seek to substitute or acquire property to be used as a substitute for the uses for which the site is maintained under the Sublease; and

H. District shall not allow any Hazardous Substances (as such term is defined in the Site Lease) to be used or stored on, under or about the Site.

SECTION 5. **REPRESENTATIONS AND WARRANTIES OF SUB-LESSOR.** Sub-Lessor represents and warrants to District that:

A. Sub-Lessor is duly organized, validly existing and in good standing as a corporation under the laws of the State of California, with full corporate power and authority to lease and own real and personal property;

B. Sub-Lessor has full power, authority and legal right to enter into and perform its obligations under this Sublease, and the execution, delivery and performance of this Sublease has been duly

authorized by all necessary corporate actions on the part of Sub-Lessor and does not require any further approvals or consents;

C. The execution, delivery and performance of this Sublease does not and will not result in any breach of or constitute a default under any indenture, mortgage, contract, agreement or instrument to which Sub-Lessor is a party by which they or their property is bound;

D. There is no pending or, to the knowledge of Sub-Lessor, threatened action or proceeding before any court or administrative agency which will materially adversely affect the ability of Sub-Lessor to perform their obligations under this Sublease; and

E. Sub-Lessor will not mortgage or encumber the Site or the Sublease or assign this Sublease or their rights to receive Sublease Payments hereunder, except as permitted herein.

SECTION 6. **CONSTRUCTION/ACQUISITION**

A. District has entered into a Services Agreement and a Site Lease with Sub-Lessor in order to acquire and construct the Project. The cost of the construction and installation of the Project is determined by the Final GMP as set forth in the Services Agreement. The Sub-Lessor shall construct the Project in accordance with the Contract Documents.

B. In order to ensure that moneys sufficient to pay all costs will be available for this purpose when required, District shall use reasonable good faith efforts to maintain on deposit in its general fund, and shall annually appropriate funds sufficient to make all Sublease Payments which become due to Sub-Lessor under this Sublease Agreement.

SECTION 7. **SUBLEASE PAYMENTS.**

A. District shall pay Sub-Lessor lease payments (the Sublease Payments) in conformance with and subject to the terms and conditions for payment for the project as set forth in the Services Agreement. In no event shall the sum of the Sublease Payments due hereunder exceed the Final GMP as it may be revised by the District from time to time in accordance with the provisions set forth in the Services Agreement. The Sublease Payments shall be adjusted to reflect any adjustment to the Final GMP agreed to in writing by the District and the Contractor.

B. SUB-LESSOR agrees that satisfactory progress pursuant to the time schedule required pursuant to the Services Agreement shall be conditions precedent to the making of Sublease Payments by the District. The determination of whether the Schedule has been adequately adhered to shall be made by the inspector hired by the District as provided in the Lease Build Services Agreement and as herein stated. If the District's inspector determines that pursuant to the Schedule, the work required to be performed prior to a given Sublease Payment has not been met, the District shall not be required to make that scheduled Sublease Payment. Once the District's inspector has notified the District that the work scheduled to be completed prior to the Sublease Payment in question has been completed, the District shall make the Sublease Payment corresponding to completion of such work.

C. The District shall retain an amount equal to ten percent (10%) of each Sublease Payment. However, at any time after fifty percent of the work has been completed, if the governing board of the District finds that satisfactory progress is being made, it may make any of the remaining Sublease Payments in full. The final Sublease Payment shall be made in the manner described in the Lease Build Services Agreement.

D. Should the District fail to pay any part of the Sublease Payments not otherwise excused pursuant to this Section or Section 9 hereof, within twenty-one (21) days from the due date thereof, the District shall, upon Sub-Lessor's written request, pay interest on such delinquent payment from the date said payment was due until paid at the rate of **six percent (6%)** per annum or two percent

(2%) over the prime interest rate, whichever is less, or in no event greater than the legal rate of interest allowable. The obligation of the District to pay Sublease Payments hereunder shall 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 limitations or requirements 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.

E. In the event that the District exercises its option under Section 25(B) below, and purchases the Project by paying the Prepayment Price, the District's obligations under this Lease, including but not limited to the District's obligation to pay Sublease Payments under this Section, shall thereupon cease and terminate.

F. Except as specifically provided in this Section and in Section 9 hereof, or as otherwise provided by law, the obligation of the District to make Sublease Payments when due and payable hereunder will be absolute and unconditional in all events and will not be subject to any set-off, defense, counterclaim, abatement or recoupment for any reason whatsoever.

SECTION 8. **FAIR RENTAL VALUE**

Sublease Payments shall be paid by District in consideration of the right of possession of, and the continued quiet use and enjoyment of, the Project and the Site during the lease. The parties hereto have agreed and determined that such total rental is not in excess of the fair rental value of the Project and the Site. In making such determination, consideration has been given to the fair market value of the Project and the Site, other obligations of the parties under this Sublease (including but not limited to costs of maintenance, taxes and insurance), the uses and purposes which may be served by the Project and the Site and the benefits therefrom which will accrue to the District and the general public, the ability of the District to make additions, modifications and improvements to the Project and the Site which are not inconsistent with the Services Agreement and which do not interfere with the Sub-Lessor's work on the Project and the Site.

SECTION 9. **TERMINATION**

A. Notwithstanding anything to the contrary stated or implied elsewhere in the Contract Documents, the District may terminate this Sublease (i) for convenience at any time (for any reason or no reason at all) upon twenty-one (21) days' prior written notice to SUB-LESSOR and (ii) immediately upon the occurrence of a Default hereunder by Sub-Lessor. Upon any termination of this Sublease for convenience prior to the final completion of the Project pursuant to the Services Agreement, the termination provisions set forth in Article 13 of the Services Agreement shall govern and control the rights and obligations of, and sets forth the exclusive remedies available to, the parties in connection with such termination. Upon any termination of this Sublease as a result of a Sub-Lessor Default prior to the final completion of the Project, the termination provisions set forth in Article 13 of the Services Agreement shall govern and control the rights and obligations of, and sets forth the exclusive remedies available to, the parties in connection with such termination. Upon any termination for convenience of the District or Default by Sub-Lessor after the final completion of the Project, then subject to the District's offset and withholding rights set forth in the Services Agreement, and its rights to indemnity under the Contract Documents, its right to damages resulting from, or to pursue its equitable remedies arising from, any Sub-Lessor Default hereunder or Sub-Lessor default under any of the other Contract Documents, and its right to attorneys' fees, costs and expenses if it is the prevailing party in any dispute under the Contract Documents, this Sublease shall terminate and the District shall pay to Sub-Lessor all amounts payable under the Contract Documents (including any "Sublease Payments" payable hereunder and any "Project Purchase Price" payable under the Services Agreement).

B. Notwithstanding anything elsewhere in the Contract Documents to the contrary, if any of the Contract Documents is terminated, the remaining Contract Documents shall automatically terminate concurrently therewith.

SECTION 10. **SUBLEASE PAYMENT ABATEMENT**

A. In addition to delay of Sublease Payments provided in Section 7, above, Sublease Payments due hereunder with respect to the Project and the Site shall be subject to abatement prior to the commencement of the use of the Project and the Site by the District or during any period in which, by reason of material damage to or destruction of the Project or the Site, there is substantial interference with the use and right of possession by the District of the Project and the Site or any substantial portion thereof. For each potential incident of substantial interference, decisions to be made on i) whether or not abatement shall apply; ii) the date upon which abatement shall commence; iii) the applicable portion of Sublease Payments to be abated and; iv) the concluding date of the particular abatement shall all be subject to determinations by the District in concert with the provider of the insurance issued pursuant to Section 18 herein. The amount of Sublease abatement shall be such that the Sublease Payments paid by the District during the period of Project and Site restoration do not exceed the fair rental value of the usable portions of the Project and Site. In the event of any damage or destruction to the Project or the Site, this Sublease shall continue in full force and effect.

B. Notwithstanding the foregoing, nothing contained herein will limit or otherwise modify the rights and obligations of the parties set forth elsewhere in the Contract Documents with respect to the insurance proceeds payable upon any casualty and/or any necessary repairs or restoration resulting from such casualty.

SECTION 11. **USE OF SITE AND PROJECT**

During the term of this Sublease, Sub-Lessor shall provide the District with quiet use and enjoyment of the Site without suit, or hindrance from Sub-Lessor or their assigns, provided District is in compliance with its duties under this Sublease. District will not use, operate or maintain the Site or Project improperly, carelessly, in violation of any applicable law, or in any other manner contrary to that contemplated by this Sublease. Except as may be required by the Services Agreement, District shall provide all permits and licenses, if any, necessary for the operation of the Project and Site. In addition, the District agrees to comply in all respects (including, without limitation, with respect to the time, maintenance and operation of the Project and Site) with laws of all jurisdictions in which its operations involving the Project and Site may extend and any legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Site or the Project. The District also agrees to comply with Sub-Lessor's dictated safety practices. Upon substantial completion of the Project or severable portions hereof, the Sub-Lessor shall provide the District with quiet use and enjoyment of the Site without suit or hindrance from the Sub-Lessor or its assigns, subject to reasonable interference from ongoing construction operations on any remaining portion of the Site under construction by the Sub-Lessor. Upon Final Completion, Sub-Lessor shall provide the District with quiet use and enjoyment of the Site without suit or hindrance from Sub-Lessor or its assigns, subject to reasonable interference from ongoing construction operations (if any) on the Site that are reasonably necessary to permit Sub-Lessor to perform and satisfy its obligations under the Services Agreement (including, without limitation, its warranty obligations thereunder). The foregoing shall in no event be construed as limiting any of Sub-Lessor's obligations set forth elsewhere in the Contract Documents, including those obligations requiring Sub-Lessor to (a) comply with all applicable laws relating to the Project and the Site, including the District's policies, rules and regulations, (b) maintain, and assume the responsibility for, proper safety practices and procedures on the Site, (c) assume responsibility for, and the risk of loss with respect

to, the Site during the time set forth in, and in accordance with, the Services Agreement, and (d) satisfy Sub-Lessor's other obligations under the Services Agreement.

SECTION 12. **SUB-LESSOR'S INSPECTION/ACCESS TO THE SITE**

District agrees that Sub-Lessor and any of Sub-Lessor's representatives shall have the right at all reasonable times to enter upon the Site or any portion thereof to construct and improve the Project, to examine and inspect the Site and the Project and to exercise its remedies pursuant to the section in this Sublease entitled "Remedies on Default." District further agrees that Sub-Lessor and any of Sub-Lessor's representatives shall have such rights of access to the Site as may be reasonably necessary to cause the proper maintenance of the Site and the Project in the event of failure by District to perform its obligations hereunder.

SECTION 13. **PROJECT ACCEPTANCE**

District shall acknowledge final inspection and completion of the Project by executing a Certificate of Acceptance and recording a Notice of Completion. The validity of this Sublease will not be affected by any delay in or failure of completion of the Project.

SECTION 14. **ALTERATIONS AND ATTACHMENTS**

All permanent improvements and additions that are made to the Project shall belong to and become the property of Sub-Lessor, subject to the provisions of the Site Lease and Sections 26 and 27 hereof. Separately identifiable attachments added to the Project by the District shall remain the property of the District. At Sub-Lessor's request, the District agrees to remove the attachments and restore the Project to substantially as good condition as when acquired and constructed, normal wear and tear excepted, in the event of failure by the District to perform its obligations hereunder.

SECTION 15. **MAINTENANCE**

District, at its own cost and expense, shall maintain the Project and the Site in good repair throughout the term of the Sublease upon completion of the Project.

SECTION 16. **UTILITIES**

Prior to Final Completion, Sub-Lessor shall be responsible for, and shall contract for and pay the expenses of, all utilities and other services for the Project and the Site required to be provided by Sub-Lessor during performance of the Work pursuant to the Services Agreement, and the District shall be responsible for, and shall, in its own name, contract for and pay the expenses of, all other utilities and other services required for the operation of the Project and the Site. Unless otherwise so specified in the Services Agreement, District shall, in its own name, contract for and pay the expenses of all utility services required for the Project and Site once constructed. Such utilities include but are not limited to, all air conditioning, heating, electrical, gas, water, and sewer services. The District shall be liable for payment as well as maintenance of all utility services received.

SECTION 17. **DAMAGE DESTRUCTION OR CONDEMNATION**

Unless otherwise so specified in the Services Agreement, with the exception of acts resulting from misconduct or negligence by Sub-Lessor, its agents and representatives, upon acceptance or taking occupancy of the Project the District assumes all risk of loss of, damage to or condemnation of the Project or the Site from any cause or for any reason whatsoever, and no such loss of, damage to or condemnation of the Project or the Site shall relieve the District of (i) the obligation to make the

Sublease Payments hereunder subject to the provisions in Sections 7 and 9 hereof, or (ii) to perform any other obligation under this Sublease. The District waives the benefit of Civil Code sections 1932(2) and 1933(4) and any and all other rights to terminate this Sublease by virtue of any damage or destruction to the Project or the Site.

SECTION 18. **TAXES**

District shall keep the Project and the Site free and clear of all levies, liens, and encumbrances and shall pay all license fees, registration fees, assessments, charges, and taxes (municipal, state, and federal) if applicable, which may now or hereafter be imposed upon the ownership, leasing, renting, sale, possession, or use of the Project and the Site, excluding, however, all taxes on or measured by Sub-Lessor's income. SECTION 19. **DEFAULT BY THE DISTRICT; REMEDIES**

A. It shall be a **"Default"** by the District hereunder if the District has substantially failed to perform its obligations under this Sublease for a period in excess of twenty-one (21) days following delivery of written notice from Sub-Lessor to the District of such failure, which written notice must include a description of the District's substantial failure to perform and the status of the Work completed under the Services Agreement as of the date of such notice, together with a description and a cost estimate of the effort necessary to complete Work in progress.

B. Upon the occurrence of any Default by the District, Sub-Lessor may terminate this Sublease by delivery of written notice of such election to the District (in which event the Site Lease and the Services Agreement shall automatically terminate concurrently therewith). If the District cures such failure to perform within the above-described 21 day period or prior to the effective date of termination, then none of the Contract Documents may be terminated by Sub-Lessor by reason of such failure to perform. Upon any such termination of this Sublease by Sub-Lessor prior to Final Completion, the termination provisions set forth in Article 13 of the Services Agreement shall govern and control the rights and obligations of, and sets forth the exclusive remedies available to, the parties in connection with such termination.

C. If Sub-Lessor does not elect to terminate this Sublease pursuant to the foregoing, the District agrees to and shall remain liable for the payment of Sublease Payments, and, if applicable, Sublease Prepayments, and the performance of all conditions and obligations of the District set forth herein, in accordance with the terms and provisions of this Sublease and the other Contract Documents.

D. Notwithstanding any provision to the contrary elsewhere in the Contract Documents, the remedies expressly provided for herein and in the other Contract Documents supersede any and all remedies that may be available to Sub-Lessor at law or in equity (including, without limitation, any remedies of a landlord or Sub-Lessor under the California Civil Code), and, upon a Default by the District, Sub-Lessor shall not have the right to exercise any remedy other than the right to terminate this Sublease (and the other Contract Documents), and collect those amounts payable to Sub-Lessor pursuant to the express terms of the Contract Documents. In furtherance of and not in limitation of the foregoing, and notwithstanding any provision to the contrary elsewhere in the Contract Documents, Sub-Lessor shall not under any circumstances have the right to accelerate the Sublease Payments that fall due in future Sublease periods or otherwise declare any Sublease Payments not then due and payable pursuant to the express terms and provisions of this Sublease to be immediately due and payable, and Sub-Lessor hereby waives its rights, if any, under any statutory provisions or other laws to the contrary.

SECTION 20. **DEFAULT BY SUB-LESSOR; REMEDIES**

A. The occurrence of any of the following events shall constitute a **"Default"** hereunder by Sub-Lessor: (a) Sub-Lessor fails in the performance of any obligation on its part to be performed

under the terms of this Sublease, and such default continues for twenty-one (21) days following the delivery of written notice thereof from the District to Sub-Lessor, (b) a "Default" by Sub-Lessor occurs under the Services Agreement and/or the Site Lease, (c) Sub-Lessor commences a voluntary action under any chapter of the United States Bankruptcy Code as now or hereafter in effect or Sub-Lessor takes any equivalent or similar action by filing a petition or otherwise under any other Federal or State law in effect at such time relating to bankruptcy or insolvency, (d) a petition is filed against Sub-Lessor under any chapter of the United States Bankruptcy Code as now or hereafter in effect at the time of filing or a petition is filed seeking any such equivalent or similar relief against Sub-Lessor under any other Federal or State law in effect at the time relating to bankruptcy or insolvency and such petition or filing is not dismissed within 60 days after being filed, (e) Sub-Lessor makes a general assignment for the benefit of creditors, or (f) a trustee, receiver, custodian or agent of Sub-Lessor is appointed under applicable law or under contract whose appointment of authority to take charge of property of Sub-Lessor is for the purpose of enforcing a lien against such property or for the purpose of general administration of such property for the benefit of Sub-Lessor's creditors.

B. Upon the occurrence of a Default by Sub-Lessor hereunder, the District may exercise all of its rights and remedies under this Sublease, in addition to any of its rights and remedies under the Site Lease and the Services Agreement, except that no merger of this Sublease and of the Site Lease shall be deemed to occur as a result thereof.

SECTION 21. **REMEDIES**

Except as otherwise expressly set forth herein or in any of the other Contract Documents, no right or remedy herein conferred upon or reserved to Sub-Lessor or the District is exclusive of any other right or remedy herein or under the other Contract Documents, but each such remedy shall be cumulative of every other right or remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise, and may be enforced concurrently therewith or from time to time.

SECTION 22. **NON-WAIVER**

No covenant or condition to be performed by District or Sub-Lessor under this Sublease can be waived except by the written consent of the other party. Forbearance or indulgence by District or Sub-Lessor in any regard whatsoever shall not constitute a waiver of the covenant or condition in question. Until complete performance by the District or Sub-Lessor of said covenant or condition, the other party shall be entitled to invoke any remedy available to it under this Sublease or by law or in equity despite said forbearance or indulgence.

SECTION 23. **ASSIGNMENT**

Without the prior written consent of the Sub-Lessor, which consent shall not be unreasonably withheld, the District shall not (a) assign, transfer, pledge, or hypothecate this Sublease, the Project and the Site, or any part thereof, or any interest therein, or (b) sublet or lend the use of the Project or any part thereof, except as authorized by the provisions of the California Civic Center Act, Education Code section 38130 et seq. Consent to any of the foregoing prohibited acts applies only in the given instance and is not a consent to any subsequent like act by the District or any other person. The Sub-Lessor shall not assign its obligations under this Sublease with the exception of their obligation to issue default notices and to convey or reconvey their interest in the Project and Site to the District upon full satisfaction of the District's obligations hereunder; however, the Sub-Lessor may assign their right, title and interest in this Sublease, the Sublease Payments and other amounts due hereunder and the Project in whole or in part to one or more assignees or subassignees at any time upon written notice to the District. No assignment shall be effective as against the District unless and until the District is so notified in writing and the District consents, which consent shall not be reasonably withheld. The District shall pay all

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Sublease Payments due hereunder pursuant to the direction of Sub-Lessor or the assignee named in the most recent assignment or notice of assignment. During the Sublease term, the District shall keep a complete and accurate record of all such assignments. Subject always to the foregoing, this Sublease inures to the benefit of, and is binding upon, the heirs, legatees, personal representatives, successors, and assigns of the parties hereto.

SECTION 24. **OWNERSHIP; TRANSFER OF TITLE**

A. The Project is and shall at all times be and remain the sole and exclusive property of the Sub-Lessor, and the District shall have no right, title, or interest therein or thereto except as expressly set forth in the Contract Documents.

B. All right, title and interest of Sub-Lessor to the Project shall be transferred to and shall vest in the District, without the necessity for any further instrument of transfer, upon the expiration or earlier termination of this Sublease. Sub-Lessor hereby agrees to execute, acknowledge, deliver, and record such instruments as the District may reasonably request to evidence such transfer of title to the District.

SECTION 25. **SUBLEASE PREPAYMENTS/PURCHASE OPTION**

A. **Sublease Prepayments.** At any time during the term of this Sublease, the District may, upon the request of the Sub-Lessor or on upon its own initiative, make Sublease Prepayments to the Sub-Lessor. No Sublease Prepayments requested by the Sub-Lessor may be made by the District in an amount exceeding the aggregate true cost to the Sub-Lessor of the work on the Project completed to the date the Sub-Lessor submits the request for a Sublease Prepayment less the aggregate amount of: (1) all Sublease Payments previously made by the District to the Sub-Lessor; (2) all Sublease Prepayments previously made by the District to the Sub-Lessor; (3) all amounts previously retained, pursuant to Section 25(A)(3) below, from Sublease Prepayments previously made by the District to the Sub-Lessor (unless the Sub-Lessor shall have previously substituted securities for such retained amounts pursuant to Section 25(A)(3)); and (4) the retention for such Sublease Prepayment pursuant to Section 25(A)(3). Sub-Lessor must submit evidence that the conditions precedent set forth in Section 25(A)(1), below, have been met. In the event District elects to make Sublease Prepayments, the Prepayment Price, contemplated in Section 25(B), below, shall be adjusted accordingly.

1. The following are conditions precedent to any Sublease Prepayments made to the Sub-Lessor pursuant to a request of the Sub-Lessor:

   a. Satisfactory progress of the Construction pursuant to the time schedule required pursuant to the Services Agreement (the Time Schedule) shall have been made as determined in Section 25 (A)(2), below.

   b. Sub-Lessor shall also submit to the District (i) duly executed conditional lien releases and waivers (in the form provided in California Civil Code Section 3262) from the Sub-Lessor, (ii) duly executed unconditional lien releases and waivers (in the form provided in California Civil Code Section 3262) from the Sub-Lessor, and (iii) any other items that the Sub-Lessor may be required to collect and distribute to the District pursuant to the terms and provisions of the Services Agreement. Sub-Lessor shall promptly pay all amounts due to each subcontractor, consultant and other person retained by Sub-Lessor in connection with the Project after Sub-Lessor's receipt of a Sublease Prepayment from the District, but in no event later than thirty (30) days after Sub-Lessor's receipt of an undisputed and properly submitted payment request from such subcontractor, consultant or other person retained by Sub-Lessor in connection with the Project.

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2. The determination of whether satisfactory progress of the Construction pursuant to the Time Schedule has occurred shall be made by the inspector hired by the District pursuant to the Services Agreement. If the District's inspector determines that pursuant to the Time Schedule, the work required to be performed, as stated in the Sub-Lessor's Sublease Prepayment request has not been substantially completed, the Sub-Lessor shall not be eligible to receive the requested Sublease Prepayment.

3. The District shall retain an amount equal to **ten percent (10%)** of each Sublease Prepayment (retention) made at Sub-Lessor's request. Sub-Lessor shall have the right, as delineated in the Services Agreement, to substitute securities for any retention withheld by the District, pursuant to the provisions of Public Contract Code section 22300.

B. **Purchase Option.** If the District is not in default hereunder, the District shall be granted an option to purchase not less than all of the Project. The Prepayment Price at any given time shall be an amount equal to the GMP, as it may be revised from time to time, less the sum of any Sublease Payments and/or Sublease Prepayments made by the District prior to the date on which the District elects to exercise its option under this Section.

SECTION 26. **RELEASE OF LIENS**

A. Notwithstanding any other provisions, upon District executing a Certificate of Acceptance and filing a Notice of Completion on the Project, as such term is defined herein and in the Services Agreement, Sub-Lessor or its assignee and the District shall release Sub-Lessor's leasehold interest in Project and the Site.

B. Sub-Lessor shall authorize, execute and deliver to the District all documents reasonably requested by the District to evidence (i) the release of any and all liens created pursuant to the provisions of this Sublease and the Site Lease, and (ii) any other documents required to terminate the Site Lease and this Sublease.

C. Nothing in this Sublease precludes the Sub-Lessor from utilizing the provisions of Civil Code Section 3196 et seq. related to releases from stop notices.

SECTION 27. **TERMINATION OF SERVICES AGREEMENT**

In the event the Services Agreement and or Site Lease is terminated pursuant to the provisions contained therein, this Sublease shall immediately terminate.

SECTION 28. **SEVERABILITY**

If any provision of this Sublease shall be held invalid or unenforceable by a court of competent jurisdiction, such holdings shall not invalidate or render unenforceable any other provision of this Sublease, unless elimination of such provision materially alters the rights and obligations embodied in this Sublease.

SECTION 29. **NOTICES**

Any notices or filings required to be given or made under this Sublease shall be served, given or made in writing upon the District or the Sub-Lessor, as the case may be, by personal delivery or registered mail to the respective addresses given below. Any change in the addresses noted shall not be binding upon the other party unless preceded by no less than **ten (10)** days prior written notice. Any such notices shall be deemed to have been received by the addressee if delivered to the person for whom they are intended or if sent by registered mail, return receipt requested, or by telex, telegram, or fax followed by regular mail, addressed as follows

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If to Sub-Lessor:

Jon Alan Baker, AIA, Principal
NTD-EDGE Design-Builders
4719 Viewridge Avenue, Suite 200
San Diego, CA. 92123

If to District:

Roger Yohe, Superintendent
Western Place Unified School District
810 J Street
Lincoln, CA 95648

SECTION 30. **BINDING EFFECT**

This Sublease shall inure to the benefit of and shall be binding upon the District, the Sub-Lessor and their respective successors in interest and assigns.

SECTION 31. **EXECUTION IN COUNTERPARTS**

This Sublease 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.

SECTION 32. **LAWS, VENUE**

The terms and provisions of this Sublease shall be construed in accordance with the laws of the State of California. If any action is brought in a court of law to enforce any term of this Sublease, the action shall be brought in a state court situated in the County of the Project's location.

SECTION 33. **INTEGRATION/MODIFICATION**

This Sublease constitutes the entire agreement between Sub-Lessor and the District as to those matters contained herein, and supersedes and cancels any prior oral or written understanding, promises or representations with respect to those matters covered herein, and it shall not be amended, altered, or changed except by a written agreement signed by the parties hereto.

SECTION 34. **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.

SECTION 35. **TITLES**

The titles to the sections of this Sublease are solely for the convenience of the parties and are not an aid in the interpretation thereof, and in no way define, limit or describe the scope or intent of any provisions of sections of this Sublease.

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SECTION 36. **TIME**

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

IN WITNESS WHEREOF, the parties hereto have executed this Sublease by their authorized officers as of the day and year first written above.

WESTERN PLACER UNIFIED SCHOOL DISTRICT

BY: _____

ITS:

NTD-EDGE DESIGN-BUILDERS
SUB-LESSOR

BY: _____
Jon Alan Baker, AIA

ITS: Principal

BY: _____
Dayne Wagoner

ITS: Principal / CEO

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SITE LEASE

Dated as of March 25, 2004

Between

WESTERN PLACER UNIFIED SCHOOL DISTRICT

and

NTD-EDGE
Design Builders

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SITE LEASE

This SITE LEASE is dated as of March 25, 2004 and is by and between the Western Placer Unified School District, a school district duly organized and existing under the laws of the State of California (the District) as lessor and NTD-EDGE Design-Builders, Inc., a corporation organized and operating under the laws of the State of California (the Lessee) with its principal place of business located at 4719 Viewridge Avenue, Suite 200, San Diego, Ca. 92123.

WHEREAS, the District desires to provide for the construction of certain public improvements at the 12 Bridges Middle School site (the Project); and

WHEREAS, the District's governing board has determined that it is in the best interests of the District and for the common benefit of the citizens it serves to construct the Project by leasing to the Lessee the 12 Bridges Middle School site at which the public improvements are to be constructed, as more specifically described under SECTION 1 of this document and subleasing from the Lessee the Site and the Project under a Sublease Agreement (Sublease) dated March 25, 2004 and by this reference incorporated herein; and

WHEREAS, the District and the Lessee have entered into the Services Agreement dated March 25, 2004 by this reference incorporated herein, to ensure that the Project will meet the District's expectations; and

WHEREAS, the District is authorized under Section 17406 of the California Education Code to lease the Site and its governing body has duly authorized the execution of this Site Lease; and

WHEREAS, the Lessee is authorized to lease the Site and to construct the Project on the Site, and has duly authorized the execution and delivery of the Sublease and this Site Lease.

NOW THEREFORE, in consideration of the covenants hereinafter contained, District and Lessee agree as follows:

SECTION 1. **Definitions** Unless the context otherwise requires, the terms defined in this Section shall, for all purposes of this Lease, have the meanings as herein specified.

A. **Approved Plans** means the final working drawings as approved by the District and the Division of State Architect (DSA)

B. **Services Agreement** means the Services Agreement Between District and Lessee as Builder for construction of improvements on the 12 Bridges Middle School site by and between the District and the Lessee dated as of March 25, 2004.

C. **Contract Documents** means the Services Agreement, the Facility Sublease and this Site Lease.

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

E. **Effective Date** shall mean the day on which the District issues a notice to proceed on the Project pursuant to the provisions of Article 4 of the Services Agreement.

F. **Lessee** shall mean NTD-EDGE Design-Builders, Inc., and its successors and assigns.

G. **Project** means the improvements and equipment to be constructed and installed by the Lessee, as more particularly described in the Approved Plans as defined in the Services Agreement.

H. **Site** means that certain parcel of real property and improvements thereon (if any) more particularly described as:

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See Exhibit A for Legal Description

I. **Site Lease** means this Site Lease together with any duly authorized and executed amendment hereto under which the District leases the Site to the Lessee.

J. **Sublease** means the Facility Sublease Agreement dated as of March 25, 2004, by and between the District and the Lessee together with any duly authorized and executed amendment thereto.

K. **Sublease Payment** means any payment required to be made by the District pursuant to Section 7 of the Sublease. Such Sublease Payment shall not utilize state bond funds or the District's matching funds for this Project

L. **Sublease Prepayment** means any payment which may be made by the District pursuant to Section 25 of the Sublease which is, in the opinion of the District, consistent with applicable law related to the use of state bond funds

M. **Term of this Lease or Term** means the time during which this Lease is in effect, as provided for in Section 3 of this Lease.

SECTION 2. **SITE LEASE**

The District leases to the Lessee, and the Lessee leases from the District, on the terms and conditions set forth herein, the Site situated in the County of Placer, State of California, more specifically described in Exhibit A attached hereto, including any real property improvements now or hereafter affixed thereto.

SECTION 3. **TERM**

The term of this Site Lease shall become effective upon the authorized execution of this Site Lease and after the District issues a notice to proceed on the Project pursuant to the provisions of Article 4 of the Services Agreement. The term of this Site Lease commences on the Effective Date and terminates two (2) months following the filing of the Notice of Completion unless sooner terminated as hereinafter provided. If on the scheduled date of termination of this Site Lease, Sublease Payments shall have been abated at any time and for any reason, then the term of this Site Lease shall be extended until the date upon which all such Sublease Payments shall be fully paid. At the termination of this Lease, natural or otherwise, title to the Site, and any improvements constructed thereon by the Lessee, shall vest in the District in accordance with Education Code section 17406.

SECTION 4. **REPRESENTATIONS, COVENANTS, AND WARRANTIES OF THE DISTRICT.** The District represents, covenants and warrants to the Lessee that:

A. The District has good and merchantable fee title to the Site and has authority to enter into and perform its obligations under this Site Lease;

B. There are no liens on the Site other than Permitted Encumbrances;

C. All taxes, assessments or impositions of any kind levied against the District with respect to the Site, if applicable, except current taxes, have and shall be paid for by the District;

D. The Site is properly zoned for the intended purpose and utilization of the Site or the District intends to render zoning inapplicable pursuant to Government Code section 53094.

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E. The District is in compliance with all laws, regulations, ordinances and orders of public authorities applicable to the Site;

F. There is no litigation of any kind currently pending or threatened regarding the Site or the District's use of the Site for the purposes contemplated by this Site Lease;

G. To the best of the District's knowledge, without duty of investigation:

(1) no dangerous, toxic or hazardous pollutants, contaminants, chemicals, waste, materials or substances, as defined in or governed by the provisions of any State or Federal Law relating thereto (hereinafter collectively called Environmental Regulations), and also including, but not limited to, urea-formaldehyde, polychlorinated biphenyls, asbestos, asbestos containing materials, nuclear fuel or waste, radioactive materials, explosives, carcinogens and petroleum products, or any other waste, material, substance, pollutant or contaminant which would subject the owner of the Site or the Lessee or the Lessee's subcontractors to any damages, penalties or liabilities under any applicable Environmental Regulation (hereinafter collectively called Hazardous Substances), are now or have been stored, located, generated, produced, processed, treated, transported, incorporated, discharged, emitted, released, deposited or disposed of in, upon, under, over or from the Site; and District has provided Lessee copies of all reports in its possession pertaining to Site conditions

(2) no threat exists of a discharge, release or emission of a Hazardous Substance upon or from the Site into the environment;

(3) the Site has not been used as or for a mine, a landfill, a dump or other disposal facility, industrial or manufacturing facility, or a gasoline service station;

(4) no underground storage tank is now located in the Site or has previously been located therein;

(5) no violation of any Environmental Regulation now exists relating to the Site, no notice of any such violation or any alleged violation thereof has been issued or given by any governmental entity or agency, and there is not now any investigation or report involving the Site by any governmental entity or agency which in any way relates to Hazardous Substances;

(6) no person, party or private or governmental agency or entity has given any notice of or asserted any claim, cause of action, penalty, cost or demand for payment or compensation, whether or not involving any injury or threatened injury to human health, the environment or natural resources, resulting or allegedly resulting from any activity or event described in (1) above;

(7) there are not now any actions, suits, proceedings or damage settlements relating in any way to Hazardous Substances, in, upon, under over or from the Site;

(8) the Site is not listed in the United States Environmental Protection Agency's National Priorities List of Hazardous Waste Sites or any other list of Hazardous Substance sites maintained by any federal, state or local governmental agency; and

(9) the Site is not subject to any lien or claim for lien or threat of a lien in favor of any governmental entity or agency as a result of any release or threatened release-of any Hazardous Substance.

H. To the extent permitted by law, the District shall not abandon the Site for the use for which it is currently required by the District and further, shall not seek to substitute or acquire property to be used as a substitute for the uses for which the Site and Project are to be maintained under the Site Lease.

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I. The term Permitted Encumbrances as used herein shall mean, as of any particular time:

(1) liens for general ad valorem taxes and assessments, if any, not then delinquent;

(2) this Site Lease; the Sublease; any right or claim of any mechanic, laborer, materialman, supplier, or vendor, if applicable, not filed or perfected in the manner prescribed by law; easements, rights of way, mineral rights, drilling rights, and other rights, reservations, covenants, conditions, or restrictions which exist of record as of the date of this Site Lease and which will not materially impair the use of the Site; and District has provided Lessee a copy of a current title report pertaining to the Site.

(3) easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions, or restrictions established following the date of recordation of this Site Lease and to which the Lessee and the District consent in writing which will not impair or impede the operation of the Site.

SECTION 5. **REPRESENTATIONS AND WARRANTIES OF THE LESSEE.** The Lessee represents and warrants to the District that:

A. The Lessee is duly organized, validly existing and in good standing under the laws of the State of California, with full corporate power and authority to lease and own real and personal property;

B. The Lessee has full power, authority and legal right to enter into and perform its obligations under this Site Lease, and the execution, delivery and performance of this Site Lease has been duly authorized by all necessary corporate actions on the part of the Lessee and does not require any further approvals or consents;

C. Execution, delivery and performance of this Site Lease does not and will not result in any breach of or constitute a default under any indenture, mortgage, contract, agreement or instrument to which the Lessee is a party or by which it or its property is bound;

D. There is no pending or, to the best knowledge of the Lessee, threatened action or proceeding before any court or administrative agency which will materially adversely affect the ability of the Lessee to perform its obligations under this Site Lease; and

SECTION 6. **RENTAL**

The Lessee shall pay to the District as and for advance rental hereunder $1.00 per year or part thereof, on or before the date of commencement of the term of this Site Lease.

SECTION 7. **PURPOSE**

The Lessee shall use the Site solely for the purpose of constructing the Project thereon and for subleasing the Site and the Project to the District. All other uses of the Site, including, but not limited to, any use that is inconsistent with the policies, rules and regulations of the District by Lessee or anyone claiming under Lessee are expressly prohibited without the prior written consent of the District.

SECTION 8. **TERMINATION BY LESSEE.** The Lessee agrees, upon termination of this Site Lease:

A. To quit and surrender the Site in the same good order and condition as it was in at the time of commencement of the term hereunder, reasonable wear and tear excepted;

B. To release and reconvey to the District any liens and encumbrances created or caused by the Lessee; and

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C. That any and all permanent improvements and structures existing upon the Site at the time of the termination of this Site Lease shall remain thereon and title thereto shall vest in the District.

Notwithstanding the District's foregoing rights in the event of termination, the Lessee shall retain the right to full compensation for all services rendered prior to the termination, including all rights they have under the Services Agreement and the Sublease for the value of the work performed on the Site and/or the Project.

In the event the Services Agreement is terminated pursuant to the provisions therein, this Site Lease shall immediately terminate.

SECTION 9. **TERMINATION BY DISTRICT**

A. Notwithstanding anything to the contrary stated elsewhere in the Contract Documents, the District may terminate this Site Lease (i) for convenience at any time (for any reason or no reason at all) upon twenty-one (21) days' prior written notice to Lessee or (ii) immediately upon the occurrence of a Default hereunder by Lessee. Upon any termination of this Site Lease for convenience prior to the final completion of the Project pursuant to the Services Agreement, the termination provisions set forth in Article 13 of the Services Agreement shall govern and control the rights and obligations, and sets forth the exclusive remedies available to, the parties in connection with such termination. Upon any termination of this Site Lease as a result of a Lessee Default prior to the final completion of the Project, the termination provisions set forth in Article 13 of the Services Agreement shall govern and control the rights and obligations, and sets forth the exclusive remedies available to, the parties in connection with such termination. Upon any termination for convenience of the District or Default by Lessee after the final completion of the Project, then subject to the District's offset and withholding rights set forth in the Services Agreement, its rights to indemnity under the Contract Documents, its right to damages resulting from, or to pursue its equitable remedies arising from, any Lessee Default hereunder or Lessee Default under any of the other Contract Documents, and its right to attorneys' fees, costs and expenses if it is the prevailing party in any dispute under the Contract Documents, this Site Lease shall terminate and the District shall pay to Lessee all amounts payable under the Contract Documents (including any "Sublease Payments" payable under the Sublease 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 Lessee in connection with any such termination set forth elsewhere in the Contract Documents, Lessee shall be obligated to:

(1) quit and, subject to the terms and provisions of clause (3) immediately below, surrender the Site in the same good order and condition as it was in at the time of commencement of the term hereunder, reasonable wear and tear excepted;

(2) release and reconvey to the District any liens and encumbrances created or caused by Lessee or anyone claiming by, under or through Lessee; and

(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 Lessee pursuant to the Services Agreement) and transfer and vest title thereto to the District in accordance with the terms of Section 24 of the Sublease.

B. If the Services Agreement or the Sublease is terminated pursuant to the provisions therein, this Site Lease shall immediately terminate concurrently therewith.

SECTION 10. **QUIET ENJOYMENT**

The District covenants and agrees that it will not take any action to prevent the Lessee's quiet enjoyment of the Site during the term hereof; and, that in the event District' s fee title to the Site is ever challenged so as to interfere with the Lessee's right to occupy, use and enjoy the Site, the District will use all governmental powers at its disposal, including the power of eminent domain, to obtain unencumbered fee title to the Site and to defend the Lessee's right to occupy, use, and enjoy the Site. The District, however, retains the right, throughout the Site Lease Term, to use the Site for District purposes, pursuant to the terms of the Sublease, subject to the approval of the Lessee, which shall not be unreasonably withheld.

SECTION 11. **NO LIENS**

The District shall not mortgage, sell, assign, transfer or convey the Site or any part thereof to any person during the term of this Site Lease, without the written consent of the Lessee. Nothing herein shall preclude the District from granting utility easements across the Site to facilitate the use and operation of the Project for which it is intended.

SECTION 12. **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 or to make any repairs, improvements or changes necessary for the preservation thereof, but in doing so shall not interfere with the Lessee's operations and safety on the Project.

SECTION 13. **ASSIGNMENT AND SUBLEASING**

The Lessee will not assign or otherwise dispose of or encumber the Site or this Site Lease without the written consent of the District.

SECTION 14. **NO WASTE**

The Lessee agrees that at all times that it is in possession of the Site it will not commit, or suffer, or permit any waste on the Site, and it will not willfully or knowingly use or permit the use of the Site for any illegal act or purpose.

SECTION 15. **NOT USED**

SECTION 16 **DEFAULT BY LESSEE; REMEDIES**

A. The occurrence of any of the following events shall constitute a "Default" hereunder by Lessee: (a) Lessee fails in the performance of any obligation on its part to be performed under the terms of this Site Lease and such default continues for twenty-one (21) days following the delivery of written notice thereof from the District to Lessee, (b) a "Default" by Lessee occurs under the Services Agreement or the Sublease, (c) Lessee commences a voluntary action under any chapter of the United States Bankruptcy Code as now or hereafter in effect or Lessee takes any equivalent or similar action by filing a petition or otherwise under any other Federal or State law in effect at such time relating to bankruptcy or insolvency, (d) a petition is filed against Lessee under any chapter of the United States Bankruptcy Code as now or hereafter in effect at the time of filing or a petition is filed seeking any such equivalent or similar relief against Lessee under any other Federal or State law in effect at the time relating to bankruptcy or insolvency and such petition or filing is not dismissed within 60 days after being filed, (e) Lessee makes a general assignment for the benefit of creditors or (f) a trustee, receiver, custodian or agent of Lessee is appointed under applicable law or under contract whose

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appointment of authority to take charge of property of Lessee is for the purpose of enforcing a lien against such property or for the purpose of general administration of such property for the benefit of Lessee's creditors.

B. Upon the occurrence of a Default by Lessee hereunder, the District may exercise all of its rights and remedies under this Site Lease (including, without limitation, its right to terminate this Site Lease pursuant to Section 9 above), in addition to any of its rights and remedies under the Sublease and the Services Agreement.

SECTION 17. **DEFAULT BY DISTRICT; REMEDIES**

A. It shall be a "Default" by the District hereunder if the District has substantially failed to perform its obligations under this Site Lease for a period in excess of twenty-one (21) days following delivery of written notice from Lessee to the District of such failure, which written notice must include a description of the District's substantial failure to perform and the status of the Work completed under the Services Agreement as of the date of such notice, together with a description and a cost estimate of the effort necessary to complete Work in progress.

B. Upon the occurrence of any Default by the District, Lessee may terminate this Site Lease by delivery of written notice of such election to the District (in which event the Sublease and the Services Agreement shall automatically terminate concurrently therewith). If the District cures such failure to perform within the above-described 21- day period or prior to the effective date of termination, then none of the Contract Documents may be terminated by Lessee by reason of such failure to perform. In the event of any such termination by Lessee for Default by the District, Lessee may pursue, as its exclusive remedies for such District Default, its rights and remedies under the Sublease and/or Services Agreement.

C. Notwithstanding any provision to the contrary elsewhere in the Contract Documents, the remedies expressly provided for herein and in the other Contract Documents supersede any and all remedies that may be available to Lessee at law or in equity (including, without limitation, any remedies of a landlord, lessor or tenant under the California Civil Code), and upon a Default by the District, Lessee shall not have the right to exercise any remedy other than the right to terminate this Site Lease (and the other Contract Documents) and collect those amounts payable to Lessee pursuant to the express terms of the Contract Documents.

SECTION 18. **EMINENT DOMAIN**

In the event the whole or any part of the Site or the improvements thereon, including but not limited to the Project, is taken by eminent domain, the financial interest of the Lessee shall be recognized and is hereby determined to be the amount of all Sublease Payments then due or past due, the next succeeding Sublease Payment and the purchase option price as set forth in Section 27 of the Sublease less any unearned interest as of the date the Lessee receives payment in full. The balance of the award in such eminent domain action, if any, shall be paid to the District.

SECTION 19. **TAXES**

The terms of this Lease may result in the creation of a possessory interest. If such a possessory interest is vested in a private party to this document, the private party may be subjected to the payment of personal property taxes levied on such interest.

SECTION 20. **INDEMNIFICATION**

A. The District covenants and agrees to indemnify, defend and hold the Lessee harmless from and against any and all losses, claims, suits, damages and expenses (including reasonable attorneys fees) arising out of the unforeseen or unforeseeable condition of the Site, including but not limited to, all costs required to be

incurred by the Lessee as a result of any condition described in Section 4, paragraph G hereof, unless the condition is caused or created by Lessee, whether or not known to the District on the date of execution of this Site Lease, or unless such cost is contemplated to be paid by the Lessee pursuant to the provisions of the Services Agreement. All other indemnification issues related to this Site Lease, the Site or the progress and prosecution of the Project shall be governed by the Services Agreement and Sublease.

B. Lessee shall assume the defense of and indemnify, and hold harmless DISTRICT (including its trustees, officers, agents, members, employees), and each of them, of and from any and all claims, demands, damages, costs, expenses, attorneys' fees, losses or liability, in law or in equity, of every kind and nature whatsoever arising out of, or in connection with Lessee's negligent acts, errors, or omissions in performing Work under this Contract including, but not limited to:

(i) Personal injury (including, but not limited to, bodily injury, emotional injury, or distress, sickness, or disease) or death to persons, including, but not limited to, any employees or agents of DISTRICT, Lessee, or any subcontractor, or damage to property of anyone including the Work itself (including loss of use thereof), caused in whole or in part by any negligent act of omission of DISTRICT, or Lessee, or anyone directly or indirectly employed by them, or anyone for whose acts they may be liable.

(ii) Penalties imposed on account of the violation of any law, order, citation, rule, regulation, standard, ordinance, or stature, caused by the action or inaction of Lessee;

(iii) Infringement of any patent rights which may be brought arising out of Lessee's design;

(iv) Lessee's failure to fulfill any of the covenants set for the in this Agreement;

(v) Failure of Lessee to comply with the provision of this Agreement relating to insurance, provided that such Insurance is available at reasonable terms; and

(vi) Any violation or infraction by Lessee of any law, order, citation, rule, regulation, standard, ordinance, or statute in any way relating to the occupation, health, or safety of employees of DISTRICT, Lessee, or any subcontractor.

(b) It is understood and agreed that such indemnity shall survive the termination of this Agreement. The indemnities set forth in this section shall not be limited by the insurance requirements set forth in this Agreement.

(c) Lessee's indemnification of DISTRICT will not include indemnification for claims which arise as the result of the active negligence of DISTRICT, or the sole negligence or willful misconduct of DISTRICT, it's agents, servants or independent contractors who are directly responsible to DISTRICT, or for defects in design furnished by such persons, other than Lessee and its agents, consultants and sub-consultants.

C. In claims against any person or entity indemnified under this Paragraph by an employee of Lessee, anyone directly or indirectly employed by Lessee or anyone for whose acts Lessee may be liable, the indemnification obligation under this Paragraph shall not be restricted by a limitation on amount or type of damages, compensation or benefits payable by or for Lessee under workers' compensation acts, disability benefit acts or other employee benefit acts.

SECTION 21. **SEVERABILITY**

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

SECTION 22. **INSURANCE**

At all times during the term of this Site Lease, Lessee, the Site and project shall be insured pursuant to, and in accordance with, the applicable terms and provisions of Article 7 of the Services Agreement.

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SECTION 23. **COMPLIANCE WITH THE LAW**

Lessee covenants and agrees that Lessee 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.

SECTION 24. **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.

SECTION 25. **NOTICES**

Any notices or filings required to be given or made under this Site Lease shall be served, given or made in writing upon the District or the Lessee, as the case may be, by personal delivery or registered mail to the respective addresses given below. Any change in the addresses noted shall not be binding upon the other party unless preceded by no less than ten (10) days prior written notice. Any such notices shall be deemed to have been received by the addressee if delivered to the person for whom they are intended or if sent by registered mail, return receipt requested, or by telex, telegram, or fax followed by regular mail, addressed as follows:

If to Lessee:

Jon Alan Baker, AIA, Principal
NTD-EDGE Design-Builders
4719 Viewridge Avenue, Suite 200
San Diego, CA. 92123

If to District:

Roger Yohe, Superintendent
Western Placer Unified School District
810 J Street
Lincoln, CA 95648

SECTION 26. **BINDING EFFECT**

This Site Lease shall inure to the benefit of and shall be binding upon the District, the Lessee and their respective successors in interest and assigns.

SECTION 27. **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.

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SECTION 28. **LAWS, VENUE AND ATTORNEYS' FEES**

The terms and provisions of this Site Lease shall be construed in accordance with the laws of the State of California. If any action is brought in a court of law to enforce any term of this Site Lease, the action shall be brought in a state court situated in the County of Placer, State of California.

SECTION 29. **INTEGRATION/MODIFICATION**

This Site Lease represents the entire understanding of the District and Lessee as to those matters contained herein, and supersedes and cancels any prior oral or written understanding, promises or representations with respect to those matters covered herein, and shall not be amended, altered, or changed except by a written agreement signed by the parties hereto.

SECTION 30. **TITLES**

The titles to the sections of this Site Lease are solely for the convenience of the parties and are not an aid in the interpretation thereof, and in no way define, limit or describe the scope or intent of any provisions of sections of this Site Lease.

SECTION 31. **TIME**

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

IN WITNESS WHEREOF, the parties hereto have executed this Site Lease by their authorized officers as of the day and year first written above.

WESTERN PLACER UNIFIED SCHOOL DISTRICT DISTRICT@	NTD-EDGE DESIGN-BUILDERS LESSEE@
BY: _____	BY: _____ Jon Alan Baker, AIA
ITS:	ITS: Principal
	BY: _____ Dayne Wagoner
	ITS: Principal/CEO

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EXHIBIT A

LEGAL DESCRIPTION
TWELVE BRIDGES MIDDLE SCHOOL

Real property in the City of Lincoln, County of Placer, State of California, described as follows:

All of Lot E as shown on that certain Map entitled "Twelve Bridges Large Lot Subdivision Phase 2", filed in Book "X" of Maps, at Page 86,
Placer County Records.

APN: 329-020-014-000

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ORIGINAL

SERVICES AGREEMENT

PREAMBLE

This Agreement ("Agreement") is made by and between the Western Placer Unified School District, a California School District organized and existing under the laws of the State of California (hereinafter called the "District"), and NTD-EDGE Design-Builders, Inc., a corporation organized and operating under the laws of the State of California ("NTD/EDGE").

RECITALS

WHEREAS, the District has determined that it is necessary to retain the services of NTD/EDGE to provide for the construction of the project known as 12 Bridges Middle School (the "Project"), and

WHEREAS, California Education Code section 17406 permits the governing board of a school district, without advertising for bids, to lease to any person, firm, or corporation any real property owned by the District if the instrument by which such property is leased requires the lessee to construct on the leased premises, or provide for the construction thereon, of a building for the use of the school district, during the term of the lease, and provides that title to that building or buildings (collectively, the "Facilities") shall vest in the District at the expiration of the lease; and

WHEREAS, the District has the legal power, right and authority to enter into this Agreement and the instruments referenced herein, and to consummate the transaction contemplated hereby; and

WHEREAS, all requisite action has been taken by the District in connection with the execution of this Agreement, the instruments referenced herein, and the consummation of the transaction contemplated hereby; and

WHEREAS, in accordance with California Education Code section 17402, the District has adopted plans and specifications for the buildings that have been approved pursuant to the provisions of Education Code sections 17280 to 17316; and

WHEREAS, the District's representative executing this Agreement and the instruments referenced herein on behalf of the District has the legal power, right, and actual authority to bind the District to the terms and conditions of this agreement; and

WHEREAS, Builder is experienced in the design and construction of the type of improvements included in the Project that are desired by the District and is willing to perform architecture, engineering and construction services and work for the Project improvements (the "Work"), and

WHEREAS, in connection with the approval of this Agreement, which shall be attached to the Facility Sublease Agreement, the District will simultaneously enter into a site lease with Builder (the "Site Lease"), under which it will lease to the Builder the Project site as described in the Site Lease (the "Site") in order for Builder to construct improvements specified herein; and

WHEREAS, the Builder will lease the Site and the Project back to the District pursuant to a Facility Sublease Agreement (the "Sublease"), under which the District will make lease payments to the Builder for the use of the Project; and

WHEREAS, at the expiration of the Lease and Sublease terms, title in the Project improvements shall vest in the District upon payment in exchange for Builder's title of the Facilities and upon such payment all leases shall be terminated; provided, that payment for the Facilities shall not be consideration for termination of the leases which will expire by virtue of the payment to the Builder to acquire Builder's title to the Facilities.

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NOW, THEREFORE, in consideration of the covenants hereinafter contained, District and Builder agree as follows:

1. ARTICLE 1 - GENERAL PROVISIONS

1.1. BASIC DEFINITIONS

1.1.1 The term "Basic Definitions" includes ~~are~~ those definitions contained in the Site Lease and Facility Sublease Agreements.

1.1.2 The term "Work" means the construction and services provided by provided by NTD/EDGE to fulfill NTD/EDGE's obligations for the construction of the Project known as "12 Bridges Middle School", constructed in two Increments as defined in paragraph 3.2.17.

1.2. EXECUTION, CORRELATION AND INTENT

1.2.1 It is the intent of the District and NTD/EDGE that the Contract Documents include all items necessary for proper execution and completion of the Work. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by NTD/EDGE shall be required only to the extent consistent with and reasonably inferable from the Contract Documents as being necessary to produce the intended results. Words that have well known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

1.2.2 If NTD/EDGE believes or is advised by the Architect, Contractor, and Inspector or by another professional retained to provide services on the Project that implementation of any instruction received from the District would cause a violation of any applicable law, NTD/EDGE shall notify the District in writing. NTD/EDGE shall not be obligated to perform any act, which either believes will violate any applicable law.

1.2.3 Except where required by the provisions of this agreement, nothing contained in this Agreement shall create a contractual relationship between the District and any person or entity other than NTD/EDGE.

1.3. OWNERSHIP AND USE OF DOCUMENTS

1.3.1 Pursuant to Education Code section 17316, all Documents, including drawings, specifications, and estimates, prepared pursuant to this Agreement shall be and remain the property of the District for the purposes of repair, maintenance, renovation, modernization, or other purposes, only as they relate to the Project for which NTD/EDGE was retained. Nothing in this Section shall preclude the District from using the plans, record drawings, specifications, or estimates related to the Project for the purposes of additions, alignments, or other development on the Project site. This Section shall not be construed to transfer or waive the Architect's copyrights over these documents, including but not limited to, all common law, statutory, and other reserved rights.

2. ARTICLE 2 - DISTRICT

2.1. The District shall designate a representative authorized to act on the District's behalf with respect to the Project. The District or such authorized representative shall examine documents submitted by NTD/EDGE and shall render decisions in a timely manner and in accordance with the schedule accepted by the District. The District may obtain independent review of the Contract Documents by a separate plan review consultant under contract to or employed by the District. Such independent review shall be undertaken at the District's expense in a timely manner and shall not delay the orderly progress of the Work.

2.2. The District may appoint an on-site project representative to observe the Work and to have such other responsibilities as the District and NTD/EDGE agree in writing.

2.3. The District shall assist with NTD/EDGE in securing building and other permits, licenses and inspections, including permits and inspections made necessary by modifications during construction. The District shall pay the costs for such permits, licenses and inspections.

2.4. The District shall furnish services of land surveyors, geotechnical engineers and other consultants for subsoil, air and water conditions, in addition to those provided under the Part 1 Agreement, when such services are deemed necessary by NTD/EDGE to properly carry out the services required by this Agreement. The District has provided NTD/EDGE with their geotechnical report prepared by Blackburn Consulting dated January 17, 2003.

2.5. The District shall disclose, to the extent known to the District, the results and reports of prior tests, inspections or investigations conducted for the Project including but not limited to: all existing building systems, on-site, off-site utility and service systems; chemical, air and water pollution; hazardous and toxic materials; or other environmental and subsurface conditions. The District shall disclose all information known to the District regarding the presence of pollutants and/or hazardous materials at the Project's site.

2.5.1 Following NTD/EDGE notification to the District that NTD/EDGE has encountered material that NTD/EDGE believes is hazardous, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law, District shall promptly investigate the conditions. If the District finds that such materials exist, and cause a decrease or increase in NTD/EDGE's cost of, or the time required for, performance of any part of the work, the District shall issue a change order.

2.5.2 If asbestos, lead or hazardous substance removal is required, such work shall be performed under separate contract as required by Section 25914.2 of the Health and Safety Code, as may from time to time be amended.

2.6. The District shall furnish all legal, accounting and insurance counseling services as may be necessary at any time on the District's behalf for the Project, including such auditing services as the District may require to verify NTD/EDGE's Applications for Payment.

2.7. The District shall appoint and pay a full-time on-site Inspector as required by State Law. Said Inspector shall be qualified and approved by the Division of State Architect and shall be under direction of the Architect of Record in general responsible charge of the project. The Inspector shall be responsible to, and act in accordance with the policies of the District. The administration by Architect of Record and his or her engineers shall be in addition to the continuous personal inspection of the District's Inspector.

2.8. The District shall furnish services of Testing Laboratories, Special Inspectors and other quality control services as required by DSA.

2.9. The District shall pay for all fees and assessments for utility and service systems assessed by agencies as a part of the approval process.

2.10. District shall file and pay for the State Water Resources Control Board (State Water Board) National Pollutant Discharge Elimination System General Permit for Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activity (the "Permit"), including the Notice of Intent. District shall provide a copy of such permit to NTD/EDGE.

2.11. Those services, information, surveys and reports required of the District by this Section shall be furnished at the District's expense, and NTD/EDGE shall be entitled to rely upon the accuracy and completeness thereof, except to the extent the District advises NTD/EDGE to the contrary in writing.

2.12. If the District requires NTD/EDGE to maintain any special insurance coverage, policy, amendment, or rider, the District shall pay the additional cost thereof, except as otherwise stipulated in this Agreement.

2.13. If the District observes or otherwise becomes aware of a fault or defect in the Work or nonconformity with NTD/EDGE's Proposal or the Construction Documents, the District shall give prompt written notice thereof to NTD/EDGE.

2.14. The District shall, at the request of NTD/EDGE, prior to execution of this Agreement and promptly upon request thereafter, furnish to NTD/EDGE evidence that financial arrangements have been made to fulfill the District's obligations under the Contract such as a letter of financial commitment from Lendor or Bond Agent.

2.15. The District shall, at the request of NTD/EDGE, and prior to execution of the Agreement and promptly upon request thereafter, certify to NTD/EDGE that the District is the legal owner of the Project site and has full title and control.

2.16. The District shall communicate with persons or entities employed or retained by NTD/EDGE through NTD/EDGE, unless otherwise directed by NTD/EDGE.

2.17. The District stipulates the GMP defined in Article 14 is subject to adjustment to reflect final costs associated with Increment 2 following DSA approval of Increment 2 in accordance with the provisions of Article 14.

3. ARTICLE 3 - NTD/EDGE

3.1. SERVICES AND RESPONSIBILITIES

3.1.1 Design services required by this Agreement shall be performed by qualified Architects and other design professionals retained by NTD/EDGE. The District shall have the right to approve any change in the lead Architect herein identified as Jordan S. Knighton, Principal, NTD/EDGE.

3.1.2 Construction services required by this Agreement shall be performed by qualified Contractors and other construction professionals retained by NTD/EDGE.

3.1.3 NTD/EDGE shall be responsible to the District for acts and omissions of NTD/EDGE employees, subcontractors and their agents and employees, and other persons, including the Architect, Contractor, and other design professionals, performing any portion of NTD/EDGE's obligations under this Agreement.

3.2. BASIC SERVICES

3.2.1 NTD/EDGE Basic Services are described below and in Article 15.

3.2.2 NTD/EDGE shall designate a representative authorized to act on NTD/EDGE behalf with respect to the Project.

3.2.3 NTD/EDGE shall be responsible for all construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work under this Agreement.

3.2.4 NTD/EDGE shall keep the District informed of the progress and quality of the Work in the following manner:

(a) **CPM Master Schedule.** NTD/EDGE shall submit to District a detailed CPM (Critical Path Method) Master Schedule for the construction.

(b) **Pre-Construction Orientation/Construction Meetings.** NTD/EDGE shall conduct pre-construction orientation conferences to orient the Contractors, Sub-Contractors, Inspectors, Design Professionals, and District Representatives to the various reporting procedures and site rules prior to the commencement of actual construction. NTD/EDGE shall also conduct construction and progress meetings as requested by the District with District Representatives and other interested parties, to discuss such matters as procedures, construction progress, problems and scheduling. NTD/EDGE shall prepare and promptly distribute official minutes of such meetings to all parties in attendance including Architect, Contractor, District and Inspector.

(c) **Budget/Cash Flow Reports.** NTD/EDGE shall incorporate approved changes as they occur, and develop cash flow reports and forecasts for submittal to the District on a monthly basis. NTD/EDGE shall provide regular monitoring of the approved estimates of Construction Costs, showing actual costs for activities in progress, and estimates for uncompleted tasks. NTD/EDGE shall identify variances between actual and budgeted or estimated costs, and advise the District whenever Project costs exceed budgets or estimates. NTD/EDGE shall maintain cost accounting records on authorized additional services or work performed under unit costs, additional work performed on the basis of actual costs of labor and materials, or other work requiring accounting records.

(d) **Scheduling.** NTD/EDGE shall complete the construction pursuant to the CPM and approved Construction Documents, subject to DSA approval and approved modifications in scope.

(e) **Progress Reports.** NTD/EDGE shall record the progress of the Project, and shall submit monthly written progress reports to the District including information on the entire Project, showing percentages of completion. Reports shall include the number and amounts of proposed Extra Work/Modifications and their effect on the Construction Costs and Schedule as of the date of the report. NTD/EDGE shall also keep a daily log containing a record of weather, Contractors and sub-Contractors working on the site, number of workers, work accomplished, problems encountered, and other similar relevant data as the District may require. NTD/EDGE shall make the log available to the District. The District shall be promptly informed in writing of all anticipated delays. In the event that NTD/EDGE determines that a schedule modification is necessary, NTD/EDGE shall promptly submit a revised Schedule for approval by the District.

3.2.5 NTD/EDGE shall be responsible for correcting work, which, does not conform to the District, approved Contract Documents.

3.2.6 NTD/EDGE warrants to the District that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the construction will be free from faults and defects, and that the construction will conform with the requirements of the Contract Documents. Construction not conforming to these requirements, including substitutions not properly approved by the District, shall be corrected in accordance with Article 9.

3.2.7 NTD/EDGE shall pay all sales, consumer, use and similar taxes, which had been legally enacted at the time NTD/EDGE's Proposal was first submitted to the District.

3.2.8 NTD/EDGE shall provide all temporary utility hook-ups and connections, and pay for all use of utilities during construction.

3.2.9 NTD/EDGE shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities relating to the Project.

(a) NTD/EDGE shall comply with all conditions of the State Water Resources Control Board (State Water Board) National Pollutant Discharge Elimination System General Permit for Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activity required by the permit issued on behalf of the District (the "Permit").

(b) NTD/EDGE shall prepare project specific documents as required to comply with all requirements of the State Water Resources Control Board, including the Storm Water Pollution Prevention Plan

3.2.10 NTD/EDGE shall pay royalties and license fees for patented designs, processes or products. NTD/EDGE shall defend suits or claims for infringement of patent rights and shall hold the District harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer is required by the District. However, if NTD/EDGE has reason to believe the use of a required design, process or product is an infringement of a patent, NTD/EDGE shall be responsible for such loss unless such information is promptly furnished to the District.

3.2.11 NTD/EDGE shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under this Agreement. At the completion of the Work, NTD/EDGE shall remove from the site waste materials, rubbish, tools, construction equipment, machinery, and surplus materials.

3.2.12 NTD/EDGE shall notify the District when NTD/EDGE believes that the Work or an agreed upon portion thereof is substantially completed. NTD/EDGE shall inspect the work with the District to confirm work is substantially complete. If the District concurs, NTD/EDGE shall issue a Certificate of Substantial Completion which shall establish the Date of Substantial Completion, shall state the responsibility of each party for security, maintenance, heat, utilities, damage to the Work and insurance, shall include a list of items to be completed or corrected, (referred to as the Punch-List) and shall fix the time within which NTD/EDGE shall complete items listed therein. Disputes between the District and NTD/EDGE regarding the Certificate of Substantial Completion shall be resolved in accordance with provisions of Article 10.

3.2.13 NTD/EDGE shall maintain at the site for the District one record copy of the drawings, specifications, product data, samples, shop drawings, Change Orders and other modifications, in good order and regularly updated to record the completed construction, (referred to as the Record Drawings). These shall be delivered to the District upon completion of construction and prior to final payment.

3.2.14 NTD/EDGE shall be responsible for providing District with a set of reproducible record documents showing significant changes in the Work made during construction.

3.2.15 NTD/EDGE shall provide assistance in obtaining final agency approvals, including filing of final reports and certifications required as the Architect of Record.

3.2.16 NTD/EDGE shall be responsible for orientation of District regarding the utilization of equipment or systems, including preparation of operation and maintenance manuals and in training personnel for operation and maintenance.

3.2.17 The scope of work under this contract is defined as Increment 1, generally consisting of mobilization, rough grading, and certain underground utilities, and further detailed in Exhibit D. Subsequent to DSA approval of Increment 2 (generally defined as the buildings and final site improvements), NTD/EDGE will provide District with final cost to complete Increment 2, and execute an amendment to this agreement revising the amount and time of performance specified in Article 15 and in accordance with the provisions of paragraph 14.1.1.

3.3. ADDITIONAL SERVICES

3.3.1 The services described in this Paragraph 3.3 are not included in Basic Services unless so identified in Article 15, and they shall be paid for by the District as provided in this Agreement, in addition to the compensation for Basic Services. The services described in this Paragraph 3.3 shall be provided only if authorized or confirmed in writing by the District.

3.3.2 Making revisions in drawings, specifications, and other documents or electronic data when such revisions are required by the enactment or revision of codes, laws or regulations subsequent to the preparation of such documents or electronic data.

3.3.3 Providing consultation concerning replacement of Work damaged by fire or other cause during construction beyond NTD/EDGE control, and furnishing services required in connection with the replacement of such Work.

3.3.4 Providing services in connection with a public hearing, mediation proceeding or legal proceeding, except where NTD/EDGE is a party thereto.

3.3.5 Providing coordination of construction performed by the District's own forces or separate contractors employed by the District, and coordination of services required in connection with construction performed and equipment supplied by the District.

3.3.6 Providing District with electronic copies of NTD/EDGE CAD files, cost estimates or other project specific documentation.

4. ARTICLE 4 - TIME

4.1. Unless otherwise indicated, the District and NTD/EDGE shall perform their respective obligations expeditiously in accordance with the standards of its professions.

4.2. Time limits stated in the Contract Documents are of the essence. The Work to be performed under this Agreement shall commence upon receipt of a written Notice to Proceed unless otherwise agreed and, subject to authorized Modifications, Substantial Completion shall be achieved on or before the date established in Article 15 as modified by District approved changes.

4.3. Substantial Completion is the stage in the progress of the Work when the Work or designated portion there of is sufficiently complete in accordance with the Contract Documents so the District can occupy or utilize the Work for its intended use.

4.4. If NTD/EDGE is delayed at any time in the progress of the Work by an act or neglect of the District, District's Representatives, or separate contractors employed by the District, or by changes ordered in the Work, or by labor disputes, fire, unavoidable delay in deliveries, adverse weather conditions not reasonably anticipatable, unavoidable casualties, or other causes beyond NTD/EDGE's control, or by delay authorized by the District pending mediation, or by other causes which the District and NTD/EDGE agree may justify delay, then the Contract Time shall be reasonably extended by Change Order.

5. ARTICLE 5 - PAYMENTS

5.1. PROGRESS PAYMENTS

5.1.1 District shall pay NTD/EDGE Sublease Prepayments pursuant to the terms and conditions set forth in the Sublease and this Section. NTD/EDGE shall provide for the cost of construction of the Project which costs shall not exceed the Guaranteed Maximum Price (GMP) per Article 14, except as otherwise provided in this Agreement. The District shall retain and release such retention pursuant to Public Contract Code sections 7107 and 9203, as those sections may be amended from time to time.

5.1.2 Substitution of Security

(a) Upon the Contractor's request, the District will make payment of funds withheld from progress payments to ensure performance under the contract pursuant to the requirements of Public Contract Code section 22300 if the Contractor deposits in escrow with the District or with a bank acceptable to the District, securities eligible for

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investment under Government Code section 16430, bank or savings and loan certificates of deposit, or other security mutually agreed to by the Contractor and the District, subject the following conditions:

- The Contractor shall bear the expense of the District and the escrow agent, either the District or the bank, in connection with the escrow deposit made.
- 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 Contractor pursuant to this section.
- The Contractor shall enter into an escrow agreement satisfactory to the District, which agreement shall include provisions governing inter alia:
  (a) The amount of securities to be deposited,
  (b) The providing of powers of attorney or other documents necessary for the transfer of the securities to be deposited,
  (c) Conversion of cash to provide funds to meet defaults by the Contractor, including, but not limited to, termination of the Contractor'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.
  (d) Decrease in value of securities on deposit.
  (e) The termination of the escrow upon completion of the contract.
- The Contractor shall obtain the written consent of the surety to such agreement.
- As an alternative to Contractor depositing into escrow securities of a value equivalent to the amounts of retention to be paid to the Contractor, upon Contractor's request, District will make payment of retentions earned directly to the escrow agent at the expense of Contractor pursuant to and in accordance with Public Contract Code section 22300.

5.2. FINAL PAYMENT

5.2.1 Neither final payment nor amounts retained, if any, shall become due until NTD/EDGE submits to the District:

(a) An affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the District or District's property might be responsible or encumbered (less amounts withheld by the District) have been paid or otherwise satisfied;

(b) A certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the District;

(c) Consent of surety, if any, to final payment;

(d) If required by the District, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the District. If a NTD/EDGE or other person or entity entitled to assert a lien against the District's property refuses to furnish a release or waiver required by the District, NTD/EDGE may furnish a bond satisfactory to the District to indemnify the District against such lien. If such lien remains unsatisfied after payments are made, NTD/EDGE shall indemnify the District for all loss and cost, including reasonable attorneys' fees incurred as a result of such lien.

5.2.2 Upon Districts determination that the work is complete as defined by Public Contract code 7107, District shall file and have properly recorded a Notice of Completion within 10 days in accordance with Government Code.

5.2.3 When the Work has been completed, the Notice of Completion filed, and the contract fully performed, NTD/EDGE shall submit a final application for payment to the District, who shall make final payment within 35 days of the date of completion.

5.2.4 The making of final payment shall constitute a waiver of claims by the District except those arising from:

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(a) liens, claims, security interests or encumbrances arising out of the Contract and unsettled;

(b) failure of the Work to comply with the requirements of the Contract Documents; or

(c) terms of special warranties required by the Contract Documents.

5.2.5 Acceptance of final payment shall constitute a waiver of all claims by NTD/EDGE except those previously made in writing and identified by NTD/EDGE as unsettled at the time of final Application for Payment.

5.3. INTEREST PAYMENTS

5.3.1 Payments due NTD/EDGE under this Agreement which are not paid when due shall bear interest from the date due at the rate specified in Article 14.3, or in the absence of a specified rate, at the legal rate prevailing where the Project is located.

6. ARTICLE 6 - PROTECTION OF PERSONS AND PROPERTY

6.1. NTD/EDGE shall be responsible for initiating, maintaining and providing supervision of all safety precautions and programs in connection with the performance of this Agreement.

6.2. NTD/EDGE shall take reasonable precautions for the safety of, and shall provide reasonable protection to prevent damage, injury or loss to: (1) employees on the Work and other persons who may be affected thereby; (2) the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of NTD/EDGE or NTD/EDGE contractors; and (3) other existing property at or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

6.2.1 By execution of this Agreement, NTD/EDGE acknowledges that NTD/EDGE, its employees and contractors are required to comply with the fingerprinting requirements set forth in Education Code Sections 45125.1.

6.2.2 In lieu of complying with Section 45125.1, NTD/EDGE may comply with the provisions of Education Code Section 45125.2 which requires that NTD/EDGE, at its own expense (1) install a physical barrier to limit contact with students by NTD/EDGE, NTD/EDGE employees and subcontractors, or (2) provide for the continuous supervision and monitoring of NTD/EDGE, NTD/EDGE employees and subcontractors by an employee of NTD/EDGE who has received fingerprint clearance from the California Department of Justice, or (3) provide for the surveillance of NTD/EDGE, NTD/EDGE employees and subcontractors by a District employee. Prior to, and as a condition to commencement of NTD/EDGE's performance under this Construction Services Agreement, NTD/EDGE shall complete the Fingerprint Certification attached to hereto as *Exhibit G* and by this reference incorporated herein.

6.2.3 For those portions of the project that are constructed without the presence of students on the site, the requirements of paragraphs 6.2.1 and 6.2.2 shall not apply

6.3. NTD/EDGE shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on the safety of persons or property or their protection from damage, injury or loss.

6.4. NTD/EDGE shall promptly remedy damage and loss (other than damage or loss insured under property insurance provided or required by the Contract Documents) to property at the site caused in whole or in part by NTD/EDGE, a contractor of NTD/EDGE or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable.

7. ARTICLE 7 - INSURANCE AND BONDS

7.1. NTD/EDGE LIABILITY INSURANCE

7.1.1 NTD/EDGE shall purchase from and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, such insurance as will protect NTD/EDGE from claims set forth below which may arise out of or result from operations under this Agreement by NTD/EDGE or by a contractor of NTD/EDGE, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

(a) claims under workers' compensation, disability benefit and other similar employee benefit laws that are applicable to the Work to be performed;

(b) claims for damages because of bodily injury, occupational sickness or disease, or death of NTD/EDGE employees;

(c) claims for damages because of bodily injury sickness or disease, or death of persons other than NTD/EDGE employees;

(d) claims for damages covered by usual personal in jury liability coverage which are sustained (1) by a person as a result of an offense directly or indirectly related to employment of such person by NTD/EDGE or (2) by another person;

(e) claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting there from;

(f) claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle; and

(g) claims involving contractual liability insurance applicable to NTD/EDGE obligations under Paragraph 11.5.

7.1.2 The insurance required by Subparagraph 7.1.1 shall be written for not less than limits of liability specified in this Agreement under Article 15.5 or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from date of commencement of the Work until date of final payment and termination of any coverage required to be maintained after final payment. Insurance obtained pursuant to this article shall remain in effect for a minimum of 3 years.

7.1.3 Certificates of insurance acceptable to the District shall be delivered to the District immediately after execution of this Agreement. These certificates and the insurance policies required by this Paragraph 7.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the District. If any of the foregoing insurance coverages are required to remain in force after final payment, an additional certificate evidencing continuation of such coverage shall be submitted with the application for final payment. Information concerning reduction of coverage shall be furnished by NTD/EDGE with reasonable promptness in accordance with NTD/EDGE information and belief.

7.2. DISTRICT'S LIABILITY INSURANCE

7.2.1 The District shall be responsible for purchasing and maintaining the District's usual liability insurance. Optionally, the District may purchase and maintain other insurance for self-protection against claims, which may arise from operations under this Agreement.

7.3. PROPERTY INSURANCE

7.3.1 NTD/EDGE shall procure and maintain during the life of this contract and for such other period as may be required herein, at its sole expense, such comprehensive general liability insurance or commercial general liability and property damage insurance as shall protect NTD/EDGE and District from all claims for bodily (personal) injury, including accidental death, as well as claims for property damage arising from operations under this contract, and other covered loss, however occasioned, occurring during the policy term. Such policy shall comply with all the requirements of this article, and shall be in the form and amounts as set forth in Article 15.6.1 hereof.

7.4. GENERAL INSURANCE PROVISIONS

7.4.1 NTD/EDGE shall make certain that any and all subcontractors hired by NTD/EDGE are insured in accordance with this contract. If any subcontractor's coverage does not comply with the foregoing provisions, NTD/EDGE shall indemnify and hold District harmless from any damage, loss, cost, or expense, including attorneys' fees, incurred by District as a result thereof.

7.3.3 Company or companies providing insurance coverage shall be acceptable to the District and authorized to conduct business in the State of California. Insurance shall have a rating of "A" or better.

7.4.2 Any general liability policy provided by NTD/EDGE hereunder shall contain an endorsement which applies its coverage to District, members of District's board of trustees, and the officers, agents, employees and volunteers of District, the State Allocation Board, if applicable, as additional insureds using form CG2010 11-85 or equivalent which must include products and completed operations coverage, broad form property damage coverage, coverage for collapse, explosion and underground, and include independent contractor coverage.

7.4.3 The coverage afforded by the additional insured endorsement described in paragraph 7.4.2 above, shall apply as primary insurance, and any other insurance maintained by District, the members of District's Board of Trustees, or its officers, agents, employees and volunteers, or any self-funded program of District, shall be in excess only and not contributing with such coverage.

7.4.4 NTD/EDGE shall notify District in writing of the amount, if any, of self-insured retention provided under the General Liability coverage, with a maximum limit of $25,000. District may approve higher retention amounts, based upon review of documentation submitted by NTD/EDGE. Such review shall take into consideration NTD/EDGE net worth and reserves for payment of claims of liability against NTD/EDGE, which must be sufficient to adequately compensate for the lack of other insurance coverage required hereunder.

7.4.5 All general liability policies shall be written to apply to all bodily injury, including death, property damage, personal injury and other covered loss, however occasioned, occurring during the policy term, and shall specifically insure the performance by NTD/EDGE of that part of the indemnification contained in Article 12 hereof, relating to liability for injury to or death of persons and damage to property. If the coverage contains one or more aggregate limits, a minimum of 50% of any such aggregate limit must remain available at all times; if over 50% of any aggregate limit has been paid or reserved, District may require additional coverage to be purchased by NTD/EDGE to restore the required limits. NTD/EDGE may combine primary, umbrella, and as broad as possible excess liability coverage to achieve the total limits indicated above. Any umbrella or excess liability policy shall include the additional insured endorsement, products and completed operations coverage and broad form property damage described above. To the extent that the umbrella insurer requires notice of changes to the primary policy, notice will be considered to be given and not prejudice the District's rights to recover under the umbrella policy.

7.4.6 NTD/EDGE and District release each other, and their respective authorized representatives, from any Claims but only to the extent that the proceeds received from any policy of liability insurance carried by District or NTD/EDGE, other than any self-insurance, covers any such Claim or damage. Included in any policy or policies of liability insurance provided by NTD/EDGE hereunder shall be a standard waiver of rights of subrogation against District by the insurance company issuing said policy or policies.

7.4.7 If coverage is written on a "claims made" basis, the Certificate of Insurance shall clearly so state. In addition to the coverage requirements specified above, such policy shall provide that:

(a) The policy retroactive date coincides with or precedes NTD/EDGE commencement of work under the Agreement (including subsequent policies purchased as renewals or replacements).

(b) NTD/EDGE will make every effort to maintain similar insurance during the required extended period of coverage following expiration of the Agreement, including the requirement of adding all additional insured's.

(c) If insurance is terminated for any reason, NTD/EDGE shall purchase an extended reporting provision of at least three years to report claims arising in connection with the Agreement.

(d) The policy allows for reporting of circumstances or incidents that might give rise to future claims.

7.4.8 NTD/EDGE's failure to procure the insurance specified herein, or failure to deliver certified copies or appropriate certificates of such insurance, or failure to make the premium payments required by such insurance, shall constitute a material breach of the contract, and District may, at its option, terminate the Agreement for any such default by NTD/EDGE.

7.4.9 The requirements as to the types and limits of insurance coverage set forth herein and in the Special Conditions to be maintained by NTD/EDGE, and any approval of said insurance by the District or its insurance Contractor(s), are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by NTD/EDGE pursuant to the Agreement, including, but not limited to, the provisions concerning indemnification.

7.4.10 District shall retain the right at any time to review the coverage, form, and amount of insurance required herein and may require NTD/EDGE to obtain insurance reasonably sufficient in coverage, form and amount to provide adequate protection against the kind and extent of risk, which exists at the time a change in insurance is required. The cost of insurance required by this provision shall be paid by NTD/EDGE.

7.4.11 All deviations from the contractual insurance requirements stated herein must be approved in writing by District's risk manager.

7.5. BUILDER'S RISK/APPLICABLE INSTALLATION/FIRE INSURANCE

7.5.1 It is NTD/EDGE's responsibility to maintain or cause to be maintained builder's risk insurance or applicable installation coverage on all work, material, equipment, appliances, tools, and structures which are a part of the contract and subject to loss or damage by fire, extended coverage, and vandalism and malicious mischief. District accepts no responsibility until the Governing Board formally accepts the Project. NTD/EDGE is required to file with the District a certificate evidencing builder's risk.

7.5.2 Provide insurance coverage on completed value form, all-risk or special causes of loss coverage.

(a) Insurance policies shall be so conditioned as to cover the performance of any extra work performed under the contract.

(b) Coverage shall include all materials stored on site and in transit.

(c) Coverage shall include NTD/EDGE tools and equipment.

(d) Insurance shall include boiler, machinery and material hoist coverage.

(e) Insurance policies shall be so conditioned as to cover the performance of any extra work performed under the contract.

(f) Coverage shall include all materials stored on site and in transit.

(g) Coverage shall include NTD/EDGE tools and equipment.

(h) Insurance shall include boiler, machinery and material hoist coverage.

7.4.3 Company or companies providing insurance coverage shall be acceptable to the District and authorized to conduct business in the State of California.

7.6. LOSS OF USE INSURANCE

7.5.1 The District, at the District's option, may purchase and maintain such insurance as will insure the District against loss of use of the District's property due to fire or other hazards, however caused.

7.7. BONDS

7.7.1 A "Payment Bond" (material and labor bond) from a California admitted surety and in the form attached hereto, shall be provided by NTD/EDGE for the Project within five (5) business days after entering into this Agreement and prior to the effective date of the District's Notice to Proceed for the Project. The Payment Bond shall be for One Hundred Percent (100%) of the Final GMP of the Project, to satisfy claims of materials suppliers and of mechanics and laborers employed on the Project. The Payment Bond shall be maintained by NTD/EDGE in full force and effect for the Project until the Project is fully completed and accepted and until all claims for materials and labor are paid, and shall otherwise comply with California law. The Payment Bond, once obtained, shall be attached to this Agreement as *Exhibit D.* In the event the Final GMP is increased in accordance with the provisions set forth in Section 8, NTD/EDGE must increase the Payment Bond to equal the revised GMP.

7.7.2 A "Performance Bond" from a California admitted surety and in the form attached hereto shall be provided by NTD/EDGE for the Project within five (5) business days after entering into this Agreement and prior to the effective date of the District's Notice to Proceed on the Project. The Performance Bond shall be for One Hundred Percent (100%) of the Final GMP for the Project to guarantee faithful performance of all work, within the time prescribed, in a manner satisfactory to the District, and that all materials and workmanship shall be free from original or developed defects.

The Performance Bond shall be in the form attached hereto as Exhibit E and shall be maintained by NTD/EDGE in full force and effect until the Project is fully completed and accepted and until all claims for materials and labor are paid, and shall otherwise comply with California law. The Faithful Performance Bond shall name the District as the entity to which the Principal and Surety, as defined in the Faithful Performance Bond, are bound. In the event the GMP is increased, NTD/EDGE shall increase the Performance Bond to equal the revised GMP.

8. ARTICLE 8 - CHANGES IN THE WORK

8.1. CHANGES

8.1.1 Changes in the Work may be accomplished after execution of this Agreement, without invalidating this Agreement, by Change Order, Construction Change Directive, or order for a minor change in the Work, subject to the limitations stated in the Contract Documents.

8.1.2 A Change Order shall be based upon agreement between the District, NTD/EDGE and the Architect of Record; a Construction Change Directive may be issued by the District and the Architect of Record without the agreement of NTD/EDGE; an order for a minor change in the Work may be issued by the Architect of Record through NTD/EDGE.

8.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and NTD/EDGE shall proceed promptly, unless other wise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work.

8.1.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are so changed in a proposed Change Order or Construction Change Directive that application of such unit prices to quantities of Work proposed will cause substantial inequity to the District or NTD/EDGE, the applicable unit prices shall be equitably adjusted.

8.2. CHANGE ORDERS

8.2.1 A Change Order is a written instrument prepared by NTD/EDGE and signed by the District, NTD/EDGE and the Architect of Record, stating their agreement upon all of the following:

(a) a change in the Work;

(b) the amount of the adjustment, if any, in the Contract Sum; and

(c) the extent of the adjustment, if any, in the Contract Time.

8.2.2 If the District requests a proposal for a change in the Work from NTD/EDGE and subsequently elects not to proceed with the change, a Change Order shall be issued to reimburse NTD/EDGE for any costs incurred for estimating services, design services or preparation of proposed revisions to the Contract Documents.

8.2.3 Change order mark up: In case of a change in the Contract Sum, the cost shall include a reasonable allowance for overhead and profit. In such case, NTD/EDGE shall provide an itemized accounting together with appropriate supporting data.

(a) Value of any such extra work, change or deduction shall be determined at the discretion of District in one or more of the following ways:

- By acceptable lump sum proposal from Contractor with itemization as required by District.
- By unit prices contained in Contractor's original bid and incorporated in contract documents or fixed by subsequent agreement between District and Contractor.
- By the cost of material and labor and a percentage for overhead and profit. The form shall be followed as applicable for additions and deductions to contract:

EXTRA/(CREDIT)

1. Material and equipment costs, including rental equipment (attach itemized quantity and nit cost per sales tax) _____

2. Labor (attach itemized hours and base rates from identified prevailing wage schedules) _____
3. additional costs of supervision and field office personnel directly attributable to the change; and fees paid to the Architect and other professionals _____
4. General Liability and **Builder's Risk** Insurance, Workers' Compensation Insurance, Social Security, Pension and Unemployment Taxes at actual and verified costs _____
5. Subtotal _____
6. Subcontractor's overhead and profit not to exceed 10% of item (5) _____
7. Subtotal _____
8. NTD/EDGE's Overhead and Profit, including extended home office overhead, not to exceed 15% of item (7) _____
9. Subtotal _____
10. Bond Premium, not to exceed 1% of item (9) _____
11. Total _____

8.3. CONSTRUCTION CHANGE DIRECTIVES

8.3.1 A Construction Change Directive is a written order prepared and signed by the District and the Architect of Record, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both.

(a) Except as otherwise agreed by the District and NTD/EDGE, the adjustment to the Contract Sum shall be determined on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including the expenditures for design services and revisions to the Contract Documents. In case of an increase in the Contract Sum, the cost shall include overhead and profit as determined by Paragraph 8.2.3(a). In such case, NTD/EDGE shall keep and present an itemized accounting together with appropriate supporting data for inclusion in a Change Order.

8.3.2 Pending final determination of cost to the District, amounts not in dispute may be included in Applications for Payment, The amount of credit to be allowed by NTD/EDGE to the District for deletion or change which results in a net decrease in the Contract Sum will be actual net cost. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of the net increase, if any, with respect to that change.

8.3.3 Pending final determination of cost to the District, amounts not in dispute may be included in Applications for Payment. The amount of credit to be allowed by NTD/EDGE to the District for deletion or change, which results in a net decrease in the Contract Sum, will be actual net cost. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of the net increase, if any, with respect to that change.

8.3.4 When the District and NTD/EDGE agree upon the adjustments in the Contract Sum and Contract Time, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.

8.4. MINOR CHANGES IN THE WORK

8.4.1 The Architect of Record, acting through NTD/EDGE, shall have authority to make minor changes in the Construction Documents and construction consistent with the intent of the Contract Documents when such minor changes do not involve adjustment in the Contract Sum or extension of the Contract Time. NTD/EDGE shall promptly inform the District, in writing, of minor changes in the Construction Documents and construction.

8.5. CONCEALED CONDITIONS

8.5.1 If conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents, or (2) unknown physical conditions of an unusual nature which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then notice by the observing party shall be given to the other party promptly before conditions are disturbed. The Contract Sum shall be equitably adjusted for such concealed or unknown conditions by Change Order upon claim by either party after the claimant becomes aware of the conditions.

8.6. REGULATORY CHANGES

8.6.1 NTD/EDGE shall be compensated for changes in the construction necessitated by the enactment or revision of codes, laws or regulations subsequent to the establishment of the Final GMP.

9. ARTICLE 9 - CORRECTION OF WORK

9.1. NTD/EDGE shall promptly correct Work rejected by the District or known by NTD/EDGE to be defective or failing to conform to the requirements of the Contract Documents, whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. NTD/EDGE shall bear costs of correcting such rejected Work, including additional testing and inspections necessitated by such correction.

9.2. If, within one (1) year after the date of Substantial Completion of the Work or, after the date for commencement of warranties established in a written agreement between the District and NTD/EDGE, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, NTD/EDGE shall correct it promptly after receipt of a written notice from the District to do so unless the District has previously given NTD/EDGE a written acceptance of such condition.

9.3. Nothing contained in this Article 9 shall be construed to establish a period of limitation with respect to other obligations, which NTD/EDGE might have under the Contract Documents. Establishment of the time period of one (1) year as described above relates only to the specific obligation of NTD/EDGE to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish NTD/EDGE liability with respect to NTD/EDGE obligations other than specifically to correct the Work.

9.4. If NTD/EDGE fails to correct nonconforming Work as required or fails to carry out Work in accordance with the Contract Documents, the District, by written order signed personally or by an agent specifically so empowered by the District in writing, may order NTD/EDGE to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the District's right to stop the Work shall not give rise to a duty on the part of the District to exercise the right for benefit of NTD/EDGE or other persons or entities.

9.5. If NTD/EDGE defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within seven (7) days after receipt of written notice from the District to commence and continue correction of such default or neglect with diligence and promptness, the District may give a second written notice to NTD/EDGE and, seven (7) days following receipt by NTD/EDGE of that second written notice and without prejudice to other remedies the District may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter-due NTD/EDGE, the costs of correcting such deficiencies. If the payments then or thereafter-due NTD/EDGE are not sufficient to cover the amount of the deduction, NTD/EDGE shall pay the difference to the District. Such action by the District shall be subject to dispute resolution procedures as provided in Article 10.

10. ARTICLE 10 - DISPUTE RESOLUTION-MEDIATION AND ARBITRATION

10.1. Claims, disputes or other matters in question between the parties to this Agreement arising out of or relating to this Agreement or breach thereof shall be subject to mediation. Such mediation shall be conducted in accordance with the Construction Industry Mediation.

10.2. Demand for mediation shall be filed in writing with the other party to this Agreement. A demand for mediation shall be made within a reasonable time after the claim, dispute or other matter in question has arisen, In no event shall the demand for mediation be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statutes of repose or limitations.

11. ARTICLE 11 – WAGE RATES AND HOURS

11.1. Pursuant to the provisions of article 2 (commencing at section 1770), chapter 1, part 7, division 2 of the Labor Code of California, the Director of Industrial Relations has ascertained the general prevailing rate of per diem wages in the locality in which this public work is to be performed for each craft, classification, or type of worker needed to execute the contract. Copies of said determination are on file at District's principal office and are available to any interested party on request.

11.2. Holiday and overtime work, when permitted by law, shall be paid for at a rate of at least one and one-half times the general prevailing rate of per diem wages as determined by the Director of Industrial Relations, unless otherwise specified.

11.3. Each construction worker of NTD/EDGE or any of his subcontractors engaged in work on the project shall be paid not less than the general prevailing rate of per diem wages determined by the Director of Industrial Relations, regardless of any contractual relationship which may be alleged to exist between NTD/EDGE or any subcontractor and such workers.

11.4. NTD/EDGE shall, as a penalty to the District, forfeit not more than fifty dollars ($50) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of Industrial Relations for the work or craft in which the worker is employed for any public work done under the contract by him or her or by any subcontractor under him or her. Prevailing wage rates shall also be used when determining wages paid for change order items. The amount of this forfeiture shall be determined by the Labor Commissioner and shall be based on consideration of NTD/EDGE mistake, inadvertence, or neglect in failing to pay the correct rate of prevailing wages, or the previous record of NTD/EDGE in meeting his or her prevailing wage obligations, or NTD/EDGE willful failure to pay the correct rates of prevailing wages. The difference between the 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 by NTD/EDGE, and NTD/EDGE shall be bound by the provisions of Labor Code section 1775.

11.5. Any worker employed to perform work on the project, which work is not covered by any classification listed in the general prevailing rate of per diem wages determined by the Director of Industrial Relations, shall be paid not less than the minimum rate of wages specified therein for the classification which most nearly corresponds to work to be performed by him. Such minimum wage rate shall be retroactive to the time of initial employment of such person in such classification.

8.4.43

11.6. Pursuant to Labor Code section 1773.1, per diem wages are deemed to include employer payments for health and welfare, pension, vacation, travel, subsistence, apprenticeship or other specified training programs and similar purposes.

11.7. NTD/EDGE shall post at appropriate conspicuous points on the site of project, a schedule showing all determined minimum wage rates and all authorized deductions, if any, from unpaid wages actually earned.

11.8. NTD/EDGE and each subcontractor shall keep an accurate payroll record, 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 him or her in connection with the public work.

11.9. The payroll records required above shall be certified and shall be available for inspection at all reasonable hours at the principal office of NTD/EDGE on the following basis:

11.9.1 A certified copy of an employee's payroll record shall be made available for inspection or furnished to such employee or his or her authorized representative on request.

11.9.2 A certified copy of all payroll records shall be made available for inspection or furnished upon request to a representative of District, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the Department of Industrial Relations.

11.9.3 A certified copy of all 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 public shall not be given access to such records at the principal office of NTD/EDGE.

11.10. NTD/EDGE shall file a certified copy of the records required above with the District or entity that requested such records within ten days after receipt of a written request.

11.11. Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the District, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address, and social security number. The name and address of NTD/EDGE shall not be marked or obliterated.

11.12. NTD/EDGE shall inform the District of the location of the records required above, including the street address, city and county, and shall, within five working days, provide a notice of a change of location and address.

11.13. In the event of noncompliance with the requirements of this article regarding maintenance of records, NTD/EDGE shall have ten days in which to comply subsequent to receipt of written notice specifying in what respects NTD/EDGE must comply with this article. Should noncompliance still be evident after such ten-day period, NTD/EDGE shall, as a penalty by the District, forfeit twenty-five dollars ($25) for each calendar day, or portion thereof, for each worker until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, such penalty shall be withheld from progress payments then due. NTD/EDGE is not subject to a penalty assessment pursuant to this section due to the failure of a subcontractor to comply with this section.

11.14. Apprentices

11.14.1 Apprentices of any crafts or trades may be employed and, when required by Labor Code section 1777.5, shall be employed provided they are properly indentured to NTD/EDGE in full compliance with provisions of the Labor Code.

11.15. Hours of Work

11.15.1 As provided in article 3 (commencing at section 1810), chapter 1, part 7, division 2 of the Labor Code, eight (8) hours of labor shall constitute a legal day's work. The time of service of any worker employed at any time by NTD/EDGE or by any subcontractor on any subcontract under this contract upon the work or upon any part of the work contemplated by this contract is limited and restricted to eight (8) hours during any one-calendar day and forty (40) hours during any one-calendar week, except as hereinafter provided. Notwithstanding the provisions herein above set forth, work performed by employees of NTD/EDGE in excess of eight (8) hours per day, and forty (40) hours during any one week, shall be permitted upon this public work upon compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half times the basic rate of pay.

11.15.2 NTD/EDGE and every subcontractor shall keep an accurate record showing the name of and actual hours worked each calendar day and each calendar week by each worker employed by him in connection with the work or any part of the work contemplated by this contract. The record shall be kept open at all reasonable hours to the inspection of the District and to the Division of Labor Law Enforcement, Department of Industrial Relations of the State of California.

11.15.3 NTD/EDGE shall pay to the District a penalty of twenty-five dollars ($25) for each worker employed in the execution of this contract by NTD/EDGE or by any subcontractor 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 article 3 (commencing at section 1810), chapter 1, part 7, division 2 of the Labor Code

11.16. Labor Compliance

11.16.1 District to address and provide a Labor Compliance Program in compliance with current state law at their expense.

12. ARTICLE 12 - MISCELLANEOUS PROVISIONS

12.1. Unless otherwise provided, this Agreement shall be governed by the law of the place where the Project is located.

12.2. SUBCONTRACTS

12.2.1 NTD/EDGE, shall furnish to the District in writing the names of the persons or entities that NTD/EDGE has selected as contractors for the Project for District's information only.

12.3. WORK BY DISTRICT OR DISTRICT'S CONTRACTORS

12.3.1 The District reserves the right to perform construction or operations related to the Project with the District's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under conditions of insurance and waiver of subrogation identical to the provisions of this Agreement. If NTD/EDGE claims that delay or additional cost is involved because of such action by the District, NTD/EDGE shall assert such claims as provided in this Article.

12.3.2 NTD/EDGE shall afford the District's separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities and shall connect and coordinate NTD/EDGE construction and operations with theirs as required by the Contract Documents.

12.3.3 Costs caused by delays or by improperly timed activities or defective construction shall be borne by the party responsible therefore.

12.4. CLAIMS FOR DAMAGES

12.4.1 If either party to this Agreement suffers injury or damage to person or property because of an act or omission of the other party, of any of the other party's employees or agents, or of others for whose acts such party is legally liable, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time. The notice shall provide sufficient detail to enable the other party to investigate the matter. If a claim of additional cost or time related to this claim is to be asserted, it shall be filed in writing providing sufficient documentation supporting the factual basis of the claim.

12.5. INDEMNIFICATION

12.5.1

(a) NTD/EDGE shall assume the defense of and indemnify, and hold harmless DISTRICT (including its trustees, officers, agents, members, employees), and each of them, of and from any and all claims, demands, suits, causes of action, damages, costs, expenses, attorneys' fees, losses or liability, in law or in equity, of every kind and nature whatsoever arising out of, or in connection with NTD/EDGE's negligent acts, errors, or omissions in performing Work under this Contract including, but not limited to:

(i) Personal injury (including, but not limited to, bodily injury, emotional injury, or distress, sickness, or disease) or death to persons, including, but not limited to, any employees or agents of NTD/EDGE, DISTRICT, or any subcontractor, or damage to property of anyone including the Work itself (including loss of use thereof), caused in whole or in part by any negligent act of omission of DISTRICT, or NTD/EDGE, or anyone directly or indirectly employed by them, or anyone for whose acts they may be liable;

(ii) Penalties imposed on account of the violation of any law, order, citation, rule, regulation, standard, ordinance, or stature, caused by the action or inaction of NTD/EDGE;

(iii) Infringement of any patent rights which may be brought arising out of NTD/EDGE's design;

(iv) NTD/EDGE's failure to fulfill any of the covenants set for the in this Agreement;

(v) Failure of NTD/EDGE to comply with the provision of this Agreement relating to insurance, provided that such Insurance is available at reasonable terms; and

(vi) Any violation or infraction by NTD/EDGE of any law, order, citation, rule, regulation, standard, ordinance, or statute in any way relating to the occupation, health, or safety of employees of NTD/EDGE, DISTRICT, or any subcontractor.

(b) It is understood and agreed that such indemnity shall survive the termination of this Agreement. The indemnities set forth in this section shall not be limited by the insurance requirements set forth in this Agreement.

(c) NTD/EDGE's indemnification of DISTRICT will not include indemnification for claims which arise as the result of the active negligence of DISTRICT, or the sole negligence or willful misconduct of DISTRICT, it's agents, servants or independent contractors who are directly responsible to DISTRICT, or for defects in design furnished by such persons, other than NTD/EDGE and its agents, consultants and subconsultants.

12.6. **12.5.2** In claims against any person or entity indemnified under this Paragraph by an employee of NTD/EDGE, anyone directly or indirectly employed by NTD/EDGE or anyone for whose acts NTD/EDGE may be liable, the indemnification obligation under this Paragraph shall not be restricted by a limitation on amount or type of damages, compensation or benefits payable by or for NTD/EDGE under workers' compensation acts, disability benefit acts or other employee benefit acts. SUCCESSORS AND ASSIGNS

12.6.1 The District and NTD/EDGE, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors and assigns of such other party with respect to all covenants of this Agreement. Neither the District nor NTD/EDGE shall assign this Agreement without the written consent of the other. The District may assign this Agreement to any institutional lender providing construction financing, and NTD/EDGE agrees to execute all consents reasonably required to facilitate such an assignment. If either party makes such an assignment, that party shall nevertheless remain legally responsible for all obligations under this Agreement, unless otherwise agreed by the other party.

12.7. EXTENT OF AGREEMENT

12.7.1 The contract Documents represent the entire agreement between the District and NTD/EDGE and supersedes prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument and signed by both the District and NTD/EDGE.

13. ARTICLE 13 - TERMINATION OF THE AGREEMENT

13.1. TERMINATION BY THE DISTRICT

13.1.1 This Agreement may be terminated by the District upon 14 days' written notice to NTD/EDGE in the event that the Project is abandoned by NTD/EDGE. If such termination occurs, the District shall pay NTD/EDGE for Work completed as of the effective date of said suspension and for proven loss sustained upon labor, materials, equipment, tools, and machinery including reasonable profit, overhead, and applicable damages including costs associated with demobilization and suspension.

13.1.2 If NTD/EDGE persistently fails or neglects to carry out the Work in accordance with the Contract Documents or fails to perform the provisions of this Agreement, the District may give written notice that the District intends to terminate this Agreement. If NTD/EDGE fails to correct the failure or neglect within twenty-One (21) days after being given notice, the District may without prejudice to any other remedy terminate the employment of NTD/EDGE and take possession of the site and of all materials, equipment, tools and construction equipment and machinery there on owned by NTD/EDGE and finish the Work by whatever method the District may deem expedient. If the unpaid balance of the Contract Sum exceeds the expense of finishing the Work and all damages incurred by the District, such excess shall be paid to NTD/EDGE. If the expense of completing the Work and all damages incurred by the District exceeds the unpaid balance, NTD/EDGE shall pay the difference to the District. This obligation for payment shall survive termination of this Agreement.

13.1.3 Termination for Convenience: notwithstanding anything to the contrary stated in this Agreement, the District may terminate this Agreement for convenience at any time upon twenty-one (21) days' prior written notice to NTD/EDGE. If the District terminates the Agreement as provided herein, the District, in its sole and absolute discretion, may require NTD/EDGE to complete any services required hereunder to facilitate the transfer of NTD/EDGE's responsibilities to another architect or other person. Upon termination, the District's total obligation to NTD/EDGE shall be limited to the payment for all services already provided by NTD/EDGE in accordance with this Agreement prior to the effective date of the "termination", plus any services rendered to facilitate the transfer of responsibilities.

13.2. TERMINATION BY NTD/EDGE

13.2.1 If the District fails to make payment of undisputed amounts when due, NTD/EDGE may give written notice of NTD/EDGE intention to terminate this Agreement. If NTD/EDGE fails to receive payment within thirty (30) days after receipt of such notice by the District, NTD/EDGE may terminate this Agreement and recover from the District payment for Work executed and for proven losses sustained upon labor, materials, equipment, tools, and machinery, including reasonable profit, overhead, and applicable damages including costs associated with demobilization and suspension.

14. ARTICLE 14 - BASIS OF COMPENSATION

The District shall compensate NTD/EDGE in accordance with Article 5, Payments, and the other provisions of this Agreement as described below.

14.1. COMPENSATION

14.1.1 For NTD/EDGE performance of the Work, as described in Article 3 and including any other services listed in Article 15 as part of Basic Services, the District shall pay NTD/EDGE in current funds the Contract Sum as follows:

(a) Preliminary Guaranteed Maximum Price (PGMP) for the overall Project is estimated to be (including Owner Requested Add Items) **$32,000,000.00** subject to paragraphs 14.1.1(a) 1, 2 & 3 below.

(1 Increment 1 Guaranteed Maximum Price (GMP) amount is **$3,315,000.00** per Exhibit A. This GMP said amount is included in above PGMP for overall Project.

(2) Subsequent to DSA approval of Increment 2, the total GMP contract amount shall be adjusted by an amendment to this contract reflecting the final cost required for construction of Increment 2.

(3) District is under no obligation to accept the amended cost for Increment 2. If District and NTD/EDGE are unable to agree on amended contract amount, District may terminate the contract for convenience under provisions of Article 13.1.3.

(b) Purchase Price shall be equal to the Guaranteed Maximum Price (GMP) per Sublease Agreement. In the event that the District does not approve the Final Guaranteed Maximum Price for Increment 2, the Purchase Price shall be equal to the GMP for Increment 1.

(c) Sublease Payments; Monthly in accordance with the Sublease Agreement, in the amount of **$70,000.00**

(d) Sublease Prepayments; Per Sublease Agreement

14.1.2 For Additional Services, as described in Article 3 and including any other services listed in Article 15 as Additional Services, compensation shall be as follows:

(a) To be determined, subject to mutual agreement between District and NTD/Edge.

(b) Allowances for Owner Requested Add Items have been provided per Exhibit A. Owner understands that these are allowances only and not bid numbers. In the event the cost of the Work of these items varies from the Allowances, the GMP shall be adjusted per actual costs incurred. Any remaining Allowance sums shall be credited back to the Owner; costs in excess of Allowances shall be added to the GMP by change order.

14.2. REIMBURSABLE EXPENSES

14.2.1 Reimbursable Expenses are in addition to the compensation for Basic and Additional Services, and include actual expenditures made by NTD/EDGE and NTD/EDGE employees and contractors in the interest of the Project, as follows:

- Costs incurred for reproduction of documents for Agency review and approval.
- Expense of additional insurance coverage or limits, including professional liability insurance, requested by the District in excess of that stipulated above and normally carried by NTD/EDGE
- Expense of reproduction of District provided Record Drawings and As-Builts of existing facilities if required by NTD/EDGE in the performance of this contract.

14.2.2 FOR REIMBURSABLE EXPENSES, compensation shall be a multiple of 1.20 times the amounts expended.

14.3. INTEREST PAYMENTS

8.4.48

14.3.1 The rate of interest for past due payments shall be as follows:

(a) Non-disputed payments due the Builder under this Part 1 Agreement which are not paid when due shall bear interest from the date due at the rate of 6 % or in the absence of a specified rate, at the legal rate against a public agency allowed under California law.

15. ARTICLE 15 - OTHER CONDITIONS AND SERVICES

15.1. The Basic Services to be performed under Increment 1 shall be commenced upon receipt of Notice to Proceed and, subject to authorized adjustments and to delays not caused by NTD/EDGE, Substantial Completion of Increment 1 shall be achieved in the Contract Time of one-hundred eighty (180) calendar days.

15.1.1 Subsequent to DSA approval of Increment 2, the date of Substantial Completion shall be adjusted by an amendment to this contract including the time required for construction of Increment 2.

15.2. The Basic Services beyond those described in Article 3 are as follows:

15.2.1 N/A

15.3. Additional Services beyond those described in Article 3 are as follows:

15.3.1 N/A

15.4. NTD/EDGE shall submit an Application for Payment on the First (1st) day of each month.

15.5. Insurance coverage required by Article 7.1 shall be provided in the following amounts:

15.5.1 $1,000,000.00

15.6. Insurance coverage required by Article 7.3 and 7.5 shall be provided in the following amounts:

15.6.1 Article 7.3 - $1,000,000.00

15.6.2 Article 7.5 – Full Replacement Cost

8.4.49

15.7 This Agreement includes the following documents:

(List the documents by specific title and date; include any required performance and payment bonds.)

Increment 1 Guaranteed Maximum Price & Contract Qualifications List per Exhibit A

Increment 1 Drawings and Specifications per Exhibits B & C

Increment 1 Payment Bond per Exhibit E

Increment 1 Performance Bond per Exhibit F

This Agreement entered into as of March 25, 2004.

Documents for Increment 2 will be added by addendum to this Agreement subsequent to DSA approval of the documents of Increment 2 and acceptance by the District of the Final GMP which shall include all of the Work of Increment 1 & Increment 2.

WESTERN PLACER UNIFIED SCHOOL DISTRICT	**NTD/EDGE, Design Builders, Inc.**
(Signature)	*(Signature)*
(Printed name and title)	*(Printed name and title)*
	(Signature)
	Dayne Wagoner Principal/CEO *(Printed name and title)*

END OF AGREEMENT

8.4.50

NTD | EDGE
DESIGN • BUILDERS

Western Placer Unified School District
Twelve Bridges Middle School Phase 1 — **January 15, 2004**
Guaranteed Maximum Price

	Direct Costs of Construction	2,743,120
	OH & P @ 6.00%	164,587
	Builders Risk @ 0.45%	13,085
	Subtotal	2,920,792
	Payment & Performance Bonds @ 1.00%	29,208
	Subtotal	2,950,000
	A/E Fees * NOT INCLUDED IN THIS PHASE	-
	TOTAL	**2,950,000**
	CONTINGENCIES	
1	Winter Conditions / Dewatering Contingency	150,000
2	Owner Contingency	200,000
	Total Value of Contingencies	**350,000**
	Total Direct Construction Costs	**2,950,000**
	Contingencies	350,000
	A/E Fees	15,000
	TOTAL INCLUDING A/E FEES & CONTINGENCIES	**3,315,000**

8.4.5

12 Bridges Middle School

Contract Qualifications

Increment 1 – Site Work

1. Proposal is based on a balanced site. No import and export of soils materials will be required.
2. Construction fencing will be typical for the industry.
3. Dust control will be as required by the jobsite conditions.
4. Contractor will provide one set of reproducible record drawings. Record plan set will be posted with as-built information.
5. Material that cannot be reasonably ripped by a D-8R caterpillar tractor in second gear with a dual shank ripper is not included. Trench excavation requiring larger than a 580 Case backhoe is not included. Blasting for the purpose of rock removal is excluded. All rock removal will be a part of the Owner's contingency.
6. We have not included costs for meters on the water services in our price. All water meters shall be furnished and installed by others.
7. We have not included any costs for removal, relocation or adjustment to grade of existing utilities. Any required adjustments will be completed in Increment 2 as appropriate.
8. We have not included costs for testing, cleaning, balling or flushing of the existing up or down stream sanitary sewer and storm drain systems.
9. Proposal assumes that there will be no students during construction and therefore fingerprinting and background checks are excluded from Increment 1.
10. Telemetering conduit and pull rope between the water meters, detector check valves, back-flow valves or post indicator valves and the buildings will be completed in Increment 2 as appropriate.

8.4.52

CONTRACT QUALIFICATIONS

11. Trenches will be completed only to the depths necessary to install the wet utilities per Code. Section 02320 paragraph 3.3.6.1 requires, "rock" to be removed 12 feet below finish grade or existing grade whichever is lower. This requirement is excluded.

8.453

EXHIBIT B

INCREMENT 1 SPECIFICATIONS

TABLE OF CONTENTS

GENERAL DOCUMENTS

Cover
Flyleaf
Directory/Certifications
Table of Contents

BIDDING/CONTRACT REQUIREMENTS

00220 Geotechnical Report
00700 General Conditions

DIVISION 01: GENERAL REQUIREMENTS

01110 Summary of Work
01150 Field Engineering & Survey Controls
01250 Contract Modifications
Request for Information Form
01257 Payment Procedures
01310 Coordination and Meetings
01320 Construction Schedules
01330 Submittals
01420 Reference and Definitions
01430 Quality Control
01450 Testing Laboratory Services
01500 Temporary Facilities & Temporary Controls
01570 Storm Water Pollution Protection Plan
01600 Product Requirements
01610 Substitutions
Substitution Request Form
01730 Cutting and Patching
01770 Contract Closeout

DIVISION 02: SITE CONSTRUCTION

02235 Site Cleaning and Demolition
02310 Grading and Excavation
02313 Rock Removal
02315 Filling and Backfilling
02320 Trenching
02500 Off-Site Improvements
02510 Water Distribution Systems
02530 Sanitary Sewer Systems
02620 Subsurface Drainage Systems
02630 Storm Drainage Systems
02700 Piped Utilities

END OF TABLE OF CONTENTS

8.4.54

12 BRIDGES MIDDLE SCHOOL

INCREMENT 1 INDEX OF DRAWINGS

EXHIBIT C

SHT #	TITLE	DATED
CIVIL		
C0.0	PARTIAL TOPOGRAPHIC SURVEY	11/13/03
C0.1	PARTIAL TOPOGRAPHIC SURVEY	11/13/03
C0.2	COORDINATE LIST, LEGEND, INDEX, AND ABBREVIATIONS	11/13/03
C0.3	PARTIAL ENGINEERED FILL PLAN	11/13/03
C0.4	PARTIAL ENGINEERED FILL PLAN	11/13/03
C1.1	PARTIAL HORIZONTAL CONTROL PLAN	11/13/03
C1.2	PARTIAL HORIZONTAL CONTROL PLAN	11/13/03
C1.3	PARTIAL HORIZONTAL CONTROL PLAN	11/13/03
C1.4	PARTIAL HORIZONTAL CONTROL PLAN	11/13/03
C1.5	PARTIAL HORIZONTAL CONTROL PLAN	11/13/03
C1.6	PARTIAL HORIZONTAL CONTROL PLAN	11/13/03
C1.7	PARTIAL HORIZONTAL CONTROL PLAN	11/13/03
C1.8	PARTIAL HORIZONTAL CONTROL PLAN	11/13/03
C2.1	PARTIAL GRADING PLAN	11/13/03
C2.2	PARTIAL GRADING PLAN	11/13/03
C2.3	PARTIAL GRADING PLAN	11/13/03
C2.4	PARTIAL GRADING PLAN	11/13/03
C2.5	PARTIAL GRADING PLAN	11/13/03
C2.6	PARTIAL GRADING PLAN	11/13/03
C2.7	PARTIAL GRADING PLAN	11/13/03
C2.8	PARTIAL GRADING PLAN	11/13/03
C3.1	PARTIAL DRAINAGE PLAN	11/13/03
C3.2	PARTIAL DRAINAGE PLAN	11/13/03
C3.3	PARTIAL DRAINAGE PLAN	11/13/03
C3.4	PARTIAL DRAINAGE PLAN	11/13/03
C3.5	PARTIAL DRAINAGE PLAN	11/13/03
C3.6	PARTIAL DRAINAGE PLAN	11/13/03
C3.7	PARTIAL DRAINAGE PLAN	11/13/03
C3.8	PARTIAL DRAINAGE PLAN	11/13/03
C4.1	PARTIAL UTILITY PLAN	11/13/03
C4.2	PARTIAL UTILITY PLAN	11/13/03
C4.3	PARTIAL UTILITY PLAN	11/13/03
C4.4	PARTIAL UTILITY PLAN	11/13/03
C4.5	PARTIAL UTILITY PLAN	11/13/03
C4.6	PARTIAL UTILITY PLAN	11/13/03
C4.7	PARTIAL UTILITY PLAN	11/13/03
C4.8	PARTIAL UTILITY PLAN	11/13/03
C5.1	PARTIAL DOMESTIC WATER AND FIRE PROTECTION PLAN	11/13/03
C5.2	PARTIAL DOMESTIC WATER AND FIRE PROTECTION PLAN	11/13/03
C5.3	PARTIAL DOMESTIC WATER AND FIRE PROTECTION PLAN	11/13/03
C5.4	PARTIAL DOMESTIC WATER AND FIRE PROTECTION PLAN	11/13/03
C5.5	PARTIAL DOMESTIC WATER AND FIRE PROTECTION PLAN	11/13/03
C5.6	PARTIAL DOMESTIC WATER AND FIRE PROTECTION PLAN	11/13/03
C5.7	PARTIAL DOMESTIC WATER AND FIRE PROTECTION PLAN	11/13/03
C5.8	PARTIAL DOMESTIC WATER AND FIRE PROTECTION PLAN	11/13/03
C6.1	PARTIAL PAVING PLAN	11/13/03
C6.2	PARTIAL PAVING PLAN	11/13/03

8.4.55

12 BRIDGES MIDDLE SCHOOL

INCREMENT 1 INDEX OF DRAWINGS

EXHIBIT C

SHT #	TITLE	DATED
C6.3	EROSION CONTROL PLAN	11/13/03
C7.1	DETAILS	11/13/03
C7.2	SECTIONS	11/13/03
C8.1	OFFSITE IMPROVEMENT PLAN COVER SHEET	11/13/03
C8.2	OFFSITE IMPROVEMENT PLAN NOTES	11/13/03
C8.3	OFFSITE IMPROVEMENT PLAN WEST VIEW DRIVE STA. 14+41.06 TO STA. 19+24.49	11/13/03
C8.4	OFFSITE IMPROVEMENT PLAN WEST VIEW DRIVE STA. 20+56.68 TO STA. 23+39.02	11/13/03
C8.5	OFFSITE IMPROVEMENT PLAN - LINCOLN PARKWAY STA. 75+64.20 TO STA. 80+00.00	11/13/03
C8.6	OFFSITE IMPROVEMENT PLAN - LINCOLN PARKWAY STA. 80+00.00 TO STA. 93+93.45	11/13/03
C8.7	OFFSITE IMPROVEMENT PLAN DETAILS & SECTIONS	11/13/03

END OF DRAWING INDEX

8.4.56

EXHIBIT D

12 BRIDGES MIDDLE SCHOOL
INCREMENT 1 - SCOPE OF WORK SUMMARY

INFORMATION DESCRIBED HEREIN REFLECTS THE SCOPE OF WORK REQUIRED TO COMPLETE THE ON and OFF-SITE PORTIONS OF THE WORK FOR INCREMENT 1 OF THIS PROJECT.

THE CALIFORNIA DIVISION OF STATE ARCHITECT APPROVAL NOTED ON THESE 'INCREMENT 1' DOCUMENTS SHALL REPRESENT DSA APPROVAL OF THE FOLLOWING ITEMS ONLY:

1. TOTAL PROJECT SITE CLEARING AND DEMOLITION,
2. TOTAL SITE ROUGH GRADING AND EXCAVATION TO SUB-GRADE ELEVATIONS; MINUS TOPSOIL OR PAVING SUB-BASE AND FINE GRADING, TO SPECIFIED REQUIREMENTS. INCREMENT 1 GRADING WORK SHALL MAINTAIN DRAINAGE, EROSION CONTROL AND ACCESS TO THE SITE.
3. TOTAL BUILDING PAD CONSTRUCTION TO FINISHED PAD ELEVATIONS, MINUS SLAB SUB-BASE, UNDERLAYMENT and SLAB.
4. ALL UNDERGROUND UTILITY and DRAINAGE SYSTEMS AS SHOWN. SYSTEMS AT DAYLIGHT POINT SHALL BE SET TO ELEVATIONS NECESSARY FOR TEMPORARY FUNCTION, UNTIL SETTING TO FUTURE INCREMENT 2 CONSTRUCTION PERMANENT ELEVATIONS.
   EXCEPTION: GAS SERVICE SYSTEM SHALL BE EXCLUDED FROM INCREMENT 1 CONSTRUCTION AND DEFERRED TO INCREMENT 2 CONSTRUCTION FOR INSTALLATION AND COMPLETION OF THIS SYSTEM.
5. NO OFF-SITE CONSTRUCTION; INCLUDING UTILITY TAPS TO EXISTING STREET UTILITIES, SHALL OCCUR AS A PART OF INCREMENT 1 CONSTRUCTION. THESE ITEMS SHALL BE DEFERRED TO THE FUTURE INCREMENT 2 CONSTRUCTION FOR INSTALLATION AND COMPLETION.
   EXCEPTION: INSTALL TAPS TO EXISTING STORM DRAIN SYSTEM IN STREET FOR ON-SITE STORM DRAINAGE DURING CONSTRUCTION.

THE ITEMS NOTED ABOVE GENERALLY REPRESENT THE SCOPE OF WORK REQUIRED FOR INCREMENT 1 CONSTRUCTION. ALL REMAINING ITEMS SHOWN ON THIS SHEET SHALL BE CONSIDERED A PART OF THE FUTURE INCREMENT 2 CONSTRUCTION. FUTURE INCREMENT 2 ITEMS SHALL BE REVIEWED AND APPROVED BY DSA AS PART OF A SECOND INCREMENTAL REVIEW.

3/25/2004

8.457

EXHIBIT E

PAYMENT BOND

(Labor and Material)

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, Western Placer Unified School District and NTD-EDGE, Inc., hereinafter designated as the "Principal", have entered into a series of agreements including a Services Agreement, a Site Lease, and a Facilities Sublease (collectively "the Agreement") for the furnishing of all construction, materials and labor, services and transportation, necessary, convenient, and proper to construct the 12 Bridges Middle School, located at Lincoln, CA, which said Agreement is dated on or about March 25, 2004, and all of the contract documents are hereby referred to and made a part hereof;

and

WHEREAS, the Principal is required, before entering upon the performance of the work, to file a good and sufficient bond with the body by whom the Agreement is awarded to secure the claims arising under said agreement.

NOW, THEREFORE, THESE PRESENTS WITNESSETH:

That the said Principal and the undersigned _____ (Surety) are held and firmly bound unto all laborers, material men, and other persons referred to in Civil Code section 3248, subdivision (b), in the sum of _____ Dollars ($_____) which sum well and truly be made, we bind ourselves, our heirs, executors, administrators, successors, or assigns, jointly and severally, by these presents.

The condition of this obligation is that if the said Principal or any of its subcontractors, or the heirs, executors, administrators, successors, or assigns of any, all, or either of them, shall fail to pay any of the persons named in Civil Code section 3181, or any of the amounts due as specified in Civil Code section 3248, subdivision (b), to pay for any materials, provisions, provender or other supplies, or teams, used in, upon, for, or about the performance of the work contracted to be done, that said Surety will promptly pay the same in an amount not exceeding the amount hereinabove set forth, and also in case suit or other legal proceeding is brought upon this bond, will pay costs and reasonable attorney's fees to be awarded and fixed by the Court, and to be taxed as costs and to be included in the judgment therein rendered.

It is hereby expressly stipulated and agreed that this bond shall inure to the benefit of any and all persons, companies, and corporations entitled to file claims so as to give a right of action to them or their assigns in any suit brought upon this bond.

Should the condition of this bond be fully performed, then this obligation shall become null and void, otherwise it shall be and remain in full force and effect.

And the said Surety, for value received, thereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of said Agreement or the specifications accompanying the same shall in any manner affect its obligations on this bond, and it does hereby waive notice of any such change, extension, alteration, or addition.

Surety represents that it is a duly qualified surety in good standing under the laws of the state of California.

IN WITNESS WHEREOF, this instrument has been duly executed by the Principal and Surety this _____ day of _____, _____.

(To be signed by)
(Principal and Surety,)
(and acknowledged and)
(Notarial Seal attached)

_____
Principal

_____

_____
Surety

_____

By:_____
Attorney-in-Fact

_____

The above bond is accepted and approved this _____ day of _____, 2003.

EXHIBIT F

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS that we NTD-EDGE, Inc. as Principal, and _____ as Surety, are held and firmly bound unto **Western Placer Unified School District**, in the County of Placer, State of California, hereinafter called the "District," in the sum of _____ Dollars ($_____) for the payment of which sum well and truly made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

The condition of this obligation is such, that whereas the Principal entered into a series of Agreements regarding the construction of improvements, including a Services Agreement between the District and NTD-EDGE, a Site Lease, and a Facility Sublease Agreement, dated _March 25, 2004 (the "Agreements") in connection with which the Principal agreed to construct facilities for the project known as the 12 Bridges Middle School and related improvements ("Improvements") at __Lincoln_____in Placer County, California, on the real property described in the attached legal description and to lease the Improvements to the District with option to purchase.

NOW, THEREFORE, if the Principal shall well and truly perform and fulfill all the undertakings, covenants, terms, conditions, and Agreements referenced above during the original term of said Agreements and any extensions thereof that may be granted by the District, with or without notice to the Surety, and during the life of any warranty required under the Agreements, and shall also well and truly perform and fulfill all the undertakings, covenants, terms, conditions of any and all duly authorized modifications of said Agreements that may hereafter be made, then this obligation is to be void, otherwise to remain in full force and virtue. In case suit or other proceeding is brought upon this bond, Surety will pay costs and reasonable attorney's fees to be awarded and fixed by the Court, and to be taxed as costs and to be included in the judgment therein rendered.

And the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Agreements or to the work to be performed thereunder or the specifications accompanying the same, shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Agreements, or to the work, or to the specifications.

8.4.60

The Surety's obligation shall be promptly rendered without further demand or Agreement, to perform the obligations with respect to the Agreements referenced herein.

Surety represents that it is a duly qualified Surety in good standing under the laws of the state of California.

IN WITNESS WHEREOF, the above-bound parties have executed this instrument under their several seals this _____ day of _____, 2004 hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

(To be signed by)
(Principal and Surety,)
(and acknowledged and)
(Notarial Seal attached)

(Affix Corporate Seal)

NTD-EDGE, Inc.

By: _____
Its:

By: _____
Its:

The rate of premium on this bond is _____ per thousand.

The total amount of premium charged is _____.

The above must be filled in by Corporate Surety.

8.4.61

MISSION STATEMENT Empower Students with the Skills, Knowledge, and Attitudes for Success in an Ever Changing World

BOARD OF TRUSTEE GLOBAL DISTRICT GOALS

1. Develop and continually upgrade a well articulated K-12 academic program that challenges all students to achieve their highest potential.
2. Fosters 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, local government, business, service organizations, etc. as partners in the education of our students.

COMPLIANCE CHECK LIST

Complies with Board Policy ___
Complies with Site Plan (LIP)___
Complies with Governance & Management Document ___
Complies with Mission Statement___
Funding Sign-Off by J. Stewart___

Personnel Sign-Off by B. Noyes___
Program Sign Off by S. Leaman___

SBLT Involvement ___
Initial

WESTERN PLACER UNIFIED SCHOOL DISTRICT
BOARD OF TRUSTEE MEETING
FACT SHEET

SUBJECT:
Approve the FY 2004-05 Transportation Fees

AGENDA ITEM AREA:
Discussion/Action

REQUESTED BY:
Jay Stewart,
Assistant Superintendent, Business Services

ENCLOSURES:
Yes

MEETING DATE:
April 20, 2004

BACKGROUND:

Attached for the Board of Trustees' review and action are the proposed transportation fees for 2004-05 school year.

SUPERINTENDENT'S RECOMMENDATION:

Administration recommends the Board of Trustees Approve the FY 2004-05 transportation fee prices.

Eva\h:\wpfiles\Board\format10

PROPOSED FEE SCHEDULE

	FY 2003-04	FY 2004-05
Home-to-School Transportation:		
Annual Pass:		
One Student	180.00	180.00
Two Students	360.00	360.00
Three or More Students	400.00	420.00
Semester Pass		
One Student	90.00	100.00
Two Students	180.00	200.00
Three or More Students	200.00	230.00
One-way Tickets (10)	5.00	10.00
Field Trips (Per Mile)	1.85	2.35
Athletic Transportation:		
High School:		
Per Sport:		
Full Pay	35.00	40.00
Reduced	25.00	30.00
Free	15.00	20.00
Family Maximum:		
Full Pay	200.00	200.00
Reduced	130.00	130.00
Free	65.00	65.00
Middle School:		
Per Sport:		
Full Pay	15.00	20.00
Reduced	10.00	15.00
Free	5.00	10.00

PROPOSED FEE SCHEDULE

	FY 2003-04	FY 2004-05
Driver Training:		
Full Pay	135.00	150.00
Reduced	85.00	100.00
Free	60.00	75.00

8.5.2

MISSION STATEMENT Empower Students with the Skills, Knowledge, and Attitudes for Success in an Ever Changing World	
BOARD OF TRUSTEE GLOBAL DISTRICT GOALS	*COMPLIANCE CHECK LIST*
1. Develop and continually upgrade a well articulated K-12 academic program that challenges all students to achieve their highest potential.	Complies with Board Policy ___
	Complies with Site Plan (LIP)___
2. Fosters a safe, caring environment where individual differencesare valued and respected.	Complies with Governance & Management Document ___
	Complies with Mission Statement___
3. Provide facilities for all district programs and functions that are suitable in terms of function, space, cleanliness and attractiveness.	Funding Sign-Off by J. Stewart___
	Personnel Sign-Off by B. Noyes___
4. Promote the involvement of the community, local government, business, service organizations, etc. as partners in the education of our students.	Program Sign Off by S. Leaman___
	SBLT Involvement ___ Initial

WESTERN PLACER UNIFIED SCHOOL DISTRICT
BOARD OF TRUSTEE MEETING
FACT SHEET

SUBJECT:
Approve the FY 2004-05 Lunch Prices

AGENDA ITEM AREA:
Discussion/Action

REQUESTED BY:
Jay Stewart,
Assistant Superintendent, Business Services

ENCLOSURES:
Yes

MEETING DATE:
April 20, 2004

BACKGROUND:

Attached for the Board of Trustees' review and action are the proposed lunch prices for 2004-05 school year.

SUPERINTENDENT'S RECOMMENDATION:

Administration recommends the Board of Trustees Approve the FY 2004-05 lunch prices.

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PROPOSED MEAL PRICES

	FY 2003-04	FY 2004-05
Full Pay:		
Student Breakfast	1.00	1.25
Student Lunch	1.75	2.00
Adult Breakfast	1.25	1.50
Adult Lunch	2.50	3.00
Reduced:		
Student Breakfast	0.30	0.30
Student Lunch	0.40	0.40
Free:		
Student Breakfast	0.00	0.00
Student Lunch	0.00	0.00

8.6.1

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.
BOARD OF TRUSTEES/GLOBAL DISTRICT 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.

AGENDA ITEM:

Approve Resolution 03/04.29 Authorizing the County Superintendent of Schools to Establish and Maintain a Countywide Contractors' Register.

SUBJECT AREA:

Discussion/Action

REQUESTED BY:

Jay M. Stewart
Assistant Superintendent, Business Services

ENCLOSURES:

Yes

BOARD MEETING DATE:

April 20, 2004

BACKGROUND:

The attached resolution authorizes the Placer County Office of Education to establish and maintain a countywide contractor register for all of the school districts. This relieves the District from having to advertise and maintain its own contractor register.

SUPERINTENDENT'S RECOMMENDATION:

Administration recommends the Board of Trustees approve Resolution 03/04.29 authorizing the County Superintendent of Schools to establish and maintain a Countywide Contractors' Register.

WESTERN PLACER UNIFIED SCHOOL DISTRICT

Resolution No. 03/04.29

A RESOLUTION AUTHORIZING THE)
COUNTY SUPERINTENDENT OF THE)
SCHOOLS TO ESTABLISH AND MAINTAIN)
A COUNTYWIDE CONTRACTORS' REGISTER)
(PUBLIC CONTRACT CODE 20116, 20657)

The following **RESOLUTION** was duly passed and adopted by the Board of Trustees of the above-entitled district at a regular meeting held the 20th day of April 2004, by roll call vote.

AYES:
NOES:
ABSENT:

WHEREAS, Public Contract Code 20116, and 20657 require school districts and community colleges that choose to utilize formal bidding for projects that cost up to the dollar limits specified for formal bidding to publish a notice inviting any contractor to register who wishes to be notified of informal bidding projects;

WHEREAS, it is cost effective to publish an annual notice that establishes a single, county-wide register for all Placer County school districts rather than establishing individual registries for each school district;

NOW THEREFORE, the Board of Trustees of the above titled district **FINDS, DECLARES, RESOLVES AND ORDERS** as follows:

1. The County Superintendent of Schools is authorized to include the above-entitled district in a countywide contractor's register for the 2002-2003 school year which complies with the informal bidding procedures required in Public Contract Code 20116 and 20657.

2. The County Superintendent of Schools is further authorized to publish the necessary legal notice, prepare the contractor's register, and provide the District with one (1) copy of the completed register. The District shall be responsible for giving contractors listed in the register notice of its informal bid projects in the time and manner provided by Public Contract Code 20116 and 20657.

Passed and adopted on this 20th day of April 2004, Western Placer Unified School District at Placer County, California.

_____
President of the Board

ATTEST:

_____, Clerk

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.
BOARD OF TRUSTEES/GLOBAL DISTRICT 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.

AGENDA ITEM:

Approval of the Proposed FY 2004-05 Budget Reductions.

SUBJECT AREA:

Discussion/Action

REQUESTED BY:

Jay M. Stewart
Assistant Superintendent, Business Services

ENCLOSURES:

Yes

BOARD MEETING DATE:

April 20, 2004

BACKGROUND:

The District's First Interim Report, which is a snapshot of the District's financial status as of October 31, 2003, received a qualified certification by the Placer County Office of Education (PCOE). The qualified certification is assigned to a school district when it is determined that, based on current projections, the school district may not meet its financial obligations for fiscal year 2003-04, 2004-05, or 2005-06. A combination of events, such as the State's financial crises which has translated into reduced funding for school districts, lower ADA counts than projected, and rising operational expenditures all contributed to the District's qualified status.

In response to the qualified certification, the FY 2003-04 budget was evaluated, and based on the most current information available, adjustments were made to the revenue assumptions and strict spending controls were introduced. However, as previously explained, the qualified certification not only addresses the current year, but the next two years as well. The goal is to have the resources to meet both planned and unplanned financial obligations under a multi-year setting. To achieve this goal, a list of suspensions and reductions were developed for the FY 2004-05 budget. The attached multi-year projection incorporates the proposed suspensions and reductions outlined on the following page. This multi-year projection was submitted to PCOE along with the District's Second Interim Report, and as a result of the revised projection, PCOE removed the qualified designation. Please note that the projections barely meet the State's requirement for the minimum reserve of 1.5% for FY 2004-05, and still falls a little short of the minimum reserve requirement of 3% for FY 2005-06. For comparison, the total average net ending balance for all

unified school districts was 10.59%. Clearly there is still a lot of work yet to be accomplished in order to bring the District's budget into a long-term stable condition.

Proposed Reductions:

In an effort to conserve on personnel costs, the District is proposing to suspend the K-5 certificated staffing ratio and instead staff in accordance with the K-3 class-size reduction limitations for grades K-3 and the negotiated contract for grades 4-5. The District is also proposing to increase the 6-8 certificated staffing ratio from 24:1 to 25:1 and the 9-12 certificated staffing ratio from 26:1 to 27:1. These adjustments will allow the District to fill some of its vacant positions with existing staff instead of hiring new personnel. Total projected savings is $233,721.

Suspension of the 1.00 FTE Elementary Spanish Teacher position. The total projected savings is $51,938.

Suspension of the 1.00 FTE Middle School Arts Core position. The total projected savings is $51,938.

Suspension of the 0.50 FTE Middle School Opportunity position. The total projected savings is $25,969.

Elimination of the 0.20 FTE High School Ag Teacher position. The total projected savings is $18,586.

Reduction of the High School Conditioning position from 0.20 FTE to 0.07 FTE. The total projected savings is $8,493.

Classified staffing ratios were suspended resulting in a 1.50 FTE reduction of clerical services. The opening of the new elementary school will further reduce existing clerical position by 0.50 FTE. Total savings are projected at $64,799.

1.00 FTE Bus Mechanic position is retiring under the provisions of the Classified Golden Handshake. The net savings is projected at $65,280. This savings may be reduced if it is determined that this position needs to be backfilled with a less expensive position classification.

Suspend certificated stipends for kindergarten orientation, sixth grade Woodleaf, 6-8 Athletic Director, 6-8 Activities Director, 9-12 Athletic Director, and the 9-12 Activities Director. Total savings are projected at $34,384.

Administratively, the District anticipates the retirement of the Director of Accounting position as of July 31, 2004. At this time there are no plans to fill this position. Total savings are projected at $100,560.

Site discretionary budgets were calculated by multiplying the site's 2003 CBEDS count by the per student allocation. No COLA was provided to the per student allocation rate, and a ten percent deduction was taken from the computed allocation for a projected savings of $29,792.

Supplemental funding for the District's art program was suspended for a savings of $16,770.

The District Staff Development budget was reduced by 16.67% for a savings of $5,000.

Supplemental funding for kindergarten class-size reduction was eliminated for a savings of $6,500.

The high school athletic uniform budget was eliminated for a savings of $10,000.

The Deferred Maintenance transfer was eliminated from the budget for a savings of $130,000.

The total projected savings equals $847,830.

SUPERINTENDENT'S RECOMMENDATION:

Administration recommends the Board of Trustees approve the Proposed FY 2004-05 Budget Reductions.

WESTERN PLACER UNIFIED SCHOOL DISTRICT

MULTI-YEAR BUDGET PROJECTION

OBJECT CODE	DESCRIPTION	FY 2003-04 PROJECTED BUDGET	FY 2004-05 PROJECTED BUDGET	FY 2005-06 PROJECTED BUDGET
	Beginning Balance	567,869	908,529	667,440
	Revenues:			
8010-8099	Revenue Limit Sources	27,773,596	29,666,810	31,377,263
8100-8299	Federal Revenues	2,327,344	1,650,540	1,653,128
8300-8599	State Revenues	3,005,756	2,949,151	3,071,473
8600-8799	Local Revenues	2,199,724	1,748,812	1,761,723
8900	Transfers In	1,498,365	0	0
	Total Revenues	36,804,785	36,015,313	37,863,587
	Total Beginning Balance & Revenues	37,372,654	36,923,842	38,531,027
	Expenditures:			
1000-1999	Certificated Salaries	13,844,505	13,885,263	14,606,779
2000-2999	Classified Salaries	3,782,507	3,711,639	4,115,623
3000-3999	Employee Benefits	4,695,860	5,233,340	5,489,877
4000-4999	Books and Supplies	2,672,929	1,606,176	1,603,846
5000-5999	Contracted Services	2,112,334	1,957,745	2,031,522
6000-6999	Capital Outlay	27,000	10,000	10,000
7000-7999	Other Outgo	9,328,990	9,852,239	9,790,835
	Total Expenditures	36,464,125	36,256,402	37,648,482
	Ending Balance	908,529	667,440	882,545
	Components of Ending Fund Balance:			
	Revolving Cash	2,000	2,000	2,000
	Prepaid Expenditures	63,000	63,000	63,000
	Economic Uncertainties (1.5%)	0	400,004	0
	Economic Uncertainties (3.0%)	821,000	0	841,771
	Textbook Adoptions	0	0	0
	Undesignated Reserve	22,529	202,436	0
	Total Reserves	908,529	667,440	906,771
	Difference	0	0	-24,226

8.8.3

MISSION STATEMENT Empower Students with the Skills, Knowledge, and Attitudes for Success in an Ever Changing World

BOARD OF TRUSTEE GLOBAL DISTRICT GOALS

1. Develop and continually upgrade a well articulated K-12 academic program that challenges all students to achieve their highest potential.
2. Fosters a safe, caring environment where individual differencesare 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, local government, business, service organizations, etc. as partners in the education of our students.

COMPLIANCE CHECK LIST

Complies with Board Policy ___
Complies with Site Plan (LIP)___
Complies with Governance & Management Document ___
Complies with Mission Statement__
Funding Sign-Off by J. Stewart___

Personnel Sign-Off by B. Noyes___
Program Sign Off by S. Leaman___

SBLT Involvement ___ initial

WESTERN PLACER UNIFIED SCHOOL DISTRICT
BOARD OF TRUSTEE MEETING
FACT SHEET

SUBJECT:
New Policies for First Reading

AGENDA ITEM AREA:
Information/Discussion

REQUESTED BY:
Roger R. Yohe,
District Superintendent

ENCLOSURES:
Policies & Regulations

MEETING DATE:
April 20, 2004

BACKGROUND:

The District Policy Committee and the Management Team have reviewed the following new policies/regulations/exhibits as per CSBA. This group of new policies is being reviewed on a first reading basis.

* AR0430 Comprehensive Local Plan for Special Education (Special Designed Instruction)
* AR1321 Soliciting Funds From and by Students
* BP4135 Soliciting and Selling

SUPERINTENDENT'S RECOMMENDATION:

Administration recommends the Board of Trustees approve the new policies/regulations and exhibits as presented.

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Philosophy, Goals, Objectives and Comprehensive Plans

Comprehensive Local Plan for Special Education (Specially Designed Instruction)

Definitions

Specially designed instruction means adapting, as appropriate to the needs of an eligible child, the content, methodology or delivery of instruction. (34 CFR 300.26)

Free and appropriate education (FAPE) means special education and related services that are provided at public expense, under public supervision and direction, and without charge; meet the standards of the California Department of Education; include appropriate services for children aged 3 through 21 years; and are provided in conformity with the student's individualized education program pursuant to 34 CFR 300.340-300.350. The right to FAPE extends to students who are suspended or expelled or placed by the district in nonpublic school or agency services. (34 CFR 300.13, 300.121)

(cf. 6159 - Individualized Education Program)

Full educational opportunities means that students with disabilities have the right to full educational opportunities to meet their unique needs, including access to a variety of educational programs and services available to nondisabled students. A program specialist may be responsible for assuring that students have full educational opportunities regardless of their district of residence. (34 CFR 300.504, 300.505; Education Code 56368)

Least restrictive environment means that to an appropriate extent, students with disabilities, including children in public or private institutions, shall be educated with children who are not disabled, including in nonacademic and extracurricular services and activities. (34 CFR 300.306, 300.550, 300.554).

Special education means specially designed instruction, at no cost to the parent/guardians, to meet the unique needs of individuals with exceptional needs, whose educational needs cannot be met with modification of the regular instruction program, and related services, at no cost to the parent/guardian, that may be needed to assist these individuals to benefit from specially designed instruction. Special education provides a full continuum of program options, including instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and instruction in physical education, to meet the educational and service needs of individuals with exceptional needs in the least restrictive environment. (Education Code 56031)

Philosophy, Goals, Objectives and Comprehensive Plans

Surrogate parent means an individual assigned to act as a surrogate for the parents/guardians. The surrogate may represent an individual with exceptional needs in matters relating to identification, assessment, instructional planning and development, educational placement, reviewing and revising the IEP, and in other matters relating to the provision of FAPE to the individual with disability. (34 CFR 300.515; Education Code 56050)

(cf. 6159.4 - Appointment of Surrogate Parent for Special Education)

Elements of the Local Plan

The special education local plan shall include, but not be limited to the following:

1. Assurances that policies, procedures and programs, consistent with state law, regulation, and policy, are in effect as specified in Education Code 56205(a)(1-21) and in conformity with 20 USC 1412(a) and 20 USC 1413(a)(1). (Education Code 56205)

2. An annual budget plan and annual service plan adopted at a public hearing held by the special education local plan area. (Education Code 56205)

3. A description of the process being utilized to oversee and evaluate placements in nonpublic, nonsectarian schools and the method for ensuring that all requirements of each student's IEP are being met. (Education Code 56205)

(cf. 6159.2 - Nonpublic, Nonsectarian School and Agency Services for Special Education)

4. A description of how specialized equipment and services will be distributed within the local plan area in a manner that minimizes the necessity to serve students in isolated sites and maximizes the opportunities to serve students in the least restrictive environment. (Education Code 56206)

The local plan, annual budget plan and annual service plan shall be written in language that is understandable to the general public. (Education Code 56205)

Each special education local plan area shall develop written agreements to be entered into by districts participating in the plan. (Education Code 56195.7)

Philosophy, Goals, Objectives and Comprehensive Plans

Each entity providing special education shall adopt policies for the programs and services it operates, consistent with agreements adopted pursuant to Education Code 56195.1 and 56195.7. (Education Code 56195.8)

(cf. 6164.4 - Identification of Individuals for Special Education)
(cf. 6164.6 - Identification and Education Under Section 504)

Adopted:

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COMMUNITY RELATIONS

Soliciting Funds from and by Students

The Superintendent or designee shall approve all fund-raising activities at least 15 days before the activity. If the event involves a contract with a commercial vendor, the Superintendent or designee shall review the contract.

In order to minimize interruptions to the educational program, staff shall limit fund-raising activities to appropriate time periods designated by the principal.

(cf. 6116 - Classroom Interruptions)

No student shall be required to raise a specified amount of money in order to participate in an activity sponsored by a school-related organization.

(cf. 1230 - School-Connected Organizations)

Students engaged in fund-raising activities on behalf of the school or for school-related projects are expected to be courteous and respectful towards all individuals and businesses.

Door-to-Door Sales

Students under 16 years old may engage in door-to-door sales of newspaper or magazine subscriptions, candy, cookies, flowers or other merchandise only under the following conditions:

1. The students shall work in pairs, as a team, on the same or opposite side of the street. (8 CCR 11706)

2. The students shall be supervised by an adult, with one adult for every crew of 10 or fewer students. (8 CCR 11706)

3. The students must be within the sight or sound of their adult supervisor at least once every 15 minutes. (8 CCR 11706)

4. The students shall be returned to their respective homes or meeting places after each day's work. (8 CCR 11706)

Soliciting Funds from and by Students

5. The students shall not engage in door-to-door sales after dark.

6. The students shall not work outside of their immediate neighborhood.

Adopted:

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Western Placer Unified School District

BP 4135(a)
BP 4235(a)
BP 4335(a)

Personnel

Soliciting and Selling

Employees shall not solicit district staff, students or their families with the intent to sell general merchandise, books, equipment or services for their own personal profit or benefit. Solicitation of students and staff on behalf of the school or other charitable organizations shall be conducted in accordance with applicable Board policy and administrative regulation.

(cf. 1325 - Advertising and Promotion)
(cf. 1321 - Solicitation of Funds from and by Students)
(cf. 4137 - Tutoring)
(cf. 5022 - Student and Family Privacy Rights)

Staff members shall respect the confidentiality of district employees and students and shall not use their status as district employees to secure information such as names, addresses, e-mail addresses, and telephone numbers for solicitations or use in personal profit-making or beneficial ventures.

(cf. 5125.1 - Release of Directory Information)

Educational tours may be promoted on school premises only if they are sponsored by the district. Employees engaged in planning, organizing or leading tours as private, non-district-sponsored businesses shall make it clear that they do not represent the school or district. All activities related to such tours must be carried on outside of school hours and off school premises.

(cf. 3312.2 - Educational Travel Program Contracts)

Staff participation in "flower funds," "anniversary funds" or other similar funds shall be voluntary.

(cf. 4161.9/4261.9/4361.9 - Catastrophic Leave Program)

Legal Reference:
EDUCATION CODE
51520 Prohibited solicitations on school premises
Adopted:
Q:4000b\bp4135

8.9.6

MISSION STATEMENT Empower Students with the Skills, Knowledge, and Attitudes for Success in an Ever Changing World	
BOARD OF TRUSTEE GLOBAL DISTRICT GOALS	*COMPLIANCE CHECK LIST*
1. Develop and continually upgrade a well articulated K-12 academic program that challenges all students to achieve their highest potential.	Complies with Board Policy ___ Complies with Site Plan (LIP)___
2. Fosters a safe, caring environment where individual differencesare valued and respected.	Complies with Governance & Management Document ___ Complies with Mission Statement__
3. Provide facilities for all district programs and functions that are suitable in terms of function, space, cleanliness and attractiveness.	Funding Sign-Off by J. Stewart___
4. Promote the involvement of the community, local government, business, service organizations, etc. as partners in the education of our students.	Personnel Sign-Off by B. Noyes___ Program Sign Off by S. Leaman___
	SBLT Involvement ___ Initial

WESTERN PLACER UNIFIED SCHOOL DISTRICT
BOARD OF TRUSTEE MEETING
FACT SHEET

SUBJECT:
Approval of Policy Revisons

AGENDA ITEM AREA:
Information/Discussion/Action

REQUESTED BY:
Roger R. Yohe,
District Superintendent

ENCLOSURES:
Policies & Regulations

MEETING DATE:
April 20, 2004

BACKGROUND:

The District Policy Committee and the Management Team have reviewed the following revised policies/regulations/exhibits as per CSBA. This group of policy revisions may be approved following board discussion.

* BP0410 Nondiscrimination In District Program and Activities
* BP0430 Comprehensive Local Plan for Special Education
* BP1321 Soliciting Funds from and by Students
* BP/AR3400 Management of District Assets/Accounts
* BP/AR3460 Financial Accountability and Reports
* BP3513.3 Tobacco-Free Schools
* AR3541.1 Transportation For School-Related Trips
* BP4111 Recruitment and Selection
* AR/E4112.3 Oath of Affirmation
* BP4119.1 Civil and Legal Rights
* BP4119.23 Unauthorized Release of Confidential/Privileged Information
* AR4121 Temporary/Substitute Personnel
* BP6161 Equipment, Books and Materials
* BP/AR6161.1 Selection and Evaluation of Instructional Materials
* BP6163.1 Libraries/Media Centers
* AR7211 Developer Fees
* BB9121 Bylaws of the Board-President
* BB9122 Bylaws of the Board-Secretary
* BB9123 Bylaws of the Board-Clerk
* BB9224 Bylaws of the Board-Oath or Affirmation
* BB9260 Legal Protection

SUPERINTENDENT'S RECOMMENDATION:

Administration recommends the Board of Trustees discuss this item and vote if desired.

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WESTERN PLACER UNIFIED SCHOOL DISTRICT

BP 0410 (a)

PHILOSOPHY-GOALS-OBJECTIVES AND COMPREHENSIVE PLANS

Nondiscrimination In District Programs And Activities

The Governing Board is committed to equal opportunity for all individuals in education. District programs and activities shall be free from discrimination based on gender, sex race, color, religion, ancestry national origin, ethnic group identification, marital or parental status, physical or mental disability, sexual orientation or the perception of one or more of such characteristics. The Board shall promote programs which ensure that discriminatory practices are eliminated in all district activities.

(cf. 4030 - Nondiscrimination in Employment)
(cf. 4032 - Reasonable Accommodation)
(cf. 4119.11/4219.11/4319.11 - Sexual Harassment)
(cf. 5145.3 - Nondiscrimination/Harassment)
(cf. 5145.7 - Sexual Harassment)
cf. 5146 - Married/Pregnant/Parenting Students)
(cf. 6145.2 - Athletic Competition)
(cf. 6164.4 - Identification of Individuals for Special Education)
(cf. 6164.6 - Identification and Education under Section 504)
(cf. 6178 - Vocational Education)
(cf. 6200 - Adult Education)

District programs and facilities, viewed in their entirety, shall be in compliance with the Americans with Disabilities Act.

The Superintendent or designee shall ensure that the district provides auxiliary aids and services where necessary to afford individuals with disabilities equal opportunity to participate in or enjoy the benefits of a service, program or activity. These aids and services may include, but not be limited to, qualified interpreters or readers, assistive listening devices, notetakers, written materials, taped text, and Braille or large print materials.

(cf. 5124 - Communication with Parents/Guardians)

PHILOSOPHY-GOALS-OBJECTIVES AND COMPREHENSIVE PLANS

Nondiscrimination In District Programs And Activities

Individuals with disabilities shall notify the Superintendent or principal if they have a disability that requires special assistance or services. Reasonable notification should be given prior to the school-sponsored function, program or meeting.

(cf. 9320 - Meetings and Notices)
(cf. 9322 – Agenda/Meeting Materials)

The Superintendent or designee shall notify students, parents/guardians, employees, employee organizations and applicants for admission and employment, and sources of referral for applicants about the district's policy on nondiscrimination. Such notification shall be included in each announcement, bulletin, catalog, application form or other recruitment materials distributed to these groups. (34 CFR 104.8, 106.9)

The Superintendent or designee shall also provide information about related complaint procedures.

(cf. 1312.3 - Uniform Complaint Procedures)
(cf. 4031 - Complaints Concerning Discrimination in Employment)

To the extent possible, the district's nondiscrimination policy shall be published in the individual's primary language.

(cf. 5145.6 - Parental Notifications)

Legal Reference:
EDUCATION CODE
200-262.4 Prohibition of discrimination
48985 Notices to parents in language other than English
GOVERNMENT CODE
11000 Definitions
11138 Rules and regulations
12900-12996 Fair Employment and Housing Act
54953.2 Brown Act compliance with Americans with Disabilities Act
PENAL CODE
422.6 Interference with constitutional right or privilege
CODE OF REGULATIONS, TITLE 5
4900-4965 Nondiscrimination in elementary and secondary education programs receiving state financial assistance
UNITED STATES CODE, TITLE 20
1400-1487 Individuals with Disabilities in Education Act
1681-1688 Discrimination based on sex or blindness, Title IX

PHILOSOPHY-GOALS-OBJECTIVES AND COMPREHENSIVE PLANS

Nondiscrimination In District Programs And Activities

2301-2415 Carl D. Perkins Vocational and Applied Technology Act
6311 State plans
6312 Local education agency plans
UNITED STATES CODE, TITLE 29
794 Section 504 of the Rehabilitation Act of 1973
UNITED STATES CODE, TITLE 42
2000d-2000d-7 Title VI, Civil Rights Act of 1964
2000e-2000e-17 Title VII, Civil Rights Act of 1964 as amended
2000h-2000h-6 Title IX
12101-12213 Americans with Disabilities Act
CODE OF FEDERAL REGULATIONS, TITLE 28
35.101-35.190 Americans with Disabilities Act
36.303 Auxiliary aids and services
CODE OF FEDERAL REGULATIONS, TITLE 34
100.1-100.13 Nondiscrimination in federal programs, effectuating Title VI
104.1-104.39 Section 504 of the Rehabilitation Act of 1973
106.1-106.61 Discrimination on the basis of sex, effectuating Title IX, especially:
106.9 Dissemination of policy

Management Resources:
U.S. DEPARTMENT OF EDUCATION, OFFICE OF CIVIL RIGHTS PUBLICATIONS
Protecting Students from Harassment and Hate Crime, January, 1999
Notice of Non-Discrimination, January, 1999
Nondiscrimination in Employment Practices in Education, August, 1991
WEB SITES
U.S. Department of Education, Office of Civil Rights: http://www.ed.gov/offices/OCR
CDE: http://www.cde.ca.gov
CSBA: http://www.csba.org
Pacific Disability and Business Technical Assistance Center: http://www.pacdbtac.org

Adopted: 1994
Revised: 8/4/98, 12/7/99, 5/2/00

q:1000(b)\bp0410

PHILOSOPHY-GOALS-OBJECTIVES AND COMPREHENSIVE PLANS

Comprehensive Local Plan for Special Education

The Governing Board desires to provide a free and appropriate public education to all individuals with disabilities, aged 3 to 21 years, who reside in the district, including children who have been suspended or expelled or placed by the district in a nonpublic school or agency services.

Students shall be referred for special education instruction and services only after the resources of the regular education program have been considered, and where appropriate, utilized. (Education Code 56303)

(cf. 5144.2 - Suspension and Expulsion/Due Process (Students with Disabilities))
(cf. 6146.4 - Differential Graduation and Competency Standards for Students with Disabilities)
(cf. 6159 - Individualized Education Program (IEP))
(cf. 6159.1 - Procedural Safeguards and Complaints for Special Education)
(cf. 6159.2 - Nonpublic Nonsectarian School and Agency Services for Special Education)
(cf. 6159.3 - Appointment of Surrogate Parent for Special Education Students)
(cf. 6159.4 - Behavioral Interventions for Special Education Students)
(cf. 6164.4 - Identification of Individuals for Special Education)
(cf. 6164.6 - Identification and Education Under Section 504)

In order to meet the needs of individuals with disabilities and employ staff with adequate expertise for this purpose, the district participates as a member of the Placer, Nevada County Special Education Local Plan Area (SELPA).

The Superintendent or designee shall extend the district's full cooperation to the SELPA. The policies and procedures of the SELPA shall be applied as policies and regulations of this district, with the exception of those that apply to complaints, unless the local plan specifically authorizes the district to operate under its own policies and regulations.

The special education local plan area shall administer a local plan and administer the allocation of funds. (Education Code 56195)

Comprehensive Local Plan for Special Education

Legal Reference:
EDUCATION CODE
56000-56001 Education for individuals with exceptional needs
56020-56035 Definitions
56040-56046 General provisions
56048-56050 Surrogate parents
56055 Foster parents
56060-56063 Substitute teachers
56170-56177 Children enrolled in private schools
56190-56194 Community advisory committees
56195-56195.10 Local plans
56205-56208 Local plan requirements
56213 Special education local plan areas with small or sparse populations
56240-56245 Staff development
56300-56385 Identification and referral, assessment, instructional planning, implementation, and review
56440-56449 Programs for individuals between the ages of three and five years
56500-56508 Procedural safeguards, including due process rights
56520-56524 Behavioral interventions
56600-56606 Evaluation, audits and information
56836-56836.05 Administration of local plan
GOVERNMENT CODE
95000-95029 California Early Intervention Services Act
CODE OF REGULATIONS, TITLE 5
3000-3089 Regulations governing special education
UNITED STATES CODE, TITLE 20
1400-1485 Individuals with Disabilities Education Act
UNITED STATES CODE, TITLE 29
794 Rehabilitation Act of 1973, Section 504
UNITED STATES CODE, TITLE 42
12101-12213 Americans with Disabilities Act
CODE OF FEDERAL REGULATIONS, TITLE 34
99.10-99.22 Inspection, review and procedures for amending education records
104.1-104.39 Section 504 of the Rehabilitation Act of 1973
300.500-300.514 Due process procedures for parents and children
303.1-303.654 Early intervention program for infants and toddlers with disabilities

Management Resources:
WEB SITES
CDE, Special Education Division: http://www.cde.ca.gov/spbranch/sed
U.S. Department of Education, Office of Special Education Programs:
http://www.ed.gov/offices/OSERS/OSEP

New - Fall 1994 (Total District Policy Book Review)
Adopted: 6/96
Revised: 5/20/97, 10/20/98
Q:1000b\bp0430

Delete

WESTERN PLACER UNIFIED SCHOOL DISTRICT

BP 1320

COMMUNITY RELATIONS

Soliciting Funds from and by Students

All personnel shall seek to educate pupils in the services performed by the humanitarian agencies, and shall encourage pupils to participate in their financial support as a social and community project, but no fund-raising drives are to be conducted by non-school agencies or for non-school activities among the school children, except as provided by law and approved by the governing board.

(cf. 1314 - Soliciting Funds from and by School Personnel)

Legal Reference:

EDUCATION CODE

51520 Prohibited solicitations on school premises (except such non-partisan, charitable organizations as approved by the governing board)

51521 Unlawful solicitation of contribution or purchase of personal property for benefit of public school or student body; exception

Adopted: 5/23/83
Revised: 1/3/95
1994/1995 School Year (Total District Policy Book Review)
word\wpfiles\policies\bp1320

8.10.6

WESTERN PLACER UNIFIED SCHOOL DISTRICT

BP 1321 (a)

COMMUNITY RELATIONS

Soliciting Funds from and by Students

The Governing Board recognizes that student participation in fund-raising activities for the schools and nonprofit, nonpartisan charitable organizations can help develop a sense of social responsibility in students, enhance the relationship between the school and community, and contribute to the improvement of the school program.

(cf. 1325 - Advertising and Promotion)
(cf. 4135/4235/4335 - Soliciting and Selling)
(cf. 5022 - Student and Family Privacy Rights)
(cf. 6142.4 - Learning through Community Service)

Whether solicitations are made on behalf of the school or on behalf of a charitable organization, students shall not be barred from an event or activity because they did not participate in fund-raising. Potential donors, including parents/guardians and members of the community, should not be unduly pressured to contribute to the school system or charitable organizations. Staff is expected to emphasize the fact that donations are always voluntary.

The Superintendent or designee shall ensure that parents/guardians are informed of the purpose of fund-raisers.

Solicitations on Behalf of the School

With the prior written approval of the Superintendent or designee, official school-related organizations may organize fund-raising events involving students.

(cf. 0420 - School Plans/Site Councils)
(cf. 1230 - School-Connected Organizations)
(cf. 1260 - Educational Foundation)
(cf. 3290 - Gifts, Grants and Bequests)
(cf. 3554 - Other Food Sales)

After the fund-raiser has been held, parents/guardians shall be informed how much money was raised and how it was spent.

8.10.7

Soliciting Funds from and by Students

Solicitations on Behalf of Charities

When approved in advance by the Superintendent or designee, nonprofit, nonpartisan organizations that are properly chartered or licensed by state or federal law may solicit students on school grounds during school hours and within one hour before school has opened and one hour after school has closed. (Education Code 51520)

Legal Reference:
EDUCATION CODE
51520 Prohibited solicitations on school premises
51521 Unlawful solicitations of contribution or purchase of personal property for benefit of public school or student body; exception
BUSINESS AND PROFESSIONS CODE
17510-17510.95 Charitable solicitations
PENAL CODE
319-329 Raffles
REVENUE AND TAX CODE
6361 Sales tax exemption for certain sales
CODE OF REGULATIONS, TITLE 8
11706 Dangerous activities and occupations

Management Resources:
CSBA PUBLICATIONS
Healthy Food Policy Resource Guide, 2003
ATTORNEY GENERAL PUBLICATIONS
Guide to Charitable Solicitation, 1999
Attorney General's Guide for Charities, 1988
WEB SITES
Office of the Attorney General: http://caag.state.ca.us

Adopted: 5/23/83
Revised: 1/3/95
1994/1995 School Year (Total District Policy Book Review)
q:5000(b)\bp1321

8.10.8

BUSINESS

Business and Non-Instructional Operations

Management of District Assets/Accounts

The Superintendent or designee shall establish and maintain accurate, efficient financial management systems to meet the district's fiscal obligations, produce useful information for financial reports, and safeguard the district's resources. The Superintendent or designee shall ensure that the district's accounting system provides ongoing internal controls and a means of ascertaining whether the district's income and expenditures are in keeping with the adopted budget.

(cf. 3100 - Budget)
(cf. 3300 - Expenditures/Expending Authority)
(cf. 3312 – Contracts)
(cf. 3460 - Financial Reports and Accountability)

The Board recognizes the importance of accurately identifying and valuing district assets in order to help ensure financial accountability and to minimize the risk of loss or misuse. District assets with a useful life of more than one year and an initial acquisition cost of $5000 or more shall be considered capital assets. The Superintendent or designee shall determine the estimated useful life of each capital asset and shall calculate and report the estimated loss of value, or depreciation, during each accounting period for all capital assets.

(cf. 3440 - Inventories)

Fraud Prevention and Investigation

The Board expects all employees, Board members, consultants, vendors, contractors and other parties maintaining a business relationship with the district to act with integrity and due diligence in duties involving the district's fiscal resources.

The Superintendent or designee shall be responsible for developing internal controls which aid in the prevention and detection of fraud, financial impropriety or irregularity within the district. Each member of the management team shall be alert

BUSINESS

Business and Non-Instructional Operations

for any indication of fraud, financial impropriety or irregularity within his/her area of responsibility.

An employee who suspects fraud, impropriety or irregularity shall immediately report those suspicions to his/her immediate supervisor and/or the Superintendent or designee. The Superintendent or designee shall have primary responsibility for any necessary investigations, in coordination with legal counsel and other internal or external departments and agencies as appropriate.

(cf. 4119.1/4219.1/4319.1 - Civil and Legal Rights)

Legal Reference:
EDUCATION CODE
14500-14508 Financial and compliance audits
35035 Powers and duties of superintendent
35250 Duty to keep certain records and reports
41010-41023 Accounting regulations, budget controls and audits
42600-42604 Control of expenditures
42647 Drawing of warrants by district on county treasurer; form; reports, statements and other data
GOVERNMENT CODE
53995-53997 Obligation of contract
Management Resources:
CSBA PUBLICATIONS
Maximizing School Board Leadership: Finance, 1996
GOVERNMENTAL ACCOUNTING STANDARDS BOARD
Statement 34, Basic Financial Statements - and Management's Discussion and Analysis - For State and Local Governments, June 1999
WEB SITES
Governmental Accounting Standards Board: http://www.gasb.org
CDE, School Fiscal Services: http://www.cde.ca.gov/fiscal
State Controller's Office: http://www.sco.ca.gov
Fiscal Crisis and Management Assistance Team: http://www.fcmat.org
School Services of California: http://www.sscal.com
California Association of School Business Officials: http://www.casbo.org

Adopted: 4/3/95
Revised: 6/18/02
New - 1994/1995 School Year (Total District Policy Book Review)
Q:3000\bp3400

8.10.10

BUSINESS AND NON-INSTRUCTIONAL OPERATIONS

Management of District Assets/Accounts

Accounts

The district's accounting system shall fully comply with the definitions, instructions and procedures set forth in the California Department of Education Accounting Manual. (Education Code 41010)

The Superintendent or designee shall see that funds are encumbered in the district accounting records immediately after an expenditure is committed for subsequent payment.

(cf. 3110 - Transfer of Funds)

Fraud Prevention and Investigation

Fraud, financial improprieties or irregularities include but are not limited to:

1. Forgery or unauthorized alteration of any document or account belonging to the district

2. Forgery or unauthorized alteration of a check, bank draft or any other financial document

3. Misappropriation of funds, securities, supplies or other assets

4. Impropriety in the handling of money or reporting of financial transactions

5. Profiteering as a result of insider knowledge of district information or activities

6. Disclosing confidential and/or proprietary information to outside parties

(cf. 4119.26/4219.26/4319.26 - Unauthorized Release of Confidential/Privileged Information)

7. Disclosing investment activities engaged in or contemplated by the district

8.10.11

(cf. 3430 - Investing)

8. Accepting or seeking anything of material value from contractors, vendors or persons providing services or materials to the district

9. Destroying, removing or inappropriately using of records, furniture, fixtures or equipment

10. Failing to provide financial records to authorized state or local entities

11. Any other dishonest or fraudulent act

The Superintendent or designee shall investigate reports of fraudulent activity in a manner that protects the confidentiality of the parties and the facts. All employees involved in the investigation shall be advised to keep information about the investigation confidential.

If an investigation substantiates the occurrence of a fraudulent activity, the Superintendent or designee shall issue a report to appropriate personnel and to the Governing Board. The final disposition of the matter and any decision to file a criminal complaint or refer the matter to the appropriate law enforcement and/or regulatory agency for independent investigation shall be made in consultation with legal counsel. The result of the investigation shall not be disclosed to or discussed with anyone other than those individuals with a legitimate need to know.

(cf. 4112.6/4212.6/4312.6 - Personnel Files)
(cf. 4119.1/4219.1/4319.1 - Civil and Legal Rights)

Adopted: 4/3/95
Revised: 4/9/96
New - 1994/1995 School Year (Total District Policy Book Review)
Q:3000\ar3400

8.10.12

BUSINESS

Financial Accountability and Reports

The Governing Board is committed to ensuring accountability to the public for the fiscal health of the district. The Board shall adopt sound fiscal policies and oversee the district's financial condition and ensure that the financial systems support the district's goals for student achievement.

(cf. 3100 - Budget)
(cf. 3110 - Transfer of Funds)
(cf. 3300 - Expenditures/Expending Authority)
(cf. 3430 - Investing)
(cf. 9000 - Role of the Board)

The Superintendent or designee shall regularly keep the Board informed about the district's finances and shall submit timely financial reports so that the Board can take appropriate action to ensure the district's financial stability.

The Superintendent or designee shall ensure that all financial reports are prepared in accordance with law and in conformity with generally accepted accounting principles and financial reporting standards stipulated by the Governmental Accounting Standards Board and the California Department of Education.

(cf. 3400 - Management of District Assets/Accounts)
(cf. 3440 - Inventories)

Legal Reference:
EDUCATION CODE
14500-14508 Financial and compliance audits
17150 Public disclosure of non-voter-approved debt
33127 Standards and criteria for local budgets and expenditures
33128 Standards and criteria; inclusions
33129 Standards and criteria; use by local agencies
35035 Powers and duties of superintendent
41010-41023 Accounting system
41344 Repayment of apportionment significant audit exceptions
41344.1 Appeals of audit findings
41455 Examination of financial problems of local districts
42100-42105 Requirement to prepare and file annual statement
42127.6 School district operations monitoring; financial obligation nonpayment
42130-42134 Financial reports and certifications
42140-42142 Public disclosure of fiscal obligations

8.10.13

BUSINESS

Financial Accountability and Reports

GOVERNMENT CODE
3540.2 School district; qualified or negative certification; proposed agreement review and comment
16429.1 Local agency investment fund
53646 Reports of investment policy and compliance
CODE OF REGULATIONS, TITLE 5
15453-15463 Criteria and standards for school district interim reports

Management Resources:
GOVERNMENTAL ACCOUNTING STANDARDS BOARD
Statement 34, Basic Financial Statements - and Management's Discussion and Analysis - For State and Local Governments, June 1999
U.S. GENERAL ACCOUNTING OFFICE AND PRESIDENT'S COUNCIL ON INTEGRITY AND EFFICIENCY (PCIE) PUBLICATIONS
Financial Audit Manual, 2001
STATE CONTROLLER PUBLICATIONS
Standards and Procedures for Audits of California K-12 Local Educational Agencies (annual publication)
CSBA PUBLICATIONS
Maximizing School Board Leadership: Finance, 1996
CDE COMMUNICATIONS
1208.00 Audit Resolution Process: Repayment Plans

WEB SITES
Governmental Accounting Standards Board: http://www.gasb.org
CDE, School Fiscal Services: http://www.cde.ca.gov/fiscal
State Controller's Office: http://www.sco.ca.gov
Education Audit Appeals Panel: http://www.eaap.ca.gov
Fiscal Crisis and Management Assistance Team: http://www.fcmat.org
California County Superintendents Educational Services Association: http://www.ccsesa.org
School Services of California: http://www.sscal.com
California Association of School Business Officials: http://www.casbo.org

Adopted: 4/3/95
Revised: 8/96, 10/20/98, 5/7/02
New - 1994/1995 School Year (Total District Policy Book Review)
Q:3000\bp3460

8.10.14

WESTERN PLACER UNIFIED SCHOOL DISTRICT

AR 3460(a)

BUSINESS

Financial Accountability and Reports

Interim Reports

The Superintendent or designee shall annually submit two interim fiscal reports to the Governing Board, the first report covering the district's financial and budgetary status for the period ending October 31 and the second report covering the period ending January 31. The reports and supporting data shall also be made available by the district for public review. *(Education Code 35035, 42130)*

(cf. 1340 - Access to District Records)

Within 45 days after the close of the period reported, the Board shall assess these reports of the district's financial condition on the basis of criteria adopted by the State Board of Education and on current information regarding the adopted state budget, district property tax revenues if any, and ending balances for the preceding year. The Board shall approve the fiscal reports and send the County Superintendent of Schools these reports and its certification of the district's financial status based on current projections, in accordance with the following: *(Education Code 42131)*

1. A "positive certification" will indicate that the district will meet its financial obligations for the current fiscal year and subsequent two fiscal years.

2. A "qualified certification" will indicate that the district may not meet its financial obligations for the current fiscal year or two subsequent fiscal years.

3. A "negative certification" will indicate that the district, will be unable to meet its financial obligations for the remainder of the fiscal year or the subsequent fiscal year.

Qualified or negative certifications shall also be sent to the Superintendent of Public Instruction and State Controller, together with a copy of the fiscal report and a completed transmittal form provided by the Superintendent of Public Instruction. *(Education Code 42131)*

If the Board files a qualified or negative certification for the second report of the fiscal year, or if its second report is classified as qualified or negative by the County Superintendent of Schools, the Superintendent or designee shall provide to the County

8.10.15

Annual Financial Report

Superintendent of Schools, the Controller, and the Superintendent of Public Instruction, no later than June 1, a financial statement that reports data for the period ending April 30 and projects the district's fund and cash balances as of June 30. *(Education Code 42131)*

Annual Financial Report

On a form prescribed by the Superintendent of Public Instruction, the Superintendent or designee shall prepare a statement of all receipts and expenditures of the district for the preceding fiscal year. On or before September 15, the Board shall approve this statement and file it with the County Superintendent of Schools. *(Education Code 42100)*

Appropriations Limit Report

The Board shall adopt a resolution by September 30 of each year to identify the estimated appropriations limit for the district for the current fiscal year and the actual appropriations limit of the district during the preceding year. Documentation used to identify these limits shall be made available to the public on the day of the meeting. *(Education Code 42132)*

(cf. 1340 - Access to District Records)

Non-Voter-Approved Debt Report

Whenever the Board approves the issuance of certificates of participation bonds, revenue bonds or any agreement for financing school construction,, the Superintendent or designee shall notify the County Superintendent of Schools and the County auditor. The Superintendent or designee shall provide the Board, the county auditor, the County Superintendent of Schools and the public with related repayment schedules and evidence of the district's ability to repay the obligation. Within 15 days, the County Superintendent and county auditor may comment publicly to the Board regarding the district's capability to repay the debt. *(Education Code 17150)*

Audit Report

By April 1 of each year, the Board shall either provide for an audit of the district's books and accounts, including an audit of income and expenditures by source of funds, or make arrangements with the County Superintendent of Schools to provide for that auditing. (Education Code 41020)

8.10.16

The audit shall include all funds of the district, including the student body and cafeteria funds and accounts and any other funds under the control or jurisdiction of the district, as well as an audit of student attendance procedures. (Education Code 41020)

(cf. 3451 - Petty Cash Funds)
(cf. 3452 - Student Activity Funds)
(cf. 3551 - Food Service Operations/Cafeteria Fund)

The Superintendent or designee shall establish a timetable for the completion and review of the audit within the deadlines established by law.

To conduct the audit, the Board shall select a certified public accountant, or public accountant licensed by the State Board of Accountancy, from among those deemed qualified by the State Controller. (Education Code 41020, 41020.5)

The Board shall not select any public accounting firm to provide audit services if the lead audit partner or coordinating audit partner having primary responsibility for the audit, or the audit partner responsible for reviewing the audit, has performed audit services for the district in each of the six previous fiscal years. (Education Code 41020)

While a firm is performing the audit of the district, it shall not provide any nonauditing, management or other consulting services except as provided in the auditor independence standards established in Government Accounting Standards, Amendment #3, published by the U.S. Government Accounting Office. (Education Code 41020)

The Board shall ensure that the audit contains: (Education Code 41020)

1. A statement that the audit was conducted pursuant to standards and procedures established in the audit guides developed by the State Controller

2. A summary of audit exceptions and management improvement recommendations

3. The auditor's evaluation as to whether there is substantial doubt about the district's ability to continue as a going concern for a reasonable period of time

4. To the extent possible, a description of the specific correction or plan of correction to address any problem identified by the auditor

8.10.17

No later than December 15, the Superintendent or designee shall file the report of the audit for the preceding fiscal year with the County Superintendent of Schools, the California Department of Education, and the State Controller. (Education Code 41020)

By January 31 of each year, the Board shall review, at an open meeting, the annual district audit for the prior year, any audit exceptions identified in that audit, the recommendations or findings of any management letter issued by the auditor, and any description of correction or plans to correct any exceptions or any issue raised in a management letter. (Education Code 41020.3)

(cf. 9322 - Agenda/Meeting Materials)

Accrued Benefits and Claims Report

The Superintendent or designee shall annually provide the Board, at a public meeting information and related actuarial reports showing the estimated accrued but unfunded cost of health and welfare benefits for retired employees after they turn 65. Costs shall be reported whether the district is responsible individually or as a member of a joint powers agency. The Board shall disclose, as a separate agenda item, whether or not it will reserve in the budget sufficient amounts to fund the present value of these benefits for existing retirees or the future cost of employees eligible for benefits in the current fiscal year, or both. The Board shall annually certify to the County Superintendent of Schools the amount, if any, that it has decided to reserve in the budget for these costs. The Board shall submit to the County Superintendent any budget revisions that may be necessary to account for this budget reserve. *(Education Code 42140)*

Investment Reports

Within 30 days of the end of each quarter, the Superintendent or designee shall provide the Board with quarterly reports of district investments that are more than $25,000 which include the following: *(Government Code 53646)*

1. The extent to which the portfolio complies and/or does not comply with the district's investment policy.

(cf. 3430 - Investing)

2. A statement denoting the district's ability to meet its pool's expenditure requirements for the next six months, or an explanation of why sufficient money shall or may not be available.

8.10.18

3. The most recent statement(s) received from the state's local agency investment fund, the National Credit Union Share Insurance Fund-insured accounts in a credit union or from FDIC-insured accounts in a bank or savings and loan association, in a county investment pool or in any combination of these.

4. The type of investment, issuer, date of maturity, par and dollar amount invested on all securities, investments and monies held by the district other than those specified in item #3 above.

5. A description of any district funds, investments or programs that are under the management of contracted parties, including lending programs.

6. The current market value, and the source of this valuation for all securities held by the district and under management of any outside party that is not another local agency or the state's local agency investment fund.

In the above report, a subsidiary ledger of investments may be used in accordance with accepted accounting practices. *(Government Code 53646)*

Adopted: 4/3/95
Revised: 8/96, 1/6/98, 10/20/98, 5/18/99
New - 1994/1995 School Year (Total District Policy Book Review)
Q:3000(a)\AR3460

8.10.19

WESTERN PLACER UNIFIED SCHOOL DISTRICT

BP 3513.3 (a)

BUSINESS

Business and Non-Instructional Operations

Tobacco-Free Schools

The Governing Board recognizes the health hazards associated with smoking and the use of tobacco products, including the breathing of second-hand smoke, and desires to provide a healthy environment for students and staff.

(cf. 4159/4259/4359 - Employee Assistance Programs)
(cf. 5131.62 - Tobacco)
(cf. 6142.8 - Comprehensive Health Education)
(cf. 6143 - Courses of Study)

The Board prohibits the use of tobacco products at any time in district-owned or leased buildings, on district property and in district vehicles. (Health and Safety Code 104420; Labor Code 6404.5; 20 USC 6083)

This prohibition applies to all employees, students and visitors at any instructional program, activity or athletic event.

Smoking or use of any tobacco-related products and disposal of any tobacco-related waste are prohibited within 25 feet of any playground, except on a public sidewalk located within 25 feet of the playground. Where district schools and city parks are adjacent, District rules regarding use of tobacco shall be posted in strategic positions. (Health and Safety Code 104495)

Legal Reference:
EDUCATION CODE
48900 Grounds for suspension/expulsion
48901 Prohibition against tobacco use by students
HEALTH AND SAFETY CODE
39002 Control of air pollution from nonvehicular sources
104350-104495 Tobacco use prevention, especially:
104495 Prohibition of smoking and tobacco waste on playgrounds
LABOR CODE
6404.5 Occupational safety and health: use of tobacco products
UNITED STATES CODE, TITLE 20
6083 Nonsmoking policy for children's services
7111-7117 Safe and Drug Free Schools and Communities Act
PERB RULINGS
Eureka Teachers Assn v. Eureka City School District (1992) PERB Order #955 (16 PERC 23168)
CSEA #506 and Associated Teachers of Metropolitan Riverside v. Riverside Unified School District (1989) PERB Order #750 (13 PERC 20147)

8.10.20

Tobacco-Free Schools

Management Resources:
WEB SITES
CDE: http://www.cde.ca.gov
California Department of Health Services: http://www.dhs.ca.gov
Occupational Safety and Health Standards Board: http://www.dir.ca.gov/OSHSB/oshsb.html
Environmental Protection Agency: http://www.epa.gov

Adopted: 7/11/88
Revised: 11/14/88, 9/20/94,2/4/03
1994/1995 School Year (Total District Policy Book Review)
q:3000\bp3513.3

8.10.21

BUSINESS

Business and Non-Instructional Operations

Transportation For School-Related Trips

The district may provide transportation for students, employees and other individuals for field trips and excursions approved according to Governing Board policy and administrative regulations.

(cf. 3541 - Transportation Routes and Services)
(cf. 6153 - School-Sponsored Trips)

The Superintendent or designee shall determine the most appropriate and cost-effective mode of transportation for each approved trip.

(cf. 3312.2 - Education Travel Program Contracts)
(cf. 3540 - Transportation)

When district transportation is provided, students may be released from using district transportation only with the advance written permission of their parent/guardian.

School-related organizations requesting transportation shall be fully responsible for the costs of their trips unless funding has been approved by the Board.

(cf. 1230 - School Connected Organizations)

The Superintendent or designee shall ensure that the district has sufficient liability insurance when field trips or excursions involve either transportation by district vehicles or travel to and from a foreign country. When a trip to a foreign country is authorized, liability insurance shall be secured from a carrier licensed to transact insurance business in that country and documentation carried by the supervisor at all times. *(Education Code 35330)*

(cf. 3530 - Risk Management/Insurance)

Transportation by Private Vehicle

The Superintendent or designee may authorize the transportation of students by private vehicle when the vehicle is driven by an adult age 21 or older who has a good driving record and who has registered with the district for such purposes. Drivers shall be required to possess a valid California driver's license and liability insurance of at least $300,000.00 per occurrence.

8.10.25

(cf. 1240 - Volunteer Assistance)
Drivers shall receive safety and emergency instructions which shall be kept in their vehicle.

All student passengers shall provide permission slips signed by their parents/guardians. Teachers shall ensure that all drivers have a copy of each student's permission slip.

Vehicle owners, drivers and passengers shall be informed that the registered owner and his/her insurance company are responsible for any accidents or violations which may occur.

The number of passengers, including the driver, shall not exceed the capacity for which the vehicle was designed. Motor trucks may not transport more persons than can safely sit in the passenger compartment. The driver shall also ensure that manufacturer's recommendations for his/her vehicle are followed regarding the seating of children in seats equipped with airbags.

Passenger Restraint Systems

All drivers and passengers shall wear seat belts in accordance with law. *(Vehicle Code 27315)*

Drivers shall ensure that any child who is under age 6 or under 60 pounds, unless exempted by law, is properly secured in an appropriate child passenger restraint system meeting federal safety standards. A child who is age 6 or older or weighs 60 pounds or more shall use a safety belt. (Vehicle Code 27360, 27360.5, 27363)

Legal Reference:
EDUCATION CODE
35330 Excursions and field trips
35332 Transportation by air
39830 School bus
39830.1 School pupil activity bus
39860 Transportation to special activities by district
44808 Liability when students not on school property
VEHICLE CODE
27315 Mandatory use of seat belts in private passenger vehicles
27360-27360.5 Child passenger restraint systems
27363 Child passenger restraint systems, exemptions

Management Resources:
WEB SITES
California Highway Patrol: http://www.chp.ca.gov
Office of Traffic Safety: http://www.ots.ca.gov
Department of Motor Vehicles: http://www.dmv.ca.gov
National Transportation Safety Board: http://www.ntsb.gov
National Highway Traffic Safety Administration: http://www.nhtsa.dot.gov

Adopted: 4/25/83
Revised: 4/3/95, 8/4/98, 11/19/02
Q:3000a\AR3541.1

8.10.23

PERSONNEL

Certificated Personnel

Recruitment and Selection

The Governing Board desires to employ the most highly qualified person and appropriate available for each open position in order to improve student achievement and efficiency in district operation. The Superintendent or designee shall develop recruitment and selection procedures, which include:

(cf. 4000 - Concepts and Roles)
(cf. 4100 - Certificated Personnel)
(cf. 4200 - Classified Personnel)
(cf. 4300 - Management, Supervisory and Confidential Personnel)

The Superintendent or designee shall recruit candidates for open positions based on an assessment of the district's needs for specific skills, knowledge and abilities. He/she shall develop job descriptions that accurately describe all essential and marginal functions and duties of each position, and shall disseminate job announcements to ensure a wide range of candidates.

(cf. 4119.3/4219.3/4319.3 - Duties of Personnel)

The Superintendent or designee shall develop selection procedures that identify the best possible candidate for each position based on screening processes, interviews, observations, and recommendations from previous employers. He/she may establish an interview committee, as appropriate, to rank candidates and recommend finalists. All discussions and recommendations shall be confidential in accordance with law.

No inquiry shall be made with regard to the age, sex, race, color, religion, national origin, medical condition, disability or sexual orientation of a person seeking employment. During job interviews, applicants may be asked to describe or demonstrate how they will be able to perform the duties of the job.

(cf. 0410 - Nondiscrimination in District Programs and Activities)
(cf. 4030 - Nondiscrimination in Employment)
(cf. 4031 - Complaints Concerning Discrimination in Employment)
(cf. 4032 - Reasonable Accommodation)
(cf. 4111.2/4211.2/4311.2 - Legal Status Requirement)

8.10.24

Recruitment and Selection (continued)

District employment practices shall not discriminate against legal noncitizen residents. Inquiries to assure employment eligibility shall be made in accordance with ***law,*** Board policy and administrative regulation.

(cf. 4111.2/4211.2/4311.2 - Legal Status Requirement)

For each position, the Superintendent or designee shall present to the Board one candidate who meets all qualifications established by law and the Board for the position. No person shall be employed by the Board without the recommendation or endorsement of the Superintendent or designee.

Recruiting Incentives for Teachers

Contingent upon available funding, the Superintendent or designee may provide incentives to recruit credentialed teachers to teach in any district school ranked in the bottom half of the state Academic Performance Index. Such incentives may include, but are not limited to, signing bonuses, improved work conditions, teacher compensation or housing subsidies. (Education Code 44735)

Legal Reference:
EDUCATION CODE
200-262.4 Prohibition of discrimination on the basis of sex
44066 Limitations on certification requirement
44259 Teaching credential; exception; designated subjects; minimum requirements
44735 Incentive grants for recruiting teachers for low-performing schools
44750-44754.5 Regional teacher recruitment centers
44830-44831 Employment of certificated persons
44858 Age or marital status in certificated positions
44859 Prohibition against certain rules and regulations re residency
45103-45138 Employment (classified employees)
49406 Examination for tuberculosis
52051 Academic Performance Index
GOVERNMENT CODE
12900-12996 Fair Employment and Housing Act, including:
12940-12956 Discrimination prohibited; unlawful practices
UNITED STATES CODE, TITLE 8
1324a Unlawful employment of aliens
1324b Unfair immigration related practices
UNITED STATES CODE, TITLE 42
2000d-2000d-7 Title VI, Civil Rights Act of 1964
2000e-2000e-17 Title VII, Civil Rights Act of 1964 as amended
2000h-2-2000h-6 Title IX, 1972 Education Act Amendments

8.10.25

Recruitment and Selection (continued)

12101-12213 Americans with Disabilities Act
CODE OF FEDERAL REGULATIONS, TITLE 28
35.101-35.190 Americans with Disabilities Act

Management Resources:
CSBA PUBLICATIONS
Maximizing School Board Leadership: Human Resources, 1996
WEB SITES
Equal Employment Opportunity Commission: http://www.eeoc.gov
Department of Fair Employment and Housing: http://www.dfeh.ca.gov
CalTeach: http://www.calteach.org
Education Job Opportunities Information Network: http://www.edjoin.org

Adopted: 6/13/83
Revised: 4/9/84; 11/7/89; 8/96, 12/4/01
1994/1995 School Year (Total District Policy Book Review)
q:4000\b\bp4111

8.10.26

WESTERN PLACER UNIFIED SCHOOL DISTRICT

AR 4112.3(a)
AR 4212.3
AR 4312.3

PERSONNEL

All Personnel

Oath or Affirmation

All public employees are disaster service workers. As such, before beginning employment with the district, employees must take the oath or affirmation required by law. In the event of natural, manmade or extreme peril to life, property and resources, all district employees are subject to disaster service activities as assigned to them by their supervisors. (Government Code 3100-3102)

(cf. 6114 - Emergencies and Disaster Preparedness Plan)
(cf. 9224 – Oath or Affirmation)

The Superintendent or designee shall administer the above oath when district employees are hired.

Legally employed noncitizens shall be exempt from taking this oath. (Government Code 3101)

At the advice of legal counsel, the Superintendent or designee may exempt a prospective employee from taking the above oath if he/she raises a valid religious objection.

The Superintendent, deputy or assistant superintendent, principal or other person authorized in Education Code 60 shall administer the oath or affirmation when a district employee is hired.

In the case of intermittent, temporary, emergency or successive employments, the Superintendent or designee may determine that the oath shall be effective for all successive periods of employment which begin within one calendar year from the date that the oath was subscribed. (Government Code 3102)

(cf. 4121 - Temporary/Substitute Personnel)

8.10.27

PERSONNEL

All Personnel

Oath or Affirmation

The Superintendent or designee shall file the executed oath or affirmation within 30 days of the date on which it is taken and subscribed. An employee's oath or affirmation may be destroyed five years after the termination of employment. (Government Code 3105)

Reimbursement of Expenses for Disaster Service Workers

Whenever an employee seeks compensation or reimbursement of expenses as a disaster service worker, the Superintendent or designee shall ascertain and certify that the employee has taken the oath or affirmation. (Government Code 3107)

Legal Reference:
EDUCATION CODE
60 Persons authorized to administer and certify oaths
44334 Oath or affirmation required for credential
44354 Administration of oath required for credential
GOVERNMENT CODE
3100-3109 Oath or affirmation of allegiance
CALIFORNIA CONSTITUTION
Article 20, Section 3 Oath of office
COURT DECISIONS
Chilton v. Contra Costa Community College District 55 Cal. App. 3d 544 (1976)
Vogel v. County of Los Angeles (1967) 68 Cal. 2d 18, 22

Adopted: 1991
Revised:
New - 1994/1995 School Year (Total District Policy Book Review)
Q:4000\ar 4112.3

8.10.28

Western Placer Unified School District

E 4112.3
E 4212.3
E 4312.3

Personnel

Oath or Affirmation

I, , do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of California against all enemies, foreign and domestic; that I will bear true faith and allegiance to the Constitution of the United States and the Constitution of the State of California; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter.

I understand that as a public employee I am a disaster service worker pursuant to Government Code 3100 and 3102 and that I am required to take this oath before entering the duties of my employment. In the event of natural, manmade or war-caused emergencies which result in conditions of disaster or extreme peril to life, property and resources, I am subject to disaster services activities assigned to me by my supervisor.

_____
(Signature)

Certified by: _____
(Person who administers the oath)

Adopted:
Q:4000bE4112.3

8.10.29

WESTERN PLACER UNIFIED SCHOOL DISTRICT

BP 4119.1 (a)
BP 4219.1 (a)
BP 4319.1 (a)

PERSONNEL

Certificated Personnel

Civil and Legal Rights

The Governing Board believes that the personal life of an employee is not an appropriate concern of the district, except as it may directly relate to the employee's performance of his/her duties.

An employee's religious or political activities, or the lack thereof, shall not be grounds for any discrimination or disciplinary action by the district, provided these activities do not violate Board policy, administrative regulations or local, state or federal laws.

(cf. 4030 - Nondiscrimination in Employment)
(cf. 4119.21/4219.21/4319.21 - Code of Ethics)
(cf. 4119.25/4219.25/4319.25 - Political Activities of Employees)

Teachers shall have the right to refuse to submit to any evaluation or survey conducted by the district concerning personal values, attitudes and beliefs; sexual orientation; political affiliations or opinions; critical appraisals of other individuals with whom the teacher has a family relationship; or religious affiliations or beliefs. (Education Code 49091.24)

Whistleblower Protection

All employees shall have the right to disclose improper governmental activities to a Board member, a school administrator, a member of the County Board of Education, County Superintendent of Schools, or the Superintendent of Public Instruction. An improper governmental activity is an activity by the district or a district employee that violates state or federal law, is economically wasteful, or involves gross misconduct, incompetency or inefficiency. (Education Code 44111, 44112)

No employee shall use or attempt to use his/her official authority or influence to intimidate, threaten, coerce or command another employee for the purpose of interfering with that employee's right to disclose improper governmental activity. (Education Code 44113)

(cf. 4118 - Suspension/Disciplinary Action)

8.10.30

(cf. 4218 - Dismissal/Suspension/Disciplinary Action)

An employee who has disclosed improper governmental activity and believes that he/she has subsequently been subjected to acts or attempted acts of reprisal shall file a written complaint in accordance with the district's complaint procedures. After filing a complaint with the district, he/she may also file a copy of the complaint with local law enforcement in accordance with Education Code 44114.

(cf. 1312.1 - Complaints Concerning District Employees)
(cf. 1312.3 - Uniform Complaint Procedures)
(cf. 4144/4244/4344 - Complaints)

Protection Against Liability

No employee shall be liable for harm caused by his/her act or omission when acting within the scope of employment or district responsibilities. For the protection against liability to apply, the act or omission must be in conformity with federal, state and local laws and must be in furtherance of an effort to control, discipline, expel or suspend a student, or to maintain order or control in the classroom, playground and all areas of the school site. (20 USC 6736)

(cf. 3320 - Claims and Actions Against the District)
(cf. 9260 - Legal Protection)

The protection against liability shall not apply when: (20 USC 6736)

1. The employee acted with willful or criminal misconduct, gross negligence, recklessness, or a conscious, flagrant indifference to the harmed person's right to safety

2. The employee caused harm by operating a motor vehicle

3. The employee was not properly licensed, if required, by state law for such activities

4. The employee was found by a court to have violated a federal or state civil rights law

5. The employee was under the influence of alcohol or any drug at the time of the misconduct

8.10.31

6. The misconduct constituted a crime of violence pursuant to 18 USC 16 or an act of terrorism for which the employee has been convicted in a court

7. The misconduct involved a sexual offense for which the employee has been convicted in a court

(cf. 4030 - Nondiscrimination in Employment)
(cf. 4119.11/4219.11/4319.11 - Sexual Harassment)

Legal Reference:
EDUCATION CODE
200-262.4 Prohibition of discrimination on the basis of sex
7050-7058 Political activities of school officers and employees
44040 Unlawful to discriminate solely because of employee's appearance before certain boards or committees
44110-44114 Reporting by school employees of improper governmental activity
49091.24 Teacher rights to refuse evaluation/survey of personal life
CIVIL CODE
51 Unruh Civil Rights Act
GOVERNMENT CODE
815.3 Intentional torts
820-823 Tort Claims Act
825.6 Indemnification of public entity
3540.1 Public employment definitions
3543.5 Interference with employee's rights prohibited
12940-12951 Discrimination prohibited; unlawful practices
UNITED STATES CODE, TITLE 20
6731-6738 Teacher liability protection
UNITED STATES CODE, TITLE 42
2000d-2000d-7 Title VI, Civil Rights Act
2000e-2000e-17 Title VII, Civil Rights Act of 1964 as amended
2000h-2000h-6 Title IX, 1972 Education Act Amendments
12101-12213 Americans with Disabilities Act

Adopted: 6/13/83
Revised: 6/5/90; 5/2/95, 12/7/99, 12/4/01
1994/1995 School Year (Total District Policy Book Review)
q:4000/bp4119.1

8.10.32

WESTERN PLACER UNIFIED SCHOOL DISTRICT

BP 4119.23 (a)
BP 4219.23 (a)
BP 4319.23 (a)

PERSONNEL

All Personnel

Unauthorized Release of Confidential/Privileged Information

The Governing Board recognizes the importance of keeping confidential information confidential. Staff shall maintain the confidentiality of information acquired in the course of their employment. Confidential/privileged information shall be released only to the extent authorized by law.

Disclosure of Closed Session Information

An employee shall not disclose confidential information acquired by being present during a closed session to a person not entitled to receive such information, unless the Board authorizes disclosure of that information. (Government Code 54963)

Confidential information means a communication made in a closed session that is specifically related to the basis for the Board to meet lawfully in closed session. (Government Code 54963)

(cf. 9011 - Disclosure of Confidential/Privileged Information)
(cf. 9321 - Closed Session Purposes and Agendas)

An employee who willfully discloses confidential information acquired during a closed session may be subject to disciplinary action if he/she has received training or notice as to the requirements of this policy. (Government Code 54963)

(cf. 4118 - Suspension/Disciplinary Action)
(cf. 4218 - Dismissal/Suspension/Disciplinary Action)

The Superintendent or designee shall provide all employees who attend closed sessions a copy of this policy. New employees who may attend closed sessions shall also receive a copy of this policy.

The district shall not take disciplinary action against any employee for disclosing confidential information acquired in a closed session, nor shall the disclosure be considered a violation of the law or Board policy, when the employee is: (Government Code 54963)

8.10.33

Unauthorized Release of Confidential/Privileged Information (continued)

1. Making a confidential inquiry or complaint to a district attorney or grand jury concerning a perceived violation of law, including disclosing facts necessary to establish the illegality or potential illegality of a Board action that has been the subject of deliberation during a closed session

(cf. 4119.1/4219.1/4319.1 - Civil and Legal Rights)

2. Expressing an opinion concerning the propriety or legality of Board action in closed session, including disclosure of the nature and extent of the illegal or potentially illegal action

3. Disclosing information that is not confidential

Other Disclosures

An employee who willfully releases confidential/privileged information about the district, students or staff shall be subject to disciplinary action.

No employee shall disclose confidential information acquired in the course of his/her official duties. Confidential information includes information that is not a public record subject to disclosure under the Public Records Act, information that by law may not be disclosed, or information that may have a material financial effect on the employee.

(cf. 4112.6/4212.6/4312.6 - Personnel Files)
(cf. 4112.62/4212.62/4312.62 - Maintenance of Criminal Offender Records)
(cf. 4143/4243 - Negotiations/Consultation)
(cf. 5125 - Student Records)
(cf. 5125.1 - Release of Directory Information)
(cf. 5141.4 - Child Abuse Reporting Procedures)
(cf. 6164.2 - Guidance/Counseling Services)

Any action by an employee which inadvertently or carelessly results in release of confidential/privileged information shall be recorded, and the record shall be placed in the employee's personnel file. Depending on the circumstances, the Superintendent or designee may deny the employee access to such information and shall take any steps necessary to prevent any further unauthorized release of such information.

8.10.34

Unauthorized Release of Confidential/Privileged Information (continued)

(cf. 5125 - Student Records; Confidentiality)
(cf. 9321 - Closed Sessions)

Legal Reference:
EDUCATION CODE
35010 Control of district; prescription and enforcement of rules
35146 Closed sessions
35160 Authority of governing boards
44031 Personnel file contents and inspection
44932 Grounds for dismissal of permanent employees
44933 Other grounds for dismissal
45113 Rules and regulations for classified service
49060-49079 Pupil records
GOVERNMENT CODE
1098 Public officials and employees: confidential information
6250-6270 Inspection of public records
54950-54963 Brown Act
UNITED STATES CODE, TITLE 20
1232g Family Education Rights and Privacy Act

Management Resources:
WEB SITES
CSBA: http://www.csba.org

Adopted: 6/13/83
Revised: 8/7/90; 5/2/95
1994/1995 School Year (Total District Policy Book Review)
Q:4000\bp4119.23

8.10.35

PERSONNEL

Certificated Personnel

Temporary/Substitute Personnel

Hiring

Substitute personnel may be employed on an on-call, day-to-day basis.

In addition, after September 1 of any school year, the Governing Board may employ substitute personnel for the remainder of the school year for positions for which no regular employee is available. The district shall first demonstrate to the Commission on Teacher Credentialing the inability to acquire the services of a qualified regular employee. (Education Code 44917)

(cf. 4117.14 - Employment of Retired Teachers)

Classification

The Board may classify as substitute certificated personnel a teacher hired to fill a position of regularly employed person absent from service. (Education Code 44917)

The Board may classify as a temporary employee a teacher who is employed at least one semester and up to one complete school year. Any person whose service begins in the second semester and before March 15 may be classified as a temporary employee even if employed for less than a semester. The Board shall determine the number of persons who shall be so employed based on the absence of regular employees due to leaves or long-term illness. (Education Code 44920)

The Board also shall classify as temporary employees those certificated persons, other than substitute employees, who are employed to:

1. Serve from day-to-day during the first three months of any term to teach temporary classes which shall not exist after that time, or perform any other duties which do not last longer than the first three months of any term (Education Code 44919)

8.10.96

Temporary/Substitute Personnel (continued)

2. Teach in special day and evening classes for adults or in schools of migratory population for not more than four months of any school term (Education Code 44919)

3. Serve in a limited assignment supervising student athletic activities provided such assignments have first been made available to teachers presently employed in the district (Education Code 44919)

(cf. 4127/4227/4327 - Temporary Athletic Team Coaches)

4. Serve in a position for a period not to exceed 20 working days in order to prevent the stoppage of district business during an emergency when persons are not immediately available for probationary classification (Education Code 44919)

5. Are employed only for the first semester because the district expects a reduction in student enrollment during the second semester due to midyear graduations (Education Code 44921)

At the time of initial employment and each July thereafter, the Board shall classify substitute and temporary employees as such. (Education Code 44915, 44916)

Before his/her first day of work, each new substitute and temporary employee shall receive a written statement at the time of initial employment during each school year confirming his/her employment status and salary. This statement shall clearly indicate the temporary nature of the employment and the length of time for which the person is being employed. (Education Code 44916)

Time of initial employment means before the employee starts work. (Kavanaugh v. West Sonoma County Union High School District)

The Superintendent or designee shall ensure that substitute and temporary employees are appropriately trained, assigned, oriented and evaluated.

(cf. 4113 - Assignment)
(cf. 4115 - Evaluation/Supervision)
(cf. 4131 - Staff Development)

8.10.37

Temporary/Substitute Personnel (continued)

Qualifications

Any person employed on a substitute or temporary basis in a position requiring certification qualifications shall possess the appropriate credential or permit authorizing his/her employment in such position and shall meet all other requirements of law for certificated positions.

(cf. 4111.2/4211.2/4311.2 - Legal Status Requirement)
(cf. 4112.2 - Certification)
(cf. 4112.3/4212.3/4312.3 - Oath or Affirmation)
(cf. 4112.4/4212.4/4312.4 - Health Examinations)
(cf. 4112.5/4312.5 - Criminal Record Check)

Any person employed on a substitute or temporary basis in a capacity designated in his/her credential shall also be required to demonstrate basic skills proficiency in reading, writing and mathematics pursuant to Education Code 44252.5, unless exempted by law. (Education Code 44830)

Qualifications for Special Education

A noncredentialed person shall not substitute for any special education certificated position. (Education Code 56060)

A person holding a valid credential authorizing substitute teaching may serve as a substitute for a special education teacher for a period not to exceed 20 cumulative school days for each

special education teacher absent during each school year. Upon application by the district, the Superintendent of Public Instruction may approve an extension of 20 school days. In extraordinary circumstances the district may seek an extension beyond the initial 20 school days. (Education Code 56061)

In placing substitute teachers in special education classrooms, the district shall give first priority to substitute teachers with the appropriate special education credential(s), second priority to substitute teachers with any other special education credential, and third priority to substitute teachers with a regular teaching credential. (Education Code 56062)

The Superintendent or designee shall recruit and maintain lists of appropriately credentialed substitute teachers. He/she shall contact institutes of higher education with approved special education programs for possible recommendations of appropriately credentialed special education personnel. (Education Code 56063)

8.10.38

Temporary/Substitute Personnel (continued)

Salary/Benefits

The Board shall adopt and make public a salary schedule setting the daily or pay period rate(s) for substitute employees for all categories or classes of certificated employees of the district. (Education Code 44977, 45030)

Substitute and temporary employees shall not participate in the health and welfare plans or other fringe benefits of the district.

Granting Probationary Status

Unless released from employment pursuant to Education Code 44954, and with the exception of on-call, day-to-day substitutes, any substitute or temporary employee who performs the duties normally required of certificated employees for at least 75 percent of the number of days the regular schools of the district were maintained in that school year, shall be deemed to have served a complete school year as a probationary employee if employed as a probationary employee for the following school year. (Education Code 44918)

(cf. 4116 - Probationary/Permanent Status)

A temporary employee hired to teach temporary classes or perform other certificated duties not expected to last more than the first three months of any semester, or to teach special day and evening classes for adults or in schools for migratory populations for the first four months of a semester, shall be classified as a probationary employee if the duties continue beyond the time limits. (Education Code 44919)

A temporary employee hired to teach only the first semester due to anticipated midyear high school graduations shall be classified as a probationary employee for the entire school year if the employment continues beyond the first semester. (Education Code 44921)

Release from Employment/Dismissal

The Board may dismiss a substitute employee at any time at its discretion. (Education Code 44953)

The Board may release a temporary employee at its discretion if the employee has served less than 75 percent of the number of days the regular schools of the district are maintained.

After serving during one school year 75 percent of the number of days the regular schools of the district are maintained, a temporary employee may be released as long as the employee is notified before the end of the school year of the district's decision not to reelect him/her for the following school year. (Education Code 44954)

8.10.39

Temporary/Substitute Personnel (continued)

Reemployment Rights

With the exception of on-call, day-to-day substitutes, a temporary or substitute employee who served during one school year at least 75 percent of the number of days the regular schools of the district were maintained and who was not released pursuant to Education Code 44954 prior to the end of the school year shall be reemployed for the following school year to fill any vacant positions in the district. (Education Code 44918)

With the exception of on-call, day-to-day substitutes, a temporary or substitute employee who was released pursuant to Education Code 44954 but who has nevertheless served for two consecutive years, for at least 75 percent of each year, shall receive first priority if the district fills a vacant position for the subsequent school year at the grade level at which the employee served during either year. In the case of a departmentalized program, the employee shall have taught the subject matter in which the vacant position occurs. (Education Code 44918)

A person employed for only the first semester because of anticipated midyear high school graduations shall be reemployed to fill any vacant positions in the district for which the employee is certified. Preference for available positions shall be determined by the Board as prescribed by Education Code 44845 and 44846. (Education Code 44921)

Legal Reference:
EDUCATION CODE
44252.5 State basic skills assessment required for certificated personnel
44300 Emergency teaching or specialist permits
44830 Employment of certificated persons; requirements of proficiency in basic skills
44839.5 Employment of retirant
44846 Criteria for reemployment preferences
44914 Substitute and probationary employment computation for classification as permanent employee
44915 Classification of probationary employees
44916 Time of classification; statement of employment status
44917 Classification of substitute employees
44918 Substitute or temporary employee deemed probationary employee; reemployment rights
44919 Classification of temporary employees
44920 Employment of certain temporary employees; classifications
44921 Employment of temporary employees; reemployment rights (unified and high school districts)
44953 Dismissal of substitute employees
44954 Release of temporary employees
44956 Rights of laid-off permanent employees to substitute positions
44957 Rights of laid-off probationary employees to substitute positions

8-10-40

Temporary/Substitute Personnel (continued)

44977 Salary schedule for substitute employees
45030 Substitutes
45041 Computation of salary
45042 Alternative method of computation for less than one school year
45043 Compensation for employment beginning in the second semester
56060-56063 Substitute teachers in special education
CODE OF REGULATIONS, TITLE 5
5502 Filing of notice of physical examination for employment of retired person
5503 Physical examination for employment of retired persons
COURT DECISIONS
Kavanaugh v. West Sonoma Union High School District, (2003) 29 Cal.4th 911
Management Resources:
WEB SITES
CTC: http://www.ctc.ca.gov
CSBA: http://www.csba.org

Adopted: 8/7/90
Revised: 5/2/95
1994/1995 School Year (Total District Policy Book Review)
q:4000\ar4121

8.10.41

DELETION – DELETION - DELETION
~~WESTERN PLACER UNIFIED SCHOOL DISTRICT~~

~~BP 4211~~

~~PERSONNEL~~

~~Classified Personnel~~

~~Recruitment and Selection~~

~~In order to secure quality personnel, the district shall maintain an effective recruitment program based upon alertness to good candidates, initiative that results in prompt action, and good personnel practices in dealing with applicants.~~

~~The Superintendent or designee shall determine the personnel needs of the district. He/she shall locate suitable candidates and make recommendations to the Governing Board for employment.~~

~~No inquiry shall be made with regard to the age, race, color, religion, sex or national origin of persons proposed for or seeking employment. Questions regarding handicap shall be asked only when directly related to the job.~~
~~*(cf. 4111.1/4211.1 - Affirmative Action)*~~

~~District employment practices shall not discriminate against authorized aliens. Legally required inquires to assure employment eligibility status shall be made in accordance with Board policy and administrative regulation.~~
~~*(cf. 4111.2/4211.2/4311.2 - Legal Status Requirement)*~~

~~The Superintendent shall ensure that persons nominated for employment meet all qualifications established by law and by the Board.~~
~~*(cf. 4112.4/4212.4/4312.4 - Health Examinations)*~~

~~*Legal Reference:*~~
~~*EDUCATION CODE*~~
~~*200-261 Prohibition of discrimination on the basis of sex*~~
~~*44066 Limitations on certification requirements*~~
~~*45103-45138 Employment (classified employees)*~~
~~*49406 Examination for tuberculosis*~~
~~*ADMINISTRATIVE CODE, TITLE 5*~~
~~*30-31 Affirmative Action Employment Programs*~~
~~*LABOR CODE*~~
~~*1420 Unlawful employment practices*~~
~~*TITLE VII, Civil Rights Act as amended by Title IX, Equal Employment Opportunity Act.*~~
~~*IMMIGRATION REFORM AND CONTROL ACT OF 1986*~~

~~Adopted: 7/11/83~~
~~Revised: 5/2/95~~
~~Fall 1994 (Total District Policy Book Review)~~

8.10.42

WESTERN PLACER UNIFIED SCHOOL DISTRICT

BP 6161 (a)

INSTRUCTION

Equipment, Books and Materials

The Governing Board recognizes that student learning is enhanced when students have access to high-quality textbooks, equipment and other instructional materials for each of the subjects they are studying. To adequately support the Board approved curriculum, instructional materials also should be up to date.

The Superintendent or designee shall develop procedures for determining the sufficiency of district instructional materials in providing accurate, current information and ensuring that students have access to standards-based materials. When new instructional materials have been chosen in accordance with the district's selection and evaluation policy the Board shall make final decisions regarding their purchase.

(cf. 0440 - District Technology Plan)
(cf. 3270 - Sale and Disposal of Books, Equipment and Supplies)
(cf. 6141 - Curriculum Development and Evaluation)
(cf. 6161.1 - Selection and Evaluation of Instructional Materials)
(cf. 6163.1 - Library Media Centers)

Whenever the Board determines that district students lack sufficient textbooks or instructional materials, the Board shall seek funding opportunities through the state's incentive program and shall comply with all related legal requirements.

Legal Reference:
EDUCATION CODE
60010 Definitions
60040-60047 Instructional requirements and materials
60119 Public hearing on sufficiency of materials
60200-60206 Elementary school materials
60240-60252 State Instructional Materials Fund
60400-60411 High school textbooks
60420-60424 Instructional Materials Funding Realignment Program
CALIFORNIA CODE OF REGULATIONS, TITLE 5
9505-9550 Instructional materials
9531-9532 Instructional Materials Funding Realignment Program

Management Resources:
WEB SITES
CDE, Curriculum Frameworks and Instructional Resources Division: http://www.cde.ca.gov/cfir

Adopted: 4/9/96
Revised:
my computer\wpusd docs on Do server (Q)\6000(b)\bp6161

8.10.43

Pupil Textbook and Instructional Materials Incentive Program (continued)

2. Ensure that funds received through the Pupil Textbook and Instructional Materials Incentive Program:

   a) Are used in compliance with Education Code 60119, and

   b) Supplement any other state and local monies expended on textbooks and/or instructional materials.

Adopted: 4/9/96
New - 1994/1995 School Year (Total District Policy Book Review)
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8.10.44

WESTERN PLACER UNIFIED SCHOOL DISTRICT

Delete

AR 6161 (a)

INSTRUCTION

Equipment, Books and Materials

Pupil Textbook and Instructional Materials Incentive Program

Any year during which the district participates in the state Pupil Textbook and Instructional Materials Incentive Program, the Governing Board shall hold one or more public hearings. At these hearings, the Board shall determine whether each student in each school has or will have before the end of the fiscal year sufficient textbooks and instructional materials in each subject consistent with the content and cycles of the state curriculum frameworks. The Board's determination shall be made in the form of a resolution. (Education Code 60119)

The Board shall encourage participation by parents/guardians, teachers, interested community members and bargaining unit leaders at the above hearing(s), the Superintendent or designee shall post a notice in three public places within the district containing the time, place and purpose of the hearing. (Education Code 60119)

If the Board determines that there are insufficient textbooks and/or instructional materials, the Board shall: (Education Code 60119)

1. Provide classroom teachers and the public the reasons for the insufficiency, and

2. Take action to ensure that the insufficiency is corrected within two years, using any of the following:

   a) Funds available from categorical programs for textbooks and/or instructional materials, including funds appropriated in the annual Budget Act.

   b) District funds that are in excess of the amount available for each student during the prior fiscal year to purchase textbooks and/or instructional materials.

   c) Other funds available to the district for textbooks and/or instructional materials.

The Superintendent or designee shall: (Education Code 60252)

1. Assure the Superintendent of Public Instruction of the district's compliance with the above requirements.

8.10.45

WESTERN PLACER UNIFIED SCHOOL DISTRICT

BP 6161.1 (a)

INSTRUCTION

Selection and Evaluation of Instructional Materials

The Governing Board desires that district instructional materials, as a whole, present a broad spectrum of knowledge and viewpoints, reflect the ethnic and cultural diversity of our society, and enhance the use of multiple teaching strategies and technologies. The Board's adoption of instructional materials shall be based on a determination that such materials meet criteria specified in law and are an effective learning resource to help students achieve grade-level competency.

(cf. 9000 - Role of the Board)

To ensure that instructional materials effectively support the district's adopted courses of study, meet curricular goals and support student achievement, the selection of textbooks, technology-based materials, other educational materials and tests shall be aligned with the development and evaluation of the district's curriculum.

(cf. 0440 - District Technology Plan)
(cf. 3220.1 - Lottery Funds)
(cf. 6010 - Goals and Objectives)
(cf. 6011 - Academic Standards)
(cf. 6141 - Curriculum Development and Evaluation)
(cf. 6143 - Courses of Study)
(cf. 6146.1 - High School Graduation Requirements)
(cf. 6161 - Equipment, Books and Materials)
(cf. 6161.11 - Supplementary Instructional Materials)
(cf. 6162.5 - Student Assessment)
(cf. 6162.7 - Use of Technology in Instruction)
(cf. 6163.1 - Library Media Centers)
(cf. 6163.4 - Student Use of Technology)

The Superintendent or designee shall establish a process by which instructional materials shall be reviewed for recommendation to the Board. This process shall involve teachers in a substantial manner and shall also encourage the participation of parents/guardians and community members.

The Superintendent or designee shall establish instructional material evaluation committees. These committees may include teachers, administrators and other staff who have subject-matter expertise, as well as parents/guardians and/or community members broadly representative of the district's ethnic and socioeconomic composition. Staff

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members who participate in selecting and/or evaluating instructional materials shall be those most competent for the task because of their professional training, experience and assignments.

Individuals who participate in selecting and evaluating instructional materials shall have no financial interest in the materials being reviewed, recommended, or approved. Conflicts of interest related to the selection and evaluation of instructional materials shall be clearly identified in administrative regulations.

(cf. 3315 - Relations with Vendors)
(cf. 9270 - Conflict of Interest)

The district may pilot instructional materials using a representative sample of classrooms for a specified period of time during a school year in order to determine how well the materials support the district's curricular goals and academic standards. Feedback from teachers piloting the materials shall be made available to the Board before the materials are adopted.

Recommendations for the adoption and/or withdrawal of instructional materials shall be presented to the Board by the Superintendent or designee and shall include documentation supporting the recommendation. All recommended materials shall be displayed and available for public inspection at the district office.

(cf. 3270 - Sale and Disposal of Books, Equipment and Supplies)

Once instructional materials have been adopted by the Board, objections and complaints shall be handled on a case-by-case basis in keeping with Board policy.

(cf. 1312.2 - Complaints Concerning Instructional Materials)

Instructional Materials Funding Realignment Program

In accordance with the Instructional Materials Funding Realignment Program, the Board's priority in the selection of instructional materials is to ensure that all students in grades K-12 are provided with instructional materials that are aligned to state content standards in the core curriculum areas of reading/language arts, mathematics, science and history/social science.

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Selection and Evaluation of Instructional Materials

The Board shall annually conduct one or more public hearings on the sufficiency of the district's instructional materials. (Education Code 60119, 60422)

These hearings shall be held not later than June 30 of each year.

At these hearings, the Board shall determine, through a resolution, whether each student in each school has or will have before the end of that fiscal year sufficient textbooks and instructional materials in each subject that are consistent with the content and cycles of the state curriculum frameworks. (Education Code 60119, 60422)

The Board shall encourage participation by parents/guardians, teachers, interested community members and bargaining unit leaders at these hearing(s). The Superintendent or designee shall post notice of this hearing in accordance with law. (Education Code 60119)

If the Board determines that there are insufficient textbooks and/or instructional materials, the Board shall provide classroom teachers and the public the reasons for the insufficiency and take action to ensure that the insufficiency is corrected within two years. (Education Code 60119)

When the Board determines that standards-aligned textbooks and instructional materials have been provided to all students in accordance with Education Code 60422, it shall so certify. A copy of the certification shall be kept on file in the district.

Legal Reference:
EDUCATION CODE
35272 Education and athletic materials
44805 Enforcement of course of studies; use of textbooks, rules and regulations
49415 Maximum textbook weight
51501 Subject matter reflecting on race, color, etc.
60000-60005 Instructional materials, legislative intent
60010 Definitions
60040-60048 Instructional requirements and materials
60060-60062 Requirements for publishers and manufacturers
60070-60076 Prohibited acts (re instructional materials)
60110-60111 Instructional materials on drug education
60119 Public hearing on sufficiency of materials
60200-60206 Elementary school materials
60226 Requirements for publishers and manufacturers
60240-60252 State Instructional Materials Fund
60350-60352 Core reading program instructional materials

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Selection and Evaluation of Instructional Materials

60400-60411 High school textbooks
60420-60424 Instructional Materials Funding Realignment Program
60451 Publishers' standards maps
60605 State content standards
CODE OF REGULATIONS, TITLE 5
9505-9550 Instructional materials, especially:
9531-9532 Instructional Materials Funding Realignment Program

Management Resources:
CDE PROGRAM ADVISORIES
1002.90 Selection of Instructional Materials, CIL: 90/91-02
CDE PUBLICATIONS
Standards for Evaluation of Instructional Materials with Respect to Social Content, 1986 edition, revised 2001
SBE POLICY
01-05 Guidelines for Piloting Textbooks and Instructional Materials, September 2001

CSBA PUBLICATIONS
Maximizing School Board Leadership; Curriculum, 1996
WEB SITES
CDE, Curriculum Frameworks and Instructional Resources Division:
http://www.cde.ca.gov/cfir

Adopted: 2/6/84
Revised:
1994/1995 School Year (Total District Policy Book Review)
q:6000\bp6161.1

8.10.99

WESTERN PLACER UNIFIED SCHOOL DISTRICT

INSTRUCTION

Selection and Evaluation of Instructional Materials

Instructional Materials Funding Realignment Program

The district shall use state funds received under the Instructional Materials Funding Realignment Program to ensure that each student is provided with standards-aligned textbooks or instructional materials in the core curriculum areas of reading/language arts, mathematics, science and history/social science at the beginning of the first school term that commences no later than 24 months after those materials are adopted by the State Board of Education. (Education Code 60422)

Instructional materials for grades K-8 shall be selected from the list of standards-aligned materials adopted by the State Board of Education subsequent to the adoption of content standards in each core curriculum area. (Education Code 60422)

(cf. 6011 - Academic Standards)

Purchase of instructional materials for grades 9-12 should be preceded by receipt and review of the standards map provided by the publishers pursuant to Education Code 60451.

For all grade levels, first priority shall be to provide reading/language arts and mathematics materials aligned to adopted standards, and second priority shall be to provide standards-aligned history/social science and science materials. (5 CCR 9531)

When the Governing Board has certified that all students have been provided with standards-aligned instructional materials in the core curriculum areas, the district may use any remaining program funds for the purposes specified in Education Code 60242. (Education Code 60119, 60422)

Criteria for Selection and Adoption of Instructional Materials

Instructional materials adopted by the Board shall:

1. For basic instructional materials in grades K-8, be selected from among the list of materials approved by the State Board of Education in accordance with law (Education Code 60200)

(cf. 1431 - Waivers)

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INSTRUCTION

Selection and Evaluation of Instructional Materials

2. For instructional materials in high schools, be provided by publishers who comply with the requirements of Education Code 60040-60048, 60060-60062 and 60226 (Education Code 60400)

3. Not reflect adversely upon persons because of their race, color, creed, national origin, ancestry, sex, disability, or occupation, or contain any sectarian or denominational doctrine or propaganda contrary to law (Education Code 60044)

4. To the satisfaction of the Board, be accurate, objective, current, and suited to the needs and comprehension of students at their respective grade levels (Education Code 60045)

5. With the exception of literature and trade books, use proper grammar and spelling (Education Code 60045)

6. Not provide any exposure to a commercial brand name, product, or corporate or company logo unless the Board makes a specific finding that the use is appropriate based on one of the following: (Education Code 60200, 60048)

   a. The commercial brand name, product, or corporate or company logo is used in text for an educational purpose as defined in guidelines or frameworks adopted by the State Board of Education.

   b. The appearance of a commercial brand name, product, or corporate or company logo in an illustration is incidental to the general nature of the illustration.

7. Meet the requirements of Education Code 60040-60043 for specific subject content

8. Support the district's adopted courses of study and curricular goals

(cf. 6010 - Goals and Objectives)
(cf. 6141 - Curriculum Development and Evaluation)
(cf. 6143 - Courses of Study)

9. Contribute to a comprehensive, balanced curriculum

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INSTRUCTION

Selection and Evaluation of Instructional Materials

10. Demonstrate reliable quality of scholarship as evidenced by:

    a. Accurate, up-to-date and well-documented information

    b. Objective presentation of diverse viewpoints

    c. Clear, concise writing and appropriate vocabulary

    d. Thorough treatment of subject

11. Provide for a wide range of materials at all levels of difficulty, with appeal to students of varied interests, abilities and developmental levels

12. Include materials that stimulate discussion of contemporary issues and improve students' thinking and decision-making skills

13. Contribute to the proper articulation of instruction through grade levels

14. Have corresponding versions available in languages other than English as appropriate

15. Include high-quality teacher's guides

16. Meet high publishing standards in terms of the quality, durability and appearance of paper, binding, text and graphics

17. Consider the impact of textbook weight on student health

Instructional Materials Evaluation Committee

The Superintendent or designee may establish an instructional materials evaluation committee to evaluate and recommend instructional materials for Board approval. This committee shall consist of a majority of teachers and may also include administrators, other staff who have subject-matter expertise, parents/guardians, community members and students as appropriate.

(cf. 1220 - Citizen Advisory Committees)

The committee shall review instructional materials using criteria provided above and in law, and shall provide the Board with documentation supporting its recommendations.

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INSTRUCTION

Selection and Evaluation of Instructional Materials

Conflict of Interest

To ensure integrity and impartiality in the evaluation and selection of instructional materials, a person participating in the evaluation, recommendation or approval of instructional materials shall not:

1. Accept any emolument, money or other valuable thing or inducement, to directly or indirectly introduce, recommend, vote for, or otherwise influence the adoption or purchase of any instructional material (Education Code 60072)

   Sample copies of instructional materials are excepted from this prohibition. (Education Code 60075)

(cf. 3315 - Relations with Vendors)
(cf. 9270 - Conflict of Interest)

2. Be employed by or receive compensation from any person, firm, organization or any of its subsidiaries or controlling entities submitting instructional materials to the district

3. Have or negotiate a contractual relationship with any person, firm or organization or any of its subsidiaries or controlling entities submitting instructional materials to the district

4. Have an interest as a contributor, author, editor or consultant in any textbook or other instructional material submitted to the district

An individual formerly employed as a consultant on textbooks or other materials shall not be deemed to be financially interested in the selection or evaluation of instructional materials provided he/she:

1. Has not had a contractual relationship or received compensation for such consulting service in the preceding two years

2. Retains no rights to compensation accruing while selecting or evaluating materials for the district

An individual shall not be disqualified from participating in the evaluation or selection of instructional materials if he/she has only a "remote interest." As used in this regulation, "remote interest" means:

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INSTRUCTION

Selection and Evaluation of Instructional Materials

1. That of a nonsalaried officer of a nonprofit organization

2. That of an employee or agent of a public entity or institution of higher education, provided the entity or institution has 10 or more other employees or agents and the individual has been an employee or agent thereof for at least three years

3. That of an editor, consultant, contributor or author of a textbook or other materials which are not being considered or reviewed, provided that such service was performed before evaluating or selecting instructional materials for the district and the individual retains no rights to compensation accruing while he/she serves in this capacity

Any remote interest must be disclosed to members of the evaluation committee, Superintendent or designee and communicated to the Board.

Adopted: 2/6/84
Revised:
1994/1995 School Year (Total District Policy Book Review)
q:6000\ar6161.1

WESTERN PLACER UNIFIED SCHOOL DISTRICT

BP 6163.1(a)

INSTRUCTION

Libraries/Media Centers

The Governing Board recognizes that school library media centers play a vital role in education by providing access to a variety of informational resources. The Board desires to provide comprehensive library media centers with up-to-date books, reference materials and electronic information resources necessary to support a high-quality educational program, promote literacy, and enable students to achieve academic standards and become lifelong learners.

(cf. 0440 - District Technology Plan)
(cf. 6011 - Academic Standards)
(cf. 6161 - Equipment, Books and Materials)
(cf. 6163.4 - Student Use of Technology)

School libraries shall be open for use by students and teachers during the school day. (Education Code 18103)

The district's school libraries may provide: (5 CCR 16040)

1. Library instruction to students that enables them to become proficient users of library resources

2. Information to teachers and administrators concerning sources and availability of instructional materials that will aid in the development of school curriculum, and, in cooperation with classroom teachers, the development of instructional units and activities using library resources

3. Assistance to teachers and students in the evaluation, selection, production and uses of instructional materials

4. A collection of materials and resources that support the curriculum and are appropriate for user needs

5. Assistance to teachers, administrators and other school staff members in becoming knowledgeable about appropriate uses of library media services, materials and equipment

(cf. 4131 - Staff Development)

8.10.55

INSTRUCTION

Libraries/Media Centers

School Library Plan

The Superintendent or designee shall develop a districtwide school library plan for approval by the Board. (Education Code 18181)

The school library plan shall describe the district's vision and goals for the district's libraries, progress toward previously established goals, and action steps including how the funds will be distributed. As appropriate, the plan may also address staffing, facilities, selection procedures, and prioritization of needs or other related matters.

The Superintendent or designee is encouraged to consult with school library media personnel in the development of the plan.

Individual school sites may develop site-level plans consistent with the districtwide plan.

Classroom Library Plan

When state funding is available for classroom library materials, the Superintendent or designee shall develop, for certification by the Board, a districtwide classroom library plan for grades K-4. The plan shall include a means of preventing loss, damage or destruction of the materials. (Education Code 60242, 60422)

(cf. 6161.2 - Damaged or Lost Instructional Materials)

The Superintendent or designee is encouraged to consult with primary grade teachers and school library media personnel in the development of the plan and to consider selections from the list of books recommended by the State Librarian pursuant to Education Code 19336.

Selection and Evaluation of Library Materials

Responsibility for the selection of library materials is delegated to the professional library staff through the principal. School librarians shall evaluate materials in accordance with law, Board policy and administrative regulation, and using professional selection aids and standards. The selection process shall invite recommendations from administrators, teachers, other staff, parents/guardians and students as appropriate.

8.10.56

INSTRUCTION

Libraries/Media Centers

(cf. 6144 - Controversial Issues)
(cf. 6161.1 - Selection and Evaluation of Instructional Materials)
(cf. 6161.11 - Supplementary Instructional Materials)

Library materials should be continually reevaluated in relation to evolving curricula, new formats of materials, new instructional methods, and the needs of students and teachers. Materials that contain obsolete subject matter or are no longer appropriate shall be removed, and lost or worn materials may be replaced if possible.

(cf. 3270 - Sale and Disposal of Books, Equipment and Supplies)

Complaints regarding the appropriateness of library materials shall be addressed using the district's procedures for complaints regarding instructional materials.

(cf. 1312.2 - Complaints Concerning Instructional Materials)

Fees

Students shall be allowed to borrow school library materials at no charge for use in the library and classrooms as well as out of school. (5 CCR 16042)

(cf. 3260 - Fees and Charges)

To encourage students to return materials in a timely manner, a nominal fee shall be charged for the late return of materials.

Reports

The district shall, on or before August 31 each year, report to the California Department of Education on the condition of school libraries for the preceding year ending June 30. (Education Code 18122)

8-10-57

INSTRUCTION

Libraries/Media Centers

Legal Reference:
EDUCATION CODE
1703 Coordination of district library services by county superintendent
1770-1775 Provision of library services by county superintendent
18010-20091 Libraries, especially:
18100-18103 School libraries, establishment and maintenance
18111 Exclusion of books by governing board
18120 Librarians
18122 Report on conditions of libraries
18130-18139 Contract with county or city library
18180-18184 California Public School Library Act of 1998
18202-18203 Business Organizations and Opportunities for Kids Fund
18300-18571 Union high school district/unified school district library district
19336 Recommended books, Reading Initiative Program
44868 Qualifications of librarians
45340-45349 Instructional aides
60240-60251.5 State Instructional Materials Fund, including purchase of classroom library materials
60420-60424 Instructional Materials Funding Realignment Program
CODE OF REGULATIONS, TITLE 5
16040-16043 School libraries
80053 Library media service teaching credential
Management Resources:
CALIFORNIA DEPARTMENT OF EDUCATION PUBLICATIONS
Check It Out! Assessing School Library Media Programs, 1998
Recommended Literature: Kindergarten Through Grade Twelve
WEB SITES
CDE, School Libraries: http://www.cde.ca.gov/library
American Library Association: http://www.ala.org
American Association of School Librarians: http://www.ala.org/aasi
California Library Association: http://www.cla-net.org
California School Library Association: http://www.schoollibrary.org

Adopted: 6/95
Revised:

Q:6000\bp6163.1

8-10-58

CONSTRUCTION

Developer Fees

Level 1 Funding: Residential, Commercial and Industrial Construction

Before taking action to establish, increase or impose developer fees, the Governing Board shall conduct a fee justification study which: (Government Code 66001)

1. Identifies the purpose of the fee and the use to which the fee will be put

2. Determines a reasonable relationship between the fee's use and the type of development project for which the fee is imposed

3. Determines a reasonable relationship between the need for the public facility and the type of development project for which the fee is imposed

4. Determines a reasonable relationship between the amount of the fee and the cost of the public facility or portion of the public facility attributed to the development for which the fee is imposed

Level 1 Funding: Notice and Hearing Requirements

Before levying developer fees or prior to increasing an existing fee, the Board shall schedule a public hearing.

The Superintendent or designee shall mail notice of the time and place of the meeting, including a general explanation of the matter to be considered and a statement that the required data are available, at least 14 days prior to the meeting to any interested party who has requested such information. Any written request for mailed notices shall be valid for one year from the date on which it is filed unless a renewal request is filed.

Renewal requests for mailed notices shall be filed on or before April 1 of each year. The district may charge a fee reasonably related to the cost of providing these materials. (Government Code 66016)

Information on the anticipated amount of fees, other available funds and funding sources, and the estimated cost of planning, land acquisition and school construction shall be made available to the public at least 10 days before the hearing. (Government Code 66016)

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CONSTRUCTION

Developer Fees

At the hearing, the Board shall adopt a resolution for the levying of the developer fees. (Government Code 66016) The resolution shall set forth:

At the hearing, the Board shall adopt a resolution for the levying of the developer fees. (Government Code 66016) The resolution shall set forth:

1. The purpose of the fee and the public improvement(s) that the fee will be used to finance (Government Code 66006)

2. The Board's findings of reasonable relationship which justify the fees pursuant to Government Code 66001

3. The district's determination of either of the following conditions which allow collection of the fees at the time when building permits are issued: (Government Code 66007)

   a. That the fees are to reimburse the district for previous expenditures, or

   b. That the fees shall be collected for public improvements or facilities for which an account has been established, funds have been appropriated and the district has adopted a proposed construction schedule or plan

Level 2 Funding: Residential Construction

In order to impose residential construction fees within the limits of Government Code 65995.5, the Board shall: (Government Code 65995.5)

1. Make a timely application to the State Allocation Board for new construction funding for which it is eligible

2. Conduct and adopt a school facility needs analysis pursuant to Government Code 65995.6

   The needs analysis shall determine the need for school facilities for unhoused students that are attributable to projected enrollment growth from the development of new residential units over the next five years. The needs analysis shall: (Government Code 65995.6)

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CONSTRUCTION

Developer Fees

a. Project the number of unhoused elementary, middle and high school students generated by new residential units, in each category of students enrolled in the district. This projection shall be based on a historical generation rate from the prior five years.

b. Calculate the existing school building capacity pursuant to Government Code 17071.10-17071.40.

In addition, when determining the funds necessary to meet its facility needs, the Board shall do each of the following: (Government Code 65995.6)

a. Identify and consider any surplus property owned by the district that can be used as a school site or that is available for sale to finance school facilities

b. Identify and consider the extent to which projected enrollment growth may be accommodated by excess capacity in existing facilities

c. Identify and consider local sources other than fees, charges, dedications or other requirements imposed on residential construction available to finance the construction or reconstruction of school facilities needed to accommodate any growth in enrollment attributable to the construction of new residential units

3. Satisfy at least two of the requirements set forth in Government Code 65995.5(b)(3)(A-D)

Level 2 Funding: Notice and Hearing Requirements

At least 45 days prior to completion of the school facility needs analysis, the Board shall notify and provide copies of the analysis to the planning commission or agency of the city or county with land use jurisdiction within the district. Upon request of either party, the Board and city or county shall meet within 15 days following notification. (Government Code 65352.2)

(cf. 7131 - Relations with Local Agencies)

8.10.61

CONSTRUCTION

Developer Fees

The Board shall adopt the school facility needs analysis by resolution at a public hearing. (Government Code 65995.6)

This analysis may not be adopted until the analysis, in its final form, has been made available to the public for a period of not less than 30 days. Prior to its adoption, the public shall have the opportunity to review and comment on the analysis and the Board shall respond to written comments it receives regarding the analysis. (Government Code 65995.6)

During the period of public review, the analysis shall be provided to the local agency responsible for land use planning for its review and comment. (Government Code 65995.6)

No less than 30 days prior to the hearing, notice of the time and place of the hearing, including the location and procedure for viewing or requesting a copy of the proposed analysis, shall be published in at least one newspaper of general circulation within the jurisdiction of the district. If there is no paper of general circulation, the notice shall be posted in at least three conspicuous places within the district's jurisdiction not less than 30 days prior to the hearing. (Government Code 65995.6)

In addition, the Superintendent or designee shall mail a copy of the needs analysis not less than 30 days prior to the hearing to any person who has made a written request if the written request was made 45 days prior to the hearing. The District may charge a fee reasonably related to the cost of providing these materials. (Government Code 65995.6)

The school facility needs analysis may be revised at any time. The revision is subject to the same conditions and requirements applicable to the adoption of the analysis. The existing school building capacity shall be recalculated as part of any revision to the needs analysis. (Government Code 65995.6)

The fees authorized by Government Code 65995.6(Level 2) and Government Code 65995.7 (Level 3) shall be adopted by resolution as part of the adoption or revision of the school facilities needs analysis. The fees shall take effect immediately upon adoption of the resolution and may not be effective for more than one year. (Government Code 65995.6)

8.10.07

CONSTRUCTION

Developer Fees

Level 3 Funding: Residential Construction

When Level 3 fees are authorized by law and the district qualifies for Level 2 funding pursuant to Government Code 65995.5, the Board may assess a fee on residential construction pursuant to the requirements of Government Code 65995.7.

Pursuant to Government Code 65995.7, the notice and hearing requirements, resolution requirement, and term of effectiveness for Level 3 funding shall be the same as for Level 2 funding as specified above.

All Developer Funding Fees: Additional Requirements

The district shall send a copy of any resolution adopting or increasing developer fees to the city and county, accompanied by all relevant supporting documentation and a map indicating the boundaries of the area subject to the fee. (Education Code 17621)

In cooperation with local governmental agencies issuing building permits, the Superintendent or designee shall establish a means by which all of the following shall be accomplished:

1. The project applicant shall receive a written statement of the amount of the fees and notification that the 90-day approval period during which the applicant may protest has begun. (Government Code 66020)

2. The Superintendent or designee shall receive and retain acknowledgment that the above notification was received.

3. Before a permit is issued and upon the payment of the applicable fee or requirement, the Board shall immediately certify that the fee has been paid or that the district has determined that the fee does not apply to the development project. (Education Code 17620)

Developer fees shall be deposited, invested, accounted for and expended pursuant to Government Code 66006. Developer fees shall be deposited in a separate capital facilities account, except for temporary investments allowed by law, and shall be used only for the purpose for which they were collected. Interest income earned by the capital facilities account shall also be deposited in that account and used only for the purpose for which the fee was originally collected. (Government Code 66006)

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CONSTRUCTION

Developer Fees

For each separate account so established, the Superintendent or designee shall, within 180 days after the last day of each fiscal year, make available to the public the following information for the fiscal year: (Government Code 66006)

1. A brief description of the type of fee in the account or fund

2. The amount of the fee

3. The beginning and ending balance of the account or fund

4. The amount of the fees collected and the interest earned

5. An identification of each public improvement on which fees were expended and the amount of the expenditures on each improvement, including the total percentage of the cost of the public improvement that was funded with fees

6. An identification of an approximate date by which the construction of the public improvement will commence if the district determines that sufficient funds have been collected to complete financing on an incomplete public improvement

7. A description of each interfund transfer or loan made from the account or fund, including the public improvement on which the transferred or loaned fees will be expended, and, in the case of an interfund loan, the date on which the loan will be repaid, and the rate of interest that the account or fund will receive on the loan

8. The amount of refunds made pursuant to Government Code 66001(e) and any allocations made pursuant to Government Code 66001(f)

The Board shall review the above information at the first regularly scheduled public Board meeting which occurs 15 days after the information is made available to the public. Fifteen-day prior notice of this meeting shall be mailed to any parties filing a written request pursuant to Government Code 66006. (Government Code 66006)

In addition to discharging its public disclosure duties regarding the levying of developer fees, the Board shall, for the fifth fiscal year after the first deposit into the account or fund and every five years thereafter, make all of the following findings with respect to the portion of the account or fund that remains unexpended, whether committed or uncommitted: (Government Code 66001)

8.10.04

CONSTRUCTION

Developer Fees

1. Identify the purpose to which the fee is to be put

2. Demonstrate a reasonable relationship between the fee and the purpose for which it is charged

3. Identify all sources and amounts of funding anticipated to complete financing in incomplete improvements originally identified

4. Designate the approximate dates on which the funding referred to in item #3 is expected to be deposited into the appropriate account or fund

When sufficient funds have been collected to complete the financing of public improvements but such improvements remain incomplete, the district shall, within 180 days of the date that a determination of sufficient funding was made, either identify an approximate date by which construction will begin or refund the unexpended revenues in accordance with Government Code 66001. (Government Code 66001)

Appeals Process for Protests by Developers

Developers of residential, commercial and industrial projects who claim that the developer fee has been inappropriately levied shall use the following procedures: (Government Code 66020)

1. The developer shall tender any required payment in full or provide satisfactory evidence of arrangements to pay the fee when due or ensure performance of the conditions necessary to meet the requirements of the imposition.

2. The developer shall serve written notice to the Board. This notice shall include:

   a. A statement that the required payment is tendered or will be tendered when due, or that any conditions which have been imposed are provided for or satisfied, under protest.

   b. A statement informing the Board of the factual elements of the dispute and the legal theory forming the basis for the protest.

3. The protest shall be filed at the time of approval or conditional approval of the development or within 90 days after the date of the imposition of the fees.

8.10.65

CONSTRUCTION

Developer Fees

At the time of the imposition of the fee, the Superintendent or designee shall provide each project applicant written notice that the 90-day period in which the applicant may initiate a protest has begun. The developer may file an action to attack, review, set aside, void or annul the imposition of the fees imposed on the development project within 180 days of delivery of the notice

Adopted: 10/19/99
Revised: 11/7/00
q:7000(a)\ar7211

8.10.66

WESTERN PLACER UNIFIED SCHOOL DISTRICT

BB 9121 (a)

BYLAWS OF THE BOARD

President

The Governing Board shall elect a president from among its members to provide leadership on behalf of the Board and the educational community it serves.

(cf. 9000 - Role of the Board)
(cf. 9005 - Governance Standards)
(cf. 9100 - Organization)

The President shall preside at all Governing Board meetings. He/she shall:

1. Call the meeting to order at the appointed time;

2. Announce the business to come before the Board in its proper order;

3. Enforce the Board's policies relating to the order of business and the conduct of meetings and help ensure compliance with applicable requirements of the Brown Act.;

4. Recognize persons who desire to speak, and protect the speaker who has the floor from disturbance or interference;

5. Explain what the effect of a motion would be if it is not clear to every member;

6. Restrict discussion to the question when a motion is before the Board;

7. Rule on issures of parliamentary procedure;

8. Put motions to a vote, and state clearly the results of the vote.

9. Be responsible for the orderly conduct of all Board meetings

(cf. 9323 - Meeting Conduct)

The president shall have all the rights of any member of the Board, including the right to move, second, discuss, and vote on all questions before the Board.

8.10.67

President (continued)

The Board president shall also perform other duties as directed by law, State Department of Education regulations and the Board, including the duty to:

1. Sign all instruments, acts, and orders necessary to carry out state requirements and the will of the Board;

2. Consult with the Superintendent or designee on the preparation of the Board's agendas;

3. Working with the Superintendent to ensure that Board members have necessary materials and information

4. Appoint and disband all committees, subject to Board approval;

5. Call such meetings of the Board as he/she may deem necessary, giving notice as prescribed by law;

6. Confer with the Superintendent or designee on crucial matters which may occur between Board meetings;

7. Share informational mail with other Board members.

8. Representing the district as governance spokesperson, in conjunction with the Superintendent

(cf. 9320 - Meetings)

When the president resigns or is absent or disabled, the vice president shall perform the president's duties. When both the president and vice president are absent or disabled, the clerk shall perform the president's duties.

Legal Reference:
EDUCATION CODE
35022 President of the board
35143 Annual organizational meetings; dates and notice
GOVERNMENT CODE
54950-54963 Ralph M. Brown Act

8.10.68

President (continued)

Management Resources:
CSBA PUBLICATIONS
Board Presidents' Handbook, revised 2002
CSBA Professional Governance Standards, 2000
Maximizing School Board Leadership: Boardsmanship, 1996
WEB SITES
CSBA: http://www.csba.org

Adopted: 4/11/83
Revised: 11/6/90, 8/1/95
1994/1995 School Year (Total District Policy Book Review)
q:9000\bb9121

8.10.09

BYLAWS OF THE BOARD

Secretary

The Governing Board shall appoint the Superintendent to serve as secretary to the Board. The secretary to the Board shall be responsible for maintaining an accurate and complete record of all Board proceedings and shall:

1. Prepare, distribute and maintain the Board agenda

(cf. 9322 - Agenda/Meeting Materials)

2. Record, distribute and maintain the Board minutes

(cf. 9324 - Minutes and Recordings)

3. Maintain Board records and documents

4. Conduct official correspondence for the Board

5. As directed by the Board, sign and execute official papers

6. Perform other duties as assigned by the Board

(cf. 2111 - Superintendent Governance Standards)

Legal Reference:
EDUCATION CODE
35025 Secretary and bookkeeper
35143 Annual organizational meetings; dates and notice
35250 Duty to keep certain records and reports
GOVERNMENT CODE
54950-54963 Ralph M. Brown Act
Management Resources:
CSBA PUBLICATIONS
CSBA Professional Governance Standards, 2000
Maximizing School Board Leadership: Boardsmanship, 1996
WEB SITES
CSBA: http://www.csba.org

Adopted: 4/11/83
Revised: 8/1/95
1994/1995 School Year (Total District Policy Book Review)
q:9000\bb9122

8.10.70

BYLAWS OF THE BOARD

Clerk

At the annual organizational meeting, the Governing Board shall elect a clerk from its own membership.
(cf. 9100 – Organization)

The duties of the clerk shall be to:

1. Certify or attest to actions taken by the Board when required.

2. Maintain such other records or reports as required by law.

3. Sign the minutes of the Board meetings following their approval.

(cf. 9324 – Minutes and Recordings)

4. Sign documents as directed by the Board on behalf of the district, and sign all other items which require the signature of the clerk.

5. Serve as presiding officer in the absence of the president and vice president

(cf. 9121 – President)

6. Perform any other duties assigned by the Board.

Legal Reference:
EDUCATION CODE
35038 Appointment of clerk by county superintendent of schools
35039 Dismissal of clerk
35121 Appointment of clerk in certain city and high school districts
35143 Annual organizational meetings
35250 Duty to keep certain records and reports
39630 Repair and supervision of property (duty of district clerk)
40003 Duty of clerk (re provision of school supplies)

Adopted: 4/11/83
Revised: 8/1/95
1994/1995 School Year (Total District Policy Book Review)
q:9000\bb9123

8.10.71

WESTERN PLACER UNIFIED SCHOOL DISTRICT

BB 9224 (a)

BYLAWS OF THE BOARD

Oath or Affirmation

Prior to entering upon the duties of their office, all Governing Board members shall take the oath or affirmation required by law. (Constitution of the State of California, Article 20, Section 3)

The oath may be administered and certified by a Board member, secretary or assistant secretary to the Board, Superintendent, deputy or assistant superintendent, principal, or County Superintendent of Schools or any other person authorized in Education Code 60.

The executed oath shall be filed with the County Clerk. (Government Code 1363)

Legal Reference:
EDUCATION CODE
60 Persons authorized to administer and certify oaths
GOVERNMENT CODE
1303 Misdemeanor for failure to take oath
1360-1369 Oath of office
3100-3109 Oath or affirmation of allegiance
CALIFORNIA CONSTITUTION
Article 20, Section 3 Oath of office
COURT DECISIONS
Chilton v. Contra Costa Community College District (1976) 55 Cal. App. 3d 544
Vogel v. County of Los Angeles (1967) 68 Cal. 2d 18, 22

Adopted: 8/195
Revised:
New - 1994/1995 School Year (Total District Policy Book Review)
Q:9000a\\bb9224

8.10.72

BYLAWS OF THE BOARD

Legal Protection

Liability Insurance

The Governing Board shall provide insurance necessary to protect Board members and employees while acting within the scope of their office or employment in accordance with Education Code 35208.

(cf. 3530 - Risk Management/Insurance)

Protection Against Liability

No Board member shall be liable for harm caused by his/her act or omission when acting within the scope of district responsibilities. The act or omission must be in conformity with federal, state and local laws and made in furtherance of an effort to control, discipline, expel or suspend a student, or maintain order or control in the classroom or school. (20 USC 6736)

The protection against liability shall not apply when: (20 USC 6736)

1. The Board member acted with willful or criminal misconduct, gross negligence, recklessness, or a conscious, flagrant indifference to the harmed person's right to safety.

2. The Board member caused harm by operating a motor vehicle.

3. The Board member was not properly licensed, if required, by the State for such activities.

4. The Board member was found by a court to have violated a federal or state civil rights law.

5. The Board member was under the influence of alcohol or any drug at the time of the misconduct.

6. The misconduct constituted a crime of violence pursuant to 18 USC 16 or an act of terrorism for which the Board member has been convicted in a court.

8.10.73

BYLAWS OF THE BOARD

Legal Protection

Liability Insurance

7. The misconduct involved a sexual offense for which the Board member has been convicted in a court.

Legal Reference:
EDUCATION CODE
17029.5 Contract funding; board liability
35208 Liability insurance
35214 Liability insurance (self-insurance or a combination of self-insurance and insurance through an insurance company)
GOVERNMENT CODE
815.3 Intentional torts
820-823 Tort Claims Act
825.6 Indemnification of public entity
1090-1098 Conflicts of interest, prohibitions applicable to specified officers
54950-54963 The Ralph M. Brown Act
87100-89503 Conflicts of interest
UNITED STATES CODE, TITLE 20
6731-6738 Teacher Protection Act
COURT DECISIONS
Caldwell v. Montoya (Paramount Unified School District) 10 Cal 4th 972 (1995)

Adopted: 4/11/83
Revised: 8/1/95
1994/1995 School Year (Total District Policy Book Review)
Q:9000a\bb9260

8.10.94

MISSION STATEMENT Empower Students with the Skills, Knowledge, and Attitudes for Success in an Ever Changing World

BOARD OF TRUSTEE GLOBAL DISTRICT GOALS

1. Develop and continually upgrade a well articulated K-12 academic program that challenges all students to achieve their highest potential.
2. Fosters a safe, caring environment where individual differencesare 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, local government, business, service organizations, etc. as partners in the education of our students.

COMPLIANCE CHECK LIST

Complies with Board Policy ___
Complies with Site Plan (LIP)___
Complies with Governance & Management Document ___
Complies with Mission Statement__
Funding Sign-Off by J. Stewart___

Personnel Sign-Off by B. Noyes___
Program Sign Off by S. Leaman___

SBLT Involvement ___
Initial

WESTERN PLACER UNIFIED SCHOOL DISTRICT
BOARD OF TRUSTEE MEETING
FACT SHEET

SUBJECT:
Policies Revisions by
LEAF Grant Committee

AGENDA ITEM AREA:
Information/Discussion/Action

REQUESTED BY:
Roger R. Yohe,
District Superintendent

ENCLOSURES:
Policies & Regulations

MEETING DATE:
April 20, 2004

BACKGROUND:

A Child Nutrition & Physical Activity Advisory Committee (CNPAAC) began reviewing policy last year pertaining to Health, Nutrition and Physical Activity. A LEAF grant (Linking Education Activity & Food) provided the funding to conduct this study. The attached policy revisions are a result of this effort.

SUPERINTENDENT'S RECOMMENDATION:

Administration recommends the Board of Trustees approve the new policies/regulations and exhibits as presented.

Eva\h:\wpfiles\Board\format2

98.11

BUSINESS

Business and Non-Instructional Operations

Food Service/Child Nutrition Program

The Governing Board recognizes the important connection between a healthy diet and student's ability to learn effectively and achieve high standards in school. The Board also acknowledges that schools play a vital role in childhood nutrition and fitness, and as part of the larger community, schools have a responsibility to promote family health and provide a strong foundation for children's future health and well being. To reinforce the district's nutrition education program, foods provided on school premises shall be:

1. Carefully selected so as to contribute to students' nutritional well being and the prevention of disease

2. Prepared in healthy and appealing ways that retain nutritive quality and foster lifelong healthful eating habits

3. Served in age-appropriate quantities and at reasonable prices

(cf. 3551 - Food Service Operations/Cafeteria Fund)
(cf. 3553 - Free and Reduced - Price Meals)
(cf. 3554 - Other Food Sales)
(cf. 5141.32 - Child Health and Disability Prevention Program)
(cf. 6142.8 - Comprehensive Health Education)

Students shall be provided adequate space in pleasant surroundings as well as adequate time to eat, relax, and socialize.

The Superintendent or designee shall ensure that the meals offered by the district's food service program meet all legal requirements for participation in the National School Lunch and School Breakfast Programs.

To the extent permitted under the National School Lunch and School Breakfast Programs, students in all grades shall be allowed to decline a certain number of meal items that they do not intend to consume.

The Superintendent or designee shall develop strategies designed to encourage the participation of students and parents/guardians in the selection of foods of good nutritional quality for school menus. Parents/guardians are encouraged to support the district's nutrition education efforts by considering nutritional quality when selecting any snacks that they may donate for occasional class parties.

Food Service/Child Nutrition Program

The Board shall sustain the already established Child Nutrition and Physical Activity Advisory Committee (CNPAAC) to discuss nutrition and physical activity related topics of concern in the school community, and to develop school district policies on nutrition and physical activity for recommendation to and approval by the Board. (Education Code 49433)

Legal Reference:
EDUCATION CODE
38080-38103 Cafeterias - establishment and use
45103.5 Contracts for management consulting services; restrictions
49490-49493 School breakfast and lunch programs
49500-49505 School meals
49510-49520 Nutrition
49530-49536 Child Nutrition Act
49540-49546 Child care food program
49547-48548.3 Comprehensive nutrition services
49550-49560 Meals for needy students
49570 National School Lunch Act
CODE OF REGULATIONS, TITLE 5
15500-15501 Food sales by student organizations
15510 Mandatory meals for needy students
15530-15535 Nutrition education
15550-15565 School lunch and breakfast programs
CODE OF FEDERAL REGULATIONS, TITLE 7
210.1-210.31 National School Lunch Program
220.1-220.21 National School Breakfast Program

Management Resources:
WEB SITES
CDE, Nutrition Services Division: http://www.cde.ca.gov/nsd/
California Project L.E.A.N: http://www.dhs.cahwnet.gov/lean
U.S. Department of Agriculture; Child Nutrition Programs: http:// www.fns.usda.gov/cnd/

Adopted: 4/25/83
Revised: 4/3/95, 5/20/97, 12/4/01
1994/1995 School/Year (Total District Policy Book Review)
Q:3000\bp3550

WESTERN PLACER UNIFIED SCHOOL DISTRICT

AR 3550 (a)

BUSINESS

Business and Non-Instructional Operations

Food Service/Child Nutrition Program

Posting Requirements

Each district school shall post the district's policies and regulations on nutrition and physical activity in public view within all school cafeterias or in other central eating areas. (Education Code 49432)

Each district school may also post a summary of nutrition and physical activity laws and regulations prepared by the California Department of Education (Education Code 49432)

Nutritional Standards

The Superintendent or designee shall ensure the nutritional quality and quantity of all foods served or made available to students and staff.

1. The goal of the Child Nutrition Services (CNS) program will be to ensure that all foods served on school campuses (including cafeteria, ala carte sales, student stores, snack bars and vending machines), from the morning opening of school until 30 minutes after the last period, will comply with the following Senate Bill 19 standards:
   a. No more than 35% of total calories from fat (not including fruits, vegetables, and 100% juices)
   b. No more than 10% of total calories from saturated fat.
   c. No more than 35% added sugar by weight (not including fruits, vegetables, and 100% juices)

   The only food that may be sold to students in elementary schools during the breakfast and lunch periods is food that is sold as a full meal. Fruit, non-fried vegetables, legumes, beverages, dairy products or grain products, if sold as individual items, may be offered for sale during the morning or afternoon breaks if they comply with the SB 19 standards listed above.

   These standards do not apply to reimbursable meals or meals served as part of the National School Breakfast and Lunch Program. Meals served as part of the National School Breakfast and Lunch Program shall meet the standards outlined by the USDA.

Business and Non-Instructional Operations

Food Services/Child Nutrition Program (continued)

2. Effective August 2004, the District shall exercise control over all beverage sales and vending machines on its elementary and middle school (K-8) properties including vendors, locations, contents, and appearance.
   a. The only beverages allowed to be sold on these campuses including vending machines are water, 100% fruit juices, or fruit-based drinks that are composed of no less than 50 percent fruit juice and have no added or artificial sweeteners, non-carbonated electrolyte replacement drinks, and/or reduced fat milk and flavored milks including soy and rice milks with no more than 18 grams of added sweetener per eight ounce serving and no artificial sweetener.

   Also effective August 2004, the District shall begin developing a plan to meet the above state standards for high school campuses by August 2006. This will include identifying existing revenue from beverage sales and identifying alternative sources of revenue.

3. To the extend possible, offer more fresh produce, particularly California grown fruits and vegetables, wherever food is sold on campus.
   a. The Child Nutrition Services program will attempt to increase the availability of fresh fruits and vegetables, using California grown produce when feasible, as part of the school food service program.
   b. Salad bars and/or pre-packaged salads, as well as fresh fruit shall be available at each school site.

4. Ensure meals are served in a pleasant environment with sufficient time for eating.
   a. Students shall have a minimum of 30 minutes to eat lunch and 20 minutes to eat breakfast, when provided.
   b. Site-Based Leadership Teams and CNS Director shall be involved to improve cafeteria décor and atmosphere.
   c. Cafeteria décor and atmosphere shall be considered in the development of new school campuses.
   d. Child Nutrition Services with Site-Based leadership Teams to solicit student preferences in planning menus and snacks through surveys and taste tests of new foods and recipes.
   e. Staff shall be encouraged to periodically join students to model good eating habits, manners, and behavior.

Business and Non-Instructional Operations

Food Services/Child Nutrition Program (continued)

5. Nutrition and Health education should be incorporated into regular teaching plans, in ways that meet California Standards requirements.
   a. The District shall work to identify opportunities to provide teachers with training and resources to integrate nutritious eating experiences, gardens, and nutrition education into the curriculum for math, science, history, and language arts at all grade levels.
   b. All schools are encouraged to develop school gardens. Gardens can promote the link between food choices, physical activity, and health in a way that is hands-on and integrated into the standards-based curriculum. In addition the school garden will provide students and opportunity to plant, harvest, prepare, cook and eat food they have grown. Consideration for the development and placement of school gardens shall be a consideration in new campus planning.

6. Ensure that no student is hungry.
   a. The District shall develop a coordinated and comprehensive outreach and promotion plan to ensure maximum participation in the school meal program.
   b. The District shall ensure that all eligible children qualify for free and reduced meals.

7. Increase family and community involvement in issues of nutrition and physical activity as it relates to childhood and adult health.
   a. Provide nutrition and physical activity information, articles and updates ion the school newsletters.
   b. Encourage the Site-Based Leadership Teams to conduct an annual evaluation of food services and physical education program services in order to improve the quality, access, and knowledge of services involving students, parents and the community.

Child Nutrition and Physical Activity Advisory Committee

The membership of the Child Nutrition and Physical Activity Advisory Committee shall include, but is not limited to, the following members: Governing Board member, school administrators, food service staff, students, parents/guardians, physical and health education teachers, dieticians, health care professionals and interested community members.

Business and Non-Instructional Operations

Food Services/Child Nutrition Program (continued)

The Child Nutrition and Physical Activity Advisory Committee shall meet at least three times during the year and meetings shall be open to the public.

The policies on nutrition and physical activity shall address issues and goals, including, but not limited to, all of the following: (Education Code 49433)

(cf. 1220 – Citizen Advisory Committees)

1. Implementing the nutritional standards set forth in Education Code 49431
2. Encouraging fund-raisers that promote good health habits and discourage fund-raisers that promote unhealthy foods
3. Ensuring that no student is hungry
4. Improving nutritional standards
5. Increasing the availability of fresh fruits and vegetables, including provisions that encourage schools to make fruits and vegetables available at all locations where food is sold
6. Ensuring, to the extent possible, that the food served is fresh
7. Encouraging eligible students to participate in the school lunch program

(cf. 3533 – Free and Reduced Price Meals)

8. Integrating nutrition and physical activity into the overall curriculum
9. Ensuring regular professional development for CNS Director and lead food service staff.
10. Ensuring students a minimum of 30 minutes to eat lunch and 20 minutes to eat breakfast, when provided
11. Ensuring students engage in healthful levels of vigorous physical activity
12. Ensuring students receive nutrition education
13. Improving the quality of elementary physical education curricula and provide training of elementary teachers to teach physical education
14. Support existing District physical education requirements
15. Altering the economic structures in place to encourage healthy eating by students and reduce dependency on generating profits for the school from the sale of unhealthy foods
16. Discuss financial impact and solutions due to implementation of this policy
17. Increasing the availability of school garden, local and California grown fruits and vegetables
18. Collaborate with local farmers' markets in order to source local and California grown fruits and vegetables

In developing the policy(ies), the committee shall hold at least one public hearing. (Education Code 49433)

8.11.6

Business and Non-Instructional Operations

Food Services/Child Nutrition Program (continued)

Legal Reference:

EDUCATION CODE

39870 et seq. Cafeterias - establishment and use
49490 - 49493 School breakfast and lunch programs
49500 - 49504 School meals for pupils
49510 - 49519 Pupil nutrition
49530 - 49536 Child nutrition act of 1974

ADMINISTRATIVE CODE, TITLE 5

15500 et seq. Child nutrition programs
15510 et seq. Mandatory meals for needy pupils
15530 et seq. Nutrition education
15550 et seq. School lunch and breakfast programs

Adopted: 4/25/83
Revised:
Fall 1994 (Total District Policy Book Review)
Q:3000\ar3550

8.11.7

Business

Other Food Sales

The sale of foods during meal periods in food service areas shall be allowed only if all income from the sale, including the sale of approved foods or drinks from vending machines, accrues to the benefit of the school, the school food service program, or the student organization(s) sponsoring the sale. (7 CFR 210.11, 220.12)

These shall be limited to four days per year at each site as approved by the Principal and coordinated with the CNS (Child Nutrition Services) Director. The foods sold shall be a nutritious food item that shall not be prepared on school premises or sold in the food services program at school during that day.

The Superintendent or designee shall ensure that all food and beverages sold outside of the Child Nutrition Services program meets basic nutrition standards:

1. School student stores shall not sell food or beverage items of any kind.
2. If part of a fund-raiser, non-nutritious foods, including but not limited to candy, sodas, donuts, and chewing gum, cannot be sold by or to students during their official school day (defined as one half hour before the official school day begins, until one half hour after the official school day ends).
3. The District should encourage fund-raisers that reflect our commitment to student health. Fund-raisers such as the sale of non-food items nutritious food items, and physical activity events are strongly encourages.

Adopted: 12/18/01
Revised:

Q:3000(a)\AR3554

8.11.8

INSTRUCTION

Physical Education

Instruction in physical education shall be provided for a total period of time of not less than 200 minutes each 10 school days for students in grades 1 through 6 and not less than 400 minutes each 10 school days for students in grades 7 through 12. (Education Code 51210, 51222)

During the month of February, April or May, students in grades 5, 7 and 9 shall undergo the physical performance testing designated by the State Board of Education. Students with a physical disability and students who are physically unable to take the entire test shall undergo as much of the test as their physical condition will permit. (Education Code 60800)

In order to ensure that students engage in healthful levels of vigorous physical activity:

1. Schools shall establish specific learning goals and objectives for physical education. A sequential, developmentally appropriate curriculum shall be designed, implemented, and evaluated to help students develop the knowledge, motor skills, self-management skills, attitudes, and confidence needed to become and remain physically active throughout their lives.
2. The existing physical education requirements should be monitored.
3. Professional development opportunities for physical education should be available to teachers and administrators.
4. Students shall be encouraged to walk, bike or otherwise "actively commute" to and from school.
5. Students should be encouraged to take an opportunity of lunchtime and after school physical activities. Site administration and staff should look at the physical activity opportunities offered and try to expand or develop new activities if needed.
6. Exemptions for high school PE classes must meet the specified criteria. Students participating in non-school programs in physical activity must demonstrate in their written application to the District that the program is:
    a. In accordance with the stated goals in physical education
    b. Conducted for a minimum of 400 minutes for each 10-day period

Adopted: 1/20/04
Revised:
Q:6000(b)\ar6142.7

8.11.9

INSTRUCTION

Physical Education

The Governing Board recognizes the positive benefits of physical activity for student health and academic achievement and encourages each student to take advantage of the various opportunities for physical activity offered by the district.

The Board desires to provide a physical education program which builds interest and proficiency in movement skills and encourages students' lifelong fitness through physical activity. Besides promoting high levels of personal achievement and a positive self-image, physical education activities should teach students how to cooperate in the achievement of common goals.

(cf. 5121 - Grades/Evaluation of Student Achievement)
(cf. 6142.8 - Comprehensive Health Education)
(cf. 6145.2 - Athletic Competition)
(cf. 6146.1 - High School Graduation Requirements)

The Board shall approve the components of the physical education program.

(cf. 6143 - Courses of Study)
(cf. 6146.1 - High School Graduation Requirements)

Physical education staff shall take care to ensure that students with a note from their doctor concerning a heart, respiratory condition or other physical disability shall follow the doctor's instructions adapting the activity to meet the student's condition.

(cf. 6164.6 - Identification and Education Under Section 504)

Physical education staff shall appropriately limit the amount or type of outside physical exercise required of students during air pollution episodes or inclement weather.

(cf. 3516 - Emergencies and Disaster Preparedness Plan)

Exemptions

With the consent of the student, the Superintendent or designee may grant temporary exemption from physical education under either of the following conditions: (Education Code 51241)

8.11.10

INSTRUCTION

Physical Education

1. A student is enrolled for one-half time or less.

2. A student is ill or injured and a modified program to meet his/her needs cannot be provided.

The Superintendent or designee may grant permanent exemptions from physical education for a student who is either: (Education Code 51241)

1. Age 16 years or older and has been in grade 10 for one or more academic years

2. Enrolled as a postgraduate student

3. Enrolled in a juvenile home, ranch, camp or forestry camp school with recreation and exercise scheduled

The Superintendent or designee may exempt students, with their consent, from any two years of physical education courses during grades 10 through 12 pursuant to Education Code 51241, provided the student has passed the physical performance test administered in grade 9 pursuant to Education Code 60800. (Education Code 51241)

The Superintendent or designee may excuse any student in grades 10 through 12 who attends a regional occupational center or program from attending physical education courses if such attendance results in hardship because of the travel time involved. (Education Code 52316)

The Superintendent or designee may exempt a high school student from physical education if he/she is engaged in a regular school-sponsored interscholastic athletic program carried on wholly or partially after regular school hours. (Education Code 51242)

Legal Reference:
EDUCATION CODE
49066 Grades; physical education class

8.11.11

INSTRUCTION

Physical Education

51210 Course of study, grades 1-6
51220 Course of study, grades 7-12
51222 Physical education
51223 Physical education, elementary schools
51241 Temporary or permanent exemption from physical education
51242 Exemption from physical education for athletic program participants
52316 Excuse from attending physical education classes
60800 Physical performance test
CODE OF REGULATIONS, TITLE 5
3051.5 Adapted physical education for individuals with exceptional needs
10060 Criteria for physical education program
UNITED STATES CODE, TITLE 29
794 Rehabilitation Act of 1973, Section 504
ATTORNEY GENERAL OPINIONS
53 Ops.Cal.Atty.Gen. 230 (1970)

Management Resources:
CSBA PUBLICATIONS
Healthy Food Policy Resource Guide, 2003
CDE PROGRAM ADVISORIES
0418.89 Physical Education, April 18, 1989
CDC PUBLICATIONS
School Health Index for Physical Activity and Healthy Eating: A Self-Assessment and Planning Guide for Elementary and Middle/High Schools, 2000
CDHS PUBLICATIONS
Jump Start Teens, 1997
Playing the Policy Game, 1999
School Idea and Resource Mini Kit, 2000
NASBE PUBLICATIONS
Fit, Healthy and Ready to Learn, 2000
WEB SITES
CSBA: http://www.csba.org
CDE, Nutrition Services Division/SHAPE California: http://www.cde.ca.gov/nsd
CDHS, School Health Connections: http://www.mch.dhs.ca.gov/programs/ shc/shc.htm
California Project LEAN (Leaders Encouraging Activity and Nutrition): http://www.californiaprojectlean.org

8.11.12

INSTRUCTION

Physical Education

California Healthy Kids Resource Center: http://www.californiahealthykids.org
National School Boards Association: http://www.schoolhealth@nsba.org
National Association of State Boards of Education (NASBE): http://www.boards@nasbe.org
Centers for Disease Control and Prevention (CDC):http://www.cdc.gov

Adopted: 1/20/04

Q:6000(b)bp6142.7

8.11.13