

# SEPARATE COVER ITEM 14.1.7

Resolution No.10-07

MEETING: SEPTEMBER 28, 2010



**TRACY UNIFIED SCHOOL DISTRICT  
RESOLUTION NO. 10-07  
RESOLUTION OF THE BOARD OF TRUSTEES OF THE  
TRACY JOINT UNIFIED SCHOOL DISTRICT  
APPROVING A DEVELOPMENT AND LEASE AGREEMENT, A SITE  
LEASE AND  
A GUARANTEED MAXIMUM PRICE RELATING TO THE CONSTRUCTION  
OF A NEW PERFORMING ARTS BUILDING AT WEST HIGH SCHOOL**

WHEREAS, the Tracy Joint Unified School District (the "District") has previously identified the need to undertake construction of a new performing arts building at West High School to accommodate its students (the "Project");

WHEREAS, Education Code Section 17406 provides for the construction and modernization of school buildings on property owned by a school district and the lease of the site and such improvements pursuant to an agreement calling for such construction;

WHEREAS, the District's Governing Board (the "Board") has previously determined that a suitable location for the Project exists at a site located within the boundaries of the District (the "Site");

WHEREAS, consistent with the requirements of Education Code Section 17400 et seq., the Board seeks to enter into the necessary building agreements and lease agreements with an outside entity that will provide for the construction and leasing of school facilities on the Site;

WHEREAS, consistent with the Board's desire to provide for the construction, acquisition and lease of the Project in accordance with the provisions of Education Code Section 17400 et seq., District staff previously evaluated firms capable of providing services to the District for the Project;

WHEREAS, it was determined that F & H Construction ("F&H") was qualified to undertake the Project on the Site and to lease the completed Project to

the District consistent with the requirements of Education Code section 17400 et seq.;

WHEREAS, the Site is owned by the District in accordance with the provisions of Education Code Section 17400 et seq.;

WHEREAS, plans for the Project have been previously approved by the Board and have received final approval from the Division of State Architect of the State of California ("DSA");

WHEREAS, it is the intent of the Board to authorize the Superintendent, or his designee, to execute the Documents, as defined below, making them applicable to the Project; and

WHEREAS, a proposed Development and Lease Agreement with an attached set of General Construction Provisions along with a proposed Site Lease between the District and F&H (collectively referred to herein as the "Documents") have been prepared, and it is the intent of the Board to approve such documents in substantially final form and to authorize the finalization and execution of such documents by the District's Superintendent in the manner provided for herein.

NOW, THEREFORE, the Board of Trustees of the Tracy Joint Unified School District does hereby resolve as follows:

Section 1.           Recitals. The foregoing recitals are true and correct.

Section 2.           Consistency of Process and Compliance with Law. The Board hereby finds that the process undertaken by the District to date to solicit proposals for the Project, and to draft the Documents have all been undertaken and performed in a manner consistent with the requirements of Education Code Section 17400 et seq. and that the District is now authorized to proceed with the commencement of the Project in the manner set forth in the Documents.

Section 3.           Adequacy of Site and Suitability of Process. The Board hereby determines that the Site is a suitable location for the Project consistent with the requirements of Education Code section 17400 et seq. and that acquisition of the Project in the manner provided for at Education Code Section 17400 et seq. is in the best interest of the District.

Section 4.           Approval of the Leases. The Board hereby approves the Documents in substantially final form with such additional changes or revisions as may be necessary to be implemented by the Superintendent to complete such

agreements consistent with the terms and conditions of this Resolution and the provisions of Education Code section 17400 et seq.

Section 5. Approval of Guaranteed Maximum Price. The Board hereby approves the Guaranteed Maximum Price of the Project consistent with the terms and conditions of the Documents, subject to the provisions of Section 7 below.

Section 6. Authorization to Enter into Documents. The Superintendent, or his designee (the "Designated Officer"), is hereby authorized, on behalf of the District, to execute and deliver the Documents as they apply to the Project to F&H in substantially the form presented to the Board with such changes therein as the Superintendent, or his designee, may require or approve, consistent with the terms and conditions of this Resolution.

Section 7. Disabled Veteran Business Enterprise Goals. F&H has acknowledged that it is engaging presently in good faith efforts to solicit proposals from qualified disabled veteran businesses and firms ("DVBE") to assist in the construction of the Project. Consistent with the District's duties under Education Code Section 17076.11, F&H is attempting to attract a DVBE or DVBEs for the Project. The Board acknowledges that either an upward adjustment or a downward adjustment to the Guaranteed Maximum Price may be necessary in recognition of the use of a DVBE for the Project, but any such upward or downward adjustment shall be solely for the purpose of accommodating the use of the services or materials to be provided by such DVBE for the Project. The District's Designated Officer is hereby authorized to modify the Guaranteed Maximum Price in order to permit the use of a DVBE as determined by the Designated Officer to be suitable for performing work or supplying materials for the Project.

Section 8. Additional Authorization. The Superintendent, or his Designated Officer is hereby further authorized and directed to prepare, on behalf of the District, any other documentation necessary to carry out the terms for the Project, as set forth in the Documents, consistent with the terms and conditions of this Resolution. Any action heretofore taken by the Designated Officer, on behalf of the District, that is in conformity with the purposes and intent of this Resolution and with the provisions of Education Code Section 17400 et seq. with respect to the Project is hereby approved and confirmed.

Section 9. Effective Date. This Resolution shall take effect immediately upon its adoption.

**APPROVED, PASSED, AND ADOPTED** on September 28, 2010, by  
the following vote:

**AYES:**

**NOES:**

**ABSTAIN:**

**ABSENT:**

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President of the Board of Trustees  
Tracy Joint Unified School District

**ATTEST:**

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Clerk of the Board of Trustees  
Tracy Joint Unified School District

Tracy Joint Unified School District  
1875 West Lowell Avenue  
Tracy, CA 95376  
Attn: Bonny Carter, Director of Facilities & Planning

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**SITE LEASE**

by and between

**TRACY JOINT UNIFIED SCHOOL DISTRICT**  
as Lessor

and

**F&H CONSTRUCTION**  
as Lessee

Dated as of September 28, 2010

West High School New Performing Arts Classrooms Project

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## SITE LEASE

This site lease (the "Site Lease") is dated as of September 28, 2010, for reference purposes only, and is made by and between the Tracy Joint Unified School District (the "District"), a school district duly organized and validly existing under the laws of the State of California, as lessor, and F&H Construction ("F&H"), a California corporation, as lessee.

## RECITALS

WHEREAS, the District currently owns a site in Tracy, California, as more particularly described in Exhibit A attached hereto and incorporated herein by reference (the "Site"), which Site the District has determined to cause to be renovated and constructed new school facilities at the District's West High School New Performing Arts Classrooms Project (the "Project");

WHEREAS, the District, by way of this Site Lease, desires to lease the Site to F&H, who in turn seeks to construct and install certain site improvements on the Site, and to lease it back to the District, as more particularly described in the Facilities Lease (as defined below) and incorporated herein by reference;

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

WHEREAS, the District is authorized under Section 17406 of the Education Code of the State of California to (i) lease the Site to F&H, (ii) direct F&H to develop and cause the construction of the Project thereon, and (iii) lease the Site back to the District by way of the Facilities Lease;

WHEREAS, the Board has duly authorized the execution and delivery of this Site Lease in order to effectuate the foregoing, based upon a finding that it is in the best interest of the District to do so;

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

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

WHEREAS, the District has a substantial need for the construction of the Project at the Site and has entered into this Site Lease and the Facilities Lease under the authority granted to the District by Section 17406 of the Education Code of the State of California in order to fill that need; and

WHEREAS, the District and F&H further acknowledge and agree that they have entered into this Site Lease pursuant to Education Code section 17406 as the best available and most expeditious means for the District to satisfy its substantial need for the construction of facilities at the Site and to accommodate and educate students served by the District.

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

## ARTICLE 1

### DEFINITIONS

- 1.1 Unless the context clearly requires otherwise, all words and phrases defined in Section 1.1 of that certain Facilities Lease dated as of September 28, 2010, by and between the District and F&H (the "Facilities Lease") shall have the same meanings when used in this Site Lease.

## ARTICLE 2

### DEMISING CLAUSES

- 2.1 Lease of the Site. The District hereby leases to F&H, and F&H hereby leases from the District, the Site, subject only to the Permitted Encumbrances, in accordance with the terms and provisions of this Site Lease, to have and to hold for the term of this Site Lease. The effectiveness of this Site Lease depends upon the execution of the Facilities Lease. If the Facilities Lease is not executed by the District and F&H within three (3) days after execution of this Site Lease, this Site Lease shall terminate and shall be of no further force or effect and no party shall have any obligation to the other hereunder except for those obligations that expressly survive termination of this Site Lease.
- 2.2 Rental. In consideration for the leasing of the Site by the District to F&H, and for other good and valuable consideration, F&H shall pay the District rent of One Dollar (\$1.00) per year.
- 2.3 Merger. The leasing of the Site by F&H to the District pursuant to the Facilities Lease shall not effect or result in a merger of the estates of the District in the Site, and F&H shall continue to have a leasehold estate in the Site pursuant to this Site Lease throughout the term, as described below.

## ARTICLE 3

### QUIET ENJOYMENT

- 3.1 Possession. The parties intend that the Site will be leased back to the District pursuant to the Facilities Lease for the term thereof. Subject to any rights the District may have under the Facilities Lease (in the absence of an Event of Default) to possession and enjoyment of the Site, the District hereby covenants and agrees that it will not take any action to prevent F&H from having quiet and peaceable possession and enjoyment of the Site during the term hereof and will, at the request of F&H, to the extent that it may lawfully do so, join in any legal action in which F&H asserts its right to such possession and enjoyment.
- 3.2 Access to Site. Prior to the acceptance of the Project by the District, the District shall have the right to enter upon the Site at reasonable times for the purposes of inspection of the progress of the Work on the Project and the District shall comply with all reasonable safety precautions required by F&H and F&H's contractors.
- 3.3 District's Title. In the event the District's fee title to the Site is ever challenged so as to interfere with F&H's rights to occupy, use and enjoy the Site under this Site Lease, the District will use all reasonable efforts at its disposal to obtain fee title to the Site and to defend F&H's rights to occupy, use and enjoy the Site.

In the event the challenge to District's fee title is successful and thereby interferes with F&H's rights under the Lease, this Lease shall terminate as of the date of judgment quieting title by the challenger, and the District shall compensate F&H for Lease Payments then due to F&H and monies for Work performed by F&H, subject to any rights of offset, under the terms of the General and Special Construction Conditions set forth in the Facilities Lease.

## ARTICLE 4

### SPECIAL COVENANTS AND PROVISIONS

- 4.1 Waste. F&H agrees that at all times that it is in possession of the Site, it will not willfully or knowingly use or permit use of the Site for any illegal purpose or act.
- 4.2 Further Assurances and Corrective Instruments. The District and F&H agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, any such further instruments as may be reasonably required for correcting any inadequate or incorrect description of the Site hereby leased or intended so to be leased or for carrying out the expressed intention of this Site Lease and the Facilities Lease.

- 4.3 Right of Entry. The District reserves the right for any of its duly authorized representatives to enter upon the Site at any reasonable time to inspect the same, subject to all reasonable safety precautions required by F&H.
- 4.4 Representations of the District. The District represents and warrants to F&H that the District is a school district, duly organized and existing under the Constitution and laws of the State of California.
- 4.5 Representations of F&H. F&H represents and warrants to the District that F&H is a California corporation, duly organized and validly existing under the laws of the State of California.

## ARTICLE 5

### ASSIGNMENT, SUBLEASING, MORTGAGING AND SELLING

- 5.1 Assignment and Subleasing. This Site Lease may not be assigned nor the Site subleased, mortgaged or sold as a whole or in part, by F&H without the prior written consent of the District to such assignment or sublease.

## ARTICLE 6

### IMPROVEMENTS

- 6.1 Improvements. Title to all improvements made on the Site by F&H during the term of this Site Lease shall vest in F&H until conveyance to the District at the end of the Facility Lease's Term pursuant to Section 7.1, 7.2, 7.3, or 7.4 below.

## ARTICLE 7

### TERM AND TERMINATION

- 7.1 Term. The term of this Site Lease shall commence on October 1, 2010, and shall terminate upon the expiration or earlier termination of the Facilities Lease. Whereupon title to all improvements made on the Site during the term of this Site Lease shall vest in the District. Notwithstanding the foregoing, if on the date scheduled for the expiration or termination of this Site Lease the Lease Payments subject to the District's right to offset, owing under the Facilities Lease have not been fully paid to F&H by the District, then the term of this Site Lease shall be extended until the date upon which all such Lease Payments shall be fully paid, and F&H shall continue to have the right of possession of the Site during such time period.
- 7.1.1 Termination Prior to Issuance of Notice to Proceed. This Site Lease shall terminate upon the termination of the Facilities Lease pursuant to Section 4.3a of the Facilities Lease.

- 7.2 Agreement on Costs. Notwithstanding anything contained in this Site Lease to the contrary, if the District and F&H fail to agree on the Project's Guaranteed Maximum Price, Lease Payments, and Lease Payment Schedule as contemplated under the Facilities Lease by the time the District is prepared to issue the Notice to Proceed, then this Site Lease shall terminate and F&H's sole liability to the District, notwithstanding anything contained in this Site Lease, shall be the amount of \$1.00 previously paid to the District and title to all improvements made on the Site during the term of this Site Lease shall immediately vest in the District.
- 7.3 Termination Upon Purchase of Project. If the District exercises its option to purchase the Project, pursuant to the Facilities Lease, then this Site Lease shall terminate concurrently with the close of escrow for the District's purchase of the Project. Upon the District's request, F&H shall execute a lease termination agreement upon the close of escrow.
- 7.4 Termination Due to Default by F&H. If there is a Default under Section 9.6 of the Facilities Lease, the District may terminate the Site Lease and the Facilities Lease, including, but not limited to, the General and Special Construction Conditions as found in Exhibit D of the Facilities Lease upon ten (10) days' written notice to F&H. If the District terminates this Site Lease and the Facilities Lease pursuant to this section, title to the Site and any improvements built upon the Site shall vest in District upon the date of termination. The District shall pay Lease Payments then due and any outstanding amounts owed to F&H based upon the percentage of completion of the Project at the time of termination plus costs incurred in securing the Project for termination, as approved by the District. If there is any credit owing to the District by F&H based upon the percentage of completion of the Project and sums received by F&H from the District by virtue of payments made for tenant improvements, F&H shall pay the amount of such credit to the District within thirty (30) days of the District's demand for payment. In no event shall the District be obligated to pay F&H any amount in excess of the Lease Payments then due and reasonable cost of the work performed by F&H in furtherance of the Project.

## ARTICLE 8

### MISCELLANEOUS

- 8.1 Binding Effect. This Site Lease shall inure to the benefit of and shall be binding upon the District, F&H and their respective successors, transferees and assigns.
- 8.2 Severability. In the event any provision of this Site Lease shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof, unless elimination of such invalid provision materially alters the rights and obligations embodied in this Site Lease or the Facilities Lease.

- 8.3 Amendments, Changes and Modifications. This Site Lease shall not be effectively amended, changed, modified, or altered without the written agreement of all parties hereto.
- 8.4 Execution in Counterparts. This Site Lease may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.
- 8.5 Applicable Law. This Site Lease shall be governed by and construed in accordance with the laws of the State of California. The parties further agree that any action of proceeding brought to enforce the terms and conditions of this Site Lease shall be maintained in San Joaquin County, California.
- 8.6 Recitals. The recitals set forth at the beginning of this Site Lease are hereby incorporated herein by reference and each party stipulates and agrees that such recitals are true and correct.
- 8.7 Captions. The captions or headings in this Site Lease are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Site Lease.
- 8.8 Time of Essence. Time is of the essence of this Site Lease and each of its provisions.
- 8.9 Remedies. The parties shall have any and all legal and equitable remedies available under applicable California law, except that the District shall have no right to terminate this Site Lease as a remedy for Default by F&H or any assignee of F&H separate and apart from a concurrent termination of the Facilities Lease due to a Default by F&H or its assignee. The remedies of the parties under this Site Lease are cumulative and shall not exclude any other remedies to which either party may be lawfully entitled.
- 8.10 Notices. Any notice to either party shall be in writing and given by delivering the same to such party in person or by sending it by nationally recognized overnight delivery service for next business day delivery, such as Federal Express, or by mailing the same by certified mail, return receipt requested, with postage fully prepaid, to the following addresses:

If to District:

Tracy Joint Unified School District  
1875 West Lowell Avenue  
Tracy, CA 95376  
Attn: Bonny Carter

With a copy to:

Kronick Moskovitz Tiedemann & Girard  
400 Capitol Mall, 27<sup>th</sup> floor  
Sacramento, CA 95814  
Attn: Addison Covert

If to F&H:

F&H Construction  
4945 Waterloo Rd  
Stockton, CA 95215  
Attn: Harold Jones

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

- 8.11 Eminent Domain. In the event the whole or any part of the Site or the improvements thereon is taken by eminent domain, the financial interests of F&H shall be recognized and is hereby determined to be the amount of all Lease Payments then due or past due, together with all remaining and succeeding installments of Lease Payments for the remainder of the original Term of this Site Lease. The balance of the award, if any, shall be paid to the District.
- 8.12 Indemnification. The District covenants and agrees to indemnify and hold F&H harmless from and against any and all losses, claims, suits, damages and expenses (including reasonable attorneys' fees) arising out of the condition of the Site, including but not limited to, all reasonable costs required to be incurred by F&H as a result of any condition, whether or not known to the District; provided, however, that the District shall not be required to indemnify F&H in the event that such liability or damage is caused by the negligent or intentional act or omission of F&H. F&H covenants and agrees to indemnify and hold the District harmless from and against any and all losses, claims, suits, damages, and expenses (including reasonable attorneys' fees) caused by the negligent or intentional acts or omissions of F&H, or its agents or employees on the Site or the condition of the Site if caused by any negligent or intentional acts or omissions of F&H, provided, however, that F&H shall not be required to indemnify the District in the event such liability or damage is caused by the District.
- 8.13 Further Assurances and Corrective Instruments. To the extent permissible under California law and as long as there are no additional costs to the District, the District agrees that it will execute and deliver estoppel certificates, financing statements or other assurances as may be reasonably necessary or requested by F&H to carry out assignments of this Site Lease and the Facilities Lease, including without limitation, to perfect and continue any security interests herein intended to be created or to correct any inadequate or incorrect description of the Site being leased or intended to be leased.

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

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

**DISTRICT:**

**TRACY JOINT UNIFIED SCHOOL DISTRICT,**  
a school district organized and existing under the laws  
of the State of California

\_\_\_\_\_  
**By:** Casey Goodall  
**Title:** Associate Superintendent Business Services

**Date:** \_\_\_\_\_

**F&H CONSTRUCTION,**  
a California corporation

\_\_\_\_\_  
**By:** Harold Jones  
**Title:** President

**Date:** \_\_\_\_\_

## **EXHIBIT A**

### **LEGAL DESCRIPTION**

The land described herein is situated in the State of California, County of San Joaquin, City of Tracy and is described as follows:

Tracy Joint Unified School District  
1875 West Lowell Avenue  
Tracy, CA 95376  
Attn: Bonny Carter, Director of Facilities & Planning

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**DEVELOPMENT AND LEASE AGREEMENT**

by and between

**F&H CONSTRUCTION**  
as Lessor

and

**TRACY JOINT UNIFIED SCHOOL DISTRICT**  
as Lessee

Dated as of September 28, 2010

West High School New Performing Arts Classrooms Project

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## DEVELOPMENT AND LEASE AGREEMENT

This development and lease agreement (the "Facilities Lease") is dated and entered into as of September 28, 2010, and is made by and between F&H Construction ("F&H"), a California corporation, as lessor, and the Tracy Joint Unified School District ("District"), a school district duly organized and validly existing under the Constitution and laws of said State of California, as lessee.

### RECITALS

WHEREAS, the District desires to provide for site work and renovation, construction and installation of new performing arts building at its West High School located in the City of Tracy, State of California, on the District's Site as defined below, and has hired an architect, Michael Rainforth Jeffrey Grau Architects, a Professional Corporation (the "Architect") to prepare the Plans and Specifications, as herein defined, as more particularly described in Exhibit A and as are on file at the District and incorporated herein by this reference (the "Project"). The parties acknowledge that the Plans and Specifications may be amended subject to mutual agreement between the parties;

WHEREAS, the Plans and Specifications were approved by the State of California's Division of the State Architect (the "DSA") on July 23, 2008 and were assigned corresponding application numbers DSA #02-109657.

WHEREAS, F&H has reviewed the General and Special Construction Conditions for the Project set forth in Exhibit D attached hereto and incorporated herein;

WHEREAS, the District and F&H agree that the Plans and Specifications attached hereto as Exhibit A, and all other supporting documents, and the General and Special Construction Conditions attached hereto as Exhibit D, and all other supporting documents, shall govern the construction of the Project, and are supplementary to the terms and conditions set forth in this Facilities Lease;

WHEREAS, on the date hereof, the District has leased to F&H, for the development and construction of the Project, the Site (the "Site") located in Tracy, California as more particularly described in Exhibit B attached hereto pursuant to the terms of a Site Lease, dated September 28, 2010 as defined herein, by and between the District and F&H;

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

WHEREAS, F&H has agreed to and is authorized to lease the Site as lessee and to develop the Project and to undertake the construction of the Project at the Site and to lease the

Site back to the District, as provided for herein and in the Site Lease, and has duly authorized the execution and delivery of this Facilities Lease;

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

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

WHEREAS, the District has a substantial need for the construction of the Project at the Site and has entered into the Site Lease and the Facilities Lease under the authority granted to the District by Section 17406 of the Education Code of the State of California in order to fill that need; and

WHEREAS, the District and F&H further acknowledge and agree that they have entered into the Site Lease and this Facilities Lease pursuant to Education Code Section 17406 as the best available and most expeditious means for the District to satisfy its substantial need for the construction of new school facilities at the Site and to accommodate and educate students served by the District.

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

## ARTICLE 1

### DEFINITIONS AND EXHIBITS

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

1.1.1 "Construction Contract" or "Contract Documents" means the Plans and Specifications attached hereto as Exhibit A, the General and Special Construction Conditions attached hereto as Exhibit D and all other design and development documents pertaining to the Project, as more particularly described in Exhibit D attached hereto.

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

1.1.3 "District Representative" means the Director of Facilities or Facilities Planner of the District, or any other person authorized by the Board of Trustees of the District to act on behalf of the District under or with respect to this Facilities Lease. The person or persons so designated to act as District Representative(s) shall be authorized in writing with notice served to F&H's Representatives.

1.1.4 "Event of Default" or "Default" means one or more events as defined in Section 9.1 and Section 9.6 of this Facilities Lease.

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

1.1.6 "Guaranteed Maximum Price" means the price for which F&H will cause the Project to be constructed as further described herein and by way of Exhibit A attached hereto.

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

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

1.1.9 "Notice to Proceed" shall mean a written communication signed by an authorized representative of the District, directing F&H to cause commencement of the Project, as provided for in this Facilities Lease and which is delivered to F&H at the address provided herein by registered or certified mail, return receipt requested.

1.1.10 "Permitted Encumbrances" means, as of any particular time: (i) liens for general ad valorem taxes and assessments, if any, not then delinquent, or which the District may, pursuant to the provisions of Section 5.3 hereof, permit to remain unpaid; (ii) the Site lease; (iii) this Facilities Lease, (iv) easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions or restrictions which exist of record as of the date of this Facilities Lease; (v) easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions or restrictions established following the date of this Facilities Lease and to which F&H and the District consent in writing which will not impair or impede the operation of the Site or the construction of the Project.

1.1.11 "Plans and Specifications" means the plans and specifications for the Project as further defined in the General and Special Construction Conditions, and as more particularly described in Exhibit A and in Exhibit D attached hereto.

1.1.12 "Project" or "Work" means the improvements and equipment to be constructed and installed by F&H, as more particularly described in Exhibit A and in Exhibit D attached hereto.

1.1.13 "F&H" means F&H Construction, organized and existing under the laws of the State of California, and its District-approved successors and assigns and which is the party responsible for construction of the Project and related work as provided for in Exhibit A.

1.1.14 "F&H's Representative" means any officer of F&H, or any person authorized to act on behalf of F&H under or with respect to this Facilities Lease as evidenced by a resolution conferring that representative with such authorization adopted by the board of directors of F&H.

1.1.15 "Site" means that certain parcel of real property and improvements thereon more particularly described in Exhibit B attached hereto.

1.1.16 "Site Lease" means the Site Lease dated as of September 28, 2010, by and between the District and F&H together with any duly authorized and executed amendments thereto under which the District leased the Site to F&H.

1.1.17 "Term of this Facilities Lease" or "Term" means the time, commencing with the District issuing to F&H a Notice to Proceed, during which the District's obligation to make the Lease Payments under this Facilities Lease is in effect, as provided for in Section 4.2 of this Facilities Lease.

1.2 Exhibits. The following Exhibits are attached to and by reference incorporated and made a part of this Facilities Lease and are binding upon the District and F&H hereto:

Exhibit A – THE PROJECT: The description of the Project, including Plans and Specifications for the Project which have been approved by the Division of the State Architect, and the Guaranteed Maximum Price.

Exhibit B – THE SITE: The descriptions of the real property constituting the Site.

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

Exhibit D – GENERAL AND SPECIAL CONSTRUCTION CONDITIONS: The provisions generally describing the Project's construction.

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

Exhibit F – SECTION 01015 ADDITIONAL REQUIREMENTS FOR DSA-REVIEWED PROJECTS: A list of additional requirements that apply to the Project which has been reviewed by the Division of State Architect.

Exhibit G – GUARANTEE: The form which F&H shall execute and deliver to District upon completion of the Work, warranting and guaranteeing that all Work and materials provided and installed by F&H was performed in strict conformity with the Contract Documents for the Work.

Exhibit H – SITE VERIFICATION CERTIFICATE: The Certificate to be executed and delivered by F&H upon completion of a site review within twenty-one (21) days of the date for commencement of the Work as set forth in the Notice to Proceed.

Exhibit I – PERFORMANCE BOND: The form of Performance Bond to serve as security for F&H's faithful performance of the Work under the Contract Documents.

Exhibit J – PAYMENT BOND: The form of Payment Bond to serve as security for payment of persons or entities performing work, labor or furnishing materials in connection with F&H's performance of the Work under the Contract Documents.

Exhibit K – SUBCONTRACTORS LIST: A list of the name of each subcontractor, contact address, and portion of the Work to be completed by that subcontractor.

Exhibit L – NON-COLLUSION AFFIDAVIT: An affidavit to be signed by F&H declaring that its Guaranteed Maximum Price is genuine, and F&H did not collude with any subcontractors to offer a false Guaranteed Maximum Price.

Exhibit M – CERTIFICATE OF WORKERS' COMPENSATION INSURANCE: The form of certificate declaring that F&H understands that it must maintain workers' compensation insurance or self-insurance.

Exhibit N – DRUG-FREE WORKPLACE CERTIFICATION: The form of certificate declaring that F&H shall comply with the requirements of the Drug Free Workplace Act of 1990, California Government Code §§ 8350 et seq.

Exhibit O – FINGERPRINT CERTIFICATE: The form of certificate declaring that F&H shall comply with the requirements of the California Education Code § 45125.1, regarding fingerprinting of persons providing services to school districts.

Exhibit P – DISABLED VETERAN BUSINESS ENTERPRISE PARTICIPATION GOAL PROGRAM POLICY: The District's policy regarding its commitment to achieving the Participation Goal for Disabled Veteran Business Enterprises.

Exhibit Q – DISABLED VETERAN BUSINESS ENTERPRISE (DVBE) PARTICIPATION WORKSHEETS: Worksheets documenting F&H's efforts to satisfy the DVBE Participation Goal.

Exhibit R – LABOR COMPLIANCE PROGRAM MANUAL: The District's manual containing the labor compliance standards required by state and federal laws and the District's policies and contract provisions.

## ARTICLE 2

### REPRESENTATIONS, COVENANTS AND WARRANTIES

2.1 Representations, Covenants and Warranties of the District. The District represents, covenants and warrants to F&H as follows:

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

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

2.2 Representations, Covenants and Warranties of F&H. F&H represents, covenants and warrants to the District as follows:

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

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

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

2.2.4 No Encumbrances. F&H shall not mortgage or encumber the Site, to finance construction of the Project.

2.2.5 Continued Existence. For up to six (6) months following the term of this Lease, F&H shall not voluntarily commence any act intended to dissolve or terminate the legal existence of F&H, provided the District is not in uncured Default under this Facilities Lease. F&H shall give the District sixty (60) days written notice prior to dissolving or terminating the legal existence of F&H.

## ARTICLE 3

### CONSTRUCTION OF PROJECT

3.1 Site Conditions and Plans and Specifications. F&H acknowledges that it has, to the extent necessary to complete the Project, visually investigated the Site, including, without limitation, a review of the soils reports for the Site as provided by the District, and concluded that there are no currently known problems with respect to the site conditions. F&H further acknowledges that it will have performed value engineering and a constructability review of the Plans and Specifications which were prepared by the Architect hired by the District and will have determined in its capacity as a contractor, but not as a licensed design professional, that prior to commencement of construction, the documents are adequate for the Project's construction and F&H has not identified any deficiencies in the Plans and Specifications that need to be cured. Provided, however, that the parties understand that F&H has not conducted an architectural, engineering, or code compliance review of the Plans and Specifications.

3.2 Construction of Project. F&H agrees to cause the Project to be developed, constructed, and installed in accordance with the terms hereof and the Plans and Specifications on file with the District and as described in Exhibit A and the General and Special Construction Conditions set forth in Exhibit D, including those things reasonably inferable from the Plans and Specifications as being within the scope of the Project and necessary to produce the stated result even though no mention of them is made in the Plans and Specifications. F&H further agrees that it will cause the development, construction, and installation of the Project to be diligently performed pursuant to the terms of the Construction Contract. F&H shall provide the District a complete copy of the executed Construction Contract documents within ten (10) days after execution of the Construction Contract. Provided, however, that F&H shall be allowed to remove all financial information from the Construction Contract with the exception of the total contract price. The District and F&H may also approve additional changes in the Plans and Specifications for the Project as provided in Exhibit D. The District and F&H will cooperate at all times in bringing about the timely completion of the Project. F&H shall cooperate with the District's efforts to obtain State funding for the Project by complying with any State requirements as reasonably requested by District, including, without limitation sections 1859.104 to 1859.106 of Title 2 of the California Code of Regulations; however, the District shall be responsible for reimbursing F&H as applicable, for any costs reasonably incurred by F&H associated with meeting those State funding requirements.

3.3 Guaranteed Maximum Price. F&H will cause the Project to be constructed within the Guaranteed Maximum Price as set forth and defined herein and in Exhibit A hereto, and shall not seek additional compensation from the District beyond the change orders approved by the parties

(as defined in Exhibit D attached hereto) or the Lease Payments and Additional Payments pursuant to this Facilities Lease or costs attributable to errors, defects or omissions in connection with architectural or engineering plans and specifications, as determined by the District and Architect, notwithstanding any cost overruns incurred by or identified by F&H following issuance of the Notice to Proceed. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid pursuant to Section 3.3.1 (Construction Contingency). If the DSA requires changes to the Plans and Specifications submitted by the District, and such changes would increase the construction costs for the Project, then such increased costs will be handled as a change order pursuant to Exhibit D, attached hereto, and paid pursuant to Section 3.3.1 (Construction Contingency). Any Work not authorized by the Plans and Specifications, the General and Special Construction Conditions or by change order pursuant to Exhibit D shall be considered unauthorized and at the sole expense of F&H.

3.3.1 Construction Contingency. A "Construction Contingency," in an amount in addition to the Guaranteed Maximum Price, shall be available to offset the costs of unforeseen circumstances. For the purposes of this Facilities Lease, "unforeseen circumstances" are limited to circumstances that neither the District nor F&H could have been expected to foresee such as design changes required by governmental agencies, change orders approved by the parties, unforeseen design errors attributable to F&H and unforeseen underground conditions including unforeseen utilities. The Construction Contingency amount shall be 5% of the Guaranteed Maximum Price.

All proposed Construction Contingency draws must be approved by the District prior to Work being performed, and shall be supported by detailed records, including full documentation of the labor, material, equipment and subcontractor costs involved. The timing and processing of requested Construction Contingency draws shall be the same as F&H's application for Lease Payments. Should the amount of the Construction Contingency be exceeded, any unfunded project costs (other than those unfunded project costs relating to material changes in the scope of the Project that are requested by the District, i.e., change orders initiated by the District or unforeseen design errors, which costs shall be borne by the District) shall be borne by F&H without increase to the Guaranteed Maximum Price. Any balance remaining in the Construction Contingency at the end of the Project after payment of all final costs shall be returned to the District.

3.4 Termination on Failure to Reach Agreement on Guaranteed Maximum Price: Costs to Be Determined. Notwithstanding anything contained herein to the contrary for the Project, the District and F&H shall agree upon (i) the Project's Guaranteed Maximum Price, (ii) Lease Payments, and (iii) Lease Payment Schedule contemplated under this Facilities Lease in writing, no later than the District issuing the Notice to Proceed. In the event F&H and the District do not come to an agreement on each item, this Facilities Lease shall terminate as of that date, and the sole compensation to F&H shall be for those costs incurred and work performed by F&H on the Project to the date of termination. Such compensation shall not exceed the reasonable value, as deemed by the District, for the authorized work completed as of the date of termination and in no event shall exceed \$100,000.

## ARTICLE 4

### AGREEMENT TO LEASE; TERMINATION OF LEASE; LEASE PAYMENTS; TITLE TO THE SITE

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

4.2 Term of Facilities Lease. The Term of this Facilities Lease, for the purposes of the District's obligation to make Lease Payments, shall commence when the District issues a Notice to Proceed for the Project, and shall terminate six (6) months after the District files a notice of completion for the Project (the "Term") at which time the District shall have the absolute right to exercise its purchase option pursuant to Section 10.1 (District's Option). The District and F&H shall execute the Memorandum of Commencement Date attached hereto as Exhibit E to memorialize the commencement and expiration dates of the Term. Notwithstanding anything contained herein to the contrary, this Facilities Lease shall not commence prior to DSA's approval of the Plans and Specifications.

4.3a Termination of Lease Prior to Commencement of Term. Prior to the commencement of the Term and up to and including the moment the Guaranteed Maximum Price is known to the District and F&H, this Facilities Lease shall terminate upon a determination by the District not to proceed with the lease and construction of the Project in accordance with Section 17406 of the Education Code of the State of California. In such event, sole compensation to F&H shall be pursuant to Section 3.4.

4.3b Termination of Lease At or After Commencement of Term. Notwithstanding Section 4.2, the Term of this Facilities Lease shall terminate upon the earliest of any of the following events:

4.3b.1 An Event of Default by District followed by F&H's election to terminate this Facilities Lease pursuant to Section 9.2 hereof;

4.3b.2 Exercise of the District's purchase option pursuant to Section 10.1 below;

4.3b.3 Failure to reach agreement on costs pursuant to Section 3.4; or

4.3b.4 An Event of Default by F&H and the District's election to terminate this Facilities Lease pursuant to Section 9.6 hereof;

4.3b.4.1 The District may terminate this Facilities Lease and the Site Lease, consistent with the General and Special Construction Conditions attached hereto as Exhibit D, upon ten (10) days' written notice to F&H and its surety concerning the reasons for the District's intention to terminate.

4.4 Project Completion. Completion of the Project shall be evidenced by a separate notice of completion that shall be filed with the County Clerk.

4.5 Lease Payments.

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

4.5.2 Lease Payments to Constitute Current Expense of the District. The District and F&H understand and intend that the obligation of the District to pay Lease Payments and other payments hereunder constitutes a current expense of the District and shall not in any way be construed to be a debt of the District in contravention of any applicable constitutional or statutory limitation or requirement concerning the creation of indebtedness by the District, nor shall anything contained herein constitute a pledge of the general tax revenues, funds or moneys of the District. Lease Payments due hereunder shall be payable only from current funds which are budgeted and appropriated or otherwise made legally available for such purpose. This Facilities Lease shall not create an immediate indebtedness for any aggregate payments which may become due hereunder. The District covenants to take all necessary actions to include the estimated Lease Payments and estimated Additional Payments due hereunder (as hereinafter defined) in each of its final approved annual budgets. The District shall notify F&H not later than December 1 in each year during the Term of this Facilities Lease of the amount of Lease Payments and Additional Payments which are to be included in the final budget of the District. The District further covenants to make all necessary appropriations (including any supplemental appropriations) from any source of legally available funds of the District for the actual amount of Lease Payments and Additional Payments which come due and payable during the period covered by each such budget. F&H acknowledges that the District has not pledged the full faith and credit of the District, State of California or any state agency or state department to the payment of Lease Payments or any other payments due hereunder. The covenants on the part of the District contained in this Facilities Lease constitute duties imposed by law and it shall be the duty of each and every public official of the District to take such action and do such things as are required by law in the performance of the official duty of such officials to enable the District to carry out and perform the covenants and agreements in this Facilities Lease agreed to be carried out and performed by the District.

4.6 Quiet Enjoyment. F&H shall provide the District with quiet use and enjoyment of the Site, and the District shall during such Term peaceably and quietly have and hold and enjoy the

Site subject to F&H's construction of the Project, without suit, trouble or hindrance from F&H, except as otherwise may be set forth in this Facilities Lease. Notwithstanding the foregoing, F&H shall have the right to inspect the Project and the Site as provided in Section 7.1 hereof.

4.7 Title. During the Term of this Facilities Lease, the District shall hold fee title to the Site. During the Term of this Facilities Lease, F&H shall have a leasehold interest in the Site pursuant to the Site Lease. If the District exercises its purchase option to accelerate the termination of this Facilities Lease pursuant to Article 10 hereof or if it pays all Lease Payments during the Term of this Facilities Lease as the same become due and payable, all right, title and interest of F&H, its assigns and successors in interest in and to the Project and the Site shall be transferred to and vested in the District at the expiration of the Term or upon the payment by the District of the final Lease Payment, whichever shall come first. Title shall be transferred to and vested in the District hereunder without the necessity for any further instrument or transfer, provided, however, that F&H agrees to execute any instrument requested by District to memorialize such termination of this Facilities Lease and transfer title to the District.

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

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

- (a) Fees, expenses and other amounts, if any, which may be payable by the District to F&H under any of the provisions of this Facilities Lease;
- (b) Any costs, fees and expenses, if any, incurred by F&H in connection with Section 5.3 of this Facilities Lease.

4.10 Lease Terminable Only As Set Forth Herein.

4.10.1 Except as otherwise expressly provided in this Facilities Lease, this Facilities Lease shall not terminate, nor shall the District have any right to terminate this Facilities Lease or be entitled to the abatement of any Lease Payments or Additional Payments or any reduction thereof, nor shall the obligations hereunder of the District be otherwise affected by reason of any damage to or destruction of all or any part of the Project from whatever cause, the taking of the

Site or any portion thereof by condemnation or otherwise, the prohibition, limitation or restriction of the District's use of the Site, interference with such use by any private person or corporation, or the District's acquisition of the ownership of the Site (other than pursuant to an express provision of this Facilities Lease), or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding. It is the intention of the parties hereto that the Lease Payments and Additional Payments and all other charges payable hereunder to or on behalf of F&H shall continue to be payable in all events, and the obligations of the District hereunder shall continue unaffected so long as F&H is not in Default of any provision of this Facilities Lease or its accompanying documents, or unless the requirement to pay or perform the same shall be terminated or modified pursuant to an express provision of this Facilities Lease.

## ARTICLE 5

### MAINTENANCE; TAXES; INSURANCE AND OTHER MATTERS

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

5.2 Utilities. Prior to completion of the Project by F&H, F&H shall pay all the below listed utility costs as they relate to the specific portion of the Work F&H is performing under the General and Special Construction Conditions, including telephone, water, sewer, trash removal, cable television, security, and internet service. All other utilities of any type shall be paid by the District.

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

5.4 Reserved.

5.5 Insurance. Following completion and acceptance of the Project by the District, and prior to taking occupancy, the District shall provide evidence that it has in full force and will maintain for the duration of this Facilities Lease, a standard commercial comprehensive, general public

liability and property damage insurance policy or policies concerning the Project. Such policy or policies shall provide coverage in the minimum liability limits of \$ 2,000,000 per occurrence with a \$ 4,000,000 general aggregate. Said policy or policies shall pay on behalf of the District and any additional insureds any amounts up to the limits of said policy for which the District becomes liable for bodily and personal injury, death or property damage occasioned by reason of the use or operation of any District property or portion thereof arising out of the District's negligence. The District shall also maintain property insurance insuring its interest in the Project and all furniture, fixtures and equipment used by the District in conjunction with its occupancy.

The District's insurance under this section may be maintained as part of or in conjunction with any other insurance carried or required to be carried by the District. The District shall cause to be delivered to F&H a certificate stating that the insurance policies required by this Lease are in full force and effect and that F&H is named as an additional insured.

F&H's insurance as required under the terms of the General and Special Construction Conditions shall continue to be primary and non-contributory for all injuries arising out of its operations or completed operations, except as stated above.

5.6 Reserved.

5.7 Cancellation or Change of Coverage. The District agrees that the insurance coverages required above in Section 5.5 shall be in effect at all times after acceptance of the Project by the District. After the District's acceptance or occupancy of the Project, all insurance required to be carried by the District shall be primary except as provided herein and that of F&H shall be non-contributory. Insurance required in Section 5.5 shall not be canceled or changed so as to no longer meet the specified insurance requirements without thirty (30) days' prior written notice of such cancellation or change being delivered to F&H.

5.8 Reserved.

5.9 Indemnification. Subsequent to completion and acceptance of the Project by the District, the District shall indemnify, defend and hold harmless F&H and its successors and assigns, its officers, members, agents and employees from and against any claims, damages, costs, expenses, including reasonable attorneys' fees, and liabilities arising from all negligent or intentional acts or omissions of the District or its officers, agents, consultants, or employees, with respect to the District's use, operation, repair, alteration and occupancy of the Site and the performance of the District's obligations under this Facilities Lease. Subsequent to completion and acceptance of the Project by the District, F&H shall indemnify, defend and hold harmless the District, its officers, consultants, agents and employees from and against any claims, damages, costs, expenses, including reasonable attorneys' fees, and liabilities arising from the negligent or intentional acts or omissions of F&H or its officers, agents, employees, contractors or subcontractors with respect to F&H's use, alteration and occupation of the Site and its obligations under this Facilities Lease.

5.10 Insurance Proceeds; Form of Policies. The District shall pay or cause to be paid when due the premiums for all insurance policies required to be maintained by the District pursuant to this Facilities Lease. F&H shall pay or cause to be paid when due the premiums for all insurance policies required to be maintained by F&H pursuant to this Facilities Lease and all Exhibits hereto. All such policies must provide that F&H will be given thirty (30) days' prior written notice of expiration, any intended cancellation or reduction of the coverage provided. F&H is not responsible for the sufficiency of any insurance herein required.

5.11 Modification of Project. The District has the right, at its expense, to make additions, modifications and improvements to the Project and the Site, provided, however, that during the two (2) year warranty period which will be provided by F&H on any defects in materials and workmanship for the Project following the Project's completion, the District shall first provide Plans and Specifications and obtain F&H's prior written consent to any additions, modifications and improvements to the Project which are not minor modifications. For the purposes of this Section, a minor modification, addition or improvement has a cost less than \$20,000.00. F&H agrees not to unreasonably withhold, delay or condition approval of the District's plans for any proposed additions, modifications and improvements to the Project. All additions, modifications and improvements to the Project will thereafter comprise part of the Project and be subject to the provisions of this Facilities Lease. Such additions, modifications and improvements may not in any way damage the Project or cause the Project to be used for purposes other than those authorized under the provisions of State and federal law, and the District must file with F&H a written certificate stating that the Project, upon the completion of any additions, modifications and improvements made thereto has a value which is not substantially less than the value of the Project immediately prior to the making of any such additions, improvements and modifications. Notwithstanding anything to the contrary contained herein, District shall have the right, without F&H's consent, to place relocatables or portables upon the Site, along with incidental site work, and such relocatables and portables shall not become part of the Project and shall remain the personal property of the District.

5.12 Compliance with Laws, Regulations.

5.12.1 The District has no actual knowledge and has not given or received any written notice indicating that the Site or the past or present use thereof or any practice, procedure or policy employed by it in the conduct of its business materially violates any applicable law, regulation, code, order, rule, judgment or consent agreement, including, without limitation, those relating to zoning, building, use and occupancy, fire safety, health, sanitation, air pollution, ecological matters, environmental protection, hazardous or toxic materials, substances or wastes, conservation, parking, architectural barriers to the handicapped, or restrictive covenants or other agreements affecting title to the Site (collectively "Laws and Regulations"). Without limiting the generality of the foregoing, neither the District nor to its actual knowledge, any prior or present owner, tenant or subtenant of the Site has, other than as set forth in this section or as may have been remediated in accordance with Laws and Regulations; (i) used, treated, stored, transported or disposed of any material amount of flammable explosives, heavy metals, chlorinated solvents, cyanide, radon, petroleum products, methane, radioactive materials, pollutants, hazardous materials, hazardous wastes, hazardous, toxic or regulated substances or related materials,

hazardous wastes, hazardous, toxic, or regulated substances as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), the Resource Conservation and Recovery Act of 1976 ("RCRA"), the Clean Water Act of 1971 ("CWA"), the Clean Air Act of 1977 ("CAA"), the Toxic Substances Control Act of 1976 ("TSCA"), as they all have been or may be amended, and the regulations promulgated pursuant thereto, and in all other environmental regulations applicable to the District, the Site, or the operations conducted by the District thereon (collectively "Hazardous Materials") on, from or beneath the Site; (ii) pumped, spilled, leaked, disposed of, emptied, discharged or released (hereinafter collectively referred to as "Release") any material amount of Hazardous Materials on, from or beneath the Site; or (iii) stored any material amount of petroleum products at the Site in underground storage tanks.

5.12.2 Excluded from the representations and warranties in subsection 5.12.1 above with respect to Hazardous Materials are those Hazardous Materials in those amounts ordinarily found in the inventory of, or used in the maintenance of, school buildings and facilities, the use, treatment, storage, transportation and disposal of which has been and shall be in compliance with all Laws and Regulations.

5.12.3 The District has no actual knowledge as to whether any portion of the Site is located in an area of high potential incidence of radon, nor will Project have an unventilated basement or subsurface portion which is or will be occupied or used for any purpose other than the foundation or support of the improvements at the Project.

### 5.13 Environmental Compliance by District.

5.13.1 Subject to F&H's construction of the Project, the District shall not use or permit the Site or any part thereof to be used to generate, manufacture, refine, treat, store, handle, transport or dispose of, transfer, produce or process Hazardous Materials, except, and only to the extent, if necessary to maintain the improvements at the Project and then, only in compliance with all environmental regulations, and any state equivalent laws and regulations, nor shall it permit, as a result of any intentional or unintentional act or omission on its part or by any tenant, subtenant, licensee, guest, invitee, contractor, employee and agent, the storage, transportation, disposal or use of Hazardous Materials or the Release or threat of Release of Hazardous Materials on, from or beneath the Project or onto any other property excluding, however, those Hazardous Materials in those amounts ordinarily found in the inventory of schools and school facilities, the use, storage, treatment, transportation and disposal of which shall be in compliance with all environmental regulations. Upon the occurrence of any Release or threat of Release of Hazardous Materials through no fault of F&H, the District shall promptly commence and perform, or cause to be promptly commenced and performed, without cost to F&H, all investigations, studies, sampling and testing, and all remedial, removal and other actions necessary to clean up and remove all Hazardous Materials so released, on, from or beneath the Site and Project or other property, in compliance with all environmental regulations. Notwithstanding the above, to the extent permitted by Law, the District's environmental responsibility under this Section 5.13 shall begin subsequent to the District filing a notice of completion for the Project.

## ARTICLE 6

### EMINENT DOMAIN; DAMAGE AND DESTRUCTION

#### 6.1 Eminent Domain.

6.1.1 Total Taking. If the Site shall be taken permanently under the power of eminent domain, the Term of this Facilities Lease shall cease as of the day possession shall be so taken. F&H shall receive an amount from the eminent domain award equal to the present value of the total of all remaining Lease Payments, Additional Payments for the remainder of the original term of this Facilities Lease, and value of Work completed by F&H, as determined by the Architect, and the District shall be entitled to the remaining proceeds, if any.

6.1.2 Partial Taking. If less than all of the Site shall be taken permanently, or if all of the Site or any part thereof shall be taken temporarily, under the power of eminent domain, (1) this Facilities Lease shall continue in full force and effect and shall not be terminated by virtue of such taking and the parties waive the benefit of any law to the contrary, and (2) there shall be a pro rata abatement of Lease Payments as a result of the application of the net proceeds of any eminent domain award to the prepayment of the Lease Payments hereunder, and F&H shall receive an amount from the proceeds equal to the value of the Work completed by F&H, as determined by the Architect. F&H shall reconfigure the Project so that any buildings on the Project affected by the partial permanent taking are useable by the District.

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

6.2.1 Escrow. Any proceeds payable to F&H or the District from property insurance policies shall be immediately deposited in an escrow (the "Escrow").

6.2.2 Total Destruction. In the event that ninety percent (90%) or more of the Site is destroyed or damaged (a "Total Destruction") through no fault of F&H, then the District, at the District's option, may elect to terminate this Facilities Lease and the Site Lease, and shall use the insurance proceeds to pay an amount to F&H equal to the Lease Payments due as of the date of destruction and the value of all Work completed by F&H, pursuant to the provisions found in Exhibit D, with any remaining insurance proceeds to be retained by District. In the alternative, the District may elect to continue with the Facilities Lease in effect and have the Site rebuilt utilizing the insurance proceeds, which shall be exclusively used for that purpose. F&H shall have no obligation to contribute funds for the rebuilding of the Site should the cost of rebuilding exceed the insurance proceeds. Anything less than a Total Destruction of the Site shall be deemed a "Partial Damage or Destruction," in accordance with subsection 6.2.3 of this Facilities Lease.

6.2.3 Partial Damage or Destruction. In the event that the Site is partially damaged or destroyed through no fault of F&H, the District shall repair or have repaired the Site utilizing the proceeds from insurance which were deposited into the Escrow.

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

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

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

## ARTICLE 7

### ACCESS; DISCLAIMER OF WARRANTIES

7.1 By F&H. F&H shall have the right at all reasonable times to enter upon the Site to construct the Project pursuant to this Facilities Lease. Following the acceptance of the Project by the District, F&H may enter the Project at reasonable times with advance notice and permission from the District for purposes of making any repairs required to be made by F&H and for purposes of inspection to ascertain whether the District is satisfying its obligation to maintain and repair the Project as required by this Facilities Lease.

7.2 By District. Prior to the acceptance of the Project by the District, the District shall have the right to enter upon the Site at all times for the purposes of inspection of the progress of the Work on the Project and the District shall comply with all safety precautions required by F&H and its contractors. Following the acceptance of the Project by the District, the District shall thereafter have the right at all times to enter upon the Site for the purposes of this Facilities Lease.

7.3 Disclaimer of Warranties. The District acknowledges that F&H makes no warranties except as specifically set forth in this Facilities Lease or in Exhibits attached hereto, including the General and Special Construction Conditions. F&H agrees to provide an express warranty against defects in materials and workmanship for a two year period, or as otherwise provided in

the Contract Documents, following acceptance of the Project by the District, and shall assign all rights under all product warranties to the District upon expiration of the warranty period. In addition, F&H agrees to use its best efforts to assist the District in enforcing any such product warranty. In the event that the assignment of the warranty is not effective or valid or F&H fails to honor the warranty, F&H shall indemnify and hold the District harmless for all costs incurred in replacing such defective product.

## ARTICLE 8

### ASSIGNMENT, SUBLEASING; AMENDMENT

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

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

8.1.2 The District shall, within thirty (30) days after the execution thereof, furnish or cause to be furnished to F&H a true and complete copy of such sublease; and

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

8.2 Amendment of this Facilities Lease. Without the written agreement of the parties, neither party shall alter or modify this Facilities Lease.

8.3 Assignment by F&H. F&H may assign its right, title and interest in this Facilities Lease, in whole or in part, to one or more assignees with the written consent of the District. No assignment shall be effective against the District unless and until the District has consented in writing.

## ARTICLE 9

### EVENTS OF DEFAULT AND REMEDIES

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

9.1.1 Failure by the District to pay any Lease Payment required to be paid hereunder at the time specified herein (unless properly withheld pursuant to provisions found in Exhibit D) when due and payable hereunder, and the continuation of such failure for a period of ten (10) days after the District's receipt of written notice from F&H.

9.1.2 Failure by the District to pay any Additional Payment or other payment (unless properly withheld pursuant to provisions found in Exhibit D) when due and payable hereunder, and the continuation of such failure for a period of fifteen (15) days after the District's receipt of written notice from F&H.

9.1.3 Failure by the District to observe and perform any covenant, condition or agreement in this Facilities Lease on its part to be observed or performed, other than as referred to in subsections 9.1.1 or 9.1.2, for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied has been given to the District by F&H; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, the District shall not be in Default if it commences cure within such thirty (30) day period and diligently pursues such cure until the Default is corrected.

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

9.2 Remedies on Default. Upon an Event of Default referred to in Section 9.1 hereof, it shall be lawful for F&H to exercise any and all remedies available pursuant to law or granted pursuant to this Facilities Lease; provided, however, there shall be no right under any circumstances to accelerate the Lease Payments or otherwise declare any Lease Payments not then in Default to be immediately due and payable. Each and every covenant hereof to be kept and performed by the District is expressly made a condition hereof and upon the breach thereof, F&H may exercise any and all rights of entry and re-entry upon the Project and the Site, and also, at its option, with or without such entry, may terminate this Facilities Lease; provided, that no such termination shall be affected either by operation of law or acts of the parties hereto, except only in the manner herein expressly provided. In the event of such Default and notwithstanding any re-entry by F&H, the District shall, as herein expressly provided, continue to remain liable for the payment of the Lease Payments and/or damages for breach of this Facilities Lease and the performance of all conditions herein contained and, in any event such rent and/or damages shall be payable to F&H, as appropriate, at the time and in the manner as herein provided. Notwithstanding the foregoing, F&H shall use commercially reasonable efforts to mitigate its damages.

9.3 Agreement to Pay Attorneys' Fees and Expenses. In the event any party to this Facilities Lease should Default under any of the provisions hereof, and the non-defaulting party should employ attorneys or incur other expenses for the collection of moneys or the enforcement or performance or observance of any obligation or agreement on the part of the defaulting party herein contained, the defaulting party agrees that it will on demand therefore pay to the non-defaulting party the reasonable fees of such attorneys and such other expenses so incurred by the non-defaulting party, including attorneys' fees and expenses incurred for any appeals.

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

9.5 Application of Proceeds. All amounts derived by F&H as a result of an Event of Default hereunder, shall be applied to the Lease Payments and Additional Payments in order of payment date to be applied to the prepayment of the Lease Payments and Additional Payments.

9.6 Event of Default by F&H. The following shall be considered an Event of Default by F&H under the Facilities Lease: (1) F&H, or any member of F&H, fails to adequately perform or refuses or fails to prosecute the Work on the Project pursuant to the terms and conditions found in Exhibit D with such reasonable diligence as will accomplish its completion within the time specified or any extension thereof, or unreasonably fails to complete said Work within such time; (2) prior to completion of the Project, F&H should be adjudged a bankrupt, or file for bankruptcy or if it should make a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of its insolvency; (3) F&H, or any member of F&H, persistently disregards all law, or otherwise be in violation of the General and Special Construction Conditions found in Exhibit D; (4) F&H Defaults in any of its obligations under the Site Lease. In the event of such a Default which remains uncured for a period of thirty (30) days after the District has given written notice specifying the failure and requesting that it be remedied, and solely with respect to the party that is then in Default, the District may, without prejudice to any other right or remedy, terminate the Site Lease, Facilities Lease, and all exhibits attached hereto, upon ten (10) days' written notice to F&H and its surety, pursuant to Section 7.4 of the Site Lease and the General and Special Construction Conditions found in Exhibit D attached hereto.

## ARTICLE 10

### PURCHASE OPTION

10.1 District's Option. If the District is not then in Default hereunder, the District shall have the option to purchase not less than all of F&H's interests under this Facilities Lease in its "as-is, where-is" condition and terminate this Facilities Lease and Site Lease, and shall pay F&H a purchase price consisting of the Guaranteed Maximum Price (for Work performed) as that term is defined in Exhibit A, less any Lease Payments paid or owed by the District. Upon payment as aforesaid and payment of all other amounts owed, F&H shall deliver to the District all reasonably necessary documents in recordable form to terminate this Facilities Lease and the Site Lease and transfer title to the District. The District may record all such documents at the District's cost and expense.

Notwithstanding the above, the warranty and indemnification provisions found in Sections 5.9 and 7.3 shall survive the termination of the Facilities Lease under this section.

## ARTICLE 11

### MISCELLANEOUS

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

If to the District: TRACY JOINT UNIFIED SCHOOL DISTRICT  
1875 West Lowell Avenue  
Tracy, CA 95376  
Attn: Bonny Carter

With a copy to: Kronick, Moskovitz, Tiedemann & Girard  
400 Capitol Mall, 27<sup>th</sup> floor  
Sacramento, CA 95814  
Attn: Addison Covert

If to F&H: F&H Construction  
4945 Waterloo Road  
Stockton, CA 95215  
Attn: Harold Jones

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

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

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

11.4 Reserved.

11.5 Further Assurances and Corrective Instruments. F&H and the District agree that they will, from time to time, execute, acknowledge and deliver, such supplements hereto and such

further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Site or the Project hereby leased or intended to be leased.

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

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

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

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

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

11.11 Time. Time is of the essence of each and all of the terms and provisions of this Facilities Lease and its exhibits.

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

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

11.14 Reserved.

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

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

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By: Casey Goodall  
Title: Associate Superintendent Business Services

F&H CONSTRUCTION,  
a California corporation

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By: Harold Jones  
Title: President

## EXHIBIT A

### THE PROJECT

The Project shall constitute that Work identified in the Drawings and Specifications, incorporated herein by reference, approved by the District by the Division of the State Architect ("DSA") by way of the letter dated below, which are incorporated herein by reference.

Description of DSA Plans	DSA Approval of Plans Letter Date	DSA Application No.
West High Performing Arts Classrooms	July 23, 2008*	02-109657

\*with DSA extension granted until July 23, 2011

The Guaranteed Maximum Price for the Project is \$3,746,494.

## **EXHIBIT B**

### **LEGAL DESCRIPTION OF THE SITE**

The land described herein is situated in the State of California, County of San Joaquin, City of Tracy and is described as follows:

## EXHIBIT C

### LEASE PAYMENT SCHEDULE

COMMENCEMENT DATE: Upon issuance of Notice to Proceed for the Project by District to F&H Construction. In no event shall this Facilities Lease commence prior to the District issuing a Notice to Proceed for the Project

#### PAYMENT SCHEDULE:

Payment	Amount*	Due Date*
Payment No. 1	\$340,590.36	Payable one month following issuance of Notice to Proceed.
Payment No. 2	\$340,590.36	Payable following month.
Payment No. 3	\$340,590.36	Payable following month.
Payment No. 4	\$340,590.36	Payable following month.
Payment No. 5	\$340,590.36	Payable following month.
Payment No. 6	\$340,590.36	Payable following month.
Payment No. 7	\$340,590.36	Payable following month.
Payment No. 8	\$340,590.36	Payable following month.
Payment No. 9	\$340,590.36	Payable following month.
Payment No. 10	\$340,590.36	Payable following month.
Payment No. 11	\$340,590.40	Payable following month.

\* Actual amount and payment date may vary based upon level of work completed and accepted by District.

## **EXHIBIT D**

### **GENERAL AND SPECIAL CONSTRUCTION CONDITIONS**

The General and Special Construction Conditions for the Project are attached hereto.

## **EXHIBIT E**

### **MEMORANDUM OF COMMENCEMENT DATE**

This MEMORANDUM OF COMMENCEMENT DATE is dated \_\_\_\_\_, 2009 and is made by and between F&H Construction ("F&H"), as Lessor, and the Tracy Joint Unified School District ("District"), as Lessee.

1. F&H and District have previously entered into a Facilities Lease dated as of September 28, 2010 (the "Lease") for the leasing by F&H to District of the Site and Project in Tracy, California, referenced in the Lease.
2. District hereby confirms the following:
  - A. That the term of the Lease commenced the day the Notice to Proceed was issued and will expire at 11:59 P.M. on \_\_\_\_\_, 20\_\_.

IN WITNESS WHEREOF, F&H and District have signed this Memorandum of Commencement Date as set forth below to confirm the foregoing.

#### **TRACY JOINT UNIFIED SCHOOL DISTRICT**

By: \_\_\_\_\_  
Casey Goodall, Associate Superintendent Business Services

#### **F&H CONSTRUCTION**

By: \_\_\_\_\_  
Harold Jones, President

## **EXHIBIT F**

### **SECTION 01015**

#### **ADDITIONAL REQUIREMENTS FOR DSA-REVIEWED PROJECTS**

##### **PART 1 GENERAL**

###### **1.01 GENERAL**

- A. The following additional requirements apply to this Project which is being reviewed by the Division of the State Architect ("DSA").

###### **1.2 ADDITIONAL REQUIREMENTS**

- A. In addition to the duties specified in the Contract Documents, the duties of the Contractor shall be in accordance with the requirements specified in Section 4-343 of Part 1, Title 24, California Code of Regulations (CCR).
- B. In addition to the duties specified in the Contract Documents, the duties of the Architect and the Architect's consultants shall be in accordance with the requirements specified in Section 4-333(a).
- C. DSA is not subject to arbitration proceedings.
- D. Notify DSA at start of construction in accordance with Section 4-341 of Part 1, Title 24, CCR.
- E. All addenda and change orders shall be submitted for DSA approval. Do not begin any work under an addendum or change order until DSA approval is obtained. Addenda and change orders shall be in accordance with Section 4-338 or Part 1, Title 24, CCR.
- F. Do not begin work under a written order until a change order has been submitted to and approved by DSA in accordance with Section 4-338 or Part 1, Title 24, CCR.
- G. Unless otherwise indicated or specified, perform the work in conformance with the latest edition of applicable regulatory requirements. A copy of Part 1 and Part 2 of Title 24, CCR shall be available on the Project site. The codes adopted by the City, County, State and Federal agencies shall govern minimum requirements for this Project.
- H. Contractor shall submit verified reports in accordance with Sections 4-341 and 4-343(c) of Part 1, Title 24, CCR.
- I. DSA may supervise construction, reconstruction, or repair in accordance with Section 4-334 of Part 1, Title 24, CCR.
- J. Construction shall be observed by a full-time Project Inspector approved by DSA in accordance with Section 4-333(b) and 4-342 of Part 1, Title 24, CCR.

- K. Testing requirements of Owner's Testing Laboratory shall be in accordance with Section 4-335 of Part 1, Title 24, CCR.
- L. Special Inspection on masonry construction, glued laminated lumber, wood framing using timber connectors, ready-mixed concrete, gunite, prestressed concrete, high strength steel bolt installation, welding, pile driving, and mechanical and electrical work shall be as required by Section 4-333(c) of Part 1, Title 24, CCR. The costs of special inspection will be paid for by the Owner.
- M. The intent of these plans and specifications is that the work of the alteration, rehabilitation or reconstruction is to be in accordance with Title 24, California Code of Regulations. Should any existing conditions such as deterioration or non-complying construction be discovered which is not covered by the contract documents wherein the finished work will not comply with Title 24, detailing and specifying the required work shall be submitted to and approved by the Office before proceeding with the work.
- N. Detail performance specifications and/or loading criteria for the deferred approval components must be included on the plans or in the specifications. The plans must include a list of the deferred approval components on the title sheet and clearly state that no work may proceed on the components until DSA stamped approved plans are provided to the contractor and inspector for the components. The A/E of record must submit complete plans and specifications for the deferred items and obtain DSA approval before the affected construction may proceed.

DSA stamped approved plans must be delivered to the inspector, applicable special inspectors, and the testing lab (as appropriate) before work on the deferred approval items may commence.

END OF SECTION

## **EXHIBIT G**

### **GUARANTEE**

**District: TRACY JOINT UNIFIED SCHOOL DISTRICT**

**Project Name: WEST HIGH SCHOOL PERFORMING ARTS CLASSROOMS**

**Contractor Name: F&H CONSTRUCTION**

The Contractor hereby warrants and guarantees to the District that all work, materials, equipment and workmanship provided, furnished or installed by or on behalf of Contractor in connection with the above-referenced Project (the "Work") have been provided, furnished and installed in strict conformity with the Contract Documents for the Work, including without limitation, the Plans and the Specifications. Contractor further warrants and guarantees that all work, materials, equipment and workmanship as provided, furnished and/or installed are fit for use as specified and fulfill all applicable requirements of the Contract Documents including without limitation, the Plans and the Specifications. Contractor shall, at its sole cost and expense, repair, correct and/or replace any or all of the work, materials, equipment and/or workmanship of the Work, together with any other items which may be affected by any such repairs, corrections or replacement, that may be unfit for use as specified or defective within a period of two (2) years, or other time period that may be specified in the Contract Documents, from the date of the District's Final Acceptance of the Work, ordinary wear and tear and unusual abuse or neglect excepted.

In the event of the Contractor's failure and/or refusal to comply with the provisions of this Guarantee, within the period of time set forth in the Contract Documents after the District's issuance of the notice to the Contractor of any defect(s) in the Work, materials, equipment or workmanship, Contractor authorizes the District, without further notice to Contractor, to repair, correct and/or replace any such defective item at the expense of the Contractor. The Contractor shall reimburse the District for all costs, expenses or fees incurred by the District in providing or performing such repairs, corrections or replacements within ten (10) days of the District's presentation of a demand to the Contractor for the same.

The provisions of this Guarantee and the provisions of the Contract Documents for the Work relating to the Contractor's Guarantee(s) and warranty(ies) relating to the

Work shall be binding upon the Contractor's Performance Bond Surety and all successors or assigns of Contractor and/or Contractor's Performance Bond Surety.

The provisions of this Guarantee are in addition to, and not in lieu of, any provisions of the Contract Documents for the Work relating to the Contractor's guarantee(s) and warranty(ies) or any guarantee(s) or warranty(ies) provided by any material supplier or manufacturer of any equipment, materials or other items forming a part of, or incorporated into the Work, or any other guarantee or warranty obligation of the Contractor, prescribed, implied or imposed by law.

The undersigned individual executing this Guarantee on behalf of Contractor warrants and represents that he/she is duly authorized to execute this Guarantee on behalf of Contractor and to bind Contractor to each and every provision hereof.

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Typewritten or Handwritten Name)

\_\_\_\_\_  
(Title)

## EXHIBIT H

### SITE VERIFICATION CERTIFICATE

I, \_\_\_\_\_, am the \_\_\_\_\_  
(Print Name) (Title)  
of F&H Constuction ("Contractor"). I declare, state, and certify all of the following:

1. I have personal knowledge of and/or have made due and diligent inquiry with respect to the following, and based on said knowledge and/or inquiry I certify that:
2. The Contractor has completed a review at the Site to determine if the Construction Documents are adequate, feasible and complete for providing, performing and constructing the Work in a sound and suitable manner for the use specified and intended by the Contract Documents.
3. The Contractor has inspected, measured, surveyed, photographed, tested and/or sampled such objects and operations at the Site as the Contractor deemed necessary to complete its review of the Site.
4. The Contractor has maintained a written log or other documentation of comments or other notations generated in the course of its review, and all such documentation shall be made available to the District for review or reproduction upon the District's reasonable request.
5. The Contractor has determined that the Construction Documents are adequate, feasible and complete for providing, performing and constructing the Work in a sound and suitable manner for the use specified and intended by the Contract Documents, with the sole exception of those items set forth in the Site Verification Exceptions, attached to this Site Verification Certificate as Attachment A.
6. All of the statements set forth above and all of the information provided in Attachment A is correct, complete, and accurate
7. I am authorized to execute this Site Verification Certificate on behalf of the Contractor.

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

Executed at \_\_\_\_\_ this \_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Handwritten or Typed Name)

**ATTACHMENT A**  
**SITE VERIFICATION EXCEPTIONS**

## EXHIBIT I

### PERFORMANCE BOND

KNOW ALL BY THESE PRESENTS, that we, \_\_\_\_\_, as Principal, and \_\_\_\_\_, a \_\_\_\_\_ corporation, as Surety, are held and firmly bound unto \_\_\_\_\_, as Obligee, in the sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) for the payment whereof said Principal and Surety bind themselves, jointly and severally, as provided herein.

WHEREAS, Principal has entered into a contract with Obligee dated \_\_\_\_\_ for the West High School Performing Arts Classrooms Project ("Contract").

NOW, THEREFORE, the condition of this obligation is such that if Principal shall perform the Construction Work to be done under the Contract as it may be modified or amended from time to time, then this obligation shall be null and void; otherwise to remain in full force and effect. Surety's obligations hereunder shall not arise unless Principal is in default under the Contract for failing to perform the Construction Work and has been declared by Obligee to be in default under the Contract for failing to perform the Construction Work; and Obligee has performed its obligations under the Contract. Obligee shall give written notice to the Surety of Principal's default under the Contract, as defined in the Contract and Obligee's termination of the Contract within twenty (20) days thereafter. In such event, Surety shall have the option of the following:

1. Upon entering into an acceptable written takeover agreement with Obligee, undertake to perform and complete the Construction Work to be done under the Contract; or

2. Obtain bids or negotiated proposals from qualified contractors for a contract for completion of the Construction Work to be done under the Contract, arrange for a contract to be prepared for execution by Obligee and contractor, to be secured with performance and payment bonds executed by a qualified surety; or

3. Waive its right to perform or complete the Construction Work pursuant to paragraphs 1 and 2 above, and with reasonable promptness under the circumstances: (a) After investigation, determine the amount for which it may be liable to the Obligee and, as soon as practicable after the amount is determined, tender payment therefor to the Obligee; or (b) Deny liability in whole or in part and notify the Obligee citing reasons therefore.

4. Surety shall notify Obligee in writing within a reasonable period of time of its decision to undertake the obligations under the bond and to specify which procedure (1, 2 or 3 as provided for in the performance bond) the Surety will undertake to discharge its obligations under the bond. The procedure selected by the Surety shall be subject to advance written approval of the Obligee, which approval shall not be unreasonably withheld, limited or restricted.

5. The Contract balance, as defined below, shall be credited against the reasonable construction cost of completing the Construction Work to be performed under the Contract. If completed by Obligee pursuant to paragraphs 2 or 3 above, and the reasonable construction cost exceeds the Contract balance, Surety shall pay to Obligee such excess, but in no event shall the aggregate liability of Surety exceed the amount of this bond. If Surety completes the Construction Work pursuant to paragraph 1 above, that portion of the Contract balance as may be required to complete the Construction Work to be done under the Contract and to reimburse Surety for its outlays shall be paid to Surety at the times and in the manner as said sums would have been payable to Principal had there been no default under the Contract; provided, however, that to the extent that Surety's outlays exceed the Contract balance paid to Surety by Obligee, Surety shall be entitled to a dollar for dollar reduction of its liability under this bond, and Surety's aggregate liability shall not exceed the penal sum of this bond. The term "Contract balance," as used in the paragraph, shall mean the total amount payable by Obligee under the Contract and any amendments thereto, less the amounts properly paid by Obligee to Principal under the Contract. The term "Construction Work" as used herein shall mean the providing all labor and/or material necessary to complete Principal's scope of work under the Contract. Notwithstanding any language in the Contract to the contrary, the Contract balance shall not be reduced or set off on account of any obligation, contractual or otherwise, except the reasonable construction cost incurred in completing the Construction Work.

6. Any suit by Obligee under this bond must be instituted before the earlier of: (a) the expiration of one year from the date of substantial completion of the Construction Work, or (b) one year after Principal ceased performing the Construction Work under the Contract, excluding warranty work. If this bond is provided to comply with bond statutes in the location where the Construction Work is being performed, and the bond statutes contain a statute of limitations for suits on the performance bond, then the limitation period set forth herein shall be read out of this bond and the statute of limitation set forth in the bond statutes shall be read into this bond. If the limitation set forth in this bond is void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable, and said period of limitation shall be deemed to have accrued and shall commence to run no later than the earlier of (y) the date of substantial completion of the Construction Work, or (z) the date Principal ceased performing Construction Work, excluding warranty work.

7. No suit or action shall be commenced hereunder other than in a court of competent jurisdiction in the county or other political subdivision of the state in which the project, or any part thereof, is situated, or in the United States District Court for the district in which the project, or any part thereof, is situated, and not elsewhere. In the event that suit or other proceeding is brought upon this performance bond, the prevailing party shall be entitled to recover all costs, expenses and fees incurred, including without limitation, reasonable attorney's fees.

8. This bond shall not afford coverage for any liability of Principal for tortious acts, whether or not said liability is direct or is imposed by the Contract, and shall not serve as or be a substitute for or supplemental to any liability or other insurance

required by the Contract. No right of action shall accrue on this bond to or for the use of any person or entity other than the named Obligee.

9. This bond is provided to comply with applicable statutory or other legal requirement for performing construction contracts for public owners in the location where the Construction Work is being performed. Except as provided in paragraph 6 above, all provisions in the bond which are in addition to or differ from applicable statutory or legal requirements shall be read out of this bond, and all pertinent statutes and other legal requirements shall be read into the bond.

10. The Surety, for value received, hereby stipulates and agrees that no change, adjustment of Contract Time, adjustment to the Contract Price, alteration, deletion, addition, or any other modification to the terms of the Contract, the Work to be performed thereunder, the Specifications or the Drawings, or any other portion of the Contract, shall in any way limit, restrict or otherwise impair the Surety's obligations or the Obligee's rights under this Bond; the Surety hereby waives notice from the Obligee of any such change, adjustment of Contract Time, adjustment of Contract Price, alteration, deletion, addition or other modifications to the Contract, the Work to be performed under the Contract, the Drawings or the Specifications, or any other portion of the Contract

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

(Principal's Corporate Seal)

\_\_\_\_\_  
(Principal Name)

By: \_\_\_\_\_

\_\_\_\_\_  
(Typed or Printed Name)

Title: \_\_\_\_\_

(Surety's Corporate Seal)

\_\_\_\_\_  
(Surety Name)

By: \_\_\_\_\_  
(Signature of Attorney-in-Fact for Surety)

(Attach Attorney-in-Fact Certificate)

\_\_\_\_\_  
(Typed or Printed Name)

( \_\_\_\_\_ )  
(Area Code and Telephone Number of Surety)

## EXHIBIT J

### PAYMENT BOND

KNOW ALL BY THESE PRESENTS, that we, \_\_\_\_\_, as Principal, and \_\_\_\_\_, a \_\_\_\_\_ corporation, as Surety, are held and firmly bound unto \_\_\_\_\_, as Oblige, in the sum of \_\_\_\_\_ U.S. Dollars (\$\_\_\_\_\_) for the payment whereof said Principal and Surety bind themselves, jointly and severally, as provided herein.

WHEREAS, Principal has entered into a contract with Oblige, dated \_\_\_\_\_, for the West High School Performing Arts Classrooms Project ("Contract").

NOW, THEREFORE, the condition of this obligation is such that if Principal shall promptly make payment to all Claimants as hereinafter defined for all labor and material or services actually used, consumed or incorporated in the performance of the construction work to be performed under the Contract, then this obligation shall be void; otherwise to remain in full force and effect, subject, however, to the following conditions:

1. A Claimant is defined as any person, corporation, partnership, proprietorship or other entity including, without limitation, all persons and entities described in California Civil Code Section 3181.
2. Pursuant to Section 3248 of the Civil Code, surety will pay if the contractor fails to pay the following: (1) amounts due under the Unemployment Insurance Code with respect to work or labor performed under the Contract, and (2) any amounts required to be deducted, withheld and paid over to the Employment Development Department from the wages of employees of the contractor and subcontractors pursuant to Section 13020 of the Unemployment Insurance Code.
3. Principal and Surety hereby jointly and severally agree with Oblige that every Claimant as herein defined who has not been paid in full before the expiration of a period of ninety (90) days after the date on which the last of such Claimant's work or labor or services was done or performed or materials were furnished by such Claimant, may bring suit on this bond, prosecute the suit to final judgment for the amount due under Claimant's contract for the services, labor and/or materials supplied by the Claimant which were used, consumed or incorporated in the performance of the work, and have execution thereon; provided, however, that a Claimant having a direct contractual relationship with a subcontractor of Principal shall have a right of action on this bond only if said Claimant notifies Surety in writing of its claim within ninety (90) days from the date on which said Claimant did or performed the last services, labor and/or materials for which the claim is made. Oblige shall not be liable for the payment of any costs or expenses of any such suit. Pursuant to Section 3248 of the Civil Code, in the event that Claimant prevails in any suit brought upon the bond, the surety will pay reasonable attorney's fees to be fixed by the court.
4. No suit or action shall be commenced hereunder by any Claimant:

a. After the expiration of the earlier of: (1) one year after the day on which Claimant last supplied the services, labor and/or materials for which the claim is made; or (2) the limitation period set forth in the public works bond statutes, if any, in the location where the construction work is being performed. Any limitation contained in this bond which is prohibited by any law controlling in the state where the suit is filed shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by the law of that state, and said period of limitation shall be deemed to have accrued and shall commence to run on the day Claimant last supplied the labor and/or materials for which the claim is made; and

b. Other than in a state court of competent jurisdiction in the county or other political subdivision of the state in which the project, or any part thereof, is situated, or in the United States District Court for the district in which the project, or any part thereof, is situated, and not elsewhere

5. The amount of this bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder. Surety's liability hereunder is limited, singly, or in the aggregate, to the penal sum of the bond set forth herein.

6. This bond is provided to comply with a statutory or other legal requirement for performing construction contracts for public owners in the location where the construction work is being performed. Except as provided in paragraph 4 above, all provisions in the bond which are in addition to or differ from those statutory or legal requirements shall be read out of this bond, and all pertinent statutes and other legal requirements shall be read into the bond. This bond is a statutory bond, not a common law bond.

7. The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, deletion, addition, or any other modification to the terms of the Contract, the Work to be performed thereunder, the Specifications or the Drawings, or any other portion of the Contract, shall in any way limit, restrict or otherwise affects its obligations under this Bond; the Surety hereby waives notice from the Obligee of any such change, extension of time, alteration, deletion, addition or other modifications to the Contract, the Work to be performed under the Contract, the Drawings or the Specifications, or any other portion of the Contract

*[Remainder of This Page Intentionally Left Blank]*

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

(Principal's Corporate Seal)

\_\_\_\_\_  
(Principal Name)

By: \_\_\_\_\_

(Signature)

\_\_\_\_\_  
(Type or Print Name)

Title: \_\_\_\_\_

(Surety's Corporate Seal)

\_\_\_\_\_  
(Surety Name)

By: \_\_\_\_\_

(Signature of Attorney-in-Fact for Surety)

(Attach Attorney-in-Fact Certificate)

\_\_\_\_\_  
(Type or Print Name of Attorney-in-Fact)

( ) \_\_\_\_\_

(Area Code and Telephone Number of Surety)

**EXHIBIT K**

**SUBCONTRACTORS LIST**

Bidder: \_\_\_\_\_

Telephone: \_\_\_\_\_

Address: \_\_\_\_\_

Fax: \_\_\_\_\_

Bidder's Authorized Representative(s): \_\_\_\_\_

**PROJECT: WEST HIGH SCHOOL PERFORMING ARTS  
CLASSROOMS PROJECT**

<b>NAME OF SUBCONTRACTOR</b>	<b>BUSINESS LOCATION/ ADDRESS OF SUBCONTRACTOR</b>	<b>TRADE OR PORTION OF THE WORK</b>

**PHOTOCOPY THIS PAGE AS NECESSARY TO LIST ADDITIONAL  
SUBCONTRACTORS**

**EXHIBIT L**

**NON-COLLUSION AFFIDAVIT**

**STATE OF CALIFORNIA  
COUNTY OF SAN JOAQUIN**

I, \_\_\_\_\_, being first duly sworn, deposes and says  
that I \_\_\_\_\_ (Typed or Printed Name)  
am \_\_\_\_\_ of \_\_\_\_\_, the party  
(Title) (Bidder Name)

submitting the foregoing Bid Proposal ("the Bidder"). In connection with the foregoing Bid Proposal, the undersigned declares, states and certifies that:

1. The Bid Proposal is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization or corporation.

2. The Bid Proposal is genuine and not collusive or sham.

3. The Bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any other bidder or anyone else to put in sham bid, or to refrain from bidding.

4. The Bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price, or that of any other bidder, or to fix any overhead, profit or cost element of the bid price or that of any other bidder, or to secure any advantage against the public body awarding the contract or of anyone interested in the proposed contract.

5. All statements contained in the Bid Proposal and related documents are true.

6. The Bidder has not, directly or indirectly, submitted the bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any person, corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ at \_\_\_\_\_

\_\_\_\_\_  
(City, County and State)

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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
Name Printed or Typed

\_\_\_\_\_  
(City, County and State)

( ) \_\_\_\_\_  
(Area Code and Telephone Number)

## EXHIBIT M

### CERTIFICATE OF WORKERS' COMPENSATION INSURANCE

I, \_\_\_\_\_ the \_\_\_\_\_ of \_\_\_\_\_,  
(Name) (Title) (Contractor Name)  
declare, state and certify that:

1. I am aware that California Labor Code § 3700(a) and (b) provides:

"Every employer except the state shall secure the payment of compensation in one or more of the following ways:

- (a) By being insured against liability to pay compensation in one or more insurers duly authorized to write compensation insurance in this state.
- (b) By securing from the Director of Industrial Relations a certificate of consent to self-insure either as an individual employer, or one employer in a group of employers, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his or her employees."

2. I am aware that the provisions of California Labor Code § 3700 require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of this Contract.

\_\_\_\_\_  
(Contractor Name)

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Typed or printed name)

## EXHIBIT N

### DRUG-FREE WORKPLACE CERTIFICATION

I, \_\_\_\_\_, am the \_\_\_\_\_ of \_\_\_\_\_  
(Print Name) (Title)  
\_\_\_\_\_. I declare, state and certify to all of the following:  
(Contractor Name)

1. I am aware of the provisions and requirements of California Government Code §§ 8350 et seq., the Drug Free Workplace Act of 1990.
2. I am authorized to certify, and do certify, on behalf of Contractor that a drug free workplace will be provided by Contractor by doing all of the following:
  - A. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited in Contractor's workplace and specifying actions which will be taken against employees for violation of the prohibition;
  - B. Establishing a drug-free awareness program to inform employees about all of the following:
    - (i) The dangers of drug abuse in the workplace;
    - (ii) Contractor's policy of maintaining a drug-free workplace;
    - (iii) The availability of drug counseling, rehabilitation and employee-assistance programs; and
    - (iv) The penalties that may be imposed upon employees for drug abuse violations;
  - C. Requiring that each employee engaged in the performance of the Contract be given a copy of the statement required by subdivision (A), above, and that as a condition of employment by Contractor in connection with the Work of the Contract, the employee agrees to abide by the terms of the statement.
3. Contractor agrees to fulfill and discharge all of Contractor's obligations under the terms and requirements of California Government Code § 8355 by, *inter alia*, publishing a statement notifying employees concerning: (a) the prohibition of any controlled substance in the workplace, (b) establishing a drug-free awareness program, and (c) requiring that each employee engaged in the performance of the Work of the

Contract be given a copy of the statement required by California Government Code § 8355(a) and requiring that the employee agree to abide by the terms of that statement.

4. Contractor and I understand that if the District determines that Contractor has either: (a) made a false certification herein, or (b) violated this certification by failing to carry out and to implement the requirements of California Government Code § 8355, the Contract awarded herein is subject to termination, suspension of payments, or both. Contractor and I further understand that, should Contractor violate the terms of the Drug-Free Workplace Act of 1990, Contractor may be subject to debarment in accordance with the provisions of California Government Code §§ 8350, *et seq.*

5. Contractor and I acknowledge that Contractor and I are aware of the provisions of California Government Code §§ 8350, *et seq.* and hereby certify that Contractor and I will adhere to, fulfill, satisfy and discharge all provisions of and obligations under the Drug-Free Workplace Act of 1990.

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

Executed at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 2010.  
(City and State)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Handwritten or Typed Name)

## EXHIBIT O

### FINGERPRINT CERTIFICATE

I, \_\_\_\_\_, am the \_\_\_\_\_ of \_\_\_\_\_  
(Print Name) (Title)

\_\_\_\_\_. I declare, state, and certify all of the following:  
(Contractor Name)

1. I am aware of the provisions and requirements of California Education Code § 45125.1, regarding fingerprinting of persons providing services to school districts.

2. I have personal knowledge of and/or have made due and diligent inquiry with respect to the following, and based on said knowledge and/or inquiry I certify that:

- A. The fingerprints of each person identified on Attachment A have been submitted to the California Department of Justice pursuant to Education Code § 45125.1; and,
- B. The California Department of Justice has issued written or electronic verification that each person identified on Attachment A has not been convicted of a felony, as defined in Education Code § 45122.1, and has no criminal felony proceedings, as defined in Education Code § 45122.1, pending against him or her.

3. The Contractor shall provide additional Fingerprint Certificate for each and every person who is not identified on Attachment A prior to permitting such person(s) access to the Site or to perform any Work at the Site.

4. Contractor and I understand that if the District determines that Contractor has either: (a) made a false certification herein, or (b) violates this certification by failing to carry out and to implement the requirements of California Education Code § 45125.1, the Contract awarded herein is subject to termination, suspension of payments, or both.

5. I am authorized to execute this Fingerprint Certificate on behalf of the Contractor. All of the statements set forth above and all of the information provided in Attachment A are true, correct, complete, and accurate. Further, there are no omissions or misstatements of material fact in the foregoing statements or in the information set forth in Attachment A which would render such statements and/or information to be false or misleading.

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

Executed at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Handwritten or Typed Name)

**FINGERPRINT CERTIFICATE  
ATTACHMENT A**

## EXHIBIT P

### DISABLED VETERAN BUSINESS ENTERPRISE ("DVBE") PARTICIPATION GOAL PROGRAM POLICY

1. **DVBE Participation Goal Program Policy.** Tracy Joint Unified School District ("District") is committed to achieving the legislatively and administratively established Participation Goal for Disabled Veteran Business Enterprises ("DVBEs") in accordance with Education Code § 17076.11. Through the DVBE Participation Goal Program, the District encourages contractors to ensure maximum opportunities for the participation of DVBEs in the Work of the Contract. The District's commitment to the achievement of DVBE Participation Goal for the Work of the Contract shall not, however, result in the District's discrimination in the award of the Contract on the basis of ethnic group identification, ancestry, religion, age, sex, race, color, or physical or mental disability.
2. **Definitions**
  - 2.1 **Disabled Veteran.** A "Disabled Veteran" means a veteran of the military, naval, or air service of the United States with at least ten percent (10%) service-connected disability who is a resident of the State of California.
  - 2.2 **Disabled Veteran Business Enterprise.** A "Disabled Veteran Business Enterprise" ("DVBE") means a business enterprise certified by the Office of Small and Minority Business, State of California, Department of General Services, pursuant to Military and Veterans Code § 999, or an enterprise certifying that it is a DVBE by meeting all of the following requirements: (a) it is a sole proprietorship at least fifty-one percent (51%) owned by one or more Disabled Veterans, or in the case of a publicly owned business, at least fifty-one percent (51%) of its stock is owned by one or more Disabled Veterans; or a subsidiary wholly owned by a parent corporation, but only if at least fifty-one percent (51%) of the voting stock of the parent corporation is owned by one or more Disabled Veterans; or a joint venture in which at least fifty-one percent (51%) of the joint venture's management and control and earnings are held by one or more Disabled Veterans; (b) the management and control of the daily business operations are by one or more Disabled Veterans; provided that the Disabled Veteran(s) exercising management and control of the business enterprise are not required to be the same Disabled Veteran(s) who is/are the equity owner(s) of the business enterprise; and (c) it is a sole proprietorship, corporation, or partnership with its home office located in the United States and which is not a branch or subsidiary of a foreign corporation, foreign firm, or other foreign-based business. The terms "foreign corporation" "foreign firm" and "foreign-based business" shall be

deemed to mean a business entity that is incorporated or which has its principal headquarters located outside the United States of America.

- 2.3 **Good Faith Efforts.** As use herein, the term "Good Faith Efforts" shall be deemed to mean demonstrable and effective efforts of the bidder to seek out, consider and secure DVBEs as potential Subcontractors or Material Suppliers, or both, in order to meet the Participation Goal; the Good Faith Efforts must be an active and aggressive effort to meet the Participation Goal, as more particularly set forth herein.

3. **Participation Goal**

- 3.1 **Participation Goal Defined.** The term "Participation Goal" is a numerically expressed objective for DVBE participation in performing the Work of the Contract. The Participation Goal is not a quota, set-aside, or rigid proportion.

- 3.2 **DVBE Participation Goal.** The DVBE Participation Goal is three percent (3%) of total amount of bidder's Bid Proposal, inclusive of the value of additive Alternate Bid Items, if any.

4. **Good Faith Efforts to Meet Participation Goal**

- 4.1 **Good Faith Efforts.** The Bid Proposal submitted by any bidder who has not met the DVBE Participation Goal shall be considered responsive only if the bidder represents that it made Good Faith Efforts to meet the DVBE Participation Goal.

- 4.2 **Good Faith Efforts to Meet DVBE Participation Goal.** A bidder must secure the participation of DVBEs in a timely manner to ensure that potential DVBE Subcontractors or Material Suppliers have an adequate opportunity to respond to the bidder's solicitation of sub-bids and be given serious consideration by the bidder prior to the closing time for the receipt of Bid Proposals. Such Good Faith Efforts shall include, without limitation:

(a) The bidder's identification of portions of the Work which may be provided or performed by DVBE Subcontractors and/or Material Suppliers and actively and sincerely seek DVBEs for those identified portions of the Work;

(b) Contact local, state and/or federal agencies, and local DVBE organizations to identify potential DVBEs for performing portions of the Work;

(c) Advertise (with sufficient time for submission of sub-bids and the bidder's good faith consideration of the same) prior to the last date for submittal of Bid Proposals in: (i) one or more daily or weekly newspapers of general circulation published in the locality of the Work, and (ii) one or more construction trade publications, and (iii) one or more construction trade publications, journals or papers focusing on DVBEs. Each of the advertisements pursuant to the preceding, must state the following: (i) identification of the general description of the Work and an identification of the District; (ii) state the closing date and time for the District's receipt of Bid Proposals; (iii) state the last date and time for submission of sub-bids from DVBEs to the bidder; (iv) request sub-bids from DVBE Subcontractors or Material Suppliers; (v) identify the type of Work of the Contract available for sub-bids by DVBEs; and (vi) unequivocally state the requirement of bonds, if any, of a DVBE sub-bidder and who is to bear the expense of obtaining any required bonds;

(d) Solicit by direct mail, telephone or personal contact a sufficient number of DVBEs who offer work or services appropriate for the Work identified by the bidder under (a) above. Solicitations shall be made in a timely manner and contain sufficient information for a sub-bidder to make a reasonable sub-bid and the bidder's good faith consideration of the same, including, without limitation, the following: (i) identification of the general description of the Work and an identification of the District; (ii) state the closing date and time for the District's receipt of Bid Proposals; (iii) state the last date and time for submission of bids from DVBEs to the bidder; (iv) request sub-bids from Subcontractors or Material Suppliers; (v) identify the type of Work of the Contract available for sub-bids by DVBEs; and (vi) unequivocally state the requirement of bonds of a DVBE sub-bidder and who is to bear the expense of obtaining any required bonds;

(e) The bidder shall follow-up initial expressions of interest of DVBEs in performing a portion of the Work by contacting such DVBEs to determine with certainty whether such DVBEs are interested in performing specific items of the Work of the Contract and submitting a sub-bid for a portion of the Work; and

(f) The bidder shall negotiate in good faith with potential DVBEs Subcontractors or Material Suppliers and shall not unjustifiably reject, as unsatisfactory, bids prepared by any DVBE for a portion of the Work of the Project. In the event that the District shall reasonably determine that the bidder has failed to engage in good faith negotiations with a potential DVBE participant or rejects the

sub-bid of a DVBE without justification, the District may deem the Bid Proposal of such bidder to be non-responsive.

5. **Documentation of Achievement of Participation Goal or Good Faith Efforts.** Each Bidder shall note, where indicated, in the form of Bid Proposal whether the DVBE Participation Goal was achieved and if not, that Good Faith Efforts were made to achieve the DVBE Participation Goal. If requested by the District, the bidders submitting the three lowest priced Bid Proposals (as determined at the time of the District's public opening and reading of Bid Proposals), shall submit to the District documentation and supporting evidence of achievement of the District's DVBE Participation Goal or Good Faith efforts to achieve the DVBE Participation Goal. Such documentation and supporting evidence shall be in the form of duly completed forms of the DVBE Participation Worksheets issued by the District; unless modified by the District, completed DVBE Worksheets must be submitted to the District no later than 5:00 p.m. of the third working day after the opening of Bid Proposals. The District may, at its discretion, request that bidders, other than the bidders submitting the three lowest priced Bid Proposals, submit documentation of compliance with the DVBE Participation Goal Program at any time after the District's opening of Bid Proposals and prior to the District's award of the Contract. **If a bidder is required by the District to submit DVBE Participation Goal Program documentation, the failure of any bidder to timely submit complete and accurate documentation on DVBE Participation Worksheets issued by the District will render the bidder's Bid Proposal non-responsive and rejected.**
6. **Counting of DVBE Participation**
  - 6.1 **Certification.** DVBEs must be certified in the category identified prior to the closing time for the District's receipt of Bid Proposals; any DVBE who is not so certified will result in such DVBE not counting towards the DVBE Participation Goal.
  - 6.2 **Bidder Acceptance of Sub-Bid.** Sub-bids of DVBEs shall be accepted by the bidder prior to the closing time for the District's receipt of Bid Proposals, with such acceptance subject only to the District's award of the Contract to the bidder.
  - 6.3 **Value of Participation Goal.** The total dollar value of a contract between the bidder and a certified DVBE will count towards the DVBE Participation Goal.
  - 6.4 **Joint Ventures.** If a DVBE is a member of a joint venture, only the dollar value of the Work actually performed by the DVBE member of the joint venture will count towards the DVBE Participation Goal, unless the joint venture entity itself is certified as a DVBE.

6.5 **Bidder as DVBE.** A bidder certified as a DVBE may count towards the Participation Goal the dollar value of the Work actually performed by the bidder's own forces. A bidder certified as a DVBE is not relieved from meeting the DVBE Participation Goal or making Good Faith Efforts to achieve the Participation Goal if the value of its Work is less than the DVBE Participation Goal.

6.6 **Lower Tier Subcontractors; Material Suppliers.** The bidder may count towards the DVBE Participation Goal the total dollar value of contracts let by its Subcontractors or Material Suppliers to lower tier Subcontractors or Material Suppliers certified as DVBEs provided that such lower tier Subcontractors or Material Suppliers actually assume the contractual responsibility and obligation for the total dollar value of the Work or materials to be supplied by such lower tier Subcontractors or Material Suppliers.

6.7 **Commercially Useful Functions.** DVBEs used by the bidder to establish achievement of the Participation Goal shall be considered as meeting the Participation Goal only if the DVBE is responsible for execution of a distinct element of the Work of the Contract, carry out its obligations by actually performing, managing, or supervising the Work for which the DVBE is responsible for executing. Such DVBEs must be responsible for the portion of the Work which is normal for its business services and functions. A DVBE Subcontractor who subcontracts a significantly greater portion of the Work assumed by the DVBE Subcontractor than would be considered normal and usual under industry standards and practices will not be presumed to be performing a commercially useful function, and such DVBE Subcontractor will not count or be considered for purposes of achieving the Participation Goal.

7. **Substitution of DVBEs.** In the event that bidder awarded the Contract deems it necessary to substitute a DVBE Subcontractor or Material Supplier identified in the Subcontractor's List submitted with the bidder's Bid Proposal, all provisions of the Contract Documents relating to the substitution of Subcontractors shall be applicable and complied with by the successful bidder. In addition to the provisions of the Contract Documents relating to the substitution of listed Subcontractors, if a DVBE under a direct contract with the bidder is to be substituted, the successful bidder is strongly encouraged to substitute the listed DVBE with an equivalent and certified DVBE.

## 8 **Monitoring of DVBE Participation**

8.1 **DVBE Participation Worksheets.** If the bidder awarded the Contract is required by the District to complete and submit DVBE Participation Worksheets, the completed forms of DVBE Participation Worksheets

submitted by the bidder shall be deemed a part of the Contract Documents.

- 8.2 **Continuing Responsibilities.** Efforts of the successful bidder to include the participation of DVBEs in the performance of the Work of the Contract shall not terminate with the award of the Contract to such bidder. The successful bidder's efforts to secure the participation of DVBEs shall continue for the duration of the Work of the Contract, including when the successful bidder is purchasing materials, equipment, supplies, and/or needs additional Subcontractors (including substitution of listed Subcontractors).
- 8.3 **DVBE Participation Reports and Data.** During performance of the Work of the Contract, the successful bidder shall maintain complete and accurate records of DVBE Participation in executing the Work. From time-to-time, upon the request of the District the bidder awarded the Contract shall submit reports, in form and content satisfactory to the District, regarding DVBE Participation in the Work of the Contract, including the participation of DVBEs in the performance of approved Changes to the Work. The failure or refusal of the successful bidder to submit reports of DVBE Participation during performance of the Work within ten (10) days of the District's request for such reports may be deemed by the District to be the successful bidder's default of a material obligation of the Contract and thereupon, the District may exercise any right or remedy provided for under the Contract Documents or at law, including without limitation termination of the Contract for default or the withholding of payments otherwise due under the Contract Documents until such report(s) is/are received. If requested by the District, upon completion of the Work of the Contract, the successful bidder shall submit a final report identifying all DVBEs utilized in the performance of the Work, the type or classification of the Work performed by each such DVBE and the dollar value of the Work performed by each such DVBE. In the event that the District shall request a report of DVBE utilization upon completion of the Work of the Contract, the submission of such report in form and content satisfactory to the District shall be deemed a condition precedent to the District's obligation to make payment of the Final Payment under the Contract Documents. In such event, the submission of such final report shall be in addition to, and not in lieu of any other conditions precedent set forth in the Contract Documents for the District's obligation to make payment of the Final Payment. The bidder awarded the Contract shall maintain books and records of DVBE Participation in the Work for at least three (3) years following completion of the Project; during such time, the District shall have access, upon reasonable advance notice, to such books and records for inspection or reproduction.

- 8.4 **Contract Audit.** The successful bidder awarded the Contract agrees that the District, or its designee, shall have the right to review, obtain and/or copy any and all writings, materials, documents and other records pertaining to utilization of DVBEs in performance of the Contract. The successful bidder awarded the Contract agrees that the District, or its designee, shall have access to any of the successful bidder's premises upon reasonable notice, during usual business hours for the purpose of interviewing employees and inspecting and/or copying such writings, materials, documents and other documents which may be relevant to a matter under investigation for the purpose of determining compliance with the DVBE Participation Goal Program Policy.
9. **Capitalized Terms.** Capitalized terms used herein shall be as defined herein or elsewhere in the Contract Documents.

[END OF SECTION]

## EXHIBIT Q

### DVBE PARTICIPATION WORKSHEETS

#### ATTACHMENT A BIDDER'S DVBE STATEMENT

1. **General Information.**

Bidder's Name: \_\_\_\_\_

Bidder's Address: \_\_\_\_\_

Bidder's Telephone Number: \_\_\_\_\_

Bidder's Fax Number: \_\_\_\_\_

Project: \_\_\_\_\_

Total Amount of Bidder's Bid Proposal (inclusive of additive Alternate Bid Items, if any): \_\_\_\_\_

Bidder's Representative: \_\_\_\_\_

2. **Bidder's Compliance With DVBE Participation Program.** (Check the appropriate statement).

- ☐ The bidder has achieved or exceeded the DVBE Participation Goal and all DVBEs counting towards the DVBE Participation Goal are set forth and identified in Attachments C-1, C-2 and C-3.
- ☐ The bidder did not achieve the Participation Goal for DVBEs, but has made the required Good Faith Efforts to secure the participation of DVBEs in accordance with guidelines established in the District's DVBE Participation Goal Program.

3. **DVBE Participation Achieved.**

Participation Goal  
DVBEs: 3%

Participation Achieved  
DVBEs: \_\_\_\_%

4. **Submittal of Documentation.**

Concurrently with the submittal of this Bidder's DVBE Statement, the Bidder has also submitted duly completed, and executed if required, forms of Attachments B, C, D, E, F, G and H of these DVBE Participation Worksheets to the extent required by the District's DVBE Participation Goal Program Policy. All of the information provided by

the Bidder in its responses to Attachments B, C, E, F, G and H are true, correct and accurate; there are no omissions in the responses of the Bidder to the foregoing Attachments which render any of the Bidder's statements or information provided therein to be false or misleading. Incomplete, inaccurate, false, misleading or omissions rendering responses to be false or misleading will render the Bid Proposal non-responsive and rejected.

**5. Certification of DVBE Status.**

The bidder certifies, warrants and represents to the District that the bidder has exercised due diligence in ascertaining the status of each proposed DVBE identified in Attachment C as a DVBE in compliance with the applicable provisions of the District's DVBE Participation Program Policy and applicable law. By executing and submitting this Bidder's DVBE Statement, the Bidder represents to the District that each DVBE identified in Attachment C is duly and properly certified as a DVBE in conformity with the District's DVBE Program Goal Policy and applicable law. The Bidder acknowledges that in the event that the District shall reasonably determine that any DVBE identified in the bidder's responses to Attachment C is not a duly and properly certified DVBE, the Bid Proposal may be rejected by the District as being non-responsive. For each DVBE identified in Attachment C, the Bidder has submitted forms of DVBE Certification (Attachment D) duly completed and executed by each such DVBE.

**6. Authority to Execute.**

The individual executing this Bidder's DVBE Statement on behalf of the bidder warrants and represents to the District that she/he is duly authorized to execute this Bidder's DVBE Statement on behalf of the Bidder.

Executed this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, at \_\_\_\_\_.  
(City and State)

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

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name of Individual Executing Statement)  
[Printed or Typed]

## DVBE PARTICIPATION WORKSHEETS

### ATTACHMENT B SUBCONTRACTIBLE ITEMS OF WORK

**Bidder Name:** \_\_\_\_\_

**Project Name:** \_\_\_\_\_

1. List each item of Work, including supplies, equipment, services, and trucking made available to DVBEs. Also list the approximate dollar value and approximate percentage of the bidder's total Bid Proposal amount that each item of Work identified below represents. (Photocopy if additional sheets are needed.)

Item or Description of Work	Approximate Dollar Value	Approximate Percentage of Total Amount of Bid Proposal

**INSTRUCTIONS FOR COMPLETION OF  
ATTACHMENT C (DVBE PARTICIPATION SUMMARY)**

1. **Submittal of Attachment C.** The Bidder shall complete and submit Attachment C regardless of whether or not such bidder has achieved some or all of the Participation Goal. Failure of the Bidder to submit completed form of Attachment C as and when required by the DVBE Participation Goal Program Policy will result in the District rejecting the Bid Proposal of such Bidder as being non-responsive.
2. **Firm Name.** State name of the enterprise proposed by the Bidder for meeting DVBE Participation Goal; the full name of each enterprise identified must be listed and if the enterprise conducts business under a fictitious business name, the same shall be stated. If the Bidder is a certified DVBE and wishes to be counted in the category certified for purposes of meeting the Participation Goal, the bidder must be identified in Attachment C.
3. **Item or Description of Work.** Identify, with specificity, the item or portion of the Work of the Contract to be provided or performed by the proposed DVBEs identified.
4. **Contracting With.** Identify the name of the company or firm with whom the proposed DVBE will be contracting with in connection with the Work of the Contract.
5. **Tier.** Identify the tier of contracting for each proposed DVBE with the following designations:
  - 0 = Bidder.
  - 1 = First Tier Subcontractor or Material Supplier under a direct contract with the bidder.
  - 2 = Second Tier Subcontractor or Material Supplier under a direct contract with a First Tier Subcontractor or Material Supplier, regardless of whether or not the First Tier Subcontractor or Material Supplier is a DVBE.
  - 3 = Third Tier Subcontractor or Material Supplier under a direct contract with a Second Tier Subcontractor or Material Supplier, regardless of whether or not the Second Tier Subcontractor or Material Supplier is a DVBE.
6. **Claimed Value.** Set forth the total dollar value of the Work to be provided or performed by the proposed DVBE. The dollar value set forth in the responses to Attachments C must conform with the applicable provisions of the District's DVBE Participation Program Goal Policy.

7. **Certification.** For each DVBE identified in Attachment C, the Bidder shall indicate in this column whether such DVBE is self-certified or certified by a public agency as a DVBE. The Bidder's completion of this portion of Attachment C with respect to each DVBE identified therein is in addition to and not in lieu of the Bidder's submittal of duly completed and executed forms of DVBE Certification (Attachment D) from each proposed DVBE identified in Attachment C.

**[END OF SECTION]**

## DVBE PARTICIPATION WORKSHEETS

### ATTACHMENT C DVBE PARTICIPATION SUMMARY

**Bidder Name:** \_\_\_\_\_

**Project Name:** \_\_\_\_\_

See instructions for completion of this Summary previous page.

Firm Name	Item or Description of Work	Contracting with	Tier	Claimed Value	Certification

**DVBE PARTICIPATION WORKSHEETS  
INSTRUCTIONS FOR COMPLETION OF  
ATTACHMENT D  
DVBE CERTIFICATION**

1. The Bidder submitting a Bid Proposal to the District shall make available to each DVBE identified by the Bidder in its responses to Attachment C a copy of the DVBE Certification (Attachment D) for completion and execution by each such DVBE.

2. The Bidder required by the DVBE Participation Goal Program Policy to submit documentation of compliance with the DVBE Participation Goal Program shall submit duly completed and executed forms of the DVBE Certification of each DVBE identified in the Bidder's responses to Attachment C. The failure or refusal, for any reason, of the Bidder to submit such completed and executed DVBE Certification(s) of each DVBE identified in the Bidder's responses to Attachment C as and when required by the DVBE Participation Goal Program Policy will result in the District rejecting the Bid Proposal of such Bidder as being non-responsive.

3. Each DVBE identified in the Bidder's responses to Attachment C shall complete and execute, under penalty of perjury, a DVBE Certification. Each such DVBE and the Bidder acknowledge that in the event that the District shall reasonably determine that there are any responses in the DVBE Certification(s) submitted which are incomplete, false or misleading or which omit facts rendering responses therein to be false or misleading, the District will reject the Bid Proposal of such Bidder as being non-responsive.

**[END OF SECTION]**

## DVBE PARTICIPATION WORKSHEETS

### ATTACHMENT D DVBE CERTIFICATION

#### 1. General Information.

Company Name: \_\_\_\_\_

Address: \_\_\_\_\_

City/State/Zip Code: \_\_\_\_\_

Services or Goods Generally Provided: \_\_\_\_\_

Services or Goods to be Provided to Bidder: \_\_\_\_\_

Name of Contact: \_\_\_\_\_

Telephone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_

Tax I.D. Number: \_\_\_\_\_

#### 2. Certification of DVBE Status (check the appropriate section).

- ☐ The above-identified DVBE is not certified as such by any state or local public agency. The undersigned individual, on behalf of the above-identified DVBE certifies, warrants and represents to the District that the above-identified DVBE meets and complies with the definition(s) of DVBE(s) as set forth in the District's DVBE Participation Program Policy and at law.
- ☐ The above-identified DVBE is certified as such by a state or local public agency and a true and correct copy of such certification is attached hereto. The bidder and the above-identified DVBE acknowledge that if the local or state public agency certification of the above-identified DVBE's status is not attached, the above-identified DVBE will not be counted or considered for purposes of the bidder's achievement of the Participation Goal.

#### 3. Authority to Execute.

The undersigned individual executing this DVBE Certification warrants and represents to the District that she/he has made diligent inquiry to ascertain that all of the information provided herein is true, correct and complete, that there are no omissions of fact in any of the responses herein which would render such responses false or misleading and that she/he is duly authorized to execute this DVBE Certification on behalf of the above-identified DVBE.

Executed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ at \_\_\_\_\_  
(City and State)

I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name of Individual Executing DVBE Certification)  
[Printed or Typed]

## DVBE PARTICIPATION WORKSHEETS

### ATTACHMENT E DVBEs CONTACTED

For each Subcontractable Item of the Work identified in the Bidder's response to Attachment B (Subcontractable Items of the Work):

1. List all the DVBEs you solicited sub-bids from and how you obtained each firm's name;
2. Indicate method and date of solicitation (all written solicitations must conform with Public Contract Code § 4108 with respect to bonding requirements, if any);
3. List the method and date of follow-up and the person you contacted;
4. USE ONE SHEET FOR EACH SUBCONTRACTABLE ITEM OF WORK IDENTIFIED IN ATTACHMENT B. (Photocopy as many sheets of this Attachment E as necessary.)

**Bidder Name:** \_\_\_\_\_

**Project Name:** \_\_\_\_\_

**Item Of Work:** \_\_\_\_\_

DVBE Solicited & Source of the Firm's Name	Method & Date of Solicitation	Follow-up Method, Date & Person Contacted

## **DVBE PARTICIPATION WORKSHEETS**

### **ATTACHMENT F DVBE SUB-BIDS NOT ACCEPTED BY BIDDER**

List all DVBEs who submitted bids or quotations to the Bidder which were not accepted. Indicate if the sub-bidder is a DVBE, identify the item of Work or materials, list the Subcontractor/Material Supplier the Bidder intends to use in lieu of the DVBE submitting a sub-bid for the identified portion of the Work, and the amount of such other sub-bidder's bid. Give the reason the Bidder did not use the DVBE firm. (Photocopy if additional sheets are needed.)

**Bidder Name:** \_\_\_\_\_

**Project Name:** \_\_\_\_\_

<b>DVBE's Who Submitted Bids</b>	<b>Item of Work or Materials</b>	<b>Subcontractor/ Material Supplier to be Used</b>	<b>Reason DVBE Bid Not Accepted</b>

## DVBE PARTICIPATION WORKSHEETS

### ATTACHMENT G VERIFICATION OF ADVERTISEMENTS AND SOLICITATIONS

Bidders: \_\_\_\_\_

Project: \_\_\_\_\_

#### 1. ADVERTISEMENTS.

True and correct copies of all advertisements identified herein shall be attached by the Bidder to this Attachment G. The failure of any Bidder to attach to this Attachment G true and correct copies of the advertisements identified herein may result in the District rejecting the Bid Proposal of such Bidder as being non-responsive. **(Photocopy if additional sheets are necessary).**

Newspapers of General Circulation	Date(s) of Advertisement

Construction Trade Publications	Date(s) of Advertisement

<b>DVBE Focus Construction Trade Publications</b>	<b>Date(s) of Advertisement</b>

## 2. SOLICITATIONS.

Identify ALL DVBE firms contacted by the Bidder for purposes of meeting the DVBE Participation Goal. If a DVBE was solicited in writing, the Bidder shall attach hereto a true and correct copy of such written solicitation; failure of the Bidder to do so may result in the District's rejection of the Bidder's Bid Proposal as being non-responsive.

<b>Name of DVBE Firm Solicited</b>	<b>Manner of Solicitation, i.e., written, personal, telephonic, etc.</b>	<b>Date of Solicitation</b>	<b>General Description of DVBE Response to Solicitation</b>

## DVBE PARTICIPATION WORKSHEETS

### ATTACHMENT H VERIFICATION OF CONTACTS WITH AGENCIES AND DVBE ORGANIZATIONS

**Bidder:** \_\_\_\_\_

**Project:** \_\_\_\_\_

Identify all local, state or federal public agencies and DVBE organizations contacted by the Bidder for the purpose of identifying potential DVBEs to meet the Participation Goal. If the Bidder received any list or other writing identifying potential DVBEs from any agency or organization set forth in this Attachment H, the Bidder shall attach hereto a true and correct copy of each such list or other writing; failure of the Bidder to so attach such list(s) or other writing(s) may result in the District rejecting the Bid Proposal of such bidder as being non-responsive. (Photocopy if additional sheets are necessary)

#### 1. LOCAL, STATE OR FEDERAL AGENCIES.

Agency Name & Address	Date of Bidder's Contact with Agency	Name & Telephone Number of Individual Contacted	DVBE List Received by Bidder (INDICATE YES OR NO. IF YES, INDICATE THE DATE OF BIDDER'S RECEIPT OF LIST)

**2. DVBE ORGANIZATIONS CONTACTED.**

Organization Name & Address	Date of Bidder's Contact with Organization	Name & Telephone Number of Individual Contacted	DVBE List Received by Bidder (INDICATE YES OR NO. IF YES, INDICATE THE DATE OF BIDDER'S RECEIPT OF LIST)

## EXHIBIT R

# LABOR COMPLIANCE PROGRAM MANUAL

## INTRODUCTION

The School District issues this Labor Compliance Program (LCP) manual for the purpose of identifying its policy relative to the responsibilities and procedures applicable to the labor compliance provisions of the state and federally funded construction contracts. This LCP contains the labor compliance standards required by state and federal laws, regulations, directives, as well as School District policies and contract provisions.

The California Labor Code Section 1770 *et seq.* and Education Code Section 17424 require that building trade contractors on public works pay their workers based on the prevailing wage rates, which are established and issued by the Department of Industrial Relations, Division of Labor Statistics and Research.

In establishing this LCP, the School District adheres to the statutory requirements as enunciated in Section 1771.5(b) of the Labor Code. It is the intent of the School District to actively enforce this LCP on all School District construction projects which use funds derived from either the Kindergarten - University Public Facilities Bond Act of 2002 or 2004 wherein the affected District construction projects are monitored for the payment of prevailing wage rates and, wherein those contractors having workers on affected School District projects routinely submit copies of certified payroll records demonstrating their compliance with the payment of prevailing wage rates.

Questions regarding the School District's LCP should be directed to Monique Willner, at Tracy Joint Unified School District, 1875 W. Lowell Avenue, Tracy California, (209) 830-3246.

Questions regarding the California Labor Code, including issues relating to this LCP, should be directed to Monique Willner at (209) 830-3246.

The School District has appointed Monique Willner as its LCP representative ("LCPR").

## **I. PUBLIC WORKS SUBJECT TO PREVAILING WAGE LAWS**

State prevailing wage rates apply to all public works contracts as set forth in Labor Code Sections 1720, 1720.2, 1720.3, 1720.4, 1771, and 1777.5, and include, but are not limited to, such types of work performed under contract as construction, alteration, demolition or repair. The Division of Labor Statistics and Research (DLSR) redetermines the appropriate prevailing wage rates for particular construction trades and crafts by county.

### **A. Types of Contracts to Which Prevailing Wage Requirements Apply**

As provided in Labor Code Section 1771.5, an awarding body LCP as approved by the Director of the Department of Industrial Relations, shall apply to public works contracts that require the payment of the prevailing wage rates and shall include all new construction contracts over \$25,000 and all contracts over \$15,000 when the project is for alteration, demolition, repair or maintenance.

### **B. Limited Exemption from the Requirement to Pay Prevailing Wages**

Upon election of a LCP for the School District, there shall be a limited exemption from the requirement to pay prevailing wage rates for any public works project of \$25,000 or less, when the project is for construction work; or for \$15,000 or less, when the project is for alteration, demolition, repair or maintenance work.

With the School District's initiation and enforcement of its LCP pursuant to Labor Code Section 1771.5, all construction contracts under \$25,000 and all School District maintenance contracts under \$15,000 would be included in the limited exemption from the legal requirement to pay prevailing wages.

The School District shall require that all limited exemption projects for construction, alteration, demolition, repair or maintenance work be identified as such in all bid advertisements and construction contracts. Moreover, if the amount of a limited exemption contract subject to this Section is changed, and as a result, exceeds the applicable dollar limits under which the payment of the prevailing wage rates is not required, those workers employed on the contract (after the amount due the contractor has reached the applicable limit) shall be paid at the prevailing wage rates.

### **C. Applicable Dates for Enforcement of the LCP**

The applicable dates for enforcement of awarding body LCP is established by Section 16425 of the California Code of Regulations. Contracts are not subject to the jurisdiction of the LCP until after the Program has received initial or final approval. Moreover, the limited exemption from the payment of prevailing wages

pursuant to Labor Code Section 1771.5(a) does not apply to any such contract until after the LCP as received initial or final approval.]

## **II. COMPETITIVE BIDDING ON DISTRICT PUBLIC WORKS CONTRACTS**

The School District publicly advertises upcoming public works projects to be awarded according to a competitive bidding process.

All School District bid advertisements (or bid invitations) and construction contracts shall contain appropriate language concerning the requirements of the Public Works chapter of the Labor Code.

## **III. JOB CONFERENCE MEETING**

After the School District awards the public works contract and prior to the commencement of the work, a Pre-Job Conference shall be held by the School District with the contractor(s) and subcontractor(s). At that meeting, the LCPR will discuss the federal and state labor law requirements applicable to the contract and will provide the contractor(s) and each subcontractor with a Checklist of Labor Law Requirements (presented in Attachment A) and will discuss in detail the following checklist items:

1. The contractor's duty to pay prevailing wages (Labor Code Section 1770, *et seq.*) should the project exceed the exemption amounts;
2. The contractor's and subcontractor's duty to employ registered apprentices on public works projects (Labor Code Section 1777.5);
3. The penalties for failure to pay prevailing wages (for nonexempt projects), failing to employ apprentices, and failing to submit complete Certified Payroll Reports, which include forfeitures and debarment (Labor Code Sections 1775, 1776, 1777.7, and 1813);
4. The requirement to maintain and submit copies of certified payroll reports to the School District at times designated on the contract. (Labor Code Section 1776(i).) This requirement includes and applies to all subcontractors performing work on School District projects even if their portion of the work is less than one half of one percent (0.5%) of the total amount of the contract, and penalties for failure to do so (Labor Code Section 1776(g));
5. The prohibition against employment discrimination (Labor Code Sections 1735 and 1777.6; the Government Code; and Title VII of the Civil Rights Act of 1964, as amended);

6. The prohibition against accepting or extracting kickbacks from employee wages (Labor Code Section 1778);
7. The prohibition against accepting fees for registering any person for public works (Labor Code Section 1779) or for filing work orders on public works (Labor Code Section 1780);
8. The requirement to list all subcontractors (Public Contract Code Section 4104, *et seq.*);
9. The requirement to be properly licensed and to require all subcontractors to be properly licensed, and the penalty for employing workers while unlicensed (Labor Code Section 1021 and 1021.5, and Business and Professions Code Section 7000, *et seq.*, under California Contractors License Law);
10. The prohibition against unfair competition (Business and Professions Code Sections 17200-17208);
11. The requirement that the contractor(s) and subcontractor(s) be properly insured for Workers' Compensation (Labor Code Section 1861);
12. The requirement that the contractor(s) abide by the Occupational Safety and Health laws and regulations that apply to the particular public works project; and
13. The prohibition against hiring undocumented workers, and the requirement to secure proof of eligibility/citizenship from all workers.

The contractor(s) and subcontractor(s) present at the meeting will be given the opportunity to ask questions of the LCPR relative to any of the Labor Law Requirements Checklist. The Checklist of Labor Law Requirements will then be signed by the prime contractor's representative, subcontractor's representative, and the School District's LCPR.

At the Pre-Job Conference, the LCPR will provide the contractor(s) with two (2) copies of the School District's LCP package which includes: a copy of the approved LCP, the checklist of Labor Law Requirements, applicable Prevailing Wage Rate Determinations, blank certified payroll report forms, fringe benefit statements, State apprenticeship requirements, and a copy of the Labor Code relating to Public Works and Public Agencies (Part 7, Chapter 1, Sections 1720-1861).

It will be the contractor's responsibility to provide copies of the LCP package to all subcontractors and to any substituted subcontractor performing work on the School District's project(s).

#### IV. RESPONSIBILITIES OF CONTRACTOR(S)

##### A. Certified Payroll Records Required

The contractor(s) shall maintain payrolls and "basic payroll records" during the course of the work and shall preserve them for a period of three (3) years thereafter for all tradesworkers working at the School District's project sites. Such records shall include the name, address, and social security number of each worker, his or her classification, a general description of the work each employee performed each day, the rate of pay (including rates of contributions for, or costs assumed to provide fringe benefits), daily and weekly number of hours worked, deductions made, and actual wages paid.

##### 1. Submission of Certified Payroll Reports

The contractor(s) shall submit all weekly certified payroll reports including those of all subcontractors to the School District at a School District-designated time, not less than monthly. The contractor(s) shall be responsible for the submittal of payroll reports of all its subcontractors. All weekly certified payroll reports shall be accompanied by a statement of compliance signed by the contractor(s) under penalty of perjury pursuant to Labor Code Section 1771.5(b)(3) and applicable regulations.

Basic payroll records may be requested by the School District or LCPR at any time and shall be provided within 10 days following the receipt of the request.

##### 2. Review of Certified Payroll Reports

Certified payroll reports shall be routinely reviewed by the Contractor for the payment of prevailing wage rates.

##### 3. Full Accountability

The name, address and social security number of every individual, laborer or craftsperson working at the project site must appear on the payroll. The basic concept is that the employer who pays the tradesworker must report that individual on its payroll. This includes individuals working as apprentices in an apprenticeship craft. Owner-operators are to be reported by the contractor employing them, rental equipment operators are to be reported by the rental company paying the workers' wages.

Sole owners and partners who work on a contract must also submit a certified payroll report listing the days and hours worked, and the trade classification descriptive of the work actually done. The contractor(s)

shall make the records required under this section available for inspection by the LCPR, an authorized representative of the School District and the Department of Industrial Relations, and shall permit such representatives to interview tradesworkers during working hours on the project site.

4. Responsibility for Subcontractor(s)

The contractor(s) shall be responsible for ensuring adherence to labor standards provisions by its subcontractor(s). Moreover, the prime contractor is responsible for Labor Code violations by its subcontractors in accordance with Labor Code Section 1775 and applicable sections of the Labor Code and California Code of Regulations.

5. Payment to Employees

Employees must be paid unconditionally, and not less often than once each week, the full amounts which are due and payable for the period covered by the particular payday. Thus, an employer must, therefore, establish a fixed workweek (i.e., Sunday through Saturday) and an established payday (such as every Friday or the preceding day should such payday fall on a holiday). On each and every payday, each worker must be paid all sums due as of the end of the preceding workweek and must be provided with an itemized wage statement.

If an individual is called a subcontractor, when, in fact, he/she is merely a journey level mechanic supplying only his/her labor, such an individual would not be deemed a bona fide subcontractor and must be reported on the payroll of the prime contractor who contracted for his or her services as a tradesworker. Moreover, any person who does not hold a valid contractor's license cannot be a subcontractor, and anyone hired by that person is the worker or employee of the general contractor who contracted for his or her services for purposes of prevailing wage requirements, certified payroll reporting and workers' compensation laws.

A worker's rate for straight time hours must equal or exceed the rate specified in the contract by reference to the Prevailing Wage Rate Determinations for the class of work actually performed. Any work performed on Saturday, Sunday, and/or a holiday, or a portion thereof, must be paid the prevailing rate established for those days regardless of the fixed workweek. The hourly rate for hours worked in excess of 8 hours in a day or 40 hours in a workweek shall be premium pay. All work performed in excess of eight hours per day, 40 hours per week, on Saturday, on Sunday, and on holidays shall be paid in accordance with the applicable Prevailing Wage Determination.

B. Apprentices

Apprentices shall be permitted to work as such only when they are registered, individually, under a bona fide apprenticeship program registered with a State apprenticeship agency which is recognized by the State Division of Apprenticeship Standards. The allowable ratio of apprentices to journey persons in any craft/classification shall not be greater than the ratio permitted to the contractor as to its entire workforce under the registered program. Any worker listed on a payroll at an apprentice wage rate who is not registered shall be paid the journey level wage rate determined by the Department of Industrial Relations for the classification of the work he/she actually performed. An apprentice who is registered and has worked outside of the prescribed geographic area is not qualified to receive the apprentice rate and must be paid the journey level rate.

The contractor shall furnish written evidence of the registration (i.e., Apprenticeship Agreement or Statement of Registration) of its training program and apprentices, as well as the ratios allowed and the wage rates required to be paid thereunder for the area of construction, prior to using any apprentices in the contract work.

Pre-apprentice trainees, trainees in nonapprenticeable crafts, and others who are not duly registered will not be permitted on public works projects unless they are paid full prevailing wage rates as journey persons.

Compliance with California Labor Code Section 1777.5 requires all public works contractors and subcontractors to:

1. Apply for a Certificate of Approval for the employment and training of apprentices for each craft or trade;
2. Employ apprentices on public works projects in a ratio to journey persons as stipulated in the Apprenticeship Standards under which each Joint Apprenticeship Committee operates, but in no case shall the ratio be less than one (1) apprentice to each five (5) journey person hours, unless a Certificate of Exemption is obtained and provided to the LCPR;
3. Contribute to the training fund in the amount identified in the prevailing wage rate publication for journey persons and apprentices. Where the trust fund administrators cannot accept the contributions, then payment shall be made to the California Apprenticeship Council, Post Office Box 420603, San Francisco, CA 94142; and
4. It should be noted that a prior approval for a separate project does not confirm approval to train on any project. The contractor/subcontractor

must check with the applicable Joint Apprenticeship Committee to verify status.

## V. ENFORCEMENT ACTION

### A. Duty of the Awarding Body

The School District, as the awarding body having an approved LCP, has a duty to the Director of the Department of Industrial Relations to enforce the Labor Code School District public works requirements (Chapter 1 of part 7 of Division 2 and Division 3 of the Labor Code) and the procedural regulations of the Department of Industrial Relations, in a manner consistent with the practice of Title 8, California Code of Regulations, Section 16000, *et seq.*

### B. Review of Certified Payroll Reports

Certified payroll reports shall be routinely reviewed by the LCPR for the payment of prevailing wages.

### C. Investigation

1. If payroll records are delinquent or inadequate, or if it appears from the certified payroll reports or other evidence that a contractor or subcontractor has failed to pay prevailing wages, the LCPR shall notify the contractor in writing of the discrepancies.
2. If clarification/correction is not received from the contractor, the LCPR shall conduct an investigation. This investigation may include an Audit.
3. Upon completion of the investigation, if the LCPR determines that the contractor has not remedied the violation, the LCPR may authorize Withholding of contract payments.

### D. Audit of Certified Payroll Reports

Audits may be conducted by the LCPR when deemed necessary, and shall be conducted at the request of the Labor Commissioner

The audit record form that is presented in Attachment B as provided for in Title 8, CCR Section 16432 demonstrates the sufficient detail that is required to verify compliance with the Labor Code requirements.

An audit consists of a comparison of payroll records to the best available information as to the actual hours worked and classifications of workers employed on the contract.

E. Withholding for Delinquent or Inadequate Payroll Records or Reports

Pursuant to a request by the School District or its LCPR for Certified Payroll Reports or Basic Payroll Records, under section IV.A.1., if contractor fails to provide Certified Payroll Reports or Basic Payroll Records within ten (10) days of receipt of the request, pursuant to Labor Code Section 1776, the amount of withholding for Delinquent or Inadequate Payroll Records or Reports shall be twenty-five dollars (\$25) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated.

F. Withholding for Violation of the Requirement to Pay Prevailing Wages

1. The amount of "Withholding" shall be the "amount equal to the underpayment." This amount shall be determined by payroll review, investigation, audit, or admission of the contractor or subcontractor. It shall be the total of the following:
  - a. The difference between amounts paid workers and the correct General Prevailing Rate of Per Diem Wages, as defined in Title 8 CCR Section 16000 *et seq.*, and determined to be the prevailing rate due workers in such craft, classification or trade in which they were employed;
  - b. The difference between amounts paid on behalf of workers and the correct amounts of Employer Payments, as defined in Title 8 CCR Section 16000 *et seq.* and determined to be part of the prevailing rate costs of contractor(s) due for employment of workers in such craft, classification or trade in which they were employed;
  - c. Estimated amounts of kickbacks;
  - d. Amounts of apprenticeship training contributions paid to neither the program sponsor's training trust nor the California Apprenticeship Council;
  - e. Estimated penalties under Labor Code Sections 1775, 1776, 1777.7 and 1813. (Title 8, CCR Section 16435.5.)
2. Provisions relating to the penalties under Labor Code Sections 1775, 1777.7, and 1813:
  - a. Pursuant to Labor Code Section 1775, the contractor shall, as a penalty to the School District on whose behalf the contract is awarded, forfeit not more than fifty dollars (\$50) for each calendar

day, or portion thereof, for each worker paid less than the prevailing wages.

- b. In situations involving overtime, the contractor shall, as an additional penalty to the School District on whose behalf the contract is awarded, forfeit twenty-five dollars (\$25) for each worker employed in the execution of the contract by the contractor or by any subcontractor for each calendar day during which such worker is required or permitted to work more than 8 hours in any one calendar day and 40 hours in any one calendar week (Monday through Friday) in violation of the provisions of Section 1813 of the Labor Code. The School District shall take cognizance of all violations of Section 1813.
- c. Pursuant to Labor Code Section 1777.5, contractors and subcontractors are required to employ registered apprentices on public works projects. Each contractor and subcontractor shall keep an accurate payroll record relative to apprentices per Section 1776 of the Labor Code. The contractor or subcontractor found in violation of Labor Code Sections 1775, 1777.5, and/or 1777.7 shall forfeit as a civil penalty the sum of fifty dollars (\$50) for each calendar day of noncompliance to the School District.

G. Withholding Procedures

- 1. The School District shall provide a notice of withholding contract payments to the contractor and subcontractor, if applicable. The notice shall be in writing and shall describe the nature of the violation and the amount of wages, penalties and forfeitures withheld. Service of the notice shall be completed pursuant to Code of Civil Procedure Section 1013 by first-class and certified mail to the contractor and subcontractor, if applicable. The notice shall advise the contractor and subcontractor, if applicable, of the procedure for obtaining review of the withholding of contract payments.
- 2. The School District shall also serve a copy of the notice by certified mail to any bonding company issuing a bond that secures the payment of wages covered by the notice and to any surety on a bond, if their identities are known to the awarding body.
- 3. Where the violation is by a subcontractor, the general contractor shall be notified of the nature of the violation and reference made to its rights under Labor Code Section 1729.

4. A release bond under Civil Code Section 3196 may not be posted for the release of the funds being withheld for the violation of the prevailing wage law.
5. The Withholding of contract payments in accordance with Labor Code Sections 1726 or 1771.5 shall be reviewable under Labor Code Section 1742 in the same manner as if the notice of the withholding was a civil penalty order of the Labor Commissioner. If review is requested, the School District may request the Labor Commissioner to intervene to represent it.
6. Pending a final order, or the expiration of the time period for seeking review of the notice of the withholding, the School District shall not disburse any contract payments withheld.

H. Forfeitures

1. When the School District completes the withholding procedure in Subsection G, it shall submit a request to the Labor Commissioner for Forfeiture from the contractor and any subcontractor for Delinquent or Inadequate payroll records or reports or failure to pay the correct rate of prevailing wages.
2. Where the School District or the LCPR requests a determination of the amount of forfeiture, the request shall include a file or report to the Labor Commissioner which contains at least the following information:
  - a. The deadline by which contract acceptance or filing of a notice of completion, under Labor Code Section 1775, plus 90 days, will occur;
  - b. Any other deadline which, if missed, would impede collection;
  - c. Evidence of violation in narrative form;
  - d. Evidence that an "audit" or "investigation" occurred;
  - e. Evidence that the contractor was given the opportunity to explain why it believes there was no violation; or that any violation was caused by mistake, inadvertence, or neglect before the forfeiture was sent to the Labor Commissioner, and the contractor either did not do so or failed to convince the awarding body of its position;
  - f. Where the LCPR seeks not only amounts of wages but also a penalty as part of the forfeiture, and the contractor has

unsuccessfully contended that the cause of violation was a mistake, inadvertence, or neglect, a statement should accompany the proposal for a forfeiture with a recommended penalty amount, pursuant to Labor Code Section 1775;

- g. Where the LCPR seeks only wages or a penalty less than Fifty Dollars (\$50) per day as part of the forfeiture, and the contractor has successfully contended that the cause of violation was a mistake, inadvertence, or neglect, then the file should include the evidence as to the contractor's knowledge of its obligation, including the LCPR's communication to the contractor of the obligation in the bid invitations, at the Pre-Job Conference agenda and records, and any other notice given as part of the contracting process. Included with the file should be a statement similar to that described in subsection (f) above and recommended penalty amounts, pursuant to Labor Code Section 1775;
  - h. The previous record of the contractor in meeting prevailing wage obligations.
- 3. The file or report shall be served on the Labor Commissioner not less than 30 days before the final payment or, if that deadline has passed, not less than 90 days following the filing of the Notice of Completion as long as funds remain in the contract.
  - 4. A copy of the file or report shall be served on the contractor, any affected subcontractor and the surety, at the same time as it is sent to the Labor Commissioner.

The School District may exclude from the documents served on the contractor/subcontractor or surety, copies of documents secured from these parties during an audit, investigation, or meeting if those documents are clearly referenced in the file or report. Along with the copy served on the contractor shall be a notice stating all deadlines and rights of the contractor to contest the amount of forfeiture. The Notice of Deadlines for Forfeitures under Title 8, CCR Section 16437 (presented in Attachment C) fulfills the requirements of this subsection.

- 5. The Labor Commissioner shall affirm, reject, or modify the forfeiture in whole or in part as to penalty and/or wages due.
- 6. The determination of the forfeiture by the Labor Commissioner is effective on one of the two following dates:

- a. For programs with initial approval or an extension of initial approval pursuant to Title 8, CCR Section 16426, on the date the Labor Commissioner serves by first class mail, on the School District and on the contractor, an endorsed copy of the proposed forfeiture, or a newly drafted forfeiture statement which sets out the amount of forfeiture approved. Service on the contractor is effective if made on the last address supplied by the contractor in the record. The Labor Commissioner's approval, modification or disapproval of the proposed forfeiture shall be served within 30 days of receipt of the proposed forfeiture or no more than 30 days after the notice of completion has been filed.
- b. For programs with final approval, approval is effective 20 days after the requested forfeitures are served upon the Labor Commissioner, unless the Labor Commissioner serves a notice upon the parties, within that time period, that this forfeiture request is subject to further review. For such programs, a notice that approval will follow such a procedure will be included in the transmittal of the forfeiture request to the contractor. The Labor Commissioner's final approval, modification or disapproval of the proposed forfeiture shall be served within 30 days of the date of receipt of the proposed forfeiture or not more than 30 days after the notice of completion has been filed, unless some other procedure has been adopted pursuant to Title 8, CCR Section 16427(d).

I. Deposits of Penalties and Forfeitures Withheld

1. Where the involvement of the Labor Commissioner has been limited to a determination of the actual amount of penalty, forfeiture, or underpayment of wages, and the matter has been resolved without litigation by or against the Labor Commissioner, the School District shall deposit penalties and forfeitures into its construction fund or other fund of its choice.
2. Where collection of fines, penalties, or forfeitures results from court action to which the Labor Commissioner and the School District are both parties, the fines, penalties, or forfeitures shall be divided between the General Funds of the State and the construction fund or other fund of the School District's choice, as the court may decide.
3. All amounts recovered by suit brought by the Labor Commissioner, and to which the School District is not a party, shall be deposited in the General Fund of the State of California.
4. All wages and benefits which belong to a worker and are withheld or collected from a contractor or subcontractor, either by withholding or as a

result of court action pursuant to Labor Code Section 1775, and which have not been paid to the worker or irrevocably committed on the worker's behalf to a benefits fund, shall be deposited with the Labor Commissioner, who will deal with such wages and benefits in accordance with Labor Code Section 96.7.

J. Debarment Policy

It is the policy of the School District that the public works prevailing wage requirements set forth in the California Labor Code, Sections 1720-1861, be strictly enforced. In furtherance thereof, construction contractors and subcontractors found to be repeat violators of the California Labor Code shall be referred to the Labor Commissioner for debarment from bidding on or otherwise being awarded any public work contract, within the state of California, for the performance of construction and/or maintenance services for the period not to exceed three (3) years in duration. The duration of the debarment period shall depend upon the nature and severity of the labor code violations and any mitigating and/or aggravating factors, which may be presented at the hearing conducted by the Labor Commissioner for such purpose.

**VI. REPORTING OF WILLFUL VIOLATIONS TO THE LABOR COMMISSIONER**

If an investigation reveals that a willful violation of the Labor Code has occurred, the LCPR will make a written report to the School District and the Labor Commissioner which shall include: (1) an audit consisting of a comparison of payroll records to the best available information as to the actual hours worked and (2) the classification of workers employed on the public works contract. Six types of willful violations are reported as follows:

A. For Failure to Comply with Prevailing Wage Rate Requirements

Failure to comply with prevailing wage rate requirements (as set forth in the Labor Code and School District contracts) is determined a willful violation whenever less than the stipulated basic hourly rate is paid to tradesworkers, or if overtime, holiday rates, fringe benefits, and/or employer payments are paid at a rate less than stipulated. The facts related to such willful violations may result in a determination that the contractor intended to defraud its employees of their wages.

B. For Falsification of Payroll Records, Misclassification of Work, and/or Failure to Accurately Report Hours of Work

Falsification of payroll records and failure to accurately report hours of work is characterized by deliberate underreporting of hours of work; underreporting the headcount; stating that the proper prevailing wage rate was paid when, in fact, it was not; clearly misclassifying the work performed by the worker; and any other

deliberate and/or willful act which results in the falsification or inaccurate reporting of payroll records. Such violations are deemed to be willful violations committed with the intent to defraud.

C. For Failure to Submit Certified Payroll Reports

Refusing to comply with a request by the LCPR for certified payroll reports or substantiating information and records as contained in Section IV.A.1. will be determined to be a willful violation of the Labor Code. Additionally, refusing to correct inaccuracies or omissions that have been discovered will also be determined to be willful violation of the Labor Code.

D. For Failure to Pay Fringe Benefits

Fringe benefits are defined as the amounts stipulated for employer payments or trust fund contributions and are determined to be part of the required prevailing wage rate. Failure to pay or provide fringe benefits and/or make trust fund contributions in a timely manner is equivalent to payment of less than the stipulated wage rate and shall be reported to the School District and Labor Commissioner as a willful violation, upon completion of an investigation and audit.

E. For Failure to Pay the Correct Apprentice Rates and/or Misclassification of Workers as Apprentices

Failure to pay the correct apprentice rate or classifying a worker as an apprentice when not properly registered is equivalent to payment of less than the stipulated wage rate and shall be reported to the School District and Labor Commissioner as a willful violation, upon completion of an investigation and audit.

F. For the Taking of Kickbacks

Accepting or extracting kickbacks from employee wages under Labor Code Section 1778 constitutes a felony and may be prosecuted by the appropriate enforcement agency.

**VII. APPEALS OF A LABOR COMPLIANCE PROGRAM ENFORCEMENT ACTION**

A. Appeal Process

A contractor may appeal the result of a LCP enforcement action by serving a "Request for Review" on the LCPR who will then forward the request to the Director of the Department of Industrial Relations. Such notice must be served

within 60 days of the first date the contractor was served by the LCPR with a "Notice of Withholding of Contract Payments" which has been approved by the Labor Commissioner.

A contractor may appeal an enforcement action by the School District pursuant to Labor Code Sections 1742 and 1742.1 to the Director of the Department of Industrial Relations. The decision to hold a hearing on the appeal is within the sole discretion of the Director of the Department of Industrial Relations. The Director may appoint a hearing officer to review the record, conduct a hearing and recommend a decision. The Director of the Department of Industrial Relations shall make the final decision on the appeal.

Upon receipt of a copy of the "Request for Review," the LCPR shall immediately forward to the Director of the Department of Industrial Relations a Notice of Transmittal, a full copy of the Request, a copy of the Notice of Withholding of Contract Payments and the audit. The contractor and/or subcontractor and surety shall be provided a copy of the Notice of Transmittal and all attachments as well as a copy of the Prevailing Wage Hearing Regulations.

In accordance with Labor Code Section 1742, the contractor or subcontractor shall be provided an opportunity to review the evidence to be utilized by the LCPR at the hearing within 20 days of receipt of the written request.

The Director of the Department of Industrial Relations may request a supplemental report from the School District on the activities of the LCP. This report will be an update of the Annual Report that is required pursuant to Section 16431 of the Final Regulations (Title 8, Group 4, Article 1) and which is discussed in Section IX of this LCP.

B. Determination and Ruling on the Appeal by the Department of Industrial Relations

Upon completion of the hearing, the Director of Department of Industrial Relations shall have forty-five (45) days in which to render a decision.

Within fifteen (15) days of the issuance of the decision, the Director may reconsider or modify the decision to correct an error, except that a clerical error may be corrected at any time.

The Hearing Officer's ruling on the appeal shall be the final decision of the Director from which any party may seek reconsideration, modification or judicial review within fifteen (15) days following its receipt. Within forty-five (45) days following service of the decision, any affected contractor or subcontractor may

seek review of the decision by filing a writ of mandate with the appropriate Superior Court pursuant to Section 1094.5 of the Code of Civil Procedure.

## VIII. PRIORITY DISTRIBUTION OF FORFEITED SUMS

### A. Withholding of Forfeited Sums

Pursuant to Labor Code Section 1727, it shall be the policy of the School District that prior to making payment to the prime contractor of monies due under any contract for public works, the School District shall withhold and retain from the prime contractor's account all amounts which have been forfeited pursuant to any stipulation under said contract for public works. But no sum shall be withheld, retained or forfeited, except from the final payment, without a full investigation by the School District.

### B. Disposition of Forfeited Sums

1. The prevailing wage recovery process of this LCP is established pursuant to Labor Code Section 1775 which provides that out of any funds withheld, recovered, or both, there shall first be paid the amount due each worker notwithstanding the filing of any Stop Notice by any person pursuant to Civil Code Section 3179, *et seq.* Thus, all workers employed on the public works project who are paid less than the prevailing wage rate shall have **PRIORITY** over all Stop Notices filed against the prime contractor.
2. In the event that there are "insufficient funds" available in the prime contractor's account to pay the total amount of prevailing wage violations and penalty amounts due, the unpaid prevailing wages shall have **PRIORITY STATUS** and must be paid first, pursuant to Labor Code Section 1775.

Furthermore, if insufficient funds are withheld, recovered, or both, to pay each underpaid worker in full, the money shall be prorated among all workers affected. From the amount recovered by the School District, the wage claim shall be satisfied prior to the amount being applied to penalties. If insufficient money is recovered to pay each worker in full, the money shall be prorated among all workers. Wages for workers who cannot be located shall be placed in the Industrial Relations Unpaid Wage Fund and held in trust for the workers pursuant to Section 96.7. Penalties shall be paid into a construction fund or other fund of the School District's choosing.

## IX. ANNUAL REPORTS

### A. Annual Report on the School District Labor Compliance Program to the Director of the Department of Industrial Relations

The School District shall submit to the Director of the Department of Industrial Relations an Annual Report on the operation of its LCP within sixty (60) days after the close of its fiscal year, or accompany its request for an extension of initial approval, whichever comes first. Pursuant to Title 8, CCR Section 16431, the Annual Report shall contain, at the minimum, the following information:

1. Number of construction contracts subject to the LCP which were awarded, and their total value;
2. The number, description, and total value of construction contracts awarded which were exempt from the requirement of payment of prevailing wages pursuant to Labor Code Section 1771.5(a);
3. A summary of wages due to workers resulting from failure by contractors to pay prevailing wage rates, the total amount withheld from money due to the contractors, and the total amount recovered by action in any court of competent jurisdiction;
4. A summary of penalties and forfeitures imposed and withheld, or recovered in a court of competent jurisdiction;
5. A LCP whose contract responsibilities are statewide, or which involves widely dispersed and numerous contracts, or which is required to report contract enforcement to federal authorities in a federal format, may adopt a summary reporting format to aggregate small contracts and estimate numbers and dollar values required by 1 and 2. A summary reporting format may be adopted by agreement with the Director after advance notice to interested parties, and a list of parties requesting such notice shall be kept by the Director.

Copies of the LCP's required Annual Report submitted to the Director of the Department of Industrial Relations will be distributed to the Superintendent and School Board of the School District.

## APPENDIX A DEFINITIONS

1. "Amount equal to the underpayment" is the total of the following determined by payroll review, investigation, audit, or admission of the contractor or subcontractor:
  - a. The difference between the amounts paid to workers and the correct General Prevailing Wage Rate of Per Diem Wages as defined in Title 8, CCR Section 16000, *et seq.*;
  - b. The difference between the amounts paid to workers and the correct amounts of employer payments, as defined in Title 8, CCR Section 16000, *et seq.* and determined to be part of the prevailing rate costs of contractors due for employment of workers in such craft, classification or trade in which they were employed and the amounts paid;
  - c. Estimated amounts of "illegal taking of wages"; and
  - d. Amounts of apprenticeship training contributions paid to neither the program sponsor's training trust nor the California Apprenticeship Council.
2. "Basic Payroll Records" means time cards, front and back copies of cancelled checks, cash receipts, trust fund forms, daily logs, employee sign-in sheets, accounting ledgers, tax forms and/or any other record maintained for the purposes of reporting payroll.
3. "Contracts," except as otherwise provided by agreement, means only contracts under a single master contract, or contracts entered into as stages of a single project which may be the subject of withholding pursuant to Labor Code Sections 1720, 1720.2, 1720.3, 1720.4, 1771, and 1771.5.
4. "Delinquent payroll records" means those not submitted on the basis set forth in the School District contract and the LCP.
5. "Failing to pay the correct rate of prevailing wages" means those public works violations which the Labor Commissioner has exclusive authority to approve before they are recoverable by the LCP, and which are appealable by the contractor in court or before the Director of the Department of Industrial Relations under Labor Code Sections 1742 and 1742.1 pursuant to the California Code of Regulations Title 8, Chapter 8, Subchapter 8 (Sections 17201 through 17270). Regardless of what is defined as prevailing "wages" in contract terms, noncompliance with the following are considered failures to pay prevailing wages:
  - a. Nonpayment of items defined as "Employer Payments" and "General Prevailing Rate of Per Diem Wages" in Title 8, CCR Section 16000 and Labor Code Section 1771;
  - b. Payroll records required by Labor Code Section 1776;

- c. Labor Code Section 1777.5 but only insofar as the failure consists of paying apprentice wages lower than the journey level rate to a worker who is not an apprentice as defined in Labor Code Section 3077, working under an apprentice agreement in a recognized program;
  - d. Labor Code Section 1778, Kickbacks;
  - e. Labor Code Section 1779, Fee for Registration; or
  - f. Labor Code Sections 1813, 1815, and Title 8, CCR Section 16200(a)(3)(F) overtime for work over eight (8) hours in any one (1) day or forty (40) hours in any one (1) week (Monday through Friday). All work performed on Saturday, Sunday, and/or a holiday shall be paid pursuant to the prevailing wage determination.
6. "Forfeitures" are the amounts of unpaid penalties and wages assessed by the School District for violations of the prevailing wage laws, whether collected by withholding from the contract amount, by suit under the contract, or both. The Division of Labor Standards Enforcement will notify the contractor/subcontractor of his/her right to a hearing to determine the appropriateness of amounts withheld.
7. "Inadequate payroll records" are any one of the following:
- a. A record lacking the information required by Labor Code Section 1776;
  - b. A record which contains the required information but which is not certified, or certified by someone not an agent of the contractor or subcontractor; or
  - c. A record remaining uncorrected for one (1) payroll period, after the School District has given the contractor notice of inaccuracies detected by audit or record review; provided, however, that prompt correction will stop any duty to withhold if such inaccuracies do not amount to one percent (1%) of the entire certified weekly payroll in dollar value and do not affect more than half the persons listed as workers employed on that certified weekly payroll, as defined in Labor Code Section 1776 and Title 8 CCR Section 16401. Prompt correction will stop any duty to withhold if such inaccuracies are de minimus.
8. "Withhold" means to cease payments by the awarding body, or others who pay on its behalf, or agents, to the general contractor.

## ATTACHMENT A

### CHECKLIST OF LABOR LAW REQUIREMENTS TO REVIEW AT JOB CONFERENCE MEETINGS

(Pursuant to Title 8, Section 16430 of the California Code of Regulations)

NAME (print) \_\_\_\_\_ Date \_\_\_\_\_

COMPANY \_\_\_\_\_ Phone \_\_\_\_\_

ADDRESS \_\_\_\_\_ Fax # \_\_\_\_\_

\_\_\_\_\_ School \_\_\_\_\_

SUPERINTENDENT \_\_\_\_\_ Project # \_\_\_\_\_

The federal and state labor law requirements applicable to the contract are composed of, but not limited to, the following:

**1. Payment of Prevailing Wage Rates**

The contractor to whom the contract is awarded and its subcontractors hired for the public works project are required to pay not less than the specified general prevailing wage rates to all workers employed in the execution of the contract. The contractor's duty to pay prevailing wages under Labor Code Section 1770 *et seq.*, should the project exceed the exemption amounts.

The contractor is responsible for ascertaining and complying with all current general prevailing wage rates for crafts and any rate changes that occur during the life of the contract. Information on all prevailing wage rates and all rate changes are to be posted at the job site for all workers to view.

**2. Apprentices**

It is the duty of the contractor and subcontractors to employ registered apprentices on the public works project under Labor Code Section 1777.5.

**3. Penalties**

There are penalties required for contractor's/subcontractor's failure to pay prevailing wages (for nonexempt projects) and for failure to employ apprentices, including forfeitures and debarment under Labor Code Sections 1775; 1777.7 and 1813.

**4. Certified Payroll Reports**

Under Labor Code Section 1776, contractors and subcontractors are required to keep accurate payroll records showing the name, address, social security number and work classification of each employee and owner performing work; also the straight time and overtime hours worked each day and each week, the fringe benefits, and, the actual per diem wage paid to each owner, journey person, apprentice worker or other employee hired in connection with the public works project.

Employee payroll records shall be certified and shall be made available for inspection at all reasonable hours at the principal office of the contractor/subcontractor, or shall be furnished to any employee, or his/her authorized representative on request, pursuant to Labor Code Section 1776.

Each contractor and subcontractor shall submit its weekly certified payroll reports to the District on a monthly basis. In the event that there has been no work performed during a given week, the Certified Payroll Report shall be annotated: "No work" for that week.

Under Labor Code Section 1776(g) there are penalties required for contractor's/subcontractor's failure to maintain and submit copies of certified payroll records on request.

**5. Nondiscrimination in Employment**

There exist prohibitions against employment discrimination under Labor Code Sections 1735 and 1777.6, the Government Code, the Public Contracts Code, and Title VII of the Civil Rights Act of 1964, as amended. All contractors and subcontractors are required to implement equal employment opportunity practices for women and minorities.

**6. Kickbacks Prohibited**

Contractors and subcontractors are prohibited from recapturing wages illegally or extracting "kickbacks" from employee wages under Labor Code Section 1778.

**7. Acceptance of Fees Prohibited**

There exists a prohibition against contractor/subcontractor acceptance of fees for registering any person for public work under Labor Code Section 1779; or for filling work orders on public works contracts pursuant to Labor Code Section 1780.

**8. Listing of Subcontractors**

All prime contractors are required to list properly all subcontractors hired to perform work on the public works projects covering more than one-half of one percent, pursuant to Government Code Section 4100 *et seq.*

**9. Proper Licensing**

Contractors are required to be licensed properly and to require that all subcontractors be properly licensed. Penalties are required for employing workers while unlicensed under Labor Code Section 1021 and under the California Contractor License Law found at Business and Professions Code Section 7000 *et seq.*

**10. Unfair Competition Prohibited**

Contractors/Subcontractors are prohibited from engaging in unfair competition as specified under Business and Professions Code Sections 17200 to 17208.

**11. Workers Compensation Insurance**

Labor Code Section 1861 requires that contractors and subcontractors be insured properly for Workers Compensation.

**12. OSHA**

Contractors and subcontractors are required to abide by the Occupational, Safety and Health laws and regulations that apply to the particular construction project.

**13. Undocumented Workers**

Contractors and subcontractors may NOT hire undocumented workers. Contractors and subcontractors are required to obtain proof of work eligibility or citizenship from all workers.

In accordance with federal and state laws and with School District contract documents, the undersigned prime contractor wishes to assure the School District that it intends to comply with the above-referenced labor law requirements, fully understanding that failure to comply with the above requirements may subject it to penalties as provided above.

For the Contractor:

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
Prime Contractor

\_\_\_\_\_  
Project Name

Tracy Joint Unified School District:

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

## **ATTACHMENT B AUDIT RECORD FORM**

(For Use With Title 8, CCR Section 16432 Audits)

An audit record is sufficiently detailed to "verify compliance with the requirements of Chapter 1, Public Works, Part 7 of Division 2" when the audit record displays that the following procedures were accomplished:

1. Audits of the obligation to secure workers' compensation means demanding written evidence of a binder issued by the carrier, or telephone or written inquiry to the Workers' Compensation Insurance Rating Bureau;
2. Audits of the obligations to employ and train apprentices means inquiry to the program sponsor for the apprenticeable craft or trade in the area of the public works as to: whether contract award information was received, including an estimate of journey person hours to be performed and the number of apprentices to be employed; whether apprentices have been requested, and whether the request has been met; whether the program sponsor knows of any amounts sent by the contractor or subcontractor to it for the training trust, or the California Apprenticeship Council; and whether persons listed on the certified payroll in that craft or trade as being paid less than the journey person rate are apprentices registered with that program and working under apprentice agreements approved by the Division of Apprenticeship Standards;
3. Audits of the obligation to pass through amounts for apprenticeship training contributions, to either the training trust or the California Apprenticeship Council, means asking for copies of checks sent, or when the audit occurs more than 30 days after the month in which payroll has been paid, copies of cancelled checks;
4. Audits of "illegal taking of wages" means inspection of written authorizations for deductions (listed in Labor Code Section 224) in the contractor's or subcontractor's files and comparison to wage deduction statements furnished to employees (Labor Code Section 226), together with an interview of employees when warranted as to any payments not shown on the wage deduction statements;
5. Audits of the obligation to keep records of working hours and pay not less than required by Title 8, CCR Section 16200(a)(3)(F) for hours worked in excess of 8 hours are the steps for review and audit of Certified Weekly Payrolls under Title 8, CCR Section 16432;
6. Audits of the obligations to pay the prevailing per diem wage, means such steps for review and audit of Certified Weekly Payrolls which will produce a report covering compliance in the areas of:

- A. All elements defined as the "General Prevailing Rate of Per Diem Wages" in Title 8, CCR Section 16000, which were determined to be prevailing in the Director's determination which was in effect on the date of the call for bids, available in its principal LCP office and posted at the public works job site;
- B. All elements defined as "Employer Payments" set forth in Section 16000 of these regulations, which were determined to be prevailing in the Director's Determination which was in effect on the date of the call for bids, and pursuant to Labor Code Section 1773.2 was to be specified in the call for bids, made available in its principal LCP office and posted at the public works job site.

## ATTACHMENT C

### NOTICE OF DEADLINES

(To go to Contractor for Forfeitures under Title 8, CCR Section 16437)

"This document requests the Labor Commissioner of California to approve a forfeiture of money you otherwise would be paid. The (Name of the labor compliance program representative) for the Tracy Joint Unified School District is asking the Labor Commissioner of California to agree, in 20 days, that the enclosed package of materials indicates that you have violated the law."

"Failure to respond to the (Name of the labor compliance program representative's) request that the Labor Commissioner approve a forfeiture by writing to the Labor Commissioner within 20 days of the date of service (date of postmark) of this document on you may lead the Labor Commissioner to affirm the proposed forfeiture, and may also end your right to contest those amounts further. You must serve any written response on the Labor Commissioner, the (Name of the labor compliance program representative) and the Tracy Joint Unified School District by return receipt requested/certified mail. If you serve a written explanation, with evidence, as to why the violation did not occur, or why the penalties should not be assessed, within the 20-day period, it will be considered,"

and

"If you change address, or decide to hire an attorney, it is your responsibility to advise both the (Name of the labor compliance program representative) and the Labor Commissioner by certified mail. Otherwise, notices will be served at your last address on file, and deadlines might pass before you receive such notices."