Request for Proposals
for
Lease-Leaseback Services

New District Office
Roseville Joint Union High School District

Exhibits

Exhibit A – Conceptual sketches
Exhibit B – DVBE Outreach requirements
Exhibit C – Allowable General Conditions costs
Exhibit D – Fee Proposal form
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The Board of Trustees ("Board") of the Roseville Joint Union High School District ("District") is seeking qualified providers of lease-leaseback construction services ("LLB Entity") to provide preconstruction and construction related services for the new construction and associated site work for the New District Office located at 1750 Cirby Way, Roseville, County of Placer, State of California pursuant to California Education Code Section 17406 (the "Project"). The District is seeking qualified providers of lease-leaseback services ("LLB Entity") for the Project. A single entity will be selected for delivery and financing for the Project.

I. Critical Dates

Proposal Due Date:

Five (5) hard copies and an electronic copy of the Proposal in a three-ring binder, and a separate sealed envelope with five (5) hard copies and one electronic copy of the Fee Proposal (Exhibit D) shall be delivered **no later than 1:00pm, November 2, 2022** to:

Roseville Joint Union High School District
Facilities Department
2 Tiger Way
Roseville, CA 95678
Attn: Scott Davis, Director of Facilities Development

Proposals not received by the deadline will be returned unopened. **QR codes and website hyper-links will not be considered.**

RFP Milestone Dates:

The following are the anticipated dates in connection with the award of the lease-leaseback instrument, but are subject to change:

- September 23, 2022 – RFP Uploaded to District's web site www.rjuhsd.com/domain/16
- September 29, 2022, 1:00 p.m. – Mandatory Preproposal conference at RJUHSD District Office. 1750 Cirby Way, Roseville, CA 95661.
- October 18, 2022, 3:00 p.m. – Prequalification application deadline
- October 20, 2022 – Deadline to submit questions via email

- October 25, 2022, 4:00 p.m. – If applicable, an addendum will be uploaded in the District's website www.rjuhsd.com/domain/16
- **November 2, 2022, 1:00 p.m. – Proposals due**
- November 10, 2022 – District Notification to Selected Interview Firms
- November 17, 2022 – Interviews (anticipated)
- December 1, 2022 – District selection of successful LLB Entity
- December 15, 2022 – Board award of LLB instrument

II. Project

Description / Anticipated Schedule – New District Office Building (Refer to Conceptual Sketches attached hereto as Exhibit A).

Construction of a new District Office of approximately 26,000 square feet including a Board Room, offices, break rooms, work rooms, lunchroom, mechanical and electrical systems, parking lot, site work and demolition of the existing District Office. The estimated total cost of the Project is $ 20,000,000.

Phase I of the Project shall be preconstruction services, as defined in Education Code section 17400(b)(4), to include the services generally described below in Section IV(1), Scope of Work, Preconstruction Phase Services including but not limited to a design/constructability and coordination review, value engineering, detailed cost estimating, including variables and options in order to meet the District's budget, development of the different trades' scope of work, and bidding and preparation of the Total Base Rent ("TBR") and lease payment schedule. The TBR shall be developed through a public competitive sub-bid selection process for any scope of work of at least one-half of one percent (0.5%). A minimum of three bids is expected for each trade. **If the LLB Entity plans to self-perform any work, LLB Entity must submit a sealed bid directly to the District a minimum of 48 hours in advance of the bid due date for the subcontractors**. LLB Entity will provide the District with a copy of their bid advertisement and subsequent addenda. Entity will be required to submit a detailed estimate for any work under one-half of one percent (0.5%) or $5,000, whichever is greater. The cumulative amount of self-perform work not required to be blind bid is $50,000. Generally speaking, preparation of the TBR will require a minimum of eight weeks, broken down as follows:

- Two weeks for bidding of trade contractors by LLB Entity,
- One week for preparation of initial TBR Binder by LLB Entity
- One week for review of TBR by District
- One week for District and LLB Entity to further clarify issues with Design Team and review proposed value engineering ideas
- One week for LLB Entity to make revisions and submit final TBR and associated supporting documents for Board approval
- Two weeks for Board review and approval

Phase I of the Project continues through approval of the Project plans by the Division of the State Architect ("DSA") and development and Board approval of the TBR for the Project, and is anticipated to be 6 months.

Phase II includes a construction and post-construction phase, and will not commence until after DSA approval of the plans and Board approval of the TBR, and will proceed only upon Notice to Proceed with Phase II by the District. The Phase II construction phase is anticipated to be 18 months, followed by a post-construction occupancy phase of 12 months.

The LLB Entity is required to hold a California Contractor's License, Class B, which is current, valid and in good standing with the California Contractor's State License Board, and is required to be registered with the Department of Industrial Relations ("DIR") pursuant to Labor Code section 1725.5.

The LLB Entity shall work under the direction of the District and its agents. District agents shall be the Architect and others designated by the District. For this Project, the District has retained **Rainforth Grau Architects** as its Architect (Designer of Record) to prepare the design and engineered plans and specification for the Project. The LLB Entity shall work with the District and the Architect, as necessary to its services, and incorporate modifications to the plans into the Total Base Rent for the Project, at the direction of the District and its agents.

The Architect Contact is:

Teri Jamison AIA
Rainforth Grau Architects
2101 Capitol Avenue, Suite 100
Sacramento, CA 95816
Phone: Tel: 916.368.7990
E-mail: tjamison@rainforthgrau.com

The District Contact is:

Scott Davis, Dir. of Facilities Dev.
Roseville Jt. Union High School District
2 Tiger Way
Roseville, CA 95678
Phone: 916.782-4707
E-mail: scdavis@rjuhsd.us

The Architect will use Revit 2022, or newer version, for all project scope; including modernization and new construction. However, Building Information Modeling ("BIM") will only be developed for the new buildings at a level 200 +. BIM will include all architectural, structural, mechanical, plumbing, electrical conduits over 2" in diameter and fire sprinkler piping. This model will be turned over to the LLB Entity, free of charge, with a signed release of liability and used to begin subcontractor coordination at the start of construction.

III. Contract Parameters

Public Contract Code section 20111.6

Prequalification in compliance with Public Contract Code section 20111.6 is required for this Project. Therefore, the LLB Entity and its mechanical, electrical and plumbing ("MEP") subcontractors (as defined by Public Contract Code section 20111.6(k)) must be prequalified prior to submitting any bids for Construction Phase services on this Project. MEP subcontractors subject to these requirements are those with any of the following license classifications: C-4, C-7, C-10, C-16, C-20, C-34, C-36, C-38, C-42, C-43 and C-46. LLB Entity shall work with the District and the District's consultants in prequalifying such subcontractors, using the District's standard Prequalification Questionnaire and uniform rating system. MEP subcontractors must have submitted a prequalification application no later than ten (10) business days before the due date for bids or have been prequalified for at least five (5) business days before the due date for bids.

LLB Entity shall be responsible to prequalify other subcontractors and suppliers, as set forth in Exhibit F.

The Roseville Joint Union High School District is utilizing a web-based process for Pre-Qualification called Quality Bidders. The District's Prequalification Application is available on the District's website at http://www.rjuhsd.com/domain/16. Respondents must have submitted their applications no later than ten (10) business days before the due date for Proposals or have been prequalified for at least five (5) business days before the due date for Proposals. Proposals will not be accepted from any Respondent to this RFP who has not complied with these requirements.

Public Works Registration Requirement

Notice is hereby given that this project is a public works project within the requirements of Division 2, Part 7, Chapter 1 of the California Labor Code, and that the LLB Entity and its subcontractors are required to be registered with the DIR pursuant to Labor Code section 1725.5 at the time of bidding. **The LLB Entity must be registered with the DIR prior to the due date for Proposals on this RFP**. If the LLB Entity is a joint venture that is not registered with the DIR prior to bidding, then each member of the joint venture must be registered with the DIR prior to bidding. Failure of a

Respondent to be registered by the Proposal due date will render the Proposal non-responsive. The selected LLB Entity's subcontractors, truckers and any suppliers and/or vendors subject to California's prevailing wage laws are required to be registered with the DIR pursuant to Labor Code section 1725.5 at the time bids are submitted for the trade work, or, in the case of any such subcontractors, truckers, suppliers and/or vendors who are not required to submit bids, must be registered with DIR not later than 24 hours before they commence any work on the Project.

Education Code section 17407.5; Public Contract Code sections 2600 *et seq.*

Compliance with Education Code section 17407.5 and Public Contract Code sections 2600 *et seq.* is required for this Project. In accordance with those statutes, the District will not enter into any Site Lease or Facilities Lease with the LLB Entity under Education Code section 17406 unless and until the LLB Entity provides to District, in a form acceptable to District's Board, an enforceable commitment that a) the LLB Entity and its subcontractors at every tier will use a skilled and trained workforce to perform all work on the Project that falls within an apprenticeable occupation in the building and construction trades, and b) the LLB Entity will provide the District with a monthly report of its compliance with the skilled and trained workforce requirements. The LLB Entity must commit to ensure that the apprenticeship program graduate percentage will be met in every year in which work will be performed. The required commitment to the District's Board shall be one of the following: a) the LLB Entity's certification and agreement in accordance with the California False Claims Act, Government Code sections 12650 through 12656, that the LLB Entity and its subcontractors at every tier will comply with the requirements of Education Code section 17407.5 and Public Contract Code sections 2600 *et seq.* and that the LLB Entity will provide the District's Board, on a monthly basis while the Project is being performed, a report demonstrating that the LLB Entity and its subcontractors are in compliance with these requirements; b) evidence that the LLB Entity has entered into a project labor agreement that includes the requirements of Education Code section 17407.5 and Public Contract Code sections 2600 *et seq.* and that will bind the LLB Entity and all its subcontractors at every tier performing on the Project.

Financing

Financing will be required from the LLB Entity in that the total of the lease payments under the Facilities Lease for the Project will be spread over a Lease Term that includes a post-construction phase of 12 months after final completion of the construction. The District contemplates that the portion of the Project financed and paid over the post-construction period will not exceed ten percent (10%) of the Total Base Rent. The post-construction amount financed, and any additional fees for financing, shall be developed as part of development of the TBR and lease payment schedule. The District will not pay any additional fees for financing during the construction period.

Construction Budgets / Costs

The District will require an open book policy with the LLB Entity and its construction team. The District, through itself or its authorized agents and consultants, expects to have full access to all Project information, including without limitation subcontractor/supplier bids, contracts, and change orders; value engineering back-up; contingency breakdown and tracking; general conditions breakdown and tracking; actual costs for bonds and insurance; and LLB Entity fees.

Refer to the Facilities Lease Agreement (Exhibit F) for what constitutes a Change Order.

DVBE Participation Requirements

In accordance with Education Code section 17076.10, the LLB Entity will be required to meet or make good faith efforts to meet a goal of providing three percent (3%) of the amount of the Total Base Rent in work or materials to certified Disabled Veteran Business Enterprises ("DVBE"). **Exhibit B to the RFP and Attachment 1 to Exhibit H to the Facilities Lease** sets forth in greater detail the DVBE outreach to apply when identifying subcontractors as part of developing the TBR. For any DVBEs identified in their

proposal, Respondent must include with its proposal all information required below in Section V, Proposal Format and Content, Body of Submittal, Paragraph 5.

Development of Total Base Rent ("TBR") (Refer to the Exhibits C and F attached herein)

Total Base Rent will be determined after taking bids for all subcontracting trades. Refer to Exhibits C and F for what will be allowed as a direct cost of the work, general conditions and Contractor's Contingency. Items included in the General Conditions cannot be included in the direct cost of the work by the subcontractors. In general, the following components will be included in TBR:

1. General conditions (refer to Exhibit C for allowable costs).
2. Work self-performed by the LLB Entity, if applicable
3. Cost of all subcontract scopes of work.
4. LLB Entity fee (includes overhead and profit and all other costs not specifically allowable in general conditions). District will not accept proposals with a Fee higher than 6.5% of the sum of the Direct Cost of the Work plus General Conditions (excluding the cost of Bonds and Insurance, Allowances and Contingencies).
5. Payment and performance bonds for the LLB Entity to cover the final TBR (inclusive of Owner's contingency and allowances).
6. All insurance costs (General Liability, Auto, Worker's Compensation, Builder's Risk, etc. – Refer to Exhibit E to the Facilities Lease for additional information).
7. A Construction Contingency of 3% of the "Direct Costs of Construction" Work (excluding general conditions, bonds and insurance, allowances and contingencies). Any unused allowance or contingency amount will be returned to the District.
8. Miscellaneous allowances, if applicable, in an amount agreed upon by the District and the LLB Entity.
9. An Owner's contingency for the District's sole use that can be up to 4% of the total costs (excluding Contractor's contingency and allowances) for the Project.
10. Financing costs.

The LLB Entity shall provide the District with written rationale for the price, and the District's Board must approve the TBR at a public meeting before the LLB Entity may proceed with any construction work. The LLB Entity must provide documentation sufficient to support each element of the final price.

Monthly lease payments **are anticipated to be the same for each month during the construction period,** *except for the inclusion of approved contingency usages.* Monthly Lease Payments **during the post-construction period following completion of the Project shall be the same for each month.** All Lease Payment Schedules or revisions presented to the Board for approval must include a twelve (12) month post-construction period.

Subject to Board approval of the TBR and Lease Payment Schedule, the District and the selected LLB Entity will amend the Facilities Lease to incorporate the agreed-upon TBR and Lease Payment Schedule. If the Board does not approve the TBR and/or the Lease Payment Schedule, then the District may, in its sole discretion, decline to proceed with Phase II (construction phase) of the Facilities Lease. No work for which a contractor is required to be licensed in accordance with Article 5 (commencing with Section 7065) of Chapter 9 of Division 3 of the Business and Professions Code, and for which Division of the State Architect approval is required, can be performed before receipt of the required DSA approval.

IV. Scope of Work

The Scope of Work is divided into Preconstruction Phase Services and Construction Phase Services. Commencement or completion of the Phase I, Preconstruction Services, does not obligate the District to proceed with Phase II, Construction and Post-Construction Services, with the selected LLB Entity. The Scope of Work is anticipated to include the following:

1. **Preconstruction Phase Services for the Project:**

a. Input to and review of design and construction documents, constructability review – not code level plan checks - for clarity, consistency, coordination, schedule, phasing, budget - (one formal Constructability report for each increment expected after DSA submission). Backchecks to be performed once design team has addressed review comments and prior to DSA approval for the different increments. The LLB Entity will work in a collaborative manner during the design process with the district staff and the Architect The LLB Entity should provide input on construction methodology and detailing based on the goals and objectives of the design to incorporate the strengths of their team. The LLB Entity may need to perform site investigation to confirm utilities and other infrastructure impacted or incorporated into the design to confirm location and or condition at the District's discretion. **LLB Entity is to include an allowance amount of $15,000 for the Project** to be used on a time and material basis for site investigation, to be used at the District's discretion. Include the equipment rates and labor rates for the possible positions necessary to perform this work. Any unused allowance amount will be returned to the District via a deductive amendment to the Facilities Lease.

b. Undertake value engineering analysis and prepare report with recommendations to the District to maintain established construction budget.

c. Attend regular meetings biweekly with the Design Team, and District Representatives.

d. Provide a detailed Construction CPM schedule that identifies the critical path within the Construction Phase. A minimum of one week of float for Owner's use needs to be identified. Identify any long lead time items.

e. Develop Scopes of Work for the different trade contractors and advertise for bids to obtain a minimum of 3 bids for each trade package. The solicitations for bids must establish reasonable qualification and selection criteria and standards, including any required prequalification, and the subcontracts shall be awarded in accordance with the stated qualification and selection criteria and standards. DVBE "Goal" of 3% or Good Faith Effort is required to meet State Funding requirements.

f. District expects the LLB Entity to engage with different subcontractors during the Preconstruction Phase to seek input. Please identify what trades you plan to include for this phase (by increment) and discuss it in the approach section. Any costs associated with subcontractor input will be included in the LLB Entity's Preconstruction Phase cost. The District expects the LLB Entity to seek competitive bids and will not be obligated to use any of the subcontractors engaged during the Preconstruction Phase during the Construction Phase, which subcontractor(s) must be identified in the Proposal and used during any Construction Phase.

g. Develop the proposed Total Base Rent (TBR) and proposed lease payment schedule. The TBR proposal shall include the written rationale for the price and objectively-verifiable documentation of the costs to perform the services under the Facilities Lease, including documentation of the costs to perform any subcontract work reserved to a designated subcontractor in the proposal.

2. **Construction and Post-Construction Services:**

Construction, modernization, new building additions, off/on site work as necessary to support the buildings and associated improvements. Services generally required are execution of subcontracts, provide on-site support and logistics including but not limited to temporary construction office trailers and equipment, supervise and direct the work, ensure a safe project/site, participate in project meetings, manage the construction costs (ensure costs allocated to construction contingency have entitlement and meet the contract requirements prior to submission to the District Representative), coordinate the work with the different subcontractors in an efficient manner, update the monthly construction schedule, coordinate equipment start-up and acceptance testing, training, prepare record construction documents and close-out of the project. *See also* Exhibits A

and F. **The building site is located adjacent to an occupied school campus and will utilize shared parking entrances and exits. School will be in session during the construction phase. Construction will take place adjacent to the existing District Office and accommodations will be required to protect the existing staff and building along with requirements for reasonable remediation work to reduce sound levels.**

The LLB Entity shall not proceed with any work unless and until the TBR is approved by the Board at a public meeting and a Notice to Proceed with Construction Phase work is issued by the District. No work for which a contractor is required to be licensed in accordance with Article 5 (commencing with Section 7065) of Chapter 9 of Division 3 of the Business and Professions Code, and for which Division of the State Architect approval is required, can be performed before receipt of the required Division of the State Architect approval.

LLB Entity will be responsible for the Internet connectivity on site.

While it is the intent of the District that the entity selected to perform the Preconstruction Services will continue on to perform the Construction and Post-Construction Services under terms of the Facilities Lease and Site Lease, the District reserves the absolute right to enter into a Site Lease and Facilities Lease with a different entity than the one selected for Preconstruction Services and/or not to proceed with the Project under a lease-leaseback format**.**

V. Proposal Format and Content

The Respondent's Proposal should be clear, concise, complete, well organized and demonstrate both Respondent's qualifications and its ability to follow instructions.

Provide five hard copies and a separate electronic pdf file of the Proposal **without the fee proposal** in a three-ring binder, not to exceed 30 single-sided pages total length (Binder cover pages, Table of Contents, Tabs, Addenda (if any), OSHA forms, and financial information forms in Section 12 below, are excluded from page count). If an addendum is issued, please include it right after the cover letter. In the event of any discrepancy between the hard copy and the pdf copy of the Proposal, the hard copy will control. In a separate, sealed envelope provide five hard copies and one electronic copy of the fee proposal. The entire proposal package (binders and fee proposal) shall be separately sealed in a box or envelope labeled with a copy of the "Submittal Cover" specified below.

The failure to include the Non-Collusion affidavit (Exhibit G) will cause the Proposal to be rejected. The failure to include the Iran Contracting Certification (Exhibit I) may, in the District's sole discretion, cause the Proposal to be rejected.

All Respondents shall follow the order and format specified below. Please tab each section of the submittal to correspond to the numbers shown below.

Submittal Cover

Include the RFP's title and submittal due date, the name, address, fax number, and the telephone number of responding firm (or firms if there is a joint venture or association).

Table of Contents

Include complete and clear listings of heading and pages to allow easy reference to key information.

Body of Submittal

The following sections should be included in the order listed:

1.	A cover letter signed by an officer of the firm submitting the Proposal, or signed by another person with authority to act on behalf of and bind the firm. Indicate contact person(s) for the project. If an addendum is issued, please also acknowledge it on the cover letter. The cover letter shall include a certification in substantially the following form: "[Respondent] certifies under penalty of perjury, under the laws of the State of California, that all information provided in its Proposal, including without limitation in exhibits thereto and its Cost Proposal, is true and correct." **Failure to include such a certification shall make the Proposal non-responsive and unavailable for award.**	**Pass/Fail**
2.	All issued addenda. It is the responsibility of Respondents to check the District's website to ensure that they have received all addenda.	**Pass/Fail**
3.	Respondents must hold a California Contractors License, Class B, which is current, valid and in good standing with the California Contractor's State License Board. Provide the following information for the license: a. Name of license holder exactly as on file b. License Classification c. License Number d. Date Issued e. Expiration Date	**Pass/Fail**
4.	General information about your firm, including number of employees, years in business, name(s) of owner(s), home office location, local office location (if different), DIR registration number, whether you are a small business or disabled veteran business enterprise (DVBE), and market areas. Also include any signatory requirements to Union participation.	**5 Points**
5.	Describe the history of any disputes and performance problems. At a minimum, discuss any of the following that have occurred: a. Suspension or revocation of any license of the Respondent, or of any parent, subsidiary, predecessor company, or affiliated company, within the last ten years. An affiliated company is one with at least 10% common ownership, or with the same qualifying individual, or that has two or more board members or officers in common. (Less 2-10 points per incident, depending on the reason, the company, and when the incident occurred) b. Any EPA, Air Quality Management District, or Regional Water Quality Control Board finding against the Respondent or the owner of a project on which the Respondent was the prime contractor in the past five years. (Less one point per incident) c. In the past five years, any violation by the Respondent of any provision of California apprenticeship laws or regulations, or the laws pertaining to use of apprentices on public works, or the laws requiring use of a "skilled and trained workforce" on certain public works projects. (Less one point per incident)	**25 Points** Loss of points from the total possible is specified for each issue

d. Payment by the Respondent of liquidated damages of $50,000 or more on any contract in the last five years. State the number of days for which liquidated damages were assessed. (Less 1 point per incident. The District retains discretion to subtract additional points for any incident in which over $100,000 in liquidated damages was paid, up to a maximum of 5 points.) e. Termination of the Respondent for default within the last ten years. (Less 10 points if in the last 5 years; less 5 points if > 5 years ago). f. Termination of the Respondent for convenience within the last ten years. Provide a detailed description of the circumstances around termination and contact information for the terminating owner; the District may contact the owner to verify circumstances. (Less up to 3 points per termination, with a maximum of 10 points, if circumstances indicate serious performance issues resulted in the termination.) g. In the past five years, cancellation of any insurance policy or refusal of any insurance company to renew an insurance policy due to non-payment of premiums or losses claimed. (Less 3 points per incident) h. Any finding by any public entity in the past five years that the Respondent was not a "responsible" bidder or proposer. (Less 2 points per incident, unless based solely on lack of experience) i. Any finding by a court or arbitrator in the past ten years that the Respondent was liable for making any false or fraudulent claim or material misrepresentation to a public agency or entity. (Less 10 points if in the last 5 years; less 5 points if > 5 years ago) j. Withdrawal of a bid for mistake. (Less one point per incident) k. Withdrawal after a contract award to the Respondent. (Less 3 points per incident) l. Any judgments **against** the Respondent in the past five years in actions in court or arbitration involving disputes with the owner of a construction project. This includes matters in which the Respondent was either plaintiff or defendant, and includes matters settled after judgment was announced. (Less up to 5 points per incident) m. Any claims in excess of $100,000 made in the past five years which were either a) asserted by the Respondent against a project owner in arbitration or litigation and compromised for 45% or less than the amount asserted or b) asserted against the Respondent by a project owner in arbitration or litigation and compromised for 55% or more than the amount asserted. (Less 3 points per incident) n. Any claims in excess of $100,000 made in the past five years in a design-build or lease-leaseback contract which were asserted by the Respondent against a project owner in mediation and compromised for 45% or less than the amount asserted. (Less 3 points per incident)	

6.	Describe the Respondent's safety record and safety program, including at least a. The Respondent's worker safety program and how construction safety would be managed for the project. (4 points) b. Any CAL OSHA or Federal OSHA finding against the Respondent for any "serious," "willful" or "repeat" violations of its safety or health regulations in the past five years. (none = 3 points; 1-2 = 2 points; 3-4 = 1 point; > 4 = 0 points) c. For each of the last three complete years - Provide the Average Lost Workday Incident Rate (LWIR), the Average Recordable Incident Rate (RIR) and the Experience Modification Rate (EMR) provided by your worker's compensation insurance carrier. (3 points)	**10 points**
7.	Identify the key personnel proposed to work on the Project, providing the names and levels of responsibility of the day-to-day project manager and superintendent and other key personnel. Emphasize specific experience as it relates to this project. Attach résumés for all identified key staff. Projects referenced on résumés should include contract value, start and finish dates, and delivery method (*e.g.,* design-build, lease-leaseback, construction manager at risk, or design-bid-build). No substitution of personnel identified will be allowed without the District's approval.	**20 Points**
8.	Specific Respondent experience with similar K-12 public school projects, with projects conducted under Education Code section 17406 *et seq* ***(Lease Lease-back)*** strongly preferred and receiving higher scores**.** Please include brief project description, constructed values, dates (start and completion), names of District contacts and architect/engineer contacts. The District may contact selected project contacts to assess similarity of work and quality of performance. Greater points will be awarded for demonstrated experience with the proposed project team. For purposes of this requirement, Respondents will receive greater points for demonstrated experience on Lease Lease-back projects of $10 million or more and on projects that consist of or include a District Office or administration building, or similar office space. Clearly identify any and all LLB projects where you exceeded the originally established TBR or Guaranteed Maximum Price in the past 10 years (identify the initial contract value, the amount and the reasons for exceeding the TBR). Provide District contact information for each such project.	**50 Points**

9.	Describe in detail your experience, approach and methods for carrying out Preconstruction Services (Phase I), including without limitation: a. Constructability review, including how you will work collaboratively with the Architect and other District personnel and consultants. Identify which trades you plan to include for this phase, and discuss how you will involve those trades. b. Cost estimating. c. Value engineering, including providing examples. d. Scheduling. e. Developing the Total Base Rent, including developing subcontractor scopes of work and bidding. Please describe your approach to ensuring that the District meets its 3% DVBE participation goal. f. DSA submittals and approval.	**20 Points**
10.	Describe in detail your approach and methods for carrying out the Construction Services (Phase II), including without limitation: a. Any creative methodology or technology that your firm uses or unique resources that your firm can offer. b. Discuss past experience with innovative project delivery techniques likely to promote the goals of the District as stated in the RFP. c. Describe how Respondent will manage the Project during construction. d. Address how the Respondent's team will work in a deeply collaborative manner as part of our team, and specifically how this will change the individuals' roles from those typically required in public school construction. e. Describe capabilities for project scheduling, including typical software programs utilized and experience of personnel in these programs. Discuss briefly the plan for scheduling of this Project, including tracking and schedule updates. f. Describe how the Respondent will comply with "skilled and trained workforce requirements," including stating whether the Respondent operates its own State-approved apprenticeship program. Describe how the Respondent will ensure skilled and trained workforce is provided by all tiers of subcontractors and trades.	**20 Points**
11.	Financial Information – Provide the following financial information: a. A letter from a financial institution stating a current line of credit. b. A letter from a California admitted surety or insurance company stating bonding limit that can be applied to this Project(s). c. A letter from insurance company indicating ability to provide insurance. d. Indicate current value of all work the Respondent has under contract.	**5 Points**
12.	An enforceable commitment that, if selected to submit a proposal in response to the RFP and if selected as the Design-Builder, the DBE and its subcontractors at every tier will use a "skilled and trained workforce," as defined in Public Contract Code section 2601(d), to perform all work on the project that falls within an apprenticeable occupation in the building and construction trades.	**Pass/Fail**

13.	Non-Collusion Affidavit	**Pass/Fail**
14.	Iran Contracting Act Certification	**Pass/Fail**

Maximum Technical Points: 155 Points

Fee Proposal

Submit the completed Fee Proposal (Exhibit D) in separate, sealed envelope, clearly labeled as the Fee Proposal.

Services	**Basis for Evaluation**	**Points**
Preconstruction Services cost	Proposals will be ranked by preconstruction services cost, from low to high. Ranked First: 10 points Ranked Second: 9 points Ranked Third: 8 points Ranked Fourth: 7 points Ranked Fifth: 6 points Etc. However, a cost within 5% of the next lowest cost receives the same points as the next-lowest cost.[1]	**10 Points**
General Conditions cost	Low cost: 15 points. Up to 4.9% higher than low cost: 15 points 5-9.9% higher than low cost: 14 points 10-14.9% higher than low cost: 13 points 15-19.9% higher than low cost: 11 points 20-24.9% higher than low cost: 9 points 25-29.9% higher than low cost: 6 points 30-34.9% higher than low cost: 3 points More than 35% higher: 0 points	**15 Points**
Cost of Bonds and Insurance	Low cost: 5 points. Up to 4.9% higher than low cost: 5 points 5-9.9% higher than low cost: 4 points 10-14.9% higher than low cost: 3 points 15-19.9% higher than low cost: 2 points 20-24.9% higher than low cost: 1 point More than 25% higher: 0 points	**5 Points**

[1] Example: Bidder A = $100,000; Bidder B = $130,000; Bidder C = $97,000; Bidder D = $117,000; Bidder E = $150,000; Bidder F = $124,000.

Bidder	Preconstruction Services Cost	Points
C	$97,000	10
A	$100,000	10
D	$117,000	8
F	$124,000	7
B	$130,000	7
E	$150,000	5

LLB Entity's fee (Must be ≤ 6.5%)	Low fee: 35 points Up to 0.25 percentage point higher: 34 points 0.26 to 0.5 percentage point higher: 33 points 0.51 to 0.75 percentage point higher: 31 points 0.75 to 1 percentage point higher: 29 points 1.01 to 1.25 percentage points higher: 26 points 1.26 to 1.5 percentage points higher: 23 points 1.51 to 1.75 percentage points higher: 19 points 1.75 to 2 percentage points higher: 15 points 2.01 to 2.5 percentage points higher: 10 points 2.51 to 3 percentage points higher: 5 points More than 3 percentage points higher: 0 points	**35 Points**
Post-construction financing rate	Finance rate will be ranked from lowest rate to highest. Lowest rate to up to .50% over the lowest rate: 5 points Lowest rate plus .51% to 1.0%: 4 points Lowest rate plus 1.01% to 1.5%: 3 points Lowest rate plus 1.51% to 2.0%: 2 points Lowest rate plus 2.01% to 2.5%: 1 points Lowest rate plus 2.51% or more: 0 points	**5 Points**

Maximum Fee Proposal Points: 70 Points

VI. Selection Process

1. The purpose of this Request for Proposals is to enable the Roseville Joint Union High School District to select the firm offering the best value to the District for award of a lease-leaseback instrument under the provisions of Education Code section 17406.

2. The District will use the qualifications-based selection process outlined below.

3. A review and selection committee composed of key District officials and consultants will review and evaluate all Proposals based on the scoring criteria identified in Section V above and will conduct interviews as appropriate. The evaluation team first will evaluate the Qualifications / Technical portion of the submitted Proposals to determine whether they meet the format and content requirements and the standards specified in the RFP. All compliant Proposals will be scored using the technical criteria identified above. The evaluation team will not open the contents of the sealed fee proposal during this part of the evaluation.

4. After the evaluation team scores all Proposals, each Proposal shall be assigned a Technical Score that is the average of the individual evaluators' scores for the Proposal. A Proposal must receive at least 70% of the available technical points to have the Fee Proposal opened and continue with the evaluation.

5. After all Technical Scores are assigned, the Fee Proposals will be opened and scored in accordance with the standards identified above. The Respondent's Fee Proposal Score will be added to its Technical Score to obtain a total Proposal Score.

6. The Total Proposal Scores will be used to create a short list of three Respondents to be interviewed by the evaluation team, at the sole discretion of the District. If the Total Proposal Score for the Respondent ranked fourth is within 15 points of the third ranked Respondent, then

the District may, at its sole discretion, short list the fourth Respondent as well. Respondents not on the short list will not be eligible for further consideration for award.

7. Prior to the interviews, the District will develop standard questions to ask of each presenter, which the District may or may not share with the short-listed Respondents prior to the interviews. The interview will be worth up to 100 points.

8. After the interviews, the interview score will be added to the Total Proposal Score for each interviewed Respondent. The District will rank Respondents by highest to lowest score (highest to lowest best value score). If the District elects to proceed with award, then, in a Notice of Intent to Award, the District shall publicly announce the rankings and scores, identify the intended awardee offering the best value, identify the intended awardee's price, and state the date of the Board meeting at which the award will be recommended.

9. Proposals will be opened privately to assure confidentiality and avoid disclosure of the contents to competing Respondents prior to and during the review, evaluation, and negotiation processes. However, to the extent that the submittals are public records under California law, they may be released to members of the public if specifically requested under the California Public Records Act.

10. The District reserves the right to request additional information at any time, which, in its sole opinion, is necessary to assure that a Respondent's competence, number of qualified employees, business organization and financial resources are adequate to perform the required lease-leaseback services for the District.

11. If the Respondent to which the LLB instrument is awarded fails to execute the Site Lease and Facilities Lease within two weeks following award by the Board, then the Board may award the LLB Instrument to the next-highest scored Respondent if the Board finds the award to be in the best interest of the District

VII. General Information

1. Amendments. The District reserves the right to cancel or revise in part or in its entirety this RFP. If the District cancels or revises this RFP, then it will do so by addenda posted to the District's website and provided to Respondents. The District also reserves the right to extend the date responses are due.

2. Inquires. Any questions regarding this RFP or selection process may be directed in writing to the Facilities Development Department office at 2 Tiger Way, Bldg. #2, Roseville, CA 95678 attention Scott Davis or via email to scdavis@rjuhsd.us. Applicants are requested not to contact other District staff or Board members in connection with this selection process. Any applicants who violate this request may be disqualified from further consideration.

   The District will reply regarding substantive issues by addenda which will be uploaded to the District's website. It is the responsibility of the Respondent to check the District's website for updated information prior to the Proposal due date. Questions received after the deadline noted in the RFP may not be answered. Only questions answered by formal written addenda will be binding.

   Respondents are encouraged to submit questions regarding any ambiguity, uncertainty, or other perceived flaw in this RFP, or any proposed changes to the Site Lease or Facilities Lease, as soon as the issue is identified. Any such issue which is not raised with the District's designated representative prior to the deadline to submit Proposals shall be waived, and the District will not consider any challenge based on the contents, structure, or terms of this RFP after the Proposal deadline. **Specifically, the District does not intend to consider any requested substantive changes to the Facilities and/or Site Leases after the Proposal**

deadline, other than to insert information about the selected LLB Entity and its pricing information, unless such changes were proposed prior to the question submittal deadline and disclosed to other Respondents as potentially acceptable changes in an addendum.

The District shall not be obligated to respond to any question unless it is submitted in writing to the District designated representative identified above. The District shall be bound only by written responses to questions contained in an addendum to the RFP. Oral responses, or email responses, shall not be binding on the District. If the District approves any change to the language of the Facilities Lease or Site Lease, that change will be shared with all Respondents by addendum identifying the optional alternate language.

VIII. Special Conditions

1. Non-Discrimination. The District does not discriminate on the basis of race, color, national origin, religion, age, ancestry, medical condition, disability or gender in consideration for an award of contract.

2. Drug-Free Policy and Fingerprinting. The selected LLB Entity shall be required to complete any and all fingerprinting requirements and criminal background checks required by State law and shall also be required to complete a Drug-Free workplace certificate.

3. Costs. Costs of preparing a Proposal in response to this RFP are solely the responsibility of the Respondent.

4. Prevailing Wages. Respondents are advised that this Project is a public work for purposes of the California Labor Code, which requires payment of prevailing wages. These rates are set forth in a schedule that may be found on the California Department of Industrial Relations home page (www.dir.ca.gov). Any LLB Entity to which a contract is awarded must pay the prevailing wage rates, post copies thereof at the job site, and otherwise comply with applicable provisions of State law.

5. Bonding. The successful LLB Entity will be required to furnish Performance and Payment (Material and Labor) Bonds in the amount of one hundred percent of the TBR after being directed to commence Phase II work.

6. Limitations. This RFP does not commit the District to award a contract, to defray any costs incurred in the preparation of a Proposal pursuant to this RFP, or to procure or contract for work.

7. Russian Sanctions. By submitting a Proposal, the Respondent represents that it is familiar with Executive Order N-6-22 issued by Governor Newsom on March 4, 2022 and that it is and will be in compliance with all Orders providing for economic sanctions against Russia.

IX. General Conditions Costs and Other Project Costs - See attached Exhibit C

X. Fee Proposal – See attached Exhibit D (To be included in a sealed envelope)

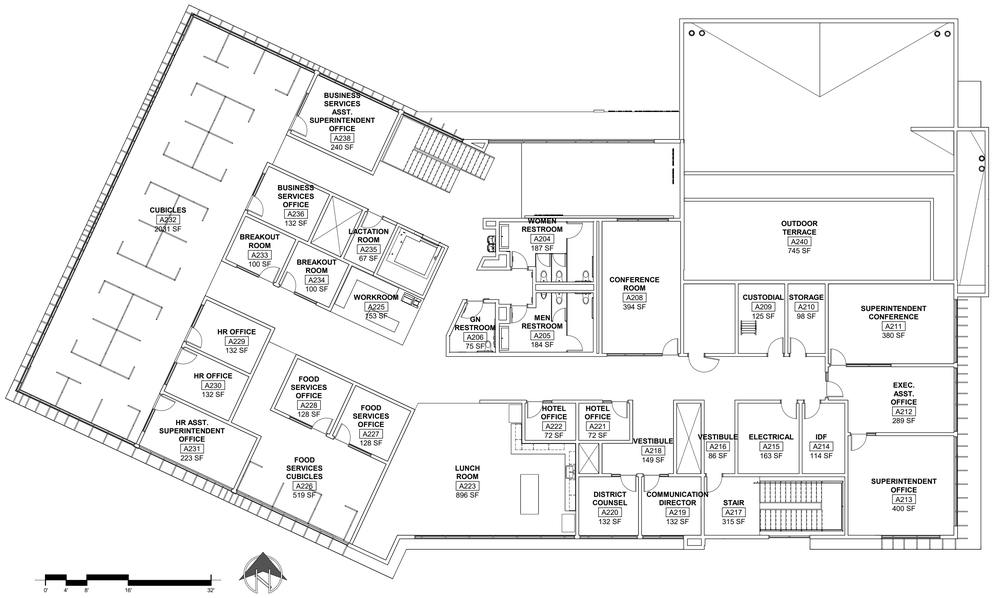
XI. Facilities Lease – See attached Exhibit E

XII. Site Lease – See attached Exhibit F

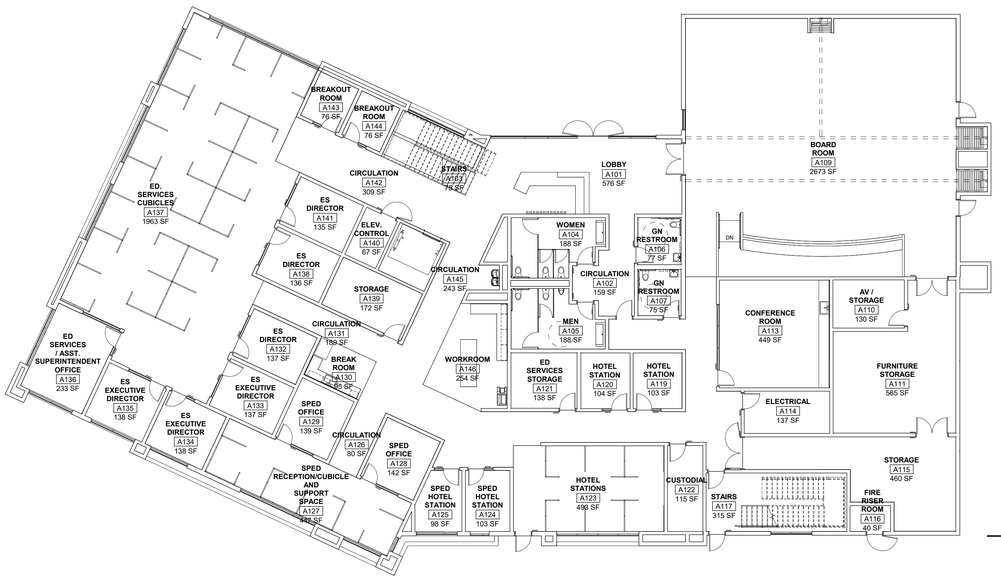
RFP EXHIBIT A

NEW DISTRICT OFFICE

07/20/2022



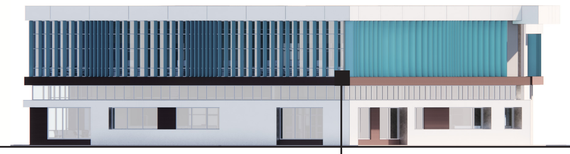
SECOND FLOOR



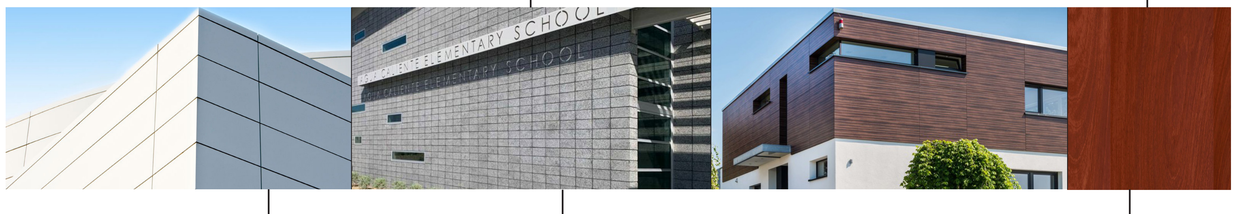
FIRST FLOOR



NORTH ELEVATION



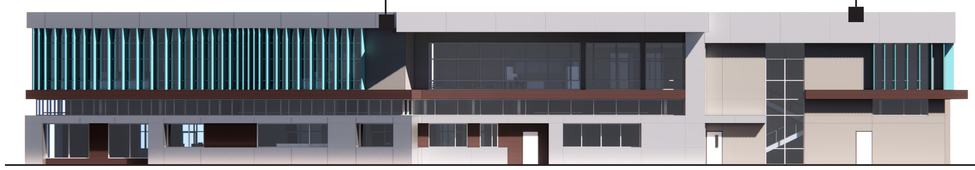
EAST ELEVATION



METAL PANEL

MASONRY BLOCK

COMPOSITE WOOD PANELS

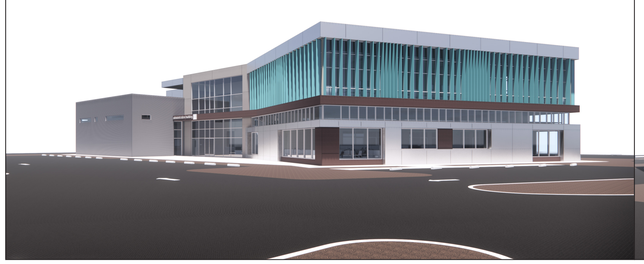


SOUTH ELEVATION

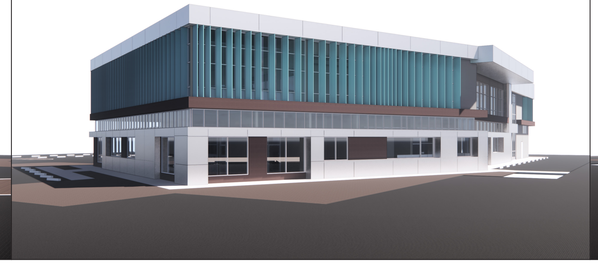


WEST ELEVATION

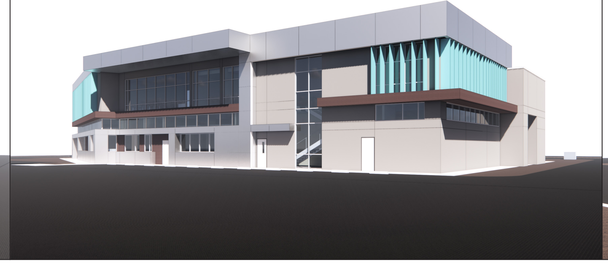
A



B



C



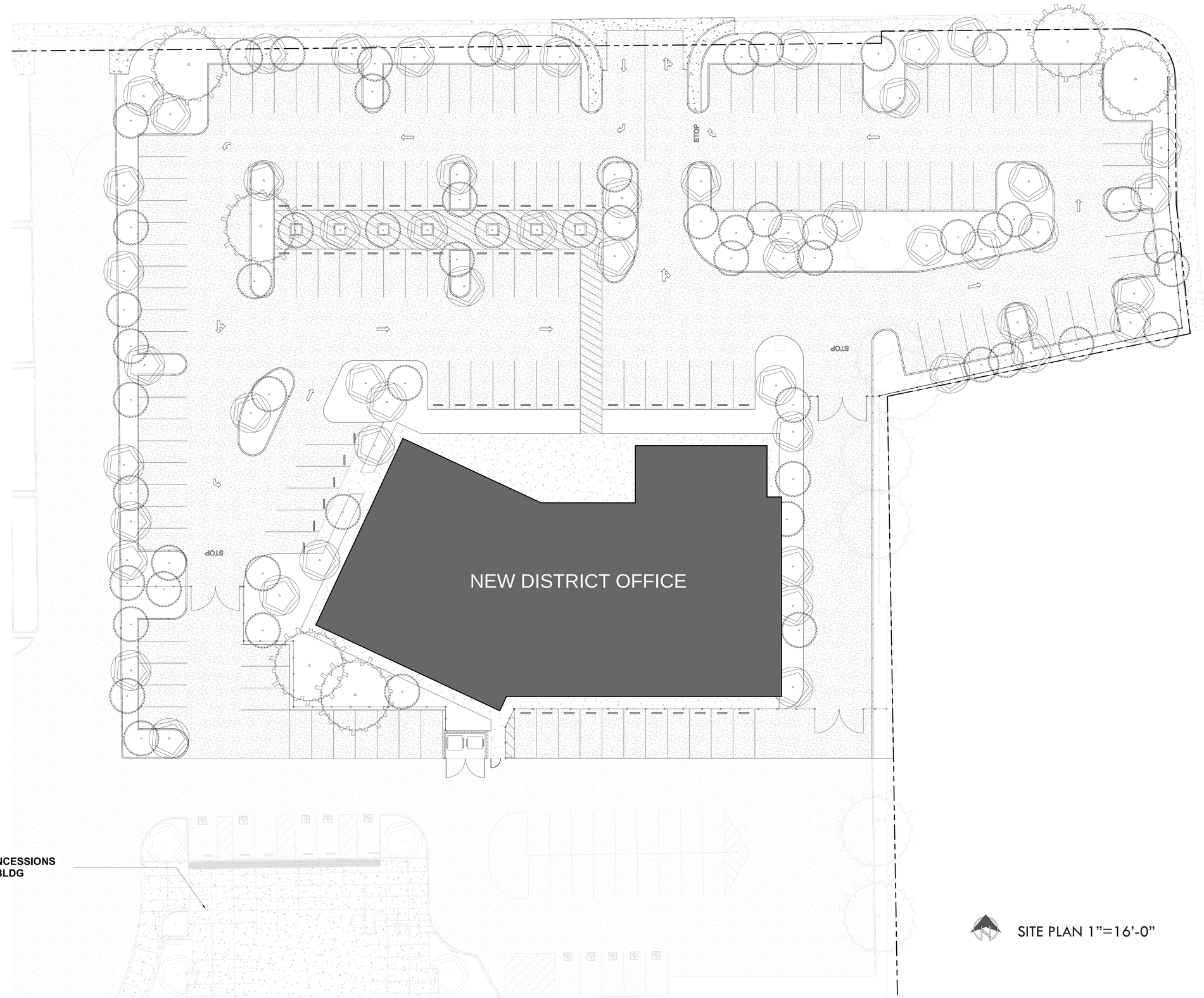
D



NEW DISTRICT OFFICE

07/20/2022

rga A studio of HMC Architects



SITE PLAN 1”=16’-0”

RFP EXHIBIT B
DVBE Good Faith Efforts Outreach Requirements

Definitions:

"Disabled Veteran Business Enterprise" (DVBE) means a business concern that is certified as a DVBE by the Department of General Services, Office of Small Business and Disabled Veteran Business Enterprise Services (OSDS).

"Entity" means the Lease-Leaseback Entity that will construct the Project.

"Participation Goal" or "Goal" means a numerically expressed DVBE objective that the Entity is required to make efforts to achieve in accordance with Section 17076.11 of the Education Code.

"Good Faith Efforts" means that the Entity took all necessary and reasonable steps to achieve the DVBE Participation Goal which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DVBE participation, even if they were not fully successful. Good Faith Efforts are further delineated below.

DVBE Certification:

In accordance with Education Code section 17076.11, this District has a Participation Goal for DVBEs of three percent (3%) per year. For any work performed by a DVBE subcontractor (including materials suppliers) to be counted toward meeting the DVBE Participation Goal, such business concern must possess current and valid certification as a DVBE through the OSDS. In addition, the work must conform to the most current regulations and requirements as published by the California Department of General Services (DGS) and/or OSDS.

A DVBE cannot self-certify. A printout from the DGS certification website (https://caleprocure.ca.gov/pages/PublicSearch/supplier-search.aspx) verifying current DVBE status must be provided for each DVBE participating in the contract. The website printout must be provided with the Proposal (for DVBEs proposed with the Proposal) or during establishment of the Total Base Rent. The District will not give Entity DVBE credit for any DVBE for which Entity fails to provide the required status verification.

Good Faith Efforts

The Entity shall either commit to meeting the Participation Goal or demonstrate Good Faith Efforts to do so, as described below. All DVBEs for which the Entity is claiming credit (including the Entity itself if it is a DVBE) must be listed on the Subcontractor listing form and identified as DVBEs, even if the work to be performed is less than one-half of one percent (0.5%) of the bid amount, involves supply of materials, or is to be performed by a lower-tier subcontractor.

Although Good Faith Efforts have been eliminated from Public Contract Code sections 10115 *et seq*., the District's obligation is separately stated under Education Code section 17076.10, so the District may find Entity to have complied with the DVBE requirements if it establishes Good Faith Efforts. In order to establish Good Faith Efforts, Entity must demonstrate at least the following directly and/or through bidders for the subcontracts:

1. Select portions of the work for which to solicit DVBEs in order to increase the likelihood that the DVBE goals will be achieved. This may include breaking out contract work items into smaller units.
2. Search at least the OSDS DVBE database to identify DVBEs to solicit to perform the portions of work identified. Print the search results to include with the Good Faith Efforts documentation.
3. Advertise for DVBE participation in focus or trade publications reasonably expected to reach DVBEs in the region as early in the process as is practicable. Depending on the project and results, multiple advertisements may be appropriate. Generally, the first publication should occur no later than one week before bids are due, whichever is earlier. Submit a copy of the advertisement(s) with the Good Faith Efforts documentation.
4. Solicit interest from identified DVBEs (from the OSDS database or otherwise) as early in the bidding process as practicable to allow the DVBEs to respond to the solicitation and submit a timely bid. Solicitations may be by phone, fax, email, letter, or other reasonable means, but must be documented. Submit documentation of all outreach efforts with the Good Faith Efforts documentation. Include copies of all DVBE responses.
5. Follow up initial solicitations. Document all such efforts and DVBE responses as part of the Good Faith Efforts documentation.
6. Work with interested DVBEs, including providing adequate information about the project and portions of work available and negotiating in good faith with interested DVBEs to assist them with being able to bid. Document all such efforts with the Good Faith Efforts documentation.

Substitutions

Entity and its subcontractors must use the DVBE subcontractor(s) and/or supplier(s) proposed unless Entity requests and receives authorization to substitute from the District. A DVBE subcontractor or supplier shall be replaced by another DVBE if possible. At a minimum, any request for substitution must include:

(1) The reason for the substitution, which shall be limited to the circumstances permitted under Public Contract Code section 4107(a).
(2) The identity of the listed DVBE and the name, address, contractor number, and DIR registration number of the proposed replacement.
(3) If a DVBE cannot be identified as a replacement, documentation of efforts to find available DVBEs.

The DVBE shall be given the rights afforded by Public Contract Code section 4107 prior to the District acting on a requested substitution.

RFP Exhibit C
Allowable General Conditions Costs

A		Item				UNIT COSTS				TOTAL COSTS					
L	DETAILS	Code	Description	Qty.	Manhours/	Labor	Material	Equip.	Sub	Labor	Material	Equip.	Sub	Line Item	Item
T					Unit	$	$	$	$	$	$	$	$	Unit$	Total $
Report DOES NOT include Taxes & Insurance or Indirect Costs.															
Administrative requirements															
			Site permits By Owner		LSUM										
			Mailing & shipping		MO										
			Drug testing & finger printing program		LS										
Administrative requirements															
Minor Item Code 01310.000 Project management and coordination															
			Project Manager		Week										
			Superintendent-full time		Week										
			Project engineer		Week										
			Project coordinator		Week										
			Certified payroll clerk		Week										
			Building layout		MH										
			Site layout		MH										
Project management and coordination															
Construction progress documentation															
			Project photographs & videos		LS										
			Schedule		Week										
			Expediting		Week										
			Job office supplies		MO										
			As-built drawings		LSUM										
			O & M manuals		EACH										
Construction progress documentation															
Administrative requirements															

A		Item				UNIT COSTS				TOTAL COSTS					
L	DETAILS	Code	Description	Qty.	Manhours/	Labor	Material	Equip.	Sub	Labor	Material	Equip.	Sub	Line Item	Item
T					Unit	$	$	$	$	$	$	$	$	Unit$	Total $
Temporary facilities and controls															
Temporary utilities															
			Construction electrical utilities		Month										
			Temp Power		MO										
			Temp elect is in place		LS										
			Elect Distribution		Sq ft										
			Temporary Lighting		Sq ft										
			Construction water utilities		Month										
			Drinking water & ice		WEEK										
			Water distribution		WK										
Temporary utilities															
Construction facilities															
			Weekly SWPPP		Week										
			Job office trailer for IOR		Month										
			Temporary toilet		MO										
			Project plans by District		LSUM										
			Temporary telephone		mo										
			Construction cellular phones		Month										
01520.000 Construction facilities															
01540.000 Construction aids															
			Equipment Rental		MO										
			Expendable tools & equip		LS										
			Gas, oil & grease		MO										
			Weather protection not included		ls										
			Temporary heat not included		ls										
			Forklifts		Month										
01540.000 Construction aids															

A		Item				UNIT COSTS				TOTAL COSTS					
L	DETAILS	Code	Description	Qty.	Manhours/	Labor	Material	Equip.	Sub	Labor	Material	Equip.	Sub	Line Item	Item
T					Unit	$	$	$	$	$	$	$	$	Unit$	Total $
Temporary barriers and enclosures															
			Construction fencing		LNFT										
			Temp fire protection		MO										
			Safety work		LS										
Temporary barriers and enclosures															
Project identification															
			Project sign		Each										
			Other signs		Each										
Project identification															
Temporary facilities and controls															
Execution requirements															
Cleaning															
			Housekeeping		WK										
			Final Cleaning		WK										
			Final clean-up – sub		LS										
			Dumpsters		Month										
Cleaning															
Execution requirements															
ESTIMATE TOTALS															

(Include this Exhibit in a sealed envelope as part of the New District Office Proposal Response)

Exhibit D – Fee Proposal Form for Lease-Leaseback Services for the New District Office Building

The undersigned hereby offers the Preconstruction Services Fee, General Conditions, Bonds and Insurance, Entity's Fee, and post-construction financing amount in the amounts stated below, for the furnishing of all services including, without limitation, for the furnishing of all labor, materials, tools, equipment, apparatus, facilities, transportation, and permits for the construction of the above referenced project, in accordance with all the provisions of the RFP, including all attachments, and to the satisfaction of the District

The estimated "Direct Cost of Construction" work for this Project is **$20 million** (excluding the costs in the table below). Construction Contingency for the LLB Entity's use, after District verification and approval, will be 3% of the Direct Cost of Construction. Do not make any changes to the table below. Proposer shall complete the information in the following table:

_____ _____

(Signature of Proposer) **(Name of Firm)**

Services:	Pricing Basis	Evaluated Price.
* Preconstruction Services 1. Collaboration/Meetings 2. Site Investigation (general) 3. Preliminary Project Schedule 4. Preliminary Cost Estimates 5. Value Engineering 6. Constructability Review 7. Development of Total Base Rent 8. Long Lead Time Items (Cost of services to evaluate long lead time items only; ***excluding*** allowance) 9. Anticipated Expenses Total	FIXED PRICE	Fixed price 1. $ _____ 2. $ _____ 3. $ _____ 4. $ _____ 5. $ _____ 6. $ _____ 7. $ _____ 8. $ _____ 9. $ _____ Total: $ _____
**LLB General Conditions cost per Exhibit C of this RFP.	FIXED PRICE Cost per month $_____	Fixed Price in dollars (18 month duration times amount on the left) $_____
***LLB Cost of Bonds and Insurance-Refer to Exhibit F (Facilities Lease). This same % will be used once the total TBR amount is determined.	Price expressed as a percent of the Estimated Direct Cost of the Work _____ %	Fixed Price in dollars (Estimated Direct Cost of Work times amount on the left) $_____
****Construction Phase Services Fee (Entity's Fee) as Specified in this RFP & Exhibit F. (Note: does not include the cost of performing the construction and direct costs, but shall cover Entity's Overhead and Profit associated with providing said Services. This fee cannot exceed 5.5% or proposer will be deemed non-responsive. This same percentage will be used once the total TBR amount is determined.	Prices expressed as a percent of the sum of the Estimated Direct Cost of Work plus General Conditions cost _____ %	Fixed Price in dollars (Sum of Estimated Direct Cost of Work plus General Conditions cost times percent at left) $_____
Total Price for Services (sum of dollar figures above)		$_____
Post-Construction Financing Rate	_____ %	N/A

(Include this Exhibit in a sealed envelope as part of the New District Office Proposal Response)

The above amounts are to be stated in figures only and will be LLB Entity's total compensation for all contract work, not including Entity Contingency. Any alteration, erasure, or change must be clearly indicated and initialed by the proposer. In the event of any error in the Fee Proposal, the individual fee percentages will prevail. The proposer agrees that the above fees will be held for at least 120 days following submittal of the Proposal.

*Preconstruction Services are more fully defined in Exhibit H to the Facilities Lease.

**LLB General Conditions is the figure provided by the LLB Entity's Fee Proposal Form for the project which also includes, but is not limited to, General Conditions of the Contract for Construction, project staff, temporary utilities, temporary facilities and other miscellaneous project costs as further referenced in Exhibit C to the RFP and not included in the direct cost of the work and the Construction Phase Services Fee (Entity Fee). Upon award of the Facilities Lease, this General Conditions cost becomes fixed as expressed in dollars, subject to later adjustment by the monthly rate if the Project duration changes.

*** The cost for bonds and insurances shall be inclusive of all of the requirements as noted in Exhibit F (Facilities Lease) to this RFP. The percentage bid in the table will be fixed and it will be applied against the actual TBR amount which will include the direct costs, general condition costs, Entity contingency, owner's contingency and any allowances. The amount noted on the right side of the table is for evaluation purposes only.

**** Construction Phase Services Fee shall be inclusive of all Proposer's profit, all price risk assumed in guaranteeing the Base Rent price, and all of LLB Entity's costs of performing the Construction Phase Services for the Project as specified in this RFP and associated Exhibits and in the final approved Construction Documents, including but not limited to any materials, payroll, overhead and administrative costs, travel and living expenses, licenses, incidentals, and any other fees or expenses expended or incurred when necessary for the performance of the Services and completion of the Project, and any other ancillary costs necessary to provide services for the turnover of the Project to the District in a condition fit for its intended use, all to be provided within the planned duration for the construction as specified in this RFP. The percentage bid will be fixed and applied against the actual direct cost of the work plus the General Conditions amounts. The amount noted on the right side column of the table is for evaluation purposes only. General Conditions costs and the cost of bonds and insurance are not part of Construction Phase Services Fee.

A Construction Contingency of 3% of the "Direct Cost of Construction" Work which excludes the Preconstruction Services, General Conditions, Overhead and Profit fee, Allowances and Contingencies will be provided for the Entity's use with prior District's approval, and is not to be included in the Fee proposal. The use of this contingency shall cover conflicts and ambiguities in the contract documents and any issues arising from a lack of coordination among and within the subcontractors' bid packages approved by the District. The LLB Entity shall return any unused portion of this contingency and any other project savings to the District as part of the final Pay Application. Costs incurred due to conflicts and ambiguities in the contract documents, and any issues arising from a lack of coordination among and within the subcontractors' scopes of work, and for any construction phase changes arising from subcontractors' performance, in excess of the LLB Entity's 3% contingency shall be borne by the LLB Entity.

In submitting the proposal as described herein, Proposer agrees that it has reviewed and agreed to all terms stated in this RFP and Associated Exhibits.

The proposed fees must be submitted on this Fee Proposal Form, completely filled out and in a sealed envelope, and delivered to the location listed in the solicitation document, or it will be disregarded.

End of Fee Proposal

RFP EXHIBIT E

SITE LEASE

RECITALS

WHEREAS Lessor, as defined below, on this ___ **Day of** _____**, 2022** holds title to that certain real property known as Roseville Joint Union High School District Office, located at 1750 Cirby Way, Roseville, in the County of Placer, which includes the buildings and the land under and around the facilities, a portion of which is more particularly shown as the shaded area on **Exhibit A** attached hereto and incorporated herein ("Site"), which Site is adequate to accommodate the Improvements referenced herein;

WHEREAS Lessor desires to allow construction of the new District Office Building (the "Improvements") to begin on the Site, as more particularly described in Exhibit A to the Facilities Lease, as referenced below;

WHEREAS Lessee, as defined below, desires to lease the Site from Lessor with the intent to perform preconstruction services and construct the Improvements on the Site;

WHEREAS Lessor intends to lease the Site to Lessee to permit Lessee to perform necessary preconstruction services and construct the Improvements on the Site at Lessee's sole cost, expense and risk; except as otherwise stated herein below and/or in the Facilities Lease;

WHEREAS Lessor is authorized under California Education Code section 17406 to lease the Site to Lessee, to require Lessee to construct the Improvements on the Site, and to lease from Lessee the Site and Improvements constructed thereon;

WHEREAS, on [date], 2022, the Governing Board of Lessor ("Board") determined that it is in the best interests of Lessor, and for the common benefit of the citizens residing in the school district, to construct the Improvements by leasing the Site to Lessee and by entering into the Facilities Lease, under which Lessor will sublease the Site and lease the Improvements from Lessee, and has duly authorized the lease of the Site and sublease of the Site and Improvements;

WHEREAS Lessee is duly authorized to lease the Site, to construct the Improvements thereon, and to sublease the Site and Improvements to Lessor, and has duly authorized the lease of the Site and sublease of the Site and Improvements;

WHEREAS Lessor and Lessee have each 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 this Site Lease ("Lease"), and are now each duly authorized to execute and enter into this Lease;

WHEREAS the parties further acknowledge and agree that they have entered into this Lease and the Facilities Lease, as defined below, pursuant to Education Code section 17406 as the best available and most expeditious means for Lessor to satisfy its substantial need for the Improvements;

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

1. BASIC TERMS

This **Section 1** contains the Basic Terms of this Lease between the Lessor and Lessee named below. Other Sections of the Lease referred to in this **Section 1** explain and define the Basic Terms and are to be read in conjunction with the Basic Terms.

1.1. **Date of Lease**: _____**, 2022**

1.2. **Lessor**: Roseville Joint Union High School District ("Lessor")

Address of Lessor: 1750 Cirby Way
Roseville, California 95661

Lessor shall be represented with respect to the obligations herein by the Superintendent of the District, or any other person authorized by the Board of Trustees of the District to act on its behalf with respect to this Lease. The person or persons so designated by Lessor shall be authorized in writing, and notice shall be served on Lessee at the address stated herein for notice. Lessor shall provide such notice designating its Authorized Representative within five (5) business days of the full and final execution of this Lease.

1.3 **Lessee**: _____, a California Corporation ("Lessee")

Address of Lessee: _____

Lessee shall be represented with respect to the obligations herein by the person or persons authorized by Lessee's governing board to act on its behalf with respect to this Lease. The person or persons so designated by Lessee shall be authorized in writing, and notice shall be served on Lessor at the address stated herein for notice. Lessee shall provide such notice designating its Authorized Representative within five (5) business days of the full and final execution of this Lease.

1.4 **Site**: That certain real property, including the buildings and the land under and around the buildings on a portion of the District Office located at 1750 Cirby Way, Roseville, California 95667, County of Placer, State of California and more particularly shown as the shaded area on **Exhibit A**, including any easements and other entitlements attached to the Site.

1.5 **Lease Term**: **Beginning on** the date this Lease is fully executed and **ending on** the last day of the term of the Facilities Lease provided that Lessor has paid to Lessee, or its assignee, all lease payments and other payments which may be due and owing under the Facilities lease, and provided that this Lease has not been earlier terminated. ("Lease Term").

1.6 **Permitted Uses**: (See **Section 5**) Any lawful use, subject to applicable zoning and governmental approvals.

1.7 **Brokers**: (If none, so state)
Lessor's Broker: None
Lessee's Broker: None

1.8 **Commission Payable to Lessor's Broker**: $ Not applicable.

1.9 **Initial Security Deposit**: $ None

1.10 **Vehicle Parking Spaces Allocated to Lessee:** 15 spaces in the parking lot near the area of work.

1.11 **Rent and Other Charges Payable by Lessee**:

1.11.1 BASE RENT: For the period set forth in **Section 1.5** above, the annual base rent shall be **Ten Dollars ($10.00)** payable as follows: Two Dollars ($2) upon executing the lease for the balance of 2022 and annually thereafter on January 1 of each year in the manner set forth in **Section 3.1** below.

1.11.2 OTHER PERIODIC PAYMENTS: (i) Taxes (See **Section 4.2**); (ii) Utilities (See **Section 4.3**); (iii) Insurance Premiums (See **Section 4.4**); and (iv) Condition of Property; Maintenance, Repairs and Alterations (See **Section 6**).

1.12 **Riders**: The following Riders are attached to and made a part of this Lease:
Exhibit A.

2 LEASE TERM

2.1 **Lease of Site For Lease Term**. Lessor leases the Site to Lessee, and Lessee leases the Site from Lessor, for the Lease Term. The Lease Term is for the period stated in **Section 1.5** above and shall begin and end on the dates specified in **Section 2.2**,

unless the beginning or end of the Lease Term is changed under any provision of this Lease.

2.2 **Lease Term**. This Lease shall commence on the date that this Lease is fully and finally executed by all parties. However, if the Facilities Lease between Lessor and Lessee is not fully executed within three (3) business days after the full and final execution of this Lease, then this Lease shall immediately terminate. This Lease shall expire, if not canceled, extended, or terminated earlier in accordance with its provisions and/or the provisions of the Facilities Lease, on the date upon which Lessor takes title to the Improvements pursuant to that certain Facilities Lease between the Lessor and Lessee for the Improvements ("Facilities Lease").

2.3 **Holding Over**. Lessee shall vacate the Site upon the expiration or earlier termination of this Lease. Lessee shall reimburse Lessor for, and indemnify Lessor against, all damages which Lessor incurs arising from or related to Lessee's delay in vacating the Site.

2.4 **No Merger.** The leasing of the Site by the Lessee to the Lessor pursuant to the Facilities Lease between Lessor and Lessee shall not affect or result in a merger of Lessor's interest under the Facilities Lease and its fee estate in the Site, and Lessor shall continue to have and hold its fee interest in the Site throughout the term of this Lease and the Facilities Lease. Lessee shall continue to have and hold a leasehold estate in the Site pursuant to this Lease and throughout the term hereof. As to the Site Lease, the Facilities Lease shall be deemed to constitute a sublease.

3 RENT

3.1 **Time and Manner of Payment**. Subject to the provisions of this Lease, Lessee shall pay Lessor the Base Rent ("Rent"), in annual installments, without offset, deduction or prior demand on the first business day of each January of the Lease Term. Notwithstanding the above, the initial Rent payment for **2022** shall be due within five (5) business days following the full and final execution of this Lease.

3.2 The Rent shall be payable at Lessor's address or at such other place as Lessor may designate in writing.

4 OTHER CHARGES PAYABLE BY LESSEE

4.1 **Additional Rent**. All charges payable by Lessee other than Rent are called "Additional Rent." Unless this Lease provides otherwise, Lessee shall pay all Additional Rent then due within fifteen (15) days of when the Additional Rent

becomes due and payable, but no later than the last business day on which the Additional Rent can be paid without incurring additional costs or penalties.

4.2 **Taxes**.

4.2.1 **Personal Property Taxes**.

4.2.1.1 Lessee shall pay all taxes charged against trade fixtures, furnishings, equipment or any other personal property belonging to Lessee. Lessee shall try to have personal property taxed separately from the Site.

4.2.1.2 If any of Lessee's personal property is taxed with the Site, Lessee shall pay Lessor the taxes for the personal property within fifteen (15) days after Lessee receives a written statement from Lessor for such personal property taxes.

4.2.2 **Real Property Taxes**. Except to the extent it is exempt from doing do, Lessor shall pay all real property taxes on the Site (including any fees, taxes or assessments against, or as a result of, any Lessee improvements installed on the Site and the term "Site" for the purposes of this **Section 4.2** shall mean and include all improvements of any nature, including buildings) during the Lease Term. "Real property tax" means: (i) any fee, levy, charge, assessment, penalty or tax imposed by any taxing authority against the Site; (ii) any tax or charge for fire protection, streets, sidewalks, road maintenance, refuse or other services provided to the Site by any governmental agency; (iii) any tax imposed upon this transaction or based upon a reassessment of the Site due to a change of ownership, as defined by applicable law, or other transfer of all or part of Lessor's interest in the Site; and (iv) any charge or fee replacing any tax previously included within the definition of real property tax.

4.3 **Utilities**. Lessee shall pay, directly to the appropriate supplier, the cost of all temporary heat, telephone, refuse disposal and other utilities and services supplied to the Site for the purpose of constructing the Improvements.

4.4 **Insurance Policies**. In addition to the coverages and/or limits required in the Facilities Lease, Lessee shall provide and maintain during the Lease Term the following minimum insurance coverages.

4.4.1 **Worker's Compensation and Employer's Liability** insurance as required by any applicable law or regulation.

Employer's Liability insurance shall be in an amount no less than;

$1,000,000 Each Accident for bodily injury by accident
$1,000,000 Policy Limit for bodily injury by disease
$1,000,000 Each Employee for bodily injury by disease

If there is potential for injury to employees under the U.S. Longshoreman's and Harbor Workers Compensation Act, the Jones Act or under laws, regulations or statutes applicable to maritime employees, coverage shall be included for such injuries or claims.

4.4.2 **General Liability Insurance** **Lessee** shall carry Commercial General Liability insurance coverage at least as broad as the ISO CG 00 01 on all operations by or on behalf of the **Lessee** providing insurance for the limits of liability indicated below and including coverage for:

(1) Premises and Operations
(2) Products and Completed Operations
(3) Contractual Liability (including **Lessee's** indemnification obligations under this Lease)
(4) Broad Form Property Damage (including Completed Operations)
(5) Explosion, Collapse, and Underground Hazards
(6) Personal Injury Liability

Except with respect to Bodily Injury and Property Damage included within the Products and Completed Operations Hazards, the aggregate limit, where applicable, shall apply separately to this location.

The limits of liability shall not be less than:

$2,000,000 Each Occurrence (Combined Single Limit for Bodily Injury & Property Damage)
$2,000,000 Personal Injury Liability
$4,000,000 Aggregate for Products and Completed Operations
$4,000,000 General Aggregate

The Lessor**,** the Architect, the Construction Manager, and any other Consultants of the Lessor, and each of their officers, officials**,** directors, trustees, agents, employees and volunteers (hereinafter collective "Additional Insureds") shall be named as Additional Insureds under the **Commercial General Liability** (Occurrence Form) policy using (GC 2010

11 85 Form B or equivalent). Coverage for the additional insureds shall be provided by a policy provision or by an endorsement. The policy shall stipulate that the insurance afforded the Additional Insureds shall apply as primary insurance and that any other insurance carried by the Additional Insureds will be excess only and will not contribute with this insurance.

4.4.3 **Commercial Automobile Liability** insurance policy (ISO CA 00 01 or equivalent) covering Bodily Injury, Property Damage and Contractual Liability coverage for "Any Auto" (Symbol 1) which includes coverage for any owned, hired, borrowed and non-owned automobile, trailer, and equipment coverage, with combined single limit of not less than $1,000,000. The Lessor**,** the Architect, the Construction Manager, and any other Consultants of the Lessor, and each of their officers, officials**,** directors, trustees, agents, employees and volunteers shall be named as Additional Insureds under the **Commercial Automobile Liability**.

4.4.4 **Umbrella or Excess Liability Policy** shall be carried in the amount of $10,000,000. The policy shall be "following form" in excess of the above captioned policies. Evidence of this coverage shall be provided on the certificate of insurance.

4.4.5 The above policies shall be endorsed or provide through policy provisions 30 days' notice of cancellation to the Lessor (Ten [10] days' notice for non-payment of premium). In addition, all policies shall by endorsement or policy provision waive subrogation against the **Lessor,** the Architect, Consultants, their Officers, Officials**,** Directors, Trustees, Agents and Employees.

4.4.6 Contractors and Subcontractors Insurance Requirements. If Lessee will be employing contractors at the site the **Lessee** shall require the contractors and all subcontractors and material suppliers of every tier to carry insurance coverages equivalent to those as outlined in Section 4.4 and the Facilities Lease (although lower limits as specified in Exhibit E to the Facilities Lease shall be acceptable). These contractors shall be required to name the Lessor**,** the Architect, the Construction Manager, and any other Consultants of the Lessor, and each of their officers, officials**,** directors, trustees, agents, employees and as Additional Insureds using (GC 2010 11 85 Form B or equivalent). The policy or endorsement shall stipulate that the insurance afforded the Additional Insureds shall apply as primary insurance and that any other insurance carried by the Lessor**,** the Architect, the Construction Manager, and any other Consultants of the Lessor, and each of their officers, officials**,** directors, trustees, agents, employees and volunteers will be excess only and will not contribute with this insurance. In addition all policies shall by endorsement or policy provision waive subrogation against

the Lessor. It is condition precedent that this insurance shall be in place before the Lessee allows any Contractor or material supplier on the site.

4.4.7 **Property Insurance.** For existing improvements, Lessor shall maintain property insurance covering loss or damage to the Site in the full amount of its replacement value.

4.4.8 **Payment of Premiums**. Lessee and Lessor shall pay all premiums for the insurance policies described in **Section 4.4** no later than the due date. Lessee shall deliver to Lessor a certificate of insurance, including any required Additional Insured Endorsements and Waivers of Subrogation, executed by an authorized officer of the insurance company, showing that the insurance which Lessee is required to maintain under this Section is in full force and effect and containing such other information which Lessor reasonably requires.

4.4.9 General Insurance Provisions.

4.4.9.1 If, without Lessor's consent, Lessee fails to deliver any policy, certificate or renewal to Lessor required under this Lease within the prescribed time period or if any such policy is canceled or coverage does not meet the requirements of this Lease during the Lease Term, Lessor may, after providing Lessee written notice and a reasonable opportunity to cure, obtain such insurance, in which case Lessee shall reimburse Lessor for the cost of such insurance within fifteen (15) days after receipt of a statement that indicates the cost of such insurance.

4.4.9.2 Lessee shall maintain all insurance required under this Lease with companies holding a Bests' rating of no less than A-VII.

4.4.9.3 Any deductibles or self-insured retentions must be declared to and approved by the Lessor which amounts shall be no greater than $50,000. Any and all deductibles or self-insurance retentions in the above described liability insurance policies shall be assumed by and be for the account of, and at the sole risk of the Lessee.

5 USE OF PROPERTY

5.1 **Use of Premises**. Lessee shall have the right, subject to limitations in **Section 5.2,** to enter upon the Site to perform necessary investigation, preparation and other work in connection with preconstruction services and to construct the Improvements on the Site, pursuant to the Facilities Lease. Lessee shall have

the right to lease the Site and Improvements to Lessor under a Facilities Lease and accept rental payments from Lessor under such Facilities Lease.

5.2 **Manner of Use**. Lessee shall not cause or permit the Site to be used in any way which constitutes a violation of any law, ordinance, or governmental regulation or order, or which constitutes a nuisance or waste. Lessee shall obtain and pay for all permits required for Lessee's occupancy of the Site and shall promptly take all actions necessary to comply with all applicable statutes, ordinances, rules, regulations, orders and requirements regulating the use by Lessee of the Site.

5.3 **Right of Entry.** Lessor reserves the right for any of its duly authorized representatives to enter upon the Site at any reasonable time to inspect the same and/or the Improvements, provided that, during construction, Lessor follows all safety precautions required by Lessee.

5.4 **Liens**. Lessee agrees to keep the Site and every part thereof free and clear of any and all liens, including, without limitation, pledges, charges, encumbrances, claims, materialmen liens, mechanic liens and other liens for or arising out of or in connection with work or labor done, services performed, or materials or equipment used or furnished for or in connection with the Site or the Improvements, provided that all payments that are due to Lessee under the Facilities Lease are current, subject to Lessor's rights to withholding thereunder. Lessee further agrees to pay promptly and fully and discharge any and all claims on which any such lien may or could be based, and to save and hold Lessor free and harmless from any and all such liens or claims, and any lawsuits or other legal proceedings pertaining thereto.

5.5 **Hazardous Materials**. As used in this Lease, the term "Hazardous Material" means any flammable items, explosives, radioactive materials, hazardous or toxic substances, material or waste or related materials, including any substances defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials" or "toxic substances" now or subsequently regulated under any applicable federal, state or local laws or regulations, including without limitation petroleum based products, paints, solvents, lead, cyanide, DDT, printing inks, acids, pesticides, ammonia compounds and other chemical products, asbestos, PCBs and similar compounds, and including any different products and materials which are subsequently found to have adverse effects on the environment or the health and safety of persons. Lessor has disclosed any contamination of the Site by Hazardous Materials of which it is aware. If Lessor becomes aware of any circumstance which would change or render this representation incorrect, in whole or in part, Lessor will give immediate written notice to Lessee. Lessee is entitled to rely on Lessor's disclosures. Lessee shall not knowingly violate any law or regulation of any federal, state or local governmental authority having jurisdiction over hazardous substances. If Lessee

becomes aware of any contamination or potential contamination of the Site by Hazardous Materials, Lessee will give immediate written notice to Lessor and shall cooperate in any investigation of potential contamination of the Site by Hazardous Materials. Lessee shall have no responsibility or liability for Hazardous Materials that are pre-existing on the Site or that are brought to the Site by others for whom Lessee is not liable.

To the fullest extent permitted by law, the Lessor shall defend, indemnify and hold harmless the Lessee, its subcontractors, sub-subcontractors, consultants, and their respective agents and employees, from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from the presence of hazardous materials or substances at the Site, except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.

5.6 **Quiet Possession**. Subject to any rights that Lessor may obtain under the Facilities Lease to possession and enjoyment of the Site and Improvements and subject to the terms of this Lease, Lessee may occupy and enjoy the Site during the full term hereof, so long as Lessee pays the rent and complies with all other terms of this Lease. Lessor will, at the request of Lessee, and to the extent that it may lawfully do so, join in any legal action in which Lessee asserts its right to such possession and enjoyment.

6 CONDITION OF PROPERTY; MAINTENANCE, REPAIRS AND ALTERATIONS

6.1 **Existing Conditions**. Except as provided herein, Lessee acknowledges that neither Lessor nor any agent of Lessor has made any representation as to the condition of the Site or the suitability of the Site for Lessee's intended use. Lessee acknowledges that it has investigated the Site and familiarized itself with relevant site conditions, and will perform further Site investigation during preconstruction services to the extent necessary to complete the Improvements and as set forth in the Facilities Lease. Lessor represents that it is not aware of any concealed conditions on or relating to the Site, including such things as physical obstructions, unusual soil conditions, hazardous materials contamination, encroachments, overlaps, boundary line disputes, laws, ordinances, governmental regulations, orders, or any other matters that would interfere with Lessee's intended use of the Site.

6.2 **Exemption of Lessor from Liability**. Not Used.

6.3 **Lessee's Obligations**.

6.3.1 Except as provided in **Section 6.5** (Damage and/or Destruction to Site) and **Section 6.7** (Eminent Domain), Lessee shall keep all

portions of the Site (including structural, nonstructural, interior, exterior, and landscaped areas, portions, systems and equipment) in good order, condition and repair (including interior repainting and refinishing, as needed). If any portion of the Site or any system or equipment in the Site, which Lessee is obligated to repair cannot be fully repaired or restored**,** Lessee shall promptly replace such portion of the Site or system or equipment in the Site, regardless of whether the benefit of such replacement extends beyond the Lease Term. If any part of the Site is damaged by any act or omission of Lessee, Lessee shall pay the cost of repairing or replacing such damaged property, except to the extent such damage is covered by any insurance required under this Lease and Lessee shall pay the deductible for any such insurance coverage. It is the intention of Lessor and Lessee that at all times Lessee shall maintain the portions of the Site in accordance with industry standards for construction sites.

6.3.2 Except as set forth in **Section 6.3.1**, Lessee shall fulfill all of Lessee's obligations under this **Section 6.3** at Lessee's sole expense. If Lessee fails to maintain, repair or replace the Site as required by this **Section 6.3,** Lessor may, upon thirty (30) days' prior notice to Lessee (except that no notice shall be required in the case of an emergency), enter the Site and perform such maintenance or repair (including replacement, as needed) on behalf of Lessee. In such case, Lessee shall reimburse Lessor for all costs incurred in performing such maintenance or repair immediately upon demand.

6.4 **Alterations, Additions, and Improvements**.

6.4.1 All alterations, additions, and improvements to the property shall be done in a good and workmanlike manner, in conformity with all applicable laws and regulations.

6.4.2 Lessee shall pay when due all claims for labor and material furnished to the Site.

6.5 **Damage and/or Destruction to Site.** Lessee shall notify Lessor in writing immediately upon the occurrence of any damage and/or destruction to the Site. In the event of such damage and/or destruction, the terms of the Facilities Lease, Article 6, Section 6.2 and/or 6.2.2 shall govern the rights and obligations of the parties except that, if Lessor does not elect to terminate this Lease, then, regardless of the cause or extent of the damage or destruction, or the amount of insurance available, this Lease and the payments due hereunder shall remain in effect.

6.6 **Condition upon Termination**. Upon the termination of the Lease, Lessee shall surrender the Site to Lessor in accordance with the provisions of Article 19 of Exhibit D to the Facilities Lease. All alterations, additions and improvements which Lessor has not required Lessee to remove shall become Lessor's property and shall be surrendered to Lessor upon the expiration or earlier termination of the Lease, except that Lessee may remove any of Lessee's machinery or equipment which can be removed without material damage to the Site. Lessee shall repair, at Lessee's expense, any damage to the Site caused by the removal of any such machinery or equipment.

6.7 **Eminent Domain.** If all of the Site shall be taken permanently under the power of eminent domain, the term of this Lease shall cease as of the day possession shall be so taken. 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 Lease shall continue in full force and effect and shall not be terminated by virtue of such taking, and the parties waive the benefit of any law to the contrary, and (2) there shall be a partial abatement of Lease payments due hereunder as a result of the application of the net proceeds of any eminent domain award to the prepayment of the Lease payments hereunder. The net proceeds of any eminent domain or condemnation shall be payable to Lessor.

6.8 Lessor hereby covenants and agrees, to the extent that it may lawfully do so, that as long as the Facilities Lease and this Lease remain in effect, Lessor will not voluntarily suffer or exercise the power of condemnation or eminent domain with respect to the Site and/or Improvements. Lessor further covenants and agrees, to the extent it may lawfully do so, that, if for any reason, the foregoing covenant is determined to be unenforceable or if Lessor should fail or refuse to abide by such covenant and condemns or takes the Site or Improvements by eminent domain, then Lessor agrees that the appraised value of the Improvements shall not be less than the aggregate total of all Lease Payments provided for under this Lease, less any Lease Payments previously made; provided, however, that if the taking occurs prior to the completion of the Improvements, Lessee shall be entitled to the value of construction completed, less the value of any Lease Payments made by the Lessor under the Facilities Lease.

7 ASSIGNMENT AND SUBLETTING

7.1 **Lessee Assignment and Subleasing**. Except as provided in this **Section 7.1 and Section 2.4**, Lessee shall not assign the Lease or its duties and obligations hereunder, or enter into any sublease of the Site or Improvements, with any other person, firm, without the prior written consent of Lessor. Lessor's acceptance of rent from any other person is not a waiver of any provision of this **Section 7**. Consent to one transfer is not a consent to any subsequent transfer. This Lease may be assigned to

an affiliate of Lessee provided that the representations, covenants, and warranties in this Lease are not impaired or violated. Contracting or subcontracting with licensed contractors is not considered an assignment or sublease.

7.2 **Restrictions on Lessor.** Except to the extent that the Site may be subject to condemnation proceedings or other proceedings pursuant to which Lessor may be legally obligated to transfer an interest in the Site, Lessor agrees that it will not mortgage, sell, encumber, assign, transfer or convey the Site or any portion thereof during the term of this Lease without Lessee's written authorization, which shall not be unreasonably withheld. Lessor is obligated to perform its obligations under this Lease only during the time that Lessor owns such interest or title in the Site. Lessor shall be relieved of its obligations under this Lease to be performed on or after the date of transfer if Lessor transfers its right in or title to the Site either with Lessee's authorization or in response to a court order.

7.3 To the extent permitted by law, Lessor shall not abandon the Site for its intended use as stated in this Lease and the Facilities Lease, for the Lease Term, nor seek other property to substitute for this Site.

8 DEFAULTS; REMEDIES

8.1 **Covenants and Condition**. Time is of the essence in the performance of all covenants and conditions set forth in this Lease.

8.2 **Default by Lessee**. Lessee shall be in material default under this Lease:

8.2.1 If Lessee fails to pay rent or any other charge pursuant to **Section 4** of this Lease within thirty (30) days after written notice of delinquency, or fails to pay any other sum due under this Lease within thirty (30) days of written demand notifying Lessee that such payment is due;

8.2.2 If Lessee fails to observe and perform any covenant, condition, or agreement in this Lease on its part to be observed or performed, other than as referenced in **Section 9.2.1**, for a period of thirty (30) days after Lessor provides written notice specifying such failure and requesting that it be remedied; provided, however, if the failure stated in the notice cannot be corrected within thirty (30) days, Lessor shall not unreasonably withhold its consent to an extension of such time if corrective action is instituted by Lessee within thirty (30) days and diligently pursued until the default is corrected. The notice required by this Section is intended to satisfy any and all notice requirements imposed by law on Lessor and is not in addition to any such requirement.

8.2.3 If Lessee abandons the Site.

8.2.4 If Lessee unreasonably refuses or fails to prosecute the work under the Facilities Lease 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.

8.2.5 If Lessee should be adjudged a bankrupt, or file for bankruptcy, or if Lessee should make a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of its insolvency, provided that such condition described in this subsection is not corrected or cured within thirty (30) days.

8.2.6 If Lessee persistently disregards any applicable law or regulation related to the Site or related to its lease or occupancy of the Site.

8.3 **Default by Lessor.** Lessor shall be in material default under this Lease if Lessor fails to observe and perform any covenant, condition, or agreement in this Lease on its part to be observed or performed for a period of thirty (30) days after Lessee provides written notice specifying such failure and requesting that it be remedied; provided, however, if the failure stated in the notice cannot be corrected within thirty (30) days, Lessee shall not unreasonably withhold its consent to an extension of such time if corrective action is instituted by Lessor within thirty (30) days and diligently pursued until the default is corrected. The notice required by this Section is intended to satisfy any and all notice requirements imposed by law on Lessee and is not in addition to any such requirement.

8.4 **Remedies for Default.**

8.4.1 **Lessor's Remedies**. In the event of Lessee's default that also constitutes an event of default under the Facilities Lease, Lessor shall have the right to terminate this Lease if such event of default has continued uncured for a period of thirty (30) days following Lessor providing Lessee with written notice of the default or to assign this Lease in accordance with Section 9.4.2 of the Facilities Lease. If the default does not constitute an event of default under the Facilities Lease, Lessor shall not have the right to terminate or assign, but Lessor shall have all other rights to compel Lessee to perform and to collect any and all sums owed to Lessor under the Lease. Subject to the terms of this **Section 8.4**, Lessor shall be entitled to enforce all of Lessor's rights and remedies now or hereafter available in equity and at law for Lessee's default under this Lease. Lessor's remedies shall be cumulative, and

the exercise of any one or more shall not prevent it from exercising any other right or remedy for Lessee's default.

8.4.2 **Lessee's Remedies.** Whenever any event of default by Lessor shall have occurred and be continuing uncured for a period of thirty (30) days following Lessee providing Lessor with written notice of the default, it shall be lawful for Lessee to exercise any and all remedies available pursuant to law or granted pursuant to this Lease or the Facilities Lease, subject to the limitations set forth in **Section 9.2** of the Facilities Lease. In the event of a default, and notwithstanding any re-entry by Lessee, Lessor shall continue to remain liable for lease payments under the Facilities Lease. Lessee's remedies shall be cumulative, and the exercise of any one or more shall not prevent it from exercising any other right or remedy for Lessor's default.

9 REPRESENTATIONS

9.1 Lessor's Representations.

9.1.1 Lessor is a school district, duly organized and existing under the laws of the State of California. Lessor has the full power and authority to enter, to execute, and to deliver this Lease, and to perform all of its duties and obligations hereunder.

9.1.2 Lessor has duly authorized the execution of this Lease. Lessor's representative executing this Lease is fully authorized to execute the same.

9.1.3 Neither the execution and delivery of this Lease, nor the fulfillment of or compliance with the terms and conditions of this lease, conflicts with or results in a breach or default (with due notice or the passage of time, or both) under the organizational instruments of Lessor or any applicable law or administrative rule or regulation, or any applicable court or administrative decree or order, or a breach of any of the terms, conditions or provisions of any restriction or any agreement or instrument to which Lessor is now a party or by which Lessor is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the Lessor, except Permitted Encumbrances, as that term is defined in the Facilities Lease.

9.1.4 Lessor is aware of no action, suit, proceeding, inquiry, or investigation pending or threatened in any court or in any federal, state, or municipal administrative body which, if determined adversely to Lessor or its interests, would have a material and adverse effect upon Lessor's ability to consummate or perform the transactions and obligations contemplated by, or validity of, this Lease or the Facilities Lease. Lessor is not in default with respect to any order or decree of any court or any

order, regulation, or demand of any federal, state, or municipal administrative body which default might have consequences that would have a material and adverse effect upon Lessor's ability to consummate or perform the transactions and obligations contemplated by, or validity of, this Lease or the Facilities Lease.

9.1.5 The Lessor is in compliance with all laws, regulations, and ordinances for the purposes of construction of the facilities pursuant to the Facilities Lease, including without limitation, any local environmental ordinances or requirements under the California Environmental Quality Act (Public Resources Code, sections 21000 et seq.) ("CEQA").

9.1.6 To the best of Lessor's knowledge, there are no plans or contemplation by another agency to condemn the Site under the power of eminent domain.

9.2 **Lessee's Representations.**

9.2.1 **Authority**. The person signing this Lease on behalf of Lessee represents and warrants that Lessee 1) is a corporation duly organized and existing under the laws of the State of California, 2) is duly authorized and licensed to do business in the State of California, 3) has the power to enter into this Lease and the Facilities Lease and to perform all of its obligations thereunder, 4) is possessed of full power to own, rent, and hold real and personal property, and to lease and sell the same, and 5) is empowered and fully capable of undertaking and performing the obligations contained herein. The person signing this Lease represents (s)he has full authority to do so and to bind Lessee hereto. If requested by Lessor, within thirty (30) days after this Lease is signed, Lessee shall deliver to Lessor a certified copy of a resolution of Lessee's Board of Directors or Members authorizing the execution of this Lease or other evidence of such authority reasonably acceptable to Lessor.

9.2.2 Lessee has duly authorized the execution of this Lease.

9.2.3 Neither the execution and delivery of this Lease, nor the fulfillment of or compliance with the terms and conditions of this Lease or the Facilities Lease, conflicts with or results in a breach of the terms, conditions, or provisions of any restriction, agreement, or instrument to which Lessee is now a party or by which Lessee is bound, or constitutes a default under any of the foregoing.

9.2.4 Lessee is aware of no action, suit, proceeding, inquiry, or investigation pending or threatened in any court or in any federal, state, or municipal administrative body which, if determined adversely to Lessee or its interests, would have a material and adverse effect upon Lessee's

ability to consummate or perform the transactions and obligations contemplated by, or validity of, this Lease or the Facilities Lease. Lessee is not in default with respect to any order or decree of any court or any order, regulation, or demand of any federal, state, or municipal administrative body which default might have consequences that would have a material and adverse effect upon Lessee's ability to consummate or perform the transactions and obligations contemplated by, or validity of, this Lease or the Facilities Lease.

9.2.5 Lessee shall not pledge the Site or other amounts derived from the Site or from any other of its rights under this Lease or the Facilities Lease, and shall not mortgage or otherwise encumber the Site.

9.2.6 For up to six months following the term of this Lease, Lessee shall not voluntarily commence any act intended to dissolve or terminate the legal existence of Lessee, provided Lessor is not in uncured default under this Lease or the Facilities Lease. Lessee shall give Lessor sixty (60) days written notice prior to dissolving or terminating the legal existence of Lessee within two years of the expiration of the term of this Lease.

10 INDEMNIFICATION

The provisions of **Section 5.5** including its subparagraphs, of the **Facilities Lease**, are incorporated herein by reference as though set forth in full.

11 MISCELLANEOUS PROVISIONS

11.1 **Disputes.** Any dispute between the parties to this Agreement will be resolved by the parties pursuant to the terms and conditions of the Facilities Lease between the parties hereto.

11.2 **Severability**. In the event any provision of this 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 Lease or the Facilities Lease.

11.3 **Interpretation**. The captions or headings in this Lease are for convenience only and in no way define, limit, or describe the scope or intent of any provisions or Sections of this Lease. Whenever required by the context of this Lease, the singular shall include the plural and the plural shall include the singular. The masculine, feminine and neuter genders shall each include the other. In any provision relating to the conduct, acts or omissions of Lessee, the term "Lessee" shall include Lessee's agents, employees, contractors, invitees, successors or others using the Site with Lessee's

expressed or implied permission. It is agreed and acknowledged by the parties hereto that the provisions of this Lease have been arrived at through negotiation, and that each of the parties has had a full and fair opportunity to revise portions of this Lease and to have such provisions reviewed by its 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 Lease.

11.4 **Incorporation of Prior Agreements; Amendments**. This Lease and the related Facilities Lease collectively contain all of the agreements of the parties hereto with respect to any matter covered by or mentioned in this Lease, and no prior agreements or understandings pertaining to any such matter shall be effective for any purpose. All amendments to this Lease shall be in writing and signed by all parties. Any other attempted amendment shall be void.

11.5 **Legal Proceedings**. In the event that either party is required to institute legal proceedings to enforce this Lease, in whole or in part, the prevailing party shall be entitled to recover its reasonable attorneys' fees, costs and expenses.

11.5.1 Lessee shall also indemnify Lessor against and hold Lessor harmless from all costs, expenses, demands and liability Lessor may incur if Lessor becomes or is made a party to any claim or action (a) instituted by Lessee against any third party, or by any third party against Lessee, or by or against any person holding any interest under or using the Site by license of or agreement with Lessee; (b) for foreclosure of any lien for labor or material furnished to or for Lessee or such other person; (c) otherwise arising out of or resulting from any act or transaction of Lessee or such other person; or (d) necessary to protect Lessor's interest under this Lease in a bankruptcy proceeding, or other proceeding under Title 11 of the United States Code, as amended. Lessee shall defend Lessor against any such claim or action at Lessee's expense with counsel reasonably acceptable to Lessor.

11.5.2 Lessor shall also indemnify Lessee against and hold Lessee harmless from all costs, expenses, demands and liability Lessee may incur if Lessee becomes or is made a party to any claim or action (a) instituted by Lessor against any third party, or by any third party against Lessor, or by or against any person holding any interest under or using the Site by license of or agreement with Lessor; (b) otherwise arising out of or resulting from any act or transaction of Lessor or such other person; or (c) necessary to protect Lessee's interest under this Lease in a bankruptcy proceeding, or other proceeding under Title 11 of the United States Code, as amended. Lessor shall defend Lessee against any such claim or action at Lessor's expense with counsel reasonably acceptable to Lessee.

11.6 **Notices**. All notices, requests, demands and other communications required or permitted under this Agreement shall be in writing and shall be sent by third party commercial courier service which provides evidence of delivery, or mailed by United States mail (postage prepaid), registered or certified, return receipt requested. Each notice shall be deemed delivered (1) on the date delivered if by courier delivery, (2) on the date delivered by U.S. Mail as evidenced by the return receipt, or (3) on the date acceptance of delivery is refused by the addressee. Provided notice is also sent by courier or U.S. Mail as aforesaid, it may also be delivered by facsimile, and delivery shall be deemed to have occurred on the date of transmission (unless the same is after 5:00 p.m. or on a non-business day, in which event delivery shall be on the next business day). By giving written notice hereunder to the other parties at least five (5) days' in advance, a party to this Agreement may from time to time and at any time during the term of this Agreement change its address for notices under this Agreement. Notices shall be sent to the following addresses

Lessor: Scott Davis
Director Facilities Development
Roseville Joint Union High School District
2 Tiger Way, Bldg #2
Roseville, California 95678

Lessee: [Name]
[Position]
[Company]
[Address]
[Address]

11.7 **Waivers**. All waivers must be in writing and signed by the waiving party. Lessor's failure to enforce any provision of this Lease or its acceptance of rent shall not be a waiver and shall not prevent Lessor from enforcing that provision or any other provision of this Lease in the future. No statement on a payment check from Lessee or in a letter accompanying a payment check shall be binding on Lessor. Lessor may, with or without notice to Lessee, negotiate such check without being bound to the conditions of such statement.

11.8 **No Recordation**. Lessee shall not record this Lease without prior written consent from Lessor. However, either Lessor or Lessee may require that a "Short Form" memorandum of this Lease executed by both parties be recorded**.** The party requiring such recording shall pay all transfer taxes and recording fees.

11.9 **Binding Effect; Choice of Law**. This Lease shall inure to the benefit of, and shall be binding upon, Lessor and Lessee, and their respective successors and assigns, to the extent that such successors and assigns have acquired their interest in the Lease in accordance with the terms of this Lease. This Lease shall be governed by the laws of the State of California.

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

11.11 **Execution of Lease**. This 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.

11.12 **Further Assurances.** The parties hereto 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 Improvements.

11.13 **Survival**. All representations and warranties of Lessor and Lessee shall survive for a period of two (2) years following the termination of this Lease.

11.14 **Lease to be Absolute "Net" Lease**. Except as otherwise provided herein, this Lease is intended to be absolutely "net" to Lessor, so that Lessor shall enjoy all rental and other sums due hereunder without deduction, set-off or any other reduction, and that Lessor shall have no expense in connection with the Property which is not paid or reimbursed by Lessee.

IN WITNESS WHEREOF, the parties have executed this Lease as of the date first above written.

LESSOR: **Roseville Joint Union High School District**
A school district organized and existing under the laws of the State of California

Date: _____, 2022

By: _____

Printed Name: _____

Position: _____

LESSEE: [Company]

Date: _____, 2022

By: _____

Printed Name: _____

Position: _____

EXHIBIT A
Site Description

The Project is New District Office to be constructed at 1750 Cirby Way, Roseville, CA 95661.



RFP EXHIBIT F

Facilities Lease Agreement

Between

Roseville Joint Union High School District

And

_____

For the
New District Office Building
DSA Application # Pending

Located at

1750 Cirby Way
Roseville, CA 95661

Documents Bound Herewith

AGREEMENT FORM

EXHIBIT A	THE PROJECT
EXHIBIT B	DESCRIPTION OF THE SITE
EXHIBIT C	LEASE PAYMENT SCHEDULE
EXHIBIT D	GENERAL CONSTRUCTION TERMS AND CONDITIONS
EXHIBIT E	INSURANCE REQUIREMENTS
EXHIBIT F	GENERAL CONDITIONS COSTS
EXHIBIT G	CONSTRUCTION SCHEDULE
EXHIBIT H	PRECONSTRUCTION SERVICES
EXHIBIT I	SAMPLE SKILLED & TRAINED REPORTING FORM

Roseville Joint Union High School District

Facilities Lease Agreement

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Roseville Joint Union High School District - Facilities Lease Agreement

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THIS FACILITIES LEASE ("Facilities Lease"), made as of **_____, 2022** ("Effective Date"), is entered into by and between _____, a California corporation, as sublessor (the "Entity"), and Roseville Joint Union High School District, a school district duly organized and validly existing under the Constitution and laws of said State of California, as sub lessee (the "District").

RECITALS

WHEREAS, the District desires to provide for a project, as more particularly described in Exhibit A attached hereto and incorporated herein by this reference (the "Project"), located on the District's property at 1750 Cirby Way, Roseville CA, 95661

WHEREAS, the District has issued a Request for Proposals for development of the Project and, upon receipt and review of the proposals has selected the Entity as submitting the best value proposal for the development of the Project;

WHEREAS, by way of a site lease dated **_____, 2022** (the "Site Lease") the District has leased to the Entity the real property described in Exhibit B for the construction of the Project (the "Site");

WHEREAS, by way of this Facilities Lease, the Entity hereby leases the Site and the improvements back to the District;

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

WHEREAS, the Entity is authorized to sublease the Site as lessee and to construct the Project on the Site, and has duly authorized the execution and delivery of this Facilities Lease;

WHEREAS, the Governing Board 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 the Entity and by immediately entering into this Facilities Lease under which the District will sublease the Site and lease the Project from the Entity and make Lease Payments 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 this Facilities Lease 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 and the Entity 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 to construct the Project.

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. Additional definitions are included in Exhibit D, the General Construction Terms and Conditions.

1.1.1 "District" means the Roseville Joint Union High School District, a school district duly organized and existing under the laws of the State of California.

1.1.2 "District Representative" means the Superintendent of the District, or any other person authorized by the Board of Education 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 the Entity's Authorized Representative. The District shall provide such notice designating the District Representative within five (5) business days of providing the Notice to Proceed.

1.1.3 "DSA" means the State of California, Department of General Services, Division of the State Architect.

1.1.4 "Entity" means _____, a corporation duly organized and existing under the laws of the State of California duly licensed to do business in the State of California.

1.1.5 "Entity Representative" means the written, authorized representatives of the Entity, or any person authorized to act on behalf of the Entity 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 the Entity or as so designated by the President of the Entity. The Entity's initial representative is _____.

1.1.6 "Event of Default by District" means one or more events as defined in Section 9.1 of this Facilities Lease.

1.1.7 "Event of Default by the Entity" means one or more events as defined in Section 9.3 of this Facilities Lease.

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

1.1.9 "General Construction Terms and Conditions" shall mean the terms and conditions set forth in Exhibit D attached hereto.

1.1.10 "Lease Payment" means any payment required to be made by the District pursuant to Section 4.4 of this Facilities Lease and as set forth in Exhibit C attached to this Facilities Lease.

1.1.11 "Lease Payment Schedule" shall mean the payment schedule attached hereto as Exhibit C, to be developed by Entity in Phase I, Preconstruction Services.

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

1.1.13 "Plans and Specifications" means the construction plans and specifications prepared for the Project by **Rainforth Grau Architects,** as approved by the DSA, Application No. **[to be added by addendum]** and as further referenced in the General Construction Terms and Conditions, Exhibit D attached hereto.

1.1.14 "Preconstruction Services" means those services to be performed in Phase I of this Facilities Lease, as defined in greater detail in Exhibit H hereto.

1.1.15 "Project" or "Work" means the improvements and equipment to be constructed and installed by the Entity for the District's construction of a new District Office at 1750 Cirby Way, Roseville, CA 95661, as more particularly described in Exhibit A attached hereto, the General Construction Terms and Conditions (Exhibit D hereto), and the Plans and Specifications, and includes, unless the context requires otherwise, the Site. No Work for which Entity is required to be licensed in accordance with Article 5 (commencing with Section 7065) of Chapter 9 of Division 3 of the Business and Professions Code, and for which DSA approval is required, can be performed before receipt of the required DSA approval.

1.1.16 "Site" means that certain real property particularly described in Exhibit "B" attached hereto.

1.1.17 "Site Lease" means the Site Lease dated as of **_____, 2022**, by and between the District and the Entity together with any duly authorized and executed amendments thereto under which the District leased the Site to the Entity.

1.1.18 "Term of this Facilities Lease" or "Term" means the time during which the District has the obligation to make the Lease Payments under this Facilities Lease, as provided for in Section 4.2 of this Facilities Lease.

1.1.19 "Total Base Rent" means that amount to be developed by Entity in Phase I, Preconstruction Services, which shall be set forth in Section 4.4.2 below, subject to adjustment as provided for herein.

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

Exhibit A - THE PROJECT: The description of the Project.

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

Exhibit C - LEASE PAYMENT SCHEDULE: The schedule of Lease Payments to be paid by the District hereunder, to be developed by Entity in Phase I, Preconstruction Services.

Exhibit D - GENERAL CONSTRUCTION TERMS AND CONDITIONS: The general terms and conditions for the construction of the Project.

Exhibit E – INSURANCE: The insurance requirements for the Project.

Exhibit F – GENERAL CONDITION COSTS

Exhibit G – CONSTRUCTION SCHEDULE, to be developed by Entity in Phase I, Preconstruction Services.

Exhibit H – PRECONSTRUCTION SERVICES

Exhibit I – SAMPLE SKILLED & TRAINED REPORTING FORM

ARTICLE 2. REPRESENTATIONS, COVENANTS AND WARRANTIES.

2.1 Representations, Covenants and Warranties of the District. The District represents, covenants and warrants to the Entity 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 the Site Lease, and to perform all of its duties and obligations hereunder, and has duly authorized the execution of this Facilities Lease and the Site

Lease. The representatives of District executing this Facilities Lease and the Site Lease are fully authorized to execute the same.

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

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

2.2 Representations, Covenants and Warranties of the Entity. The Entity represents, covenants and warrants to District as follows:

2.2.1 Due Organization and Existence. The Entity is a California corporation duly organized and existing under the laws of the State of California; duly authorized and licensed to do business in 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; has duly authorized the execution and delivery of all of the aforesaid agreements; and is empowered and fully capable of undertaking the development and construction of the Project as described herein and in the documents referred to herein.

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

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

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

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

2.2.6 Continued Existence. For up to six months following the term of this Lease, the Entity shall not voluntarily commence any act intended to dissolve or terminate the legal existence of the Entity, provided District is not in uncured default under this Facilities Lease. The Entity shall give District sixty (60) days written notice prior to dissolving or terminating the legal existence of the Entity within two (2) years of the expiration of this Lease.

2.2.7 No Assignments. Except as provided herein or otherwise with the District's advance written consent, the Entity will not assign this Facilities Lease, its right to receive Lease Payments and prepayments from the District, or its duties and obligations hereunder to any other person, firm or corporation. If assignment of rents is necessary to finance construction of the Project, the parties shall reasonably cooperate to facilitate such assignment. No assignment shall impair or violate the representations, covenants and warranties contained in this Section 2.2. This Lease may be assigned to an affiliate of the Entity provided that the representations, covenants and warranties in this Section 2.2 are not impaired or violated. Contracting or subcontracting with licensed contractors is not an assignment.

ARTICLE 3. PROJECT PHASES.

3.1 Project Phase I: Preconstruction Services. Upon execution of this Facilities Lease, Entity shall commence performance of Preconstruction Services, as defined in and governed by Exhibit H hereto. Although the District anticipates authorizing Entity to proceed with Phase II following completion of Phase I, performance of Preconstruction Services shall not entitle Entity to perform any Phase II services.

3.2 Project Phase II: Construction of the Project and Post-Construction Lease. Following approval of the Total Base Rent ("TBR") and Lease Payment Schedule by the Board, if the District elects to proceed with Phase II hereunder, then the District shall issue to Entity a Notice to Proceed with Phase II. Entity may not perform any construction work prior to issuance of that Notice to Proceed, and the District shall make no payment for Phase II work unless it issues a Notice to Proceed.

3.2.1 Site Conditions and Pre-Construction Review. The Entity acknowledges that the Entity has visually investigated the Site and reviewed all reports for the Site provided to Entity by the District, has satisfied itself as to all issues related to site conditions that are discoverable through diligent observation by an experienced construction professional and has included all such issues in the Total Base Rent. The Entity further acknowledges that, prior to the start of construction, the Entity has reviewed the Plans and Specifications, geotechnical report and

pointed out any design errors or omissions that are reasonably observable by an experienced construction professional and will have determined that, prior to commencement of construction, the Plans and Specifications are adequate for the Project's construction, provided, however, the parties understand that the Entity has not conducted an architectural or engineering or code compliance review of the Plans and Specifications.

3.2.2 Construction of Project. The Entity, in conjunction with the District, agrees to cause the Project to be developed, constructed, and installed in accordance with the terms hereof, the General Construction Terms and Conditions set forth in Exhibit D, the Plans and Specifications and those things reasonably inferable from the aforementioned documents as being within the scope of the Project and necessary to produce the stated result even though no mention is made thereof. The Entity, in conjunction with the District, further agrees that it will cause the development, construction, and installation of the Project to be diligently performed. The parties may approve additional changes in the Plans and Specifications for the Project as provided in Exhibit D.

3.2.3 Time of Completion. Following execution of this Facilities Lease and receipt of the Notice to Proceed with Phase II work, the Entity shall proceed with the construction of the Project with due diligence. The construction of the Project shall be fully complete no later than the date stated in the Notice to Proceed with Phase II work, together with such additional time as may be provided by amendment (change order) pursuant to the General Construction Terms and Conditions set forth in Exhibit D. Included in this time to complete is an allowance of up to **(32)** weather days of excusable weather delays. "Completion" means completion of all contract work, including punch list items and final cleaning completed, so that the entire Project can be occupied for its intended purpose. In the event only portions of the Project are completed prior to that date upon which the District requires occupancy and notwithstanding the fact that Completion has not occurred, the District may exercise its right to early occupancy of the completed portions of the Project upon terms and conditions set forth in Exhibit D. The Entity expressly acknowledges and agrees that the District's occupancy at any time shall not entitle the Entity to acceleration of any Lease Payment, including, without limitation, the Final Lease Payment. A timely completion of the Project requires timely response to questions and approvals. The process for responses to questions and approvals is set forth in Exhibit D.

3.2.4 Liquidated Damages. The Project is a critical component of ongoing educational services being provided by the District, which can be impacted if the Project is not timely completed. Therefore, if the Project is not completed within the time period set forth at Section 3.2.3 above, as such completion date may be revised from time to time by mutual agreement or may be extended in accordance with the terms and conditions set forth in Exhibit D, it is understood that the District will suffer damage, and that it is impractical and unfeasible to determine the amount of actual damages. Therefore, it is agreed that if the Project is not completed within the time period specified in Section 3.2.3 as such completion date may be extended in accordance with the terms and conditions set forth in Exhibit D, the Entity shall pay to the District as fixed and liquidated damages, and not as a penalty, the sum of **$5,000.00 (Five Thousand Dollars and No Cents)** for each calendar day of delay until the date by which the District can take occupancy of the full Project for its intended use, and that both the Entity and the Entity's surety shall be liable for the total amount thereof. After the date by which the

District can take occupancy of the full Project for its intended use, the District may withhold one hundred fifty percent (150%) of the reasonable value of any incomplete work as determined by the District's Representative, including, without limitation, any remaining contract work, punch list items, final completion and/or close-out documents. The District shall have the right to deduct the amount of liquidated damages and/or withholdings from any money due or to become due to the Entity.

3.2.5 Acceptance of the Project. When it believes the Project is fully complete, the Entity shall provide the District with a Certificate of Completion. The Project shall only be considered fully complete after the District accepts completion of the Project. The District shall have no obligation to accept completion of the Project until the entire work has been completed in accordance with the Plans and Specifications, including any amendments thereto, and Exhibit D hereto and approved for completion by the District in consultation with its representative, architect and inspector and all close-out documents and submissions required of the Entity have been provided to the District. The District shall not unreasonably withhold, condition, or delay acceptance of the Project. If the District determines not to accept the Project following receipt of Certificate of Completion from the Entity, the District shall within ten (10) days provide the Entity, with a written statement indicating in adequate detail those deficiencies remaining and what measures are necessary in the reasonable opinion of the District to correct such deficiencies prior to acceptance by the District.

3.2.6 Notice of Completion. Within fifteen (15) days after the District accepts the Project as complete, the District shall record a Notice of Completion with the County Recorder.

3.2.7 Compliance with Public Contract Code section 20111.6. Compliance with Public Contract Code section 20111.6 is required on this Project. Through the Request for Proposals/Requests for Qualifications, Entity has been prequalified for this Project pursuant to this statute. Mechanical contractors, electrical contractors and plumbing contractors also must be prequalified prior to submitting bids for the Project. Mechanical, electrical and plumbing contractors subject to these requirements are those with any of the following license classifications: C-4, C-7, C-10, C-16, C-20, C-34, C-36, C-38, C-42, C-43 and C-46. In compliance with Public Contract Code section 20111.6, Entity shall work with the District and the District's consultants in prequalifying such subcontractors, using the District's standard on-line Prequalification Questionnaire and uniform rating system.

3.2.8 Compliance with Education Code section 17407.5 and Public Contract Code sections 2600 *et seq*. Compliance with Education Code section 17407.5 and Public Contract Code sections 2600 *et seq.* will be required on this Project. Pursuant to these statutes, the District may not enter into the Site Lease and/or Facilities Lease with the Entity unless the Entity provides to the District an enforceable commitment that the Entity will comply with the statute. Therefore, as an inducement to the District to enter into the Site Lease and this Facilities Lease, the Entity hereby commits that every trade and specialty contract awarded will be subject to the requirements in Education Code section 17407.5 and Public Contract Code sections 2600 *et seq.* with respect to a skilled and trained workforce, including without limitation the requirement that specified percentages of the workforce must be graduates of an approved apprenticeship program. The apprenticeship graduation requirements are met if, in a particular calendar month,

either i) at least the required percentage of the skilled journeypersons employed by the Entity or a subcontractor to perform work on the Project meet the graduation percentage requirement or ii) for the hours of work performed by skilled journeypersons employed by the Entity or a subcontractor on the Project, the percentage of hours performed by skilled journeypersons who met the graduation requirement is at least equal to the required graduation percentage.

As part of this inducement and commitment, the Entity shall provide to the District's Board either i) the Entity's certification and agreement in accordance with the California False Claims Act, Government Code sections 12650 through 12656, that the Entity and its subcontractors at every tier will comply with the requirements of Education Code section 17407.5 and Public Contract Code sections 2600 *et seq.* and that the Entity will provide the District's Board, on a monthly basis while the Project is being performed, a report in substantially the form of Exhibit I hereto (as that form may be updated by the District) demonstrating that the Entity and its subcontractors are in compliance with these requirements, or ii) evidence that the Entity has entered into a project labor agreement that includes the requirements of Education Code section 17407.5 and Public Contract Code sections 2600 *et seq.* and that will bind the Entity and all its subcontractors at every tier performing on the Project.

The skilled and trained workforce requirements are addressed further in Section 8.02 of Exhibit D, General Terms and Conditions. In addition to relying upon the Department of Apprenticeship Standards website for proof of journeymen graduated from DIR-approved apprenticeship programs, the Entity and its subcontractors may rely upon Union hiring hall representation that it holds a valid apprenticeship certificate for its dispatched members, which Union hiring hall representation shall be in writing and maintained by the Entity.

If the Entity provides an incomplete report, or a report that does not demonstrate compliance with the skilled and trained workforce requirements, then the District shall withhold 150% of the value of the work for which the report is missing or for which the Entity and/or any subcontractor failed to comply with the skilled and trained workforce requirements. If the District withholds payment due to a subcontractor's failure to submit required information, then the Entity may withhold from the subcontractor amounts withheld from Entity attributable to the subcontractor's work until a) the subcontractor provides the Entity a complete report, and b) the District pays the Entity the payments withheld due to the subcontractor's failure.

If the required report for any given month shows the required percentages were not met during that month, then the District shall withhold payments as stated above until the Entity provides an explanation as to why the percentages were not met and a plan to achieve substantial compliance, with respect to the relevant apprenticeable occupation(s), by the end of construction. If the Entity submits a plan to achieve substantial compliance, then the District will either a) resume making payments to the Entity, including previously withheld payments, or b) within a reasonable time, reject the plan as insufficient and explain the reasons for the rejection. Plans that only offer reasons for the past failure to meet percentages and do not address future compliance generally will be rejected as insufficient. If, after an opportunity to cure identified deficiencies in the plan, the District is not reasonably assured by the Entity that compliance will be achieved by the end of construction, then the District may terminate the leases or a portion thereof impacted by any non-compliance. Failure to have achieved the skilled and trained

workforce requirements by the end of construction may be grounds for a finding that the Entity knowingly violated the California False Claims Act, subjecting the Entity to any and all remedies contained therein.

Pursuant to Public Contract Code section 2602(b), if the Entity fails to provide the monthly report as required, then the District shall immediately cease making any payments due under the Facilities Lease to the Entity. No further payment under the Facilities Lease shall be made unless and until the required monthly report(s) has been submitted. If the Entity fails on more than one occasion to provide the required, complete monthly report or fails to provide any missing or incomplete report within thirty (30) calendar days after its original due date, in addition to withholding payment, the District may terminate the leases and/or exercise any other rights under the leases and/or law. All such remedies are cumulative.

If the failure of the Entity to provide the required monthly report is due to a subcontractor's failure to provide the information to the Entity necessary for the Entity to certify compliance, the Entity also shall provide notice of this subcontractor failure to the District within five (5) business days after the due date of the report. Failure of a subcontractor timely to provide the required information demonstrating compliance may be grounds for substitution in accordance with Public Contract Code section 4107(a)(3) and/or (7). If the Entity substitutes a subcontractor for failure to demonstrate compliance, then the Entity must replace the subcontractor with one that provides an enforceable commitment that a skilled and trained workforce will be used to complete the Project. The District will not grant substitution without such a commitment. If the District approves substitution, then the District shall immediately resume making payments to the Entity, including previously withheld payments. Ongoing or repeated failure of a subcontractor to provide the necessary information is grounds for the District to object to the continued use of that subcontractor.

The Entity may draw upon the Construction Contingency Fund, but not the District Contingency, for any increased costs it incurs for replacing a subcontractor under this paragraph, but the Entity shall not be entitled to any increase of that contingency, any increase in the Total Base Rent, or any increase in the lease Term. The Entity shall comply with the requirements of paragraph 4.4.2.4.4 related to any such use of the Construction Contingency Fund.

The Entity shall include in every subcontract a copy of Public Contract Code Division 2, Part 1, Chapter 2.9 (beginning with Section 2600). In addition, the Entity shall periodically monitor the subcontractor's use of a skilled and trained workforce. Upon becoming aware of a failure of the subcontractor to use a skilled and trained workforce, the Entity shall take corrective action, including, but not limited to, retaining 150% of the amount due to the subcontractor for work performed on the Project until the failure is corrected. Before making final payment in full to a subcontractor for Project work, the Entity shall obtain, if possible, a declaration signed under penalty of perjury from the subcontractor that the subcontractor has met the skilled and trained workforce requirements.

The District will forward any report that does not demonstrate compliance to the Labor Commissioner for issuance of a civil wage and penalty assessment in accordance with Public Contract Code section 2603. The District also will forward to the Labor Commissioner a copy of

any plan to achieve substantial compliance, and may include the District's response to such plan (if any). Generally, the District forwards such documents at the end of construction, but it may forward them earlier at the District's discretion.

ARTICLE 4. AGREEMENT TO LEASE; TERMINATION OF LEASE; LEASE PAYMENTS; TITLE TO THE PROJECT.

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

4.2 Term of Facilities Lease. The Term of this Facilities Lease shall be **36 months**, consisting of the total of the time a) to perform Phase I, Preconstruction Services, estimated to require 6 months, b) to construct the Project, and c) to perform a post-construction period of **12 consecutive months** following completion of construction, subject to the right of the District not to implement Phase II or to terminate earlier in accordance with this Facilities Lease. If the time to complete Preconstruction Services is extended or delayed, then the Term shall be extended a corresponding amount. If the time to complete construction of the Project is extended or delayed, then the Term shall be extended in a corresponding amount to allow for the full 12-month post-construction lease period; the monthly lease payments for the post-construction period shall not change if the Term is extended, except that, if the delay or extension is the result of a District-caused action or delay during construction, then the parties shall meet and confer in good faith regarding any additional financing costs. **The term shall commence on _____, 2022 (the "Commencement Date")**.

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

4.3.1 An Event of Default by District and the Entity's election to terminate this Facilities Lease pursuant to Section 9.2 hereof; or

4.3.2 An event of Default by the Entity and the District's election to terminate this Facilities Lease pursuant to Section 9.4 hereof; or

4.3.3 The District's election to terminate this Facilities Lease pursuant to Section 6.2 or Section 9.6 hereof; or

4.3.4 The District's election not to proceed with Phase II of this Facilities Lease; or

4.3.5 The arrival of the last day of the Term of this Facilities Lease and payment of all Lease Payments hereunder; provided, however, that if on the scheduled date for expiration of this Facilities Lease the Lease Payments shall not have been fully paid by District, then the Term of this Facilities Lease and Site Lease shall be extended until the date upon which all such Lease Payments shall be fully paid, notwithstanding anything to the contrary in this Facilities Lease and the Site Lease.

4.4 Lease Payments.

4.4.1 Obligation to Pay. Subject to adoption of the Lease Payment Schedule upon determination of the Total Base Rent, issuance of a Notice to Proceed, and the provisions of Article 6 hereof, the District agrees to pay to the Entity, its successors and assigns, as rental for the use and occupancy of the Project, the Lease Payments commencing with the month in which the District issues the Notice to Proceed, in the amounts specified in the Lease Payment Schedule attached hereto as Exhibit C, plus any such approved allowances or contingencies and incorporated herein by reference. In partial consideration for the Facilities Lease and the reduced rent specified in the Site Lease, Entity agrees to abate lease payments from the Commencement Date through Phase I of the Project, unless otherwise specified in the Lease Payment Schedule approved by the District's Board. Lease Payments shall be payable on the **last day of each calendar month, unless that date is a weekend or holiday, in which case the Lease Payment is due on the first business date thereafter**.

4.4.2 Total Base Rent. The TBR shall be the total sum paid by the District for Phase II of the Project, in the form of Lease Payments under the terms of this Facilities Lease. The TBR for the Project shall not be exceeded except as specified under the provisions of this Article 4 and/or Exhibit D. The TBR for the lease of the Project is **[to be added by Amendment] Dollars ($ .00)** subject to the provisions of any Contingency Funds set forth in this Article 4.

4.4.2.1 The Entity shall prepare a detailed line item costing of the TBR, including the Entity's fee and any financing costs, and, once agreed to by the District, it shall be attached to the Lease Payment Schedule. However, in the event any of the costs included in the TBR (excluding the Entity's General Condition costs) are reduced subsequent to the District's approval, the savings shall be disclosed by the Entity to the District and shall be distributed in equal parts to the Construction Contingency and to the District's Contingency. Entity's failure to disclose the savings shall be a material breach of this Agreement. All parties acknowledge that the Total Base Rent is based on the Plans and Specifications for the Project as approved or amended by DSA or as amended by mutual agreement of the Entity and the District.

4.4.2.2 The Total Base Rent will only be subject to change, as described in Exhibit D, for change orders and/or any other changes directed by the District or for Compensable Time Extensions.

4.4.2.3 Because satisfactory completion of the Project and the District's rights under this Facilities Lease are essential to the District's educational services, rights of quiet enjoyment, and other rights of tenancy, in addition to any other rights the District enjoys under California law, the District may withhold from any Lease Payment sufficient amount (a maximum of 150%) as in its reasonable judgment may be necessary to cover:

(1) Failure of the Entity to comply with its obligations under this Facilities Lease, including its exhibits;

(2) Breaches or interferences by the Entity of the District's rights of quiet enjoyment and other rights of tenancy permitted under California law;

(3) Failure of the Entity to give the District timely occupancy of the Site and/or the Project;

(4) Payments which may be past due and payable for just claims against the Entity or any subcontractors for labor/materials furnished in and about the performance of work on the Project;

(5) Defective work not remedied;

(6) Completion of the Project if there exists a reasonable doubt that the Project can be completed for the balance of the unpaid Lease Payments;

(7) Damage to another contractor; and/or

(8) Potential penalties that may be due to the Labor Commissioner for the Entity's or any subcontractor's failure to meet skilled and trained workforce requirements.

Upon the Entity's removal of the condition upon which the withholding is based, the District shall promptly pay the withheld amount to the Entity.

4.4.2.4 The Total Base Rent includes:

4.4.2.4.1 Construction Contingency Fund in the amount of **[to be added by amendment] Dollars and no cents ($ .00)**, which, except as set forth herein, shall cover all additional or extra Costs of the Work set forth in the Contract Documents as a result of all conditions and events that do not entitle Entity to a change order in accordance with Exhibit D, Article 15.01 of the Facilities Lease. The Construction

Contingency Fund may not be used for costs associated with Entity, subcontractor or supplier's delay, lack of coordination or inefficiencies except as allowed in Exhibit D, Article 14. Any additional work needed to achieve a complete, usable and functional Project consistent with the design intent of the District's Architect will be covered by the Construction Contingency Fund and will not be considered a material change in the scope of the work per Article 15.01 of the Facilities Lease.

4.4.2.4.2 Specific Allowances – A Long Lead Time Allowance of **Ninety-Nine Thousand Dollars ($99,000.00)** may be used during preconstruction services only for the purchase of any long lead time materials that, in the District's sole and absolute discretion, cannot reasonably wait to be ordered until after Notice to Proceed. Any such purchase shall be done using competitive methods or shall meet the requirements of Public Contract Code section 3400 for designation of a single source for the material. If Notice to Proceed is not issued, then the District may direct the Entity either to deliver any such materials to the District or to return the materials to the supplier, if possible, with any costs of return to be paid by the District. **[any others to be added by amendment]**

4.4.2.4.3 District Contingency in the amount of **[to be added by amendment] Dollars and no cents ($ .00)** which shall cover additional or extra costs to the project that entitle Entity to a change order in accordance with Exhibit D, Article 15.01 of the Facilities Lease. The Entity shall have no right to draw against this contingency without written approval of the District prior to its use.

4.4.2.4.4 Allowances and Contingencies shall be used efficiently and expeditiously to minimize cost and delay to the project. Prior to commencing any work that would result in the utilization of one of the Contingencies or Allowances, the Entity shall give the District written notice of its intended use of said funds. Once the parties are in agreement as to the use of contingency, the Entity shall submit a Contingency Draw Authorization (CDA) form to the Architect and District for execution of the approved use of an allowance or contingency. By signing the CDA form, the Entity agrees that the amounts requested are in full and complete satisfaction of any direct and indirect costs along with extension of time, if any, associated with the requested contingency use. In the event of disagreement about the use of any said funds, including without limitation, which funds may be used, the District may direct the Entity to proceed and direct the Entity

which, if any, of the funds Entity may draw against. The Entity shall promptly comply with such directive and may submit a claim in accordance with Article 23 of Exhibit D. If the Entity commences the work without giving the District the required written notices and opportunity to object, the Entity shall, for all purposes, be deemed to have waived its rights to compensation for such work. The Entity shall provide the District with a monthly accounting of its use of any part of the Contingencies and Allowances. Pricing and record keeping for uses of any Contingency Fund or Allowance shall be in accordance with Article 15 of Exhibit D, the General Construction Terms and Conditions and shall be memorialized by a Contract Draw Authorization (CDA). Allowable payments of Contingency Funds or Allowances shall be reflected as increases to the Lease Payment(s) for the given month(s).

4.4.2.4.5 If paid to the Entity, any funds remaining in any Contingency or Allowance Fund shall be returned to the District within fifteen (15) days after the Notice of Completion is recorded. Otherwise, the funds not used and not paid to the Entity shall be deducted by written amendment from the Total Base Rent prior to the final Lease Payment.

4.4.3 Lease Payments to Constitute Current Expense of the District. The District and the Entity 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 has appropriated the Total Base Rent from the District's current fiscal year and/or State funds to be received during the District's current fiscal year, and has segregated such funds in a separate account to be utilized solely for the Lease Payments. The Entity acknowledges that the District has not pledged the full faith and credit of the District, the State of California or any state agency or state department to the payment of Lease Payments or any other payments due hereunder. The covenants on the part of District contained in this Facilities Lease constitute duties imposed by law and it shall be the duty of each and every public official of the District to take such action and do such things as are required by law in the performance of the official duty of such officials to enable the District to carry out and perform the covenants and agreements in this Facilities Lease agreed to be carried out and performed by the District in accordance with the terms and conditions set forth herein.

4.4.4 Optional Prepayment. The District may prepay the Lease Payments, in whole or in part, at any time, without penalty. The District shall give the Entity written notice of its intent to exercise its option and the date and amount of such prepayment not less than fifteen (15) days in advance of the date of the exercise.

4.5 Title. Pursuant to California Education Code section 17402, the District has the requisite legal interest in the Site. During the Term of this Facilities Lease, the District shall hold title to the Site. Upon payment by the District of all Lease Payments during the Term of this Facilities Lease as the same become due and payable, or if the Entity or the District exercises any option to terminate this Facilities Lease as set forth herein, all right, title and interest of the Entity, its assigns and successors in interest in and to the Project, including all additions which comprise fixtures, repairs, replacements or modifications thereof, shall be transferred to and vested in the District at the expiration of the Term or payment of the final Lease Payment or termination, 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 the Entity agrees to execute any instrument requested by District to memorialize such termination of this Facilities Lease and transfer title to the District.

4.6 Fair Rental Value. The Lease Payments coming due and payable during each month of the Term constitute the total rental for the Project and shall be paid by the District as set forth in Section 4.4 and the Lease Payment Schedule for and in consideration of the right to use and occupy the Project. The District and the Entity have agreed and determined that the total Lease Payments do not exceed the fair rental value of the Project. In making such determination, consideration has been given to the obligations of the parties under the Facilities Lease and Site Lease, the uses and purposes which may be served by the Project, and the benefits there from which will accrue to the District and the general public.

4.7 Quiet Enjoyment. Excepting any interference resulting from the Entity's performance pursuant to the General Construction Terms and Conditions and/or the Plans and Specifications, during the Term of this Facilities Lease, the Entity 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 without suit, trouble or hindrance from the Entity, except as expressly set forth in this Facilities Lease. The Entity will, at the request of the District, join in any legal action in which the District asserts its right to such possession and enjoyment to the extent the Entity may lawfully do so, at the District's sole cost.

4.8 District's Right to do Other Improvements. Following completion of the Project, the District may have other improvements done at the facility and/or on the site unrelated to the Project and through its own forces and/or separately retained service providers. The District shall comply with all laws in connection with such improvements, be fully responsible for payment for all such improvements, and obtain or cause to be obtained all required insurances for such improvements. Further, the District's indemnity obligations owed to the Entity under Section 5.5.1 shall apply to claims, damages, costs, expenses (including reasonable attorneys' fees), judgments or liabilities arising from such improvements.

4.9 Abatement of Rental in the Event of Substantial Interference With Use and Occupancy of the Project and the Site. The amount of Lease Payments for the Project and the Site shall be abated during any period of delay before District occupancy of the Project and the Site, which delay is due to damage or destruction from earthquake, flood and/or any of the hazards to be insured by the Entity under this Lease, such that there is substantial interference with the

District's use and occupancy of the Project by the date of completion set forth in Section 3.2.3 hereof. Once the Project is restored to its status as of the date of the event which caused the delay and/or interference with the District's use and occupancy of the Project, the Lease Payments shall resume, less any Lease Payments received by the Entity as of the time the Lease Payments resume but with no reduction for any applicable insurance proceeds received by the Entity under this Section, and the Lease Payment Schedule and/or Lease Term shall be adjusted accordingly. Nothing contained herein shall be construed as a waiver of the Entity's right to receive any Lease Payments otherwise due as of the initial date of the abatement or that may become due when the Lease Payments resume.

ARTICLE 5. MAINTENANCE; TAXES; INSURANCE AND OTHER MATTERS.

5.1 Maintenance. During Phase I and following delivery of possession of the Project by the Entity to District, the repair, improvement, replacement and maintenance of the Project shall be at the sole cost and expense and the sole responsibility of the District, subject to all warranties against defects in materials and workmanship provided in Exhibit D hereto.

5.2 Utilities. From the Notice to Proceed with Phase II until completion of the Project by the Entity, the Entity shall pay all utility costs of temporary heat, telephone, and refuse disposal as they specifically relate to the work the Entity is performing to complete the Project. If District's existing electrical and water services are insufficient for the Entity's and Districts concurrent use, the Entity shall pay all costs associated with providing temporary services for Entity's use for construction. During Phase I and following completion of the Project by the Entity, the cost and expenses for all utility services shall be paid by District.

5.3 Taxes and Other Impositions.

5.3.1. Except to the extent that it is exempt from doing so, District shall pay, 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 the Entity or the District or their respective interests or estates in the Project. In the event any possessory interest tax is levied on the Entity, its successors and assigns, by virtue of this Facilities Lease, the Site Lease, or General Construction Terms and Conditions, District shall pay such possessory interest tax directly, if possible, or shall reimburse the Entity, its successors and assigns for the full amount thereof within thirty (30) days after presentation of proof of payment by the Entity. This section does not apply to any taxes of any kind for labor, equipment or material performed, purchased or used by the Entity, all of which remain the sole obligation of the Entity.

5.3.2. Entity shall pay all taxes charged against trade fixtures, furnishings, equipment or any other personal property belonging to Entity. Entity shall try to have personal property taxed separately from the Site. If any of Entity's personal property is taxed with the Site, project and/or improvements, Entity shall pay District the taxes for the personal property within fifteen (15) days after Lessee receives a written statement from District for such personal property taxes.

5.3.3 At its sole cost and expense, Entity shall give all notices and comply with all laws, ordinances, rules, regulations, and lawful orders of any public authority bearing on the performance of the Work; pay all local, state, and federal taxes, except as otherwise expressly provided herein; and pay all benefits, insurance, taxes, and contributions for Social Security and Unemployment which are measured by wages, salaries, or other remunerations paid to Entity's employees. Upon the District's request, Entity shall furnish evidence satisfactory to the District that any or all of the foregoing obligations have been fulfilled.

5.4 Insurance. During the term of this Facilities Lease the Entity shall maintain all of the insurance coverages as set forth in the Site Lease and in Exhibit E hereto.

5.5 Indemnification.

5.5.1 The District shall indemnify, defend and hold harmless the Entity and its successors, assigns, officers, directors, shareholders, partners, members, agents and employees from and against any claims, damages, costs, expenses (including reasonable attorneys' fees), judgments or liabilities arising from the negligent or intentional acts or omissions of the District or its officers, agents, or employees, with respect to District's use, operation, repair, alteration and occupancy of the Site and/or the Project and the performance of District's obligations herein or arising from the presence of hazardous materials that predates the Site Lease.

5.5.2 The Entity shall indemnify, defend with counsel acceptable to the District and hold harmless District, its officers, officials, agents and employees from and against any and all third party claims, damages, costs, expenses (including reasonable attorneys' fees), judgments or liabilities arising out of or in any way connected with the performance or attempted performance of the provisions hereof, or in any way arising out of or connected with this Facilities Lease (including without limitation the Preconstruction Services, the General Construction Terms and Conditions, and the Plans and Specifications), including but not limited to, equitable relief, stop payment notice actions (but only when not caused by the District's failure to make payments in accordance with the Facilities Lease) or any acts or omissions, any wrongful act, or any negligent act or omission to act, whether active or passive, on the part of the Entity or any of its agents, employees, independent contractors, Subcontractors or suppliers; provided, further, without limiting the foregoing, that the indemnity is intended to apply to any wrongful acts, or any actively or passively negligent acts or omissions to act, committed jointly or concurrently by the Entity, the Entity's agents, employees, independent contractors, Subcontractors or suppliers.

5.5.2.1 To the fullest extent permitted by law, the Entity's duty to defend shall extend, without limitation, to any suit or action founded upon any third party losses, claims, demands, damages, costs, expenses, attorney's fees, or liability of every nature arising out of or in any way connected with the performance or attempted performance of the provisions hereof, or in any way arising out of or connected with this Facilities Lease, including its exhibits.

5.5.2.2 The Entity's defense and indemnity obligations expressly extend to and include any and all claims, demands, damages, costs, expenses, or liability

occasioned as a result of damages to adjacent property caused by the conduct of the work for the Project by the Entity or any party for whom the Entity is liable.

5.5.2.3 The Entity's defense and indemnity obligations expressly extend to and include any and all claims, demands, damages, costs, expenses, or liability occasioned as a result of the violation by the Entity, the Entity's agents, employees, or independent contractors, Subcontractors or suppliers of any provisions of federal, state or local law, including applicable administrative regulations.

5.5.2.4 The Entity's defense and indemnity obligations also expressly extend to and include any claims, demands, damages, costs, expenses, or liability occasioned by injury to or death of any person, or any property damage to property owned by any person while on or about the Site or as a result of the work for the Project, whether such persons are on or about the Site by right or not, whenever the work is alleged to have been a contributing cause in any degree whatsoever.

5.5.2.5 Nothing contained in the foregoing indemnity provisions shall be construed to require the Entity to indemnify the District in contravention of Section 2782 of the Civil Code for the sole negligence or willful misconduct of the District, its agents, employees, or independent contractors.

5.5.2.6 In claims against any person or entity herein indemnified that are made by an employee of the Entity or an employee of any of the Entity's agents, independent contractors, Subcontractors or suppliers, a person indirectly employed by the Entity or by any of the Entity's agents, independent contractors, Subcontractors or suppliers, or anyone for whose acts the Entity or any of the Entity's agents, independent contractors, Subcontractors or suppliers may be liable, the defense and indemnification obligations herein shall not be limited by any limitation on amount or type of damages, compensation, or benefits payable by or for the Entity or the Entity's agents, independent contractors, Subcontractors or suppliers under workers' compensation acts, disability acts, or other employee benefit acts.

5.5.2.7 The Entity's defense and indemnification obligations shall not be limited by any assertion or finding that the person or entity indemnified is liable by reason of a non-delegable duty.

5.5.2.8 Nothing contained in the foregoing defense and indemnity provisions shall be construed to require the Entity to defend or indemnify the District to the extent the claims, damages, costs, expenses, judgments, fines, penalties or liabilities arise out of the actions or inaction of the Architect or its subconsultants, or any other person, firm or entity providing design or other professional services in connection with the Project.

5.5.2.9 Should the Entity be required to investigate or defend any third party claims or actions that are subsequently determined not to be the sole responsibility of the Entity, the District shall then reimburse the Entity its unrecovered out-of-pocket costs, including reasonable attorneys' fees and any insurance deductibles, to the proportionate extent that the Entity is determined not to be responsible.

5.6 Not Used.

ARTICLE 6. EMINENT DOMAIN; DAMAGE AND DESTRUCTION.

6.1 Eminent Domain.

6.1.1 Eminent Domain Takings. If all of the Project and the Site shall be taken permanently under the power of eminent domain, the Term of this Facilities Lease shall cease as of the day possession shall be so taken, provided that if the taking occurs prior to full completion of the Project, the Entity shall be entitled to the value of the construction completed, plus reasonable costs of termination, plus a pro rata share of overhead and profit, less any Lease Payments and other payments made prior to the taking. If less than all of the Project and the Site shall be taken permanently, or if all of the Project and the Site or any part thereof shall be taken temporarily, under the power of eminent domain: (1) this Facilities Lease shall continue in full force and effect and shall not be terminated by virtue of such taking and the parties waive the benefit of any law to the contrary, and (2) there shall be a partial abatement of Lease Payments as a result of the application of the net proceeds of any eminent domain award to the prepayment of the Lease Payments hereunder.

6.1.2 From Eminent Domain Award. The net proceeds of any eminent domain or condemnation shall be payable to the District.

6.2 Damage and Destruction. If the Site and/or the Project is totally or partially destroyed due to fire, acts of vandalism, flood, storm, earthquake, Acts of God, or other casualty beyond the control or responsibility of either party hereto, the Lease Payments shall abate, in accordance with Section 4.9, during the time that the Site and/or the Project, or a portion thereof, is unusable for District's intended use. The Entity and 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 the Entity and District from all applicable insurance policies, other than rental interruption insurance, 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 and/or the Project is destroyed or damaged (a "Total Destruction") through no fault of the Entity, then District, at District's option, may elect to terminate this Facilities Lease and the Site Lease, and shall use the insurance proceeds to pay an amount to the Entity equal to the Lease Payments due as of the date of destruction and the value of all work completed by the Entity, plus reasonable costs of termination, less any Lease Payments previously made. Any remaining insurance proceeds will be retained by District. In the alternative, District may elect to continue

with the Facilities Lease in effect and have the Site and/or the Project rebuilt utilizing the insurance proceeds, which shall be exclusively used for that purpose. The Entity shall have no obligation to contribute funds for the rebuilding of the Site and/or the Project should the cost of rebuilding exceed the insurance proceeds. Anything less than a Total Destruction of the Site and/or the Project shall be deemed a "Partial Damage or Destruction."

6.2.3 Partial Damage or Destruction. In the event that the Site and/or the Project is partially damaged or destroyed before final completion, the Entity shall repair and/or have repaired the Site and/or the Project utilizing the proceeds from insurance which were deposited into the Escrow up to the amount of the Entity's actual costs for the repair or reconstruction, and District shall pay the Entity any excess amounts needed to pay the costs of repair or reconstruction. In the event the costs of repair or reconstruction do not exceed the amount held in the Escrow, the remaining funds shall be released to District. In the event that the Site and/or the Project is partially damaged or destroyed after final completion but before expiration of the Lease Term, the District shall repair or have repaired the Site and/or the Project utilizing the proceeds from insurance which were deposited into the Escrow. If District fails or refuses to repair or reconstruct as provided herein, then the Entity shall have the right to repair and restore the Site and/or the Project, in which case the Entity shall be entitled to a disbursement of the funds in the Escrow up to the amount of the Entity's actual costs for the repair or reconstruction, and District shall pay the Entity any excess amounts needed to pay the costs of repair or reconstruction. In the event the costs of repair or reconstruction do not exceed the amount held in the Escrow, the remaining funds shall be released to District.

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 Party contractually obligated to provide such insurance shall pay any such deductible amount or the amount of any self-insurance, except if loss is caused by the other party, or its other contractors, subcontractors or suppliers.

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

ARTICLE 7. ACCESS; DISCLAIMER OF WARRANTIES.

7.1 By the Entity. The Entity shall have the right at all reasonable times, as further defined in Exhibit D, General Requirements, Section 01500 to enter upon the Site to construct the Project pursuant to this Facilities Lease. Following the acceptance of the Project by District, the Entity may enter the Project at reasonable times with advance notice and arrangement with District for purposes of making any repairs required to be made by the Entity.

7.2 By District. The District shall have the right to enter upon the Site at reasonable times for whatever purpose the District chooses, providing that during construction, the District shall comply with all safety precautions required by the Entity.

7.3 Disclaimer of Warranties. The Entity acknowledges that under the terms of the Site Lease, the Entity is leasing the Site from the District in an "AS IS" condition. The Entity further acknowledges that the District makes no other warranties except as specifically set forth in the Site Lease and this Facilities Lease or in Exhibit D hereto. The Entity agrees that it or its authorized contractor shall provide to the District an express warranty in accordance with Article 22 of the General Construction Terms and Conditions, Exhibit D hereto, and the Entity shall assign or direct its authorized contractor to assign all rights under said warranty to the District. In addition, the Entity agrees to use its best efforts to assist the District in enforcing said warranty. In the event that assignment of the warranty is not effective or valid or the Entity's authorized contractor fails to honor the warranty, the Entity shall indemnify and hold the District harmless.

ARTICLE 8. ASSIGNMENT, SUBLEASING; AMENDMENT.

8.1 Assignment and Subleasing. Except as provided in Section 9.4, this Facilities Lease may not be assigned by the District. Any sublease by the District of this Facilities Lease shall be upon thirty (30) days' written notice to the Entity and shall be subject to the following conditions: (1) this Facilities Lease and the obligation of the District to make Lease Payments hereunder shall remain obligations of the District; (2) the District shall, within thirty (30) days after the delivery thereof, furnish or cause to be furnished to the Entity a true and complete copy of such sublease; and (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. The District shall indemnify the Entity for any violation of applicable Education Code sections, including but not limited to sections 17402 and 17406, that may arise as a result of such sublease. This Facilities Lease may be assigned or subleased by the Entity only to an entity or affiliate of the Entity, but the Entity shall not be released from any liability under the terms of this Lease.

8.2 Amendment of this Facilities Lease. The parties anticipate that this Facilities Lease will be amended, by written agreement of the parties, to reflect the Total Base Rent and Lease Payment Schedule following Phase I of the work, and may be amended at other times to reflect modifications to its terms. Without the written agreement of the parties, neither party will alter or modify, or agree or consent to alter or modify this Facilities Lease.

ARTICLE 9. EVENTS OF DEFAULT AND REMEDIES; TERMINATION.

9.1 Events of Default by the District. The following shall be "Events of Default" by the District 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 this Facilities Lease and/or the provisions found in Exhibit D.

9.1.2 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 Section 9.1.1, 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 the Entity; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, the Entity shall not unreasonably withhold its consent to an extension of such time if corrective action is instituted by the District within the applicable period and diligently pursued until the default is corrected.

9.2 Remedies on Default by District. Whenever any Event of Default referred to in Section 9.1 hereof shall have happened and be continuing, it shall be lawful for the Entity to exercise any and all remedies available pursuant to law or granted pursuant to this Facilities Lease, including but not limited to the right to stop work and to extend the date of completion by the number of days the Project is delayed due to the Event of Default; 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, the Entity 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 the Entity, the District shall, except as provided herein, 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 the Entity at the time and in the manner as herein provided.

9.3 Event of Default by the Entity. The following shall be Events of Default by the Entity 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:

9.3.1 The Entity, or any member of the Entity, unreasonably refuses or fails to prosecute the work on the Project pursuant to the terms and conditions of this Facilities Lease, including Exhibits D and H, and/or the Plans and Specifications 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.

9.3.2 Prior to completion of Project, the Entity 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, unless these conditions are cured within thirty (30) days.

9.3.3 The Entity, or any member of the Entity, persistently disregards applicable laws as referenced in the General Construction Terms and Conditions (Exhibit D), or otherwise be in material violation of the General Construction Terms and Conditions.

9.4 Remedies on Default by the Entity.

9.4.1 If an Event of Default by the Entity remains uncured for a period of three (3) days for Phase I work or thirty (30) days for Phase II work after District has given written notice specifying the failure and requesting that it be remedied, District may, at its sole discretion, without prejudice to any other right or remedy, terminate the Site Lease and this Facilities Lease, including all provisions and Exhibits hereto, and acquire not less than all of the Entity's interest in the labor, equipment and materials provided under this Facilities Lease in its "as is, where is" condition and pay the Entity the sums due under the terms of this Facilities Lease consistent with the actual work completed as it relates to the Preconstruction Services fee or Total Base Rent payments as adjusted by the terms of this Facilities Lease, less any Lease Payments and other payments already paid as of the date of termination.

In the event that the District exercises this option to terminate after an uncured Event of Default by the Entity in Phase II, the parties shall meet and confer and review the accounts and records of the Entity to determine the actual costs incurred by the Entity for the work completed in Phase II and acceptable to the Architect and the District to the date of termination ("Actual Costs"), including both paid and unpaid. The Actual Costs of the work completed shall include the cost of any materials or equipment ordered and paid for (including any deposits paid toward final costs) but which have not been shipped or are stored off-site and any contractual obligations incurred by the Entity that cannot be cancelled or terminated without penalty. In addition, the Actual Costs shall include any development or overhead fees that have been earned based on the actual work completed as of the date of termination prorated based on the total cost of the Project. Once the Actual Costs have been agreed to by the Parties, or otherwise determined, if the Actual Costs are greater than the Base Rent and other payments made by the District for Phase II work, then the difference will be payable by the District. If the Actual Costs are less than the Base Rent paid by the District, the Entity will pay the difference to the District. The District will assume any accounts payable and contractual obligations that cannot be cancelled or terminated for labor, materials or equipment ordered but not fully paid for by the Entity as of the date of termination. The Entity will cooperate with the District and assign any subcontracts with subcontractors or material providers to the District at the District's election. Upon payment as aforesaid and payment of all other amounts owed, the Entity shall deliver to the District all reasonably necessary documents in recordable form to terminate the Facilities Lease and the Site Lease and transfer title to the Project to the District. District may record all such documents as are necessary to accomplish such termination at the District's cost and expense and proceed to complete the Project in any manner deemed appropriate by the District. Any such payments required hereunder shall be paid within ten (10) days of the final determination of the amounts due.

9.4.2 Alternatively, the District may, without prejudice to any other right or remedy, serve upon the Entity and its surety written notice of default, declaring an Entity default, reserving the right to assign, and advising of the District's intention to require the Entity to assign the Entity's obligations under the Site Lease, the Facilities Lease, including Exhibit D hereto, and the Construction Documents as defined in Exhibit D hereto (the "Obligations") to a party as designated by the District due to Entity's default. Such notice shall contain the reasons for the default. Unless, within thirty (30) days after the service of such notice, such violation shall cease and satisfactory arrangements for the correction thereof be made by the Entity, or in

the event that Entity fails to cease such violation and make, in the District's sole discretion, satisfactory arrangements for the correction thereof, upon written notice from District of assignment ("Notice of Assignment"), Entity shall not be entitled to receive any further payment, except as provided for in this Section 9.4.2, and the District shall have the absolute right to designate an assignment of the Obligations from the Entity to another party. The Entity and its surety hereby consent to such assignment.

9.4.2.1 In the event of service of a Notice of Assignment upon the Entity and its surety, the Entity's surety shall have the right to take over and complete the Project by giving the District written notice of such within fifteen (15) days after service upon it of the Notice of Assignment. If the surety fails to commence performance thereof within thirty (30) days from date of serving such notice, the District may require that the Entity and/or the surety assign the Obligations to a party designated by the District. The District may, without liability for doing so, take possession of and utilize in completing the work such materials, appliances, plants, and other property belonging to the Entity as may be on the site of the work and necessary therefore.

9.4.2.2 If the unpaid balance of the Total Base Rent exceeds the expenses of finishing the work including compensation for additional managerial and administrative services, such excess shall be paid to the Entity. If such expenses exceed such unpaid balance, the Entity shall pay the difference to District within sixty (60) days of recordation of the Notice of Completion for the Project. Any expense incurred by the District as herein provided, and damage incurred through the Entity's default shall be certified by the Architect.

9.4.2.3 The foregoing provisions are in addition to and not in limitation of any other rights or remedies available to the District.

9.4.3 In the event it is determined that the District did not have cause to issue a Notice of Assignment under Section 9.4.2, the Entity shall only be entitled to receive compensation in accordance with Section 9.4.1.

9.5 No Remedy Exclusive. No remedy herein conferred upon or reserved to the parties is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Facilities Lease or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the parties to exercise any remedy reserved to them in this Article 9, it shall not be necessary to give any notice, other than such notice as may be required in this Article or by law.

9.6 Termination for Convenience. The District has the absolute right to terminate the Facilities Lease and the Site Lease without cause and for its convenience upon fourteen (14) days' written notice to the Entity. In the event of termination without cause during Phase I, Entity shall be entitled to payment in an amount not to exceed the Preconstruction Services fee which shall be calculated as follows: (1) the percentage completion of items of preconstruction services by Entity as accepted by the District; plus (2) other reasonable costs actually incurred by Entity in connection with termination; provided, however, that in no event shall Entity be paid an amount which exceeds the Preconstruction Services fee for any item of Preconstruction Services. In the event of such termination without cause during Phase II, the District shall pay the Entity the earned but unpaid actual costs, calculated in accordance with Section 9.4.1, plus ten percent (10%) of the remaining Entity fee for the Project. The Entity shall not be entitled to any further compensation.

If the Facilities Lease and Site Lease are terminated by the District for default, and it is later determined that the default termination was wrongful, such termination automatically shall be converted to and treated as a termination for convenience under this section, and Entity shall be entitled to receive only the amounts payable hereunder in compensation.

9.7 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.

9.8 Application of Proceeds. All amounts derived by the Entity as a result of an Event of Default hereunder, shall be applied to the Lease Payments in order of payment date.

ARTICLE 10. MISCELLANEOUS.

10.1 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:

To the District: Roseville Joint Union High School District
2 Tiger Way,
Roseville, CA 95678
Attention: Scott Davis
Director Facilities Development

With a copy to:
1750 Cirby Way
Roseville, CA 95661
Attention: Joe Landon, RJUHSD Representative

To the Entity: _____
_____
_____
Attention: _____

Any party may change its mailing address at any time by giving written notice of such change to the other parties in the manner provided therein. All notices under this Facilities Lease shall be deemed given, received, made or communicated on the date personal delivery is 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.

10.2 Binding Effect. This Facilities Lease shall inure to the benefit of and shall be binding upon The Entity and the District and their respective successors, transferees and assigns.

10.3 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.

10.4 Further Assurances and Corrective Instruments. The Entity 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.

10.5 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.

10.6 Applicable Law. This Facilities Lease shall be governed by and construed in accordance with the laws of the State of California.

10.7 The Entity and District Representatives. Whenever under the provisions of this Facilities Lease the approval of the Entity or the District is required, or the Entity or the District is required to take some action at the request of the other, such approval or such request shall be given for the Entity by the Entity'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.

10.8 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.

10.9 Interpretation. It is agreed and acknowledged by District and the Entity 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.

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

10.11 Force Majeure. Except as otherwise provided herein, 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, other than third parties under the control or supervision of the party hereto charged with the delay, 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.

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

10.13 Attorneys' Fees; Disputes. In the event that either party is required to institute legal proceedings to enforce this Lease, in whole or in part, the prevailing party shall be entitled to recover its reasonable attorneys' fees, costs and expenses. The parties further agree that any action of proceeding brought to enforce the terms and conditions of this Facilities Lease shall be maintained exclusively in Sacramento County, California.

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

Signatures on next page

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.

Roseville Joint Union High School District,
A school district organized and existing under the laws
of the State of California

By: _____

Printed Name: _____

Title: _____

Contract: $_____

Entity:

_____

By: _____

Printed Name: _____

Title: _____

Business Address: ___

License Number:_____ Expiration Date:_____
Entity (DIR) Registration #:_____ Expiration Date:_____

Federal Tax Identification Number – _____

EXHIBIT A

The name of the Project is **New District Office** to be constructed at **1750 Cirby Way, Roseville, CA 95661** and consists of construction, in accordance with the Plans and Specifications prepared by **Rainforth Grau Architects**.

The Project shall include, but not be limited to, the Construction of a new District Office of approximately 26,000 square feet including a Board Room, offices, break rooms, work rooms, lunchroom, mechanical and electrical systems, parking lot and site work; including the demolition of the existing District office.

EXHIBIT B

DESCRIPTION OF THE SITE

The Site leased is all of that area inside
the (colored boundary) on the map shown below.



EXHIBIT C
Lease Payment Schedule/TBR Calculation

Item No	Date		**Construction Phase**	Lease Payment
1	June	2023	Lease Payment	
2	July	2023	Lease Payment	
3	August	2023	Lease Payment	
4	September	2023	Lease Payment	
5	October	2023	Lease Payment	
6	November	2023	Lease Payment	
7	December	2023	Lease Payment	
8	January	2023	Lease Payment	
9	February	2023	Lease Payment	
10	March	2023	Lease Payment	
11	April	2024	Lease Payment	
12	May	2024	Lease Payment	
13	June	2024	Lease Payment	
14	July	2024	Lease Payment	
15	August	2024	Lease Payment	
16	September	2024	Lease Payment	
17	October	2024	Lease Payment	
18	November	2024	Lease Payment	
			Post-Construction Phase	
19	December	2024	Lease Payment	
20	January	2024	Lease Payment	
21	February	2024	Lease Payment	
22	November	2024	Lease Payment	
23	December	2024	Lease Payment	
24	January	2025	Lease Payment	
25	February	2025	Lease Payment	
26	March	2025	Lease Payment	
27	April	2025	Lease Payment	
28	May	2025	Lease Payment	
29	June	2025	Lease Payment	
30	July	2025	Lease Payment	
Total Phase II (Construction) Lease Payments				$ -
			Contingencies:	
			Construction Contingency	
			Owner Contingency	
			Total Contingencies	
			TOTAL BASE RENT	$ -

EXHIBIT C
Lease Payment Schedule/TBR Calculation

Exhibit C

TOTAL BASE RENT CALCULATION

TAB #	DESCRIPTION	AMOUNT
1	Surveying	
2	Demolition & Abatement	
3	Earthwork	
4	Landscaping & Irrigation	
5	Concrete & Rebar	
6	Masonry	
7	Structural & Misc. Steel	
8	Chain Link/Ornamental Fencing	
9	Expansion Control	
10	Rough Carpentry	
11	Finish Carpentry/Millwork	
12	Below Grade Waterproofing	
13	Caulking/Sealants	
14	Insulation	
15	Fireproofing/Fire Safing	
16	Roofing	
17	Deck Coating System	
18	Flashing Sheetmetal	
19	Roof Accessories	
20	Unit Skylights	
21	Doors/Frames/Hardware	
22	Access Doors	
23	Overhead Coiling Doors	
24	Glass & Glazing	
25	Metal Studs & Drywall	
26	Lath & Plaster	
27	Acoustical Ceilings	
28	Painting & Wall Covering	
29	Fiberglass Reinforced Wall Panels	
30	Ceramic Tile & Stone	
31	Carpeting & Resilient Flooring	
32	Epoxy Floor Coating	
33	Toilet Partitions & Accessories	
34	Building Signage	
35	Miscellaneous Specialties	
36	Theatrical Equipment	
37	Window Shade Systems	
38	Auditorium Seating	
39	Fire Sprinkler System	
40	Wheel Chair Lift	
41	Mechanical	
42	Electrical	
	SUBTOTAL	**0.00**

TAB #	DESCRIPTION	AMOUNT
43	General Conditions	
	Construction Contingency – 3%	
44	District's Contingency	
	Overhead & Profit – _____%	
	(Does not account for Contingencies)	
	Bonds & Insurance	
	SUBTOTAL WITHOUT ALTERNATES	**0.00**
	TOTAL BASE RENT	**$0.00**

EXHIBIT C
ROSEVILLE JOINT UNION HIGH SCHOOL DISTRICT

QUALIFICATIONS & ASSUMPTIONS

ROSEVILLE JOINT UNION HIGH SCHOOL DISTRICT

EXCLUSIONS AND WORK NOT INCLUDED

1.

1

LIST OF PLANS, SPECIFICATIONS AND OTHER DOCUMENTS

1.

2

Sheet	Description	
A0.0	Cover Sheet	

EXHIBIT D

GENERAL CONSTRUCTION TERMS AND CONDITIONS

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ACKNOWLEDGMENTS

The Roseville Joint Union High School District (the "District") and _____ (the "Entity") acknowledge the following as of the Effective Date of the Facilities Lease:

a. The District desires to have the Entity construct an auxiliary gymnasium located on the District's property, which is subject to a Site Lease and a Facilities Lease between the District and the Entity; and

b. The District owns the Site; and

c. The District has entered into an agreement for architectural services with respect to the design of the Project (the "Architectural Services Agreement"); and

d. Construction documents for the Project, including Plans and Specifications as defined in the Facilities Lease, will be submitted to the DSA for approval; no work for which Entity is required to be licensed in accordance with Article 5 (commencing with Section 7065) of Chapter 9 of Division 3 of the Business and Professions Code and for which DSA approval is required may be performed before receipt of the required DSA approval. Upon approval, those construction documents are incorporated herein by this reference; and

e. Upon commencement of construction under the Plans and Specifications, the Entity will have thoroughly investigated the site conditions and reviewed the Plans and Specifications to establish that there are no known problems with respect to the site conditions or the Plans and Specifications and that Entity can and will construct the Project for the Total Base Rent as set forth and defined in Article 4 of the Facilities Lease, and the Entity will not seek any additional compensation whatsoever, including, without limitation, any requests based upon known site conditions, unless otherwise provided in the Facilities Lease, these General Construction Terms and Conditions and/or the Construction Documents as defined herein; and

The Entity is experienced in the construction of the type of facility desired by District and will have all construction performed by firms with all necessary licenses and qualifications which are required to build and deliver the Project.

ARTICLE 1. DEFINITIONS AND PRINCIPLES OF INTERPRETATION

The definitions in the Facilities Lease have the same meanings where the terms are used herein. Additionally, the following definitions and principles of interpretation also apply:

Section 1.01. Definitions and Principles of Interpretation.

Whenever the following terms, titles, or phrases are used in the Construction Documents, the intent and meaning thereof shall be as defined in this article.

Section 1.02. Architect.

The "Architect" is the architectural firm engaged as an agent by the District to perform the services set forth in the Construction Documents.

The Architect is designated by the Board of Education as the District's agent to perform all functions delegated to the Architect by the Construction Documents.

Section 1.03. Architect's Instruction Bulletin.

"Architect's Instruction Bulletins" are supplemental drawings or instructions, which may be issued as necessary from time to time to make clear or define in greater detail the intent of the Plans and Specifications. There may be a change in the Total Base Rent or Contract Time involved with the work shown in the Bulletin.

Section 1.04. Board of Education

"Board of Education" shall mean the duly elected officials constituting the Board of Education of the Roseville Joint Union High School District.

Section 1.05. Change Order.

"Change Order" shall mean a written order to the Entity signed by the District and the Entity or signed unilaterally by the District, issued after execution of the Facilities Lease, authorizing a change in the Work and/or an adjustment in the Total Base Rent and/or the Contract Time. A Change Order shall be memorialized as an "Amendment" to the Facilities Lease.

Section 1.06. Closeout Documents.

Documents as required to meet the requirements of final completion.

Section 1.07. Construction.

"Construction" means all labor and services necessary for the construction and delivery of the Project, and all materials, equipment, tools, supplies and incidentals incorporated or to be incorporated in such construction as described in the Facilities Lease and the Construction Documents. Unless otherwise expressly stipulated, the Entity shall perform all Work and provide and pay for all materials, labor, tools equipment and utilities, including, but not limited to, light, water and power, necessary for the proper execution and completion of the Project pursuant to the Facilities Lease and the Construction Documents.

Section 1.08. Construction Change Directive ("Directive").

"Construction Change Directive", or "Directive" shall mean a written order to the Entity, issued after execution of the Facilities Lease, signed by the Owner or the District Representative directing a change in the Work and stating a proposed basis for adjustment, if any, in the Total Base Rent or Contract Time, or both, and which shall be used in the absence of total agreement with the Entity on the terms of a Change Order or when time does not permit processing of a Change Order prior to implementation of the change.

Section 1.09. Contract Change Document (CCD)

A "Contract Change Document" or "CCD" shall mean the following documents, which may be required to be submitted to DSA for approval prior to being implemented and incorporated into a Change Order: Architect's Instruction Bulletins, Construction Change Directives, Interpretations, RFI's or Substitutions. Any CCD including any change to the Plans and Specifications related to Structure, Fire, Life and Safety and Accessibility must be accompanied by a DSA stamped and signed Form DSA-140 for a "Category A" change for which DSA approval is required or a "Category B" change for which DSA approval is not required in the professional opinion of the Architect. The Form DSA-140 shall be issued, completed, and signed by the Architect. The Entity is not authorized to proceed with any work specified on a Form DSA-140 unless and until all required approvals are received from DSA and provided to the Entity.

Section 1.10. Construction Documents.

The "Construction Documents" shall include the Plans and Specifications including any addenda, these General Construction Terms and Conditions, Change Orders, Interpretations, Directives, Supplemental Drawings, the Entity's Guarantee Form, Architects Instruction Bulletins, the Performance Bond and the Payment Bond, and other documents as defined in the Facilities Lease to be prepared and/or assembled by Architect with input from Entity to define the Work to be constructed as part of the Project.

Section 1.11. Construction Schedule.

The "Construction Schedule" is the schedule produced by the Entity for the construction of the Project. See Article 13 for specific requirements.

Section 1.12. Contract Time.

"Contract Time" shall mean the period specified for completion of the Work, as set forth in the Facilities Lease and adjusted by any Change Order issued pursuant to the Construction Documents.

Section 1.13. Contract Documents.

The Lease Agreements, together with any exhibits, Drawings, Specifications, Schedules, Performance Bond, Payment Bond, Addenda issued prior to execution of the Lease Agreements, other documents listed in the Lease Agreement, and Modifications issued after execution of the Lease Agreement. A Modification is (1) a written amendment to the Lease Agreements signed by both parties, (2) a Change Order, (3) a Construction Change Directive (4) a written order for a minor change in the Work issued by Architect or the District. The Contract Documents do not include other documents such as bidding requirements (advertisement or invitation to bid, Instructions to Bidders, or sample forms).

Section 1.14. Date of Completion.

The "Date of Completion" is the date certified by the District's Representative when construction of the Work is 100% complete including acceptance by the Architect of all punch list corrections.

Section 1.15. Day.

Unless otherwise expressly defined, a "day" shall mean a calendar day of 24 hours, including each and every day of the year.

Section 1.16. District's Consultants

Those consultants retained by District identified in the Project Roster (or later added) who will assist District in carrying out the Project.

Section 1.17. District Representative.
"District Representative" shall mean the District's designated agent engaged to perform all functions delegated to the District Representative by the Contract Documents. The District Representative will be the Entity's primary contact during Construction of the Project.

Section 1.18. Division of the State Architect (DSA).
"Division of the State Architect" is the California State agency responsible for checking construction documents for compliance with Title 24, California Code of Regulations, and monitoring compliance on the construction site. The Division of the State Architect also approves inspectors on all public school projects.

Section 1.19. Drawings
The graphic and pictorial portions of the Contract Documents, showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams. This information may be developed and stored in a 3D or 4D model of the Project.

Section 1.20. Entity
The Lease-Leaseback Entity hired to provide preconstruction services and is anticipated to build the Project under a Facilities Lease per Education Code section 17406 et seq.

Section 1.21. Final Completion
Includes completion of all contract work, including punch list items and final cleaning completed and all close-out documents, including as-builts and other documents required in the Facilities Lease.

Section 1.22. Interpretations.
"Interpretations" are all clarifications, additional instructions, and explanations issued by the Architect pursuant to Article 5 hereof.

Section 1.23. Materials and Equipment.
"Materials" is a generic term, which shall include all building materials, articles, supplies, and equipment delivered to the Project for incorporation into the Work. "Materials" includes everything incorporated into the Work except labor, unless otherwise noted.

"Equipment" shall mean all pre-manufactured or partially pre-assembled products or components, assembled or partially assembled before delivery to the Site.

Section 1.24. Notice to Proceed.
"Notice to Proceed" is the notice given to the Entity following approval of the Plans and Specifications by DSA and approval of the Total Base Rent and Lease Payment Schedule by the Board which establishes the start of the construction Work and authorizes the Entity to begin construction.

Section 1.25. Office of Public School Construction (OPSC).
"Office of Public School Construction" is the California State agency responsible for apportionment, disbursement and monitoring of state provided school district capital improvement funds.

Section 1.26. Product Data.
"Product Data" shall mean illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Entity to illustrate a material, product or system for some portion of the Work.

Section 1.27 . Project
The total design and construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by District or by separate contractors

Section 1.28. Project Evaluation Criteria
Benchmarks, metrics, or standards of evaluation developed by the District, Entity, and Architect and used throughout the Project as a basis for evaluating and continuously improving Project performance.

Section 1.29. Project Inspector.
The "Project Inspector" shall mean the person or persons employed or engaged as (an) independent contractor(s) by the District to inspect the performance of the Work by the Entity for compliance with the Construction Documents. The Project Inspector is hereby designated as an agent of the District for such purpose and no other. The Project Inspector is supervised by, and reports to, the Architect. The authority of the Project Inspector to monitor the work shall be strictly limited to that authority specified herein and in Title 24, California Code of Regulations, and no additional authority has been granted nor shall be inferred.

Section 1.30. Proposed Change Order/Work Order (PCO).
A "Proposed Change Order/Work Order" is the name given to a document issued by the Entity proposing a change to the Work and stating a proposed basis for adjustment, if any, in the Total Base Rent or Contract Time, or both. A PCO shall be used by the Entity to respond to a Request for Proposal. A PCO is not effective to authorize the proposed change to the Work, to the Total Base Rent or to the Contract Time unless it is accepted in writing by the District.

Section 1.31. Provide.
"Provide" shall mean to furnish, install, and connect complete and ready for use.

Section 1.32. Reference to Codes.
Unless otherwise noted, all references to statutes are to the laws of the State of California as codified in the various specified codes.

Section 1.33. Request for Information (RFI).
"Request for Information", or "RFI" is the name given to a document issued by the Entity seeking clarification and/or additional information regarding an aspect of the Work. The response to the RFI does not constitute authorization or direction to proceed with any changed or additional work. Changed or additional work must be separately authorized by the Owner.

1. Should the Contractor require clarification or additional information of the Contract Documents, and after the Contractor has consulted with the Project Inspector, the Contractor will direct the request to the District Representative on a Request for Information (RFI) form. (See appendix.)

2. Each RFI will be submitted to the District Representative un-numbered. The District Representative will number each RFI sequentially and will maintain an RFI log. The Contractor shall describe on the RFI the problem or clarification being requested. The description provided should be complete and adequate to permit a written response without additional communications with the Contractor. The Contractor shall attach any related information or correspondence that may have been received from Subcontractors or vendors on the subject. In instances where the Contractor believes there may be a conflict between elements of the plans and specifications, the Contractor should identify the conflict and indicate the manner in which it interprets the Contract Documents.

3. The District Representative will review the request and take one or more of the following steps:
   a. Return the request to the Contractor for additional information.
   b. Forward the request to the Architect for response, copying the Project Inspector.
   c. Provide response and return to the Contractor with copies to the Architect and Project Inspector.

4. The Architect or other appropriate party receiving the RFI, will attempt to provide a response to the District Representative within seven (7) calendar days of receipt. The District Representative will in turn review the response and forward it to the Contractor. Should the response to an RFI be required by a specific critical date the Contractor shall indicate that date on the RFI.

5. If the Architect's review indicates a change or revision is necessary to the Contract Documents, the Architect will prepare the appropriate drawings and/or specifications required to define the change or revision and obtain DSA approval, if necessary. These documents will be transmitted to the District Representative for review and incorporation into the Contract Documents. The District Representative will transmit the revised documents to the Contractor.

6. If the Contractor believes the clarification or direction provided by the response to the RFI will impact the cost or schedule of the Project, the Contractor shall provide prompt notification to the District Representative, according to the General Conditions. After consultation with the Architect, the District Representative may prepare a Request for Proposal, PCO/Work Order and/or Change Order (see appendix) that shall be processed as outlined in the Change Order Procedure section of the Manual.

Section 1.34. Request for Proposal (RFP).
A "Request for Proposal", or "RFP" is the name given to a document issued by the District Representative requesting pricing information and/or an adjustment in Contract Time for a described scope of Work. An RFP is not a Change Order, a Directive or a direction to proceed with the scope of work described in the RFP. The Entity's response to the RFP shall be in the form of a Proposed Change Order.

Section 1.35. Samples.
"Samples" shall mean physical examples, which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

Section 1.36. Shop Drawings.
"Shop Drawings" shall mean drawings, diagrams, schedules and other data specifically prepared for the Work by the Entity or any Subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

Section 1.37. Special Inspector.
The "Special Inspector" shall mean the person or persons employed or engaged as (an) independent contractor(s) by the District to inspect the performance of specific aspects of the work as required by Title 24, California Code of Regulations.

Section 1.38. Specifications
That portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards, execution and workmanship for the Work, and performance of related services.

Section 1.39. Subcontractor.

"Subcontractor" shall mean each person or firm who is required by law to be and who is licensed to and will perform work, labor, or render services to the Entity in or about the construction of the Work, or who, under subcontract to the Entity, fabricates and installs a portion of the Work. To the extent the term Subcontractor is referred to as if singular in number it shall include the plural and shall means a Subcontractor or an authorized representative the Subcontractor.

Section 1.40. Submittal.

"Submittal" shall include all product data, shop drawings, manufacturers' installation instructions, samples, equal or substitution requests and all other submissions that the Entity is required to make to the District and/or Architect.

Section 1.41. Substantial Completion

The stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so Owner can occupy or utilize the Work for its intended use, and only minor corrective Work remains to be performed, all required approvals, certificates of occupancy and other sign-off from any public agencies with jurisdiction have been obtained, (provided such approvals are not delayed as a result of causes unrelated to Entity's or its Subcontractors', Sub-subcontractors', or Suppliers' performance or failure to perform the Work or to satisfy its obligations under the Contract Documents) and Entity has cleaned up and removed all equipment, tools and other materials from the Work area. Entity shall secure and deliver to Owner written warranties and guaranties from its Subcontractors, Sub-subcontractors and Suppliers bearing the date of Substantial Completion or some other date as may be agreed to by Owner and stating the period of warranty as required by the Contract Documents.

Section 1.42. Substitution.

"Substitution" shall mean a system, process, product or material similar in form or function and equal in quality and performance to that shown or specified. Note: Substitutions may be subject to DSA approval prior to fabrication or use.

Section 1.43. Supply.

"Supply" shall mean to furnish only, complete and ready for installation, including shipping, delivery, protection, and any assembly required prior to installation.

Section 1.44. Work.

The construction and services required from Entity by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by Entity to fulfill its obligations to provide a complete, usable and functional Project consistent with the design intent of the District's Architect. The Work may constitute the whole or a part of the Project.

Section 1.45. Work Plan

The resource-loaded Work Plan prepared by Entity (or any other party as requested by the District) depicting the activities to be accomplished in each phase of the Project and the anticipated labor (and resulting personnel costs), together with anticipated Reimbursable Expenses.

ARTICLE 2. CONSTRUCTION DOCUMENTS

Section 2.01. General Intent of Construction Documents.

It is the overriding intent of the Construction Documents that the work performed shall result in a complete and operable project in satisfactory condition for occupancy, with all mechanical equipment in functional operating condition and fit for the use for which it is intended, and which complies in all respects with the Construction Documents. No extra compensation will be allowed for anything omitted but fairly implied to be included in the Construction Documents.

Section 2.02. Labor and Materials.

Unless otherwise provided in the Construction Documents, the Entity shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, light, heat, utilities, transportation and other facilities and services necessary for the execution and completion of the Work in accordance with the Construction Documents, whether or not specifically described herein, as long as same is reasonably inferable there from as being necessary to produce the intended results, whether temporary or permanent, and whether or not incorporated or to be incorporated in the Work.

Section 2.03. Complementary Feature of Various Parts of Construction Documents.

The Construction Documents, including the specifications and plans and drawings, are complementary and what is called for by any one shall be as binding as if called for by all. In case of conflict, large scale (detail) drawings shall govern over small-scale drawings, the Specifications shall govern over the Plans except as noted below, and subsequent addenda, Interpretations, or Change Orders shall govern over the original documents, unless a different order of precedence is noted elsewhere in conjunction with a specific portion of the documents.

In case of conflict between the Plans and Specifications, the Plans shall govern in matters of quantity, the Specifications in matters of quality. In case of conflict within the Plans involving quantities or within the Specifications involving quality, the greater quantity and the higher quality shall be provided.

Where on any drawing a portion of the Work is drawn out and the remainder is indicated in outline, the drawn-out parts shall apply to all other like portions of the Work. Where ornament or other detail is indicated as starting, such detail shall be continued throughout the courses or parts in which it occurs and shall also apply to other similar parts in the Work, unless otherwise indicated.

Scale drawings, full-size details, and specifications are intended to be fully coordinated and to agree. Where not specifically stated otherwise, all work and materials necessary for each unit of construction, even though only briefly mentioned or indicated, shall be furnished and installed fully and completely, including, but not limited to, the manufacturer's instructions and/or recommendations.

Any material specified by reference to the number, symbol, or title of a specified standard such as a Commercial Standard, a Federal Specification, a trade association standard, or other similar standards, shall comply with the requirements in the latest approved revision thereof and any amendments or supplements thereto in effect on the Effective Date, except as limited to type, class, or grade, or modified in such reference. The standards referred to, except as modified in the Specifications, shall have full force and effect as though printed in the Specifications.

Section 2.04. Ownership and Use of Documents.

The Plans and Specifications prepared by the Architect are and shall remain the property of the District.

Section 2.05. Written Notice.
Written notice may be accomplished by personal delivery, United States mail, overnight mail, facsimile, e-mail (with confirmation of receipt), or any other form of commercially accepted communication. The written notice shall become effective upon delivery. Delivery is complete when the notice is hand delivered to Entity's home office, job-site office, or to Entity's superintendent; or when the facsimile transmission is complete if completed by 5:00 p.m. on a business day, or otherwise on the following business day; or when an e-mail return receipt is sent; or two business days after mailing by U.S. mail; or upon actual delivery as evidenced by a delivery receipt.

Section 2.06. Not Used.

Section 2.07. Rights and Remedies.
The duties and obligations of the Entity imposed by the Construction Documents and the rights and remedies of the parties available hereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

The failure of the District, the District's Representative, the Project Inspector or the Architect to insist in any one or more instances upon the strict performance of any one or more of the provisions of the Construction Documents or to exercise any right herein contained or provided by law, shall not be construed as a waiver or relinquishment of the performance of such provision or right(s) or of the right to subsequently demand such strict performance or exercise such right(s) and the rights shall continue unchanged and remain in full force and effect.

ARTICLE 3. BONDS

Section 3.01. Bonds: Time to Submit.
Within ten (10) days after receipt of a Notice to Proceed with Phase II work, the Entity shall furnish and deliver to the District bonds as set forth below in Sections 3.03 and 3.04.

Section 3.02. Qualifications of Surety.
All bonds shall be duly executed by a responsible corporate surety listed in the current version of the United States Department of the Treasury circular entitled "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies," admitted by the State of California Department of Insurance to do business in the State of California and acceptable to District.

Section 3.03. Performance Bond.
The Entity shall submit a faithful Performance Bond on the form provided by the District, conditioned upon the faithful performance by the Entity of all requirements of the Facilities Lease and the Construction Documents. The amount of the bond shall be in a sum no less than one hundred percent (100%) of the Total Base Rent.

Section 3.04. Labor and Materials Payment Bond.
The Entity shall also submit a bond on the form provided by the District, which in all respects complies with Civil Code sections 3247-3252, inclusive. This bond, hereinafter referred to as a "Payment Bond," shall be in a sum no less than one hundred percent (100%) of the Total Base Rent.

Section 3.05. Additional Bonding Requirements.
All bonds submitted shall include the following:

1. Full name and address of the Entity, Surety, and District
2. Effective Date of the Facilities Lease
3. Total Base Rent
4. Project name and address
5. Signature of the Entity
6. Corporate Seal if Applicable
7. Signature of authorized Surety representative
8. Notarization of the Entity and Surety
9. Power of Attorney
10. Local contact for Surety, with name, phone number, and address to which legal notices may be sent

ARTICLE 4. PERMITS, LICENSES, ORDINANCES, AND REGULATIONS

Section 4.01. Basic Standard.

The Entity shall conduct the Work so that all laws and ordinances for the protection of the public and the workers shall be obeyed fully both by the Entity and by all Subcontractors on the Site.

The Entity shall comply with the requirements of the California State Licensing Board and have a valid contractor's license, which is to be active and maintained in "Good Standing" throughout full completion of the Project.

The Entity, and any used subcontractor shall be registered pursuant to Labor Code section 1725.5 prior to executing any contract or engaging in any work, whichever is earlier, that involves the performance of any public work contract that is subject to the requirements of Division 2, Part 7, Chapter 1 of the California Labor Code, and shall maintain current registration throughout the term of this Contract.

Section 4.02. Permits.

The District shall pay all fees required by the Division of the State Architect, Department of General Services, State of California. The District shall reimburse the Entity for specific construction permits related exclusively to the project and/or project location that could include but are not limited to encroachment permits, water usage permits, meter permits, fire alarm permits, elevator permits, confined space and special work permits, storm water permits, erosion control permits and any applicable State, County or City permits related to agency inspections, utility connection fees, encroachment permits, utility service charges other than temporary utility charges unless otherwise indicated, necessary for the completion of the Work. All other fees and permits shall be at the expense of the Entity. Proper documentation of fee, permit, and utility service charges shall be submitted to the District through the District's Representative. No mark-up shall be allowed the Entity on these reimbursable charges.

The Entity shall give all notices and comply with all laws, ordinances, rules, regulations or orders of any public authority bearing on the performance of the Work.

Except as provided above, the District shall secure and pay for necessary approvals, easements, assessments and charges required for the Construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

Section 4.03. Compliance with Laws and Regulations.

The Entity shall keep itself fully informed of and shall observe and shall conduct its operations so as to comply with, and shall cause any and all persons, firms, or corporations employed by it or under it to observe and comply with all federal and state laws, and county or municipal ordinances, regulations, orders, and decrees which in any manner affect those engaged or employed on the Work, or the materials used in the Work, or in any way affect the conduct of the Work.

All work shall be performed in accordance with the rules and regulations, latest Edition of Title 24, Parts 1-5 and 9, California Code of Regulations, and Division of the State Architect, and a copy shall be kept on the job at all times during construction.

ARTICLE 5. INTERPRETATION OF PLANS AND SPECIFICATIONS

Section 5.01. Sections of Plans and Specifications.

For convenience, the Plans and Specifications in the Construction Documents are arranged in several sections, but this separation shall not be considered as the limits of the work required of any separate trade. The terms and conditions of the work to be performed by any Subcontractor are strictly between the Entity and the Subcontractor.

Section 5.02. Diagrammatic Drawings.

Drawings showing the locations of equipment, wiring, piping, etc., unless dimensioned, are diagrammatic, and conditions will not always permit their installation in the exact location shown. In such event, the Entity shall notify the District's Representative and obtain an Interpretation before proceeding with the work in question. Unless there is a material increase in the Entity's scope of Work, installation as specified in the Interpretation shall be without any additional compensation to the Entity. Any work done after discovery of the issue, until authorization to proceed based on the Interpretation provided will be done at the Entity's risk.

Section 5.03. Interpretation and Additional Instructions.

The goal of the preconstruction involvement of Entity and key Subcontractors is to maximize the parties' understanding of the design requirements, including the design intent and all technical requirements of the Project, prior to field construction. If the parties have maximized this opportunity, then there will be little or no need for RFIs or clarifications after construction is commenced.

To the extent that the need for clarification does arise, the party seeking clarification should first raise the issue either in a face-to-face conversation or via telephone with the Architect. The initial conversation shall describe the issue, identify the area affected, and request the clarification needed. If the parties to that conversation resolve the issue in the course of that conversation, they shall also agree on how the clarification shall be documented. If the parties to that conversation are not able to resolve the issue in the course of that conversation, they shall agree on how the issue will be resolved (who, will do what, by when) and shall agree which of them will notify the District concerning the issue and the plan for resolution. It is the parties' goal that RFI's will only be issued to document solutions, rather than raise questions that have not previously been the subject of a conversation. To the extent that resolution of the issue may affect progress of the Work, the issue shall be included in the schedule updates.

Should the Entity proceed with the work affected before receipt of instructions from the Architect, and, in the case of a change to the Work, before authorization to proceed, it shall remove and replace or adjust any work which is not in accordance therewith, and it shall be responsible for any resultant damage, defect, or added cost, without an extension of the Contract Time.

Section 5.04. Architect's Instruction Bulletins, Construction Change Document and Drawings.

In addition to the drawings incorporated in the Construction Documents, the Architect may furnish such supplemental drawings or instructions from time to time as may be necessary to make clear or to define in greater detail the intent of the Plans and Specifications. In furnishing additional drawings or instructions, the Architect shall have the authority to make minor changes in the Work, not involving any extra cost, and not inconsistent with the overall design of the Project. Any Architect's Instruction Bulletin including a change to the Plans and Specifications must be accompanied by either a Form DSA-140 for a "Category A" change for which DSA approval is required or 2) a Form DSA-141 for a "Category B" change for which DSA approval is not required in the professional opinion of the Architect. If extra cost is known to be involved, and time permits, these instructions will be accompanied by a RFP. The Entity shall have up to ten (10) to respond to

the RFP in the form of a Proposed Change Order which shall be accompanied by the supplemental drawings or instructions signed by the Entity. Upon approval of the PCO, the supplemental drawings or instructions shall become a part of the Construction Documents; the Entity shall make its Work conform to them. If time does not permit the processing of a Change Order, the supplemental drawings or instructions will be accompanied by a Construction Change Directive.

Section 5.05. Notification of Disagreement Regarding Scope of Work.

When the Entity does not agree that work due to an Interpretation or supplemental drawing or instruction is within the scope of the Construction Documents, the Entity shall nevertheless perform such work without delay. Within seven (7) days after receipt of the Interpretation or instruction, the Entity shall submit a Proposed Change Order to the District's Representative specifying in detail in what particulars the construction requirements were exceeded and the change in cost resulting therefrom. **Failure of the Entity to provide timely written notice waives the Entity's right to claim that the Interpretation or Architect's Instruction Bulletin constitutes a change to the Contract Documents.** The District's Representative shall then determine whether the work should be covered by a contingency or allowance per Section 4.4.2.4 or an amendment to the Total Base Rent is warranted. Change Orders shall be issued in accordance with Article 15 of these General Construction Terms and Conditions. The time during which the request is pending shall not affect the Contract Time.

Section 5.06. As-Built Drawings and Specifications.

The Entity shall maintain a hard copy or PDF master set of red line Drawings and Specifications at the Site which shall be updated weekly to reflect current as-built conditions of the Work as the Work progresses. The information to be recorded by the Entity will be determined by the Architect, who will be responsible for preparing the final, reproducible as-built drawings based upon the information submitted by the Entity. The Entity's as-built information shall be clear and legible, and at a minimum, the following information shall be inserted and dimensioned on those Drawings and Specifications, in RED, by the Entity: the exact horizontal and vertical location of all installations in their finished condition, including all electrical, plumbing and mechanical installations; all changes in construction, materials and installed equipment; posting of all issued addenda, Request for Information (RFI) signed by the Architect and Architect's Instruction Bulletins with back-up to the bid documents in all applicable locations along with adequate dimensional data, both horizontal and vertical, to allow location of covered installations; the identification of each change authorized by Directive, and the number of that Directive. The updated drawings and specifications shall be available for review by the District Representative and the Inspector. If as-builts are marked up in PDF format, the file shall be made available remotely in a manner acceptable to the District Representative and Inspector.

Written confirmation from the District Representative that the as-builts have been properly updated weekly shall be submitted with each pay application request, and the existence of such properly updated as-builts shall be a condition precedent to payment. Failure to comply with the preparation and submission of as-builts may result in the District withholding the current lease payment.

As a condition to certification of final completion, the Entity shall provide signed and dated original as-built drawings and specifications in a PDF color format, with a resolution of 600 DPI and each plan sheet and specification section bookmarked by name, number or title, together with all additional information requested by the Architect to enable the Architect to prepare a set of final, reproducible as-built drawings and specifications. Timely submission of complete as-built documents shall be a condition precedent to certification of final completion. Delays in the submission of complete as-built documents may subject the Entity to liquidated damages.

ARTICLE 6. SUBCONTRACTORS

Section 6.01. Subcontracting.

The Entity shall give personal attention to the fulfillment of the Construction Documents and all Work of the Project and shall control the Work.

If the Entity subcontracts any Work to be performed or materials to be supplied pursuant to this Agreement, the Entity shall be as fully responsible to the District for the acts and/or omissions of such subcontractor or supplier and of the persons either directly or indirectly employed or engaged as subcontractors by such subcontractor or supplier as it is for its own acts and omissions.

The Entity shall bind every Subcontractor or supplier, and every subcontractor of a Subcontractor, by the terms of the Construction Documents.

The Entity shall be responsible to ensure that each of its Subcontractors has an active contractor's license pertaining to its classification of work maintained in "good standing" from commencement of the Subcontractor's work through final completion of the Project.

All Subcontractors shall be registered pursuant to Labor Code section 1725.5 before performing any public work contract that is subject to the requirements of Division 2, Part 7, Chapter 1 of the California Labor Code, and shall maintain current registration throughout through final completion of the Project.

The Entity shall not perform work on the Project with a Subcontractor who is ineligible to perform work on public works project pursuant to Labor Code sections 1725.5, 1777.1, or 1777.7.

Section 6.02. Compliance with Education Code section 17407.5 and Public Contract Code sections 2600 *et seq*.

The Entity must comply with Education Code section 17407.5 and Public Contract Code sections 2600 *et seq*, including without limitation making an enforceable commitment to the District's governing board that the Entity and all subcontractors at every tier will use a skilled and trained workforce to perform all work on the Project that falls within an apprenticeable occupation in the building and construction trades. In compliance with that requirement, prior to the District approving the Facilities Lease, the Entity must have provided to District's governing board either a) the Entity's certification and agreement that the Entity and its subcontractors at every tier will comply with the requirements of Education Code section 17407.5 and Public Contract Code sections 2600 *et seq.* and that the Entity will provide the District's governing board, on a monthly basis while the Project is being performed, a report demonstrating that the Entity and its subcontractors are in compliance with these requirements, or b) evidence that the Entity has entered into a project labor agreement that includes the requirements of Education Code section 17407.5 and Public Contract Code sections 2600 *et seq.* and that will bind the Entity and all its subcontractors at every tier performing on the Project.

Section 6.03. Disputes Between Subcontractors and/or the Entity.

If, through acts or neglect on the part of the Entity, including failure to supervise and control its subcontractors or suppliers, any other contractor, subcontractor or supplier, or worker suffers loss or damage, the Entity agrees to resolve any resulting dispute with such other contractor, subcontractor, supplier, or worker by agreement, arbitration or litigation, if such other contractor, subcontractor, or worker shall assert any claim against the District or any of its officers, agents, or employees, on account of any damage alleged to have been so sustained.

In the event of the receipt of any such claim, the District shall notify the Entity, who shall defend, indemnify, and save harmless the District and all of its officers, agents, and employees against any such claim.

Section 6.04. Dealings with Subcontractors.

Nothing contained in the Construction Documents shall create any contractual relationship between any Subcontractor or supplier and the District or any of its representatives, nor shall the Facilities Lease or the Construction Documents be construed to be for the benefit of any Subcontractor or supplier.

Section 6.05. Termination of Unsatisfactory Subcontractors.

When any portion of the Work that has been subcontracted by the Entity is not being prosecuted in a satisfactory manner, or when materials supplied do not conform to the Construction Documents, the District may direct the Entity to discharge the subcontractor or supplier.

Any Subcontractor or supplier that is discharged shall not again be employed on this Project.

Section 6.06. Payment of Subcontractors and Suppliers.

The Entity shall make all payments to Subcontractors and suppliers as expeditiously and timely as possible, consistent with any applicable law so as to prevent any stop notices, liens or claims from being filed against the District or the Site. Provided that the District has not withheld payments contrary to the provisions of the Facilities Lease, these General Construction Terms and Conditions or law, the Entity shall indemnify, defend and hold the District harmless from any claims or actions which allege that any Subcontractor or supplier was not paid with respect to the Project, except for claims resulting from dispute between District and Entity. Election to bond subcontractors and include the cost of subcontractor bond in the TBR is Entity's with prior approval of the District.

Section 6.07. Subguard.

To the extent the Entity obtains subguard insurance and includes the premiums in the Total Base Rent, the Entity shall refund to the District at the completion of the Project any savings in the premiums.

ARTICLE 7. STATE REQUIREMENTS REGARDING WAGES, HOURS, AND EQUAL OPPORTUNITY

Section 7.01. Prevailing Wage Rate; Notice.

As provided under Labor Code Sections 1726-1861, the Director of the Department of Industrial Relations (DIR) of the State of California has determined the prevailing rate of wages in the locality in which the work on the project is to be performed for each craft, classification, or type of worker needed to execute this Contract. The prevailing rates so determined are on file with the District, and they are available for public inspection. They may also be obtained on the Internet at http://www.dir.ca.gov/DIR/S&R/statistics_research.html. Those prevailing wage rates hereby are incorporated in this agreement and made a part hereof.

The Entity shall obtain and post copies of these prevailing wage rates in a prominent place at the job site, in accordance with the regulations of the Department of Industrial Relations.

The Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. The Entity shall post on the jobsite a Notice containing the following language:

> This public works project is subject to monitoring and investigative activities by the Department of Industrial Relations ("DIR"), State of California. This Notice is intended to provide information to all workers employed in the execution of the contract for public work and to all contractors and other persons having access to the job site to enable the DIR to ensure compliance with and enforcement of prevailing wage laws on public works projects.
>
> The prevailing wage laws require that all workers be paid at least the minimum hourly wage as determined by the Director of Industrial Relations for the specific classification (or type of work) performed by workers on the project. These rates are listed on a separate job site posting of minimum prevailing rates required to be maintained by the public entity which awarded the public works contract. Complaints concerning nonpayment of the required minimum wage rates to workers on this project may be filed with the DIR at any office of the Division of Labor Standards Enforcement ("DLSE").
> Local Office Telephone Number: _____
>
> Complaints should be filed in writing immediately upon discovery of any violations of the prevailing wage laws due to the short period of time following the completion of the Project that the DIR may take legal action against those responsible.
>
> Complaints should contain details about the violations alleged (for example, wrong rate paid, not all hours paid, overtime rate not paid for hours worked in excess of 8 per day or 40 per week, etc) as well as the name of the employer, the public entity which awarded the public works contract, and the location and name of the project.
>
> For general information concerning the prevailing wage laws and how to file a complaint concerning any violation of these prevailing wage laws, you may contact any DLSE office. Complaint forms are also available at the DIR website found at: www.dir.ca.gov/dlse/PublicWorks.html.

Section 7.02. Payment of Prevailing Wage Rates.
Pursuant to Labor Code Section 1772, workers employed by contractors or subcontractors in the execution of any contract for public work, including the Preconstruction Services, are deemed to be employed upon public work as defined in Labor Code Sections 1720-1725. Therefore, the Entity shall pay, and shall cause all subcontractors, whether under contract with the Entity or under contract with any Subcontractor, to pay not less than the specified prevailing wage rates to all workers employed in the execution of this Contract.

In accordance with Labor Code Section 1775, the Entity shall monitor the payment of the specified general prevailing rate of per diem wages by subcontractors to employees by periodic review of the certified payrolls of the subcontractors.

Section 7.03. Wage Rate for Crafts Not Listed.
The responsibility to check prevailing wage rates is the Entity's. Pursuant to Labor Code Section 1773, the Entity may file with the Director of DIR or the Chief of the Division of Labor Standards Enforcement ("DLSE") a petition to review a determination of any rate or rates made by the Director of DIR. The Entity may also petition the Director of DIR to make a determination for a particular craft, classification or type of work not covered by a general determination. Pending the review or determination, the wages may be assumed to be those in the applicable collective bargaining agreement, but no adjustment in the Total Base Rent shall be made if such assumption is incorrect.

Section 7.04. Records of Hours Worked and Wages.
The Entity shall keep, and shall cause all subcontractors on the Project to keep, certified payroll records of the hours and wages of all employees employed on the Project, and those records shall be open at all times for inspection by the District and/or the Division of Labor Statistics and Enforcement, in accordance with Sections 1776 and 1812 of the Labor Code. The certified payroll records shall be submitted to DIR including all required information and including, at a minimum, the following information: the name, address, social security number, work classification, dates of payroll period, straight time, and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by the Entity and/or each subcontractor in connection with the Work.

If the District requests copies of the certified payroll records, then the Entity and/or any subcontractor must provide the requested records within ten (10) days of the request. In the event that the Entity and/or any subcontractor fails to submit certified payroll records within ten (10) calendar days of a request from the District for the records, then the Entity and/or the subcontractor shall, as a penalty, forfeit one hundred dollars ($100) per calendar day, per worker, until strict compliance is effectuated. These penalties shall be withheld from lease payments then due and/or to become due. The Entity is not subject to this penalty assessment due to the failure of a subcontractor to comply with these requirements if the Entity can demonstrate that it has fully complied with the provisions of Labor Code Section 1776.

The Entity shall not carry on its payrolls any person not actually employed by the Entity, including without limitation employees of any subcontractor. The Entity shall show on its payrolls all persons actually employed by the Entity on the Project, in any capacity. The Entity shall cause all subcontractors on the Project, whether under contract with the Entity or under contract with any Subcontractor, to comply with this Section.

In accordance with Government Code Section 8546.7, or any amendments thereto, all books, records, and files of the Entity, or any subcontractor connected with the performance of this Contract, shall be subject to examination and audit by the Auditor General for a period of three (3) years after final payment. The Entity shall preserve and cause all subcontractors to preserve such books, records and files for the audit period.

Section 7.05. Additional Requirements for Labor Compliance.

The Entity shall comply with all applicable and current requirements of the DIR and the DLSE, including without limitation the following additional requirements, and shall cause all subcontractors on the Project, whether under contract with the Entity or under contract with any Subcontractor, to comply. The records kept by the Contactor and all subcontractors of the hours and wages of all employees employed on Project also shall be open at all times for inspection by the DIR and DLSE, in accordance with Sections 1776 and 1812 of the Labor Code. Such records shall be furnished electronically to the Labor Commissioner of the DIR monthly, unless more frequent submission is required herein, and shall be furnished within 10 days of any separate request by the DIR or DLSE. Payroll records shall be furnished in a format prescribed by the DIR and uploaded into the electronic certified payroll reporting (eCPR) system.

On a random basis and at such other times as it deems appropriate, the DIR also may confirm the accuracy of payroll reports, including by corroboration of information in payroll reports through independent sources, including without limitation worker interviews, examination of any time and pay records found within the definition of "Payroll Records" in section 16000 of Title 8 of the California Code of Regulations, direct verification of "Employer Payments" (as defined at section 16000 of Title 8 of the California Code of Regulations) through third-party recipients of those payments, or any other legal and reasonable method of corroboration. As part of its confirmation process, the DIR may require the Entity and any of its subcontractors to furnish for inspection itemized statements prepared in accordance with Labor Code Section 226. The DIR may conduct random confirmation based on a recognized statistical sampling of the records submitted.

The DIR may conduct in-person inspection(s) at the site or sites at which the Work of the Project is being performed ("On-Site Visits"). On-Site Visits may include visual inspection of required job site notices, including but not limited to (1) the determination(s) of the Director of DIR of the prevailing wage rate of per diem wages required to be posted at each job site in compliance with Labor Code Section 1773.2; (2) the Notice of pay days and time and place of payment required by Labor Code Section 207; and (3) any other notices prescribed by law. On-Site Visits may also include inspections of records, inspections of the work site and observation of work activities, interviews of workers and others involved with the Project, and any other activities deemed necessary by the DIR to ensure compliance with prevailing wage requirements. Under Labor Code Section 90, the Labor Commissioner and his deputies and agents shall have free access to any construction site or other place of labor and may obtain any information or statistics pertaining to the lawful duties of the Labor Commissioner, including but not limited to evidence of compliance with Labor Code Section 226 (itemized wage statements for employees) and other laws enforced by the Labor Commissioner.

In accordance with Section 16463 of Title 8 of the California Code of Regulations ("8 CCR Section 16463"), the District may, on its own or if required by the Labor Commissioner, withhold funds due to the Entity when payroll records are delinquent or inadequate. The amount withheld shall be those payments due or estimated to be due to the Entity or subcontractor whose payroll records are delinquent or inadequate, plus any additional amount that the Labor Commissioner has reasonable cause to believe may be needed to cover a back wage and penalty assessment against the Entity or subcontractor whose payroll records are delinquent or inadequate. The Entity shall cease all payments to a subcontractor whose payroll records are delinquent or inadequate until the Labor Commissioner provides notice that the subcontractor has cured the delinquency or deficiency. When payments are withheld under 8 CCR Section 16463, the Labor Commissioner will provide the Entity and subcontractor, if applicable, with immediate written notice that includes all of the following: (1) a statement that payments are being withheld due to delinquent or inadequate payroll records, and that identifies what records are missing or states why records that have been submitted are deemed inadequate; (2) specifies what amounts the District has been directed to withhold; and (3) informs the Entity or subcontractor of the

right to request an expedited hearing to review the withholding of payments under Labor Code Section 1742, limited to the issue of whether the records are delinquent or inadequate or the Labor Commissioner has exceeded his or her authority under 8 CCR Section 16463. Where the violation is by a subcontractor, the Entity shall be notified of the nature of the violation and reference shall be made to Entity's rights to withhold or recover payments from the subcontractor under Labor Code Section 1729. The withholdings under 8 CCR Section 16463 do not preclude assessment of penalties under Labor Code Section 1776(g) for failure to timely comply with a written request for certified payroll records, as set forth below.

Section 7.06. Underpayment of Wages.

The Entity agrees that in the event of underpayment of wages to any employee on the Project, whether by the Entity or any subcontractor on the Project, the District may retain from payments due to the Entity, an amount sufficient to pay such worker the difference between the wages required to be paid by the DIR, and the wages actually paid such worker for the total number of hours worked, plus any penalties and forfeitures. The District may disburse such retention to such employees.

Section 7.07. Apprentices.

Attention is directed to the provisions of Sections 1777.5, 1777.6 and 1777.7 of the Labor Code concerning the employment of apprentices by the Entity or any subcontractor.

The Entity and all subcontractors on the Project shall comply with the requirements of Sections 1777.5 and Section 1777.6 of the Labor Code in the employment of apprentices. Violation of these requirements shall subject the Entity and/or subcontractor to the penalties set forth in Section 1777.7 of the Labor Code and/or otherwise provided by law or Contract.

Attention is directed to the provisions of Section 17407.5 of the Education Code and Public Contract Code sections 2600 *et seq.* with respect to the requirement that the Entity and its subcontractors at any level employ on the Project apprentices registered in an apprenticeship program approved by the Chief of the Division of Apprenticeship Standards of the Department of Industrial Relations.

Information relative to apprentice standards, wage schedules, and other requirements may be obtained from the Director of Industrial Relations, ex-officio the Administrator of Apprenticeship, San Francisco, California, from the Division of Apprenticeship Standards or its branch offices, and/or on the DLSR website at www.dir.ca.gov/DLSR/PWD. Apprentices employed on the Project must at all times work with or be under the direct supervision of a journeyman or journeymen.

Section 7.08. Penalties.

In accordance with Articles 2 and 3, Chapter 1, Part 7, Division 2 of the Labor Code, particularly Sections 1775, 1776, 1777.7 and 1813, the Entity shall forfeit to District as a penalty the sum specified below, over and above any retention or withholds otherwise authorized by the agreement, as follows:

A. Up to two hundred dollars ($200) for each calendar day, or portion thereof, for each worker paid less than the applicable prevailing wages for any work done by him/her under this Contract or under any subcontract on the Project, with the amount to be determined by the Labor Commissioner in accordance with the considerations set forth in Labor Code section 1775. If a worker employed by a subcontractor on the Project is paid less than the prevailing wages by the subcontractor, the Entity is not subject to this penalty assessment if the Entity can demonstrate that it did not have knowledge of that failure of the subcontractor to pay the prevailing wages and that it strictly complied with the requirements of Labor Code Section 1775(b).

B. Twenty-five dollars ($25) for each worker employed in the execution of this agreement by the Entity or by any subcontractor on the Project for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week in violation of the provisions of Article 3.

C. Failure to provide certified payroll records to the District or to the Labor Commissioner within ten (10) calendar days of a request, shall, in addition to resulting in a withholding of payments due, result in a penalty in the amount of one hundred dollars ($100) for each calendar day, or portion thereof, for each worker until strict compliance is effectuated. The Entity is not subject to this penalty assessment due to the failure of a subcontractor to comply with these requirements if the Entity can demonstrate that it has fully complied with the provisions of Labor Code Section 1776.

D. Knowing violation of Labor Code Section 1777.5 shall yield a penalty in an amount not exceeding one hundred dollars ($100) for each full calendar day of non-compliance. A contractor or subcontractor who knowingly commits a second or subsequent violation of Section 1777.5 within a three-year period, where noncompliance results in apprenticeship training not being provided as required, shall forfeit as a civil penalty the sum of no more than three hundred dollars ($300) for each full calendar day of noncompliance.

Section 7.09. Hours of Work; Approval of Schedules.

Eight (8) hours of labor constitutes a legal day's work, and forty (40) hours constitutes a legal work week. No worker employed at any time by the Entity, or by any subcontractor upon the Project, shall be required or permitted to work more than eight (8) hours in any one calendar day or forty (40) hours in any one week, except as provided in Labor Code Sections 1810 through 1815.

Overtime shall be paid at the rate of not less than one and one-half (1-1/2) times the basic rate of pay, or at such other rate as stated on the applicable Determination issued by the DIR, or as may be required by applicable statutes or collective bargaining agreements.

The District reserves the right to approve or disapprove the days scheduled for work, and the hours during which work is in progress.

Section 7.10. Compliance with State Anti-Discrimination Laws.

The Entity shall comply with Section 1735 of the Labor Code, which provides as follows:

> "A contractor shall not discriminate in the employment of persons upon public works on any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code, except as otherwise provided in Section 12940 of the Government Code. Every contractor for public works who violates this section is subject to all the penalties imposed for a violation of this chapter."

Section 7.11. Workers' Compensation Insurance.

The Entity shall provide, at all times in which it is providing or performing any work on the Project, at its sole cost and expense, workers' compensation insurance for all of the employees engaged in work for the Project. In case any of the Entity's work is sublet, the Entity shall require the Subcontractor similarly to provide workers' compensation insurance for all the latter's employees. Any class of employee or

employees not covered by a Subcontractor's insurance shall be covered by the Entity's insurance. In case any class of employees engaged in work on or at the site of the Project is not protected under Workers' Compensation laws, the Entity shall provide or shall cause a Subcontractor to provide, adequate insurance coverage for the protection of such employee, not otherwise protected. The Entity shall file with the District certificates of its insurance protecting workmen. The Entity is required to secure payment of compensation to its employees in accordance with the provisions of Section 3700 of the Labor Code.

ARTICLE 8. SUPERVISION AND LABOR

Section 8.01. Supervision Procedures.

The Entity shall supervise and direct the Work using its best skill and attention. The Entity shall be solely responsible for all construction means, methods, techniques, and procedures and for coordinating all portions of the Work under the Facilities Lease and the Construction Documents.

The Entity shall be responsible to the District for the acts and omissions of its employees, all subcontractors and their agents and employees and other persons performing any of the Work.

The Entity shall not be relieved from its obligations to perform the Work in accordance with the Facilities Lease and/or the Construction Documents either by the activities or duties of the Architect or the District's Representative in their administration of the Project or by inspections, tests or approvals (or the lack thereof) required or performed under Article 9 by persons other than the Entity.

Section 8.02. Skilled Labor.

All non-apprentice labor shall have the skills of a journeyperson in the applicable trade. All workmanship shall be of the highest quality and finish in all respects.

All of the workers on the Project must be either "skilled journeypersons" or apprentices registered in an apprenticeship program approved by the Chief of the Division of Apprenticeship Standards of the Department of Industrial Relations ("Chief"). A "skilled journeyperson" is a worker that either a) graduated from an apprenticeship program for the applicable occupation that was approved by the Chief or located outside California and approved for federal purposes pursuant to the apprenticeship regulations adopted by the federal Secretary of Labor, or b) has at least as many hours of on-the-job experience in the applicable occupation as would be required to graduate from an apprenticeship program for the applicable occupation that is approved by the Chief. In addition, the following percentages of the skilled journeypersons employed to perform work on the Project must be graduates of an apprenticeship program for the applicable occupation that was either approved by the Chief pursuant to Section 3075 of the Labor Code or located outside California and approved for federal purposes pursuant to the apprenticeship regulations adopted by the federal Secretary of Labor:

- For work performed by an acoustical installer, bricklayer, carpenter, cement mason, drywall installer or lather, marble mason, finisher, or setter, modular furniture or systems installer, operating engineer, pile driver, plasterer, roofer or waterproofer, stone mason, surveyor, terrazzo worker or finisher, or tile layer, setter, or finisher: thirty percent (30%) or more;
- For others except teamsters: sixty percent (60%) or more.

The requirement that the specified percentage of skilled journeypersons be graduates of an apprenticeship program shall not apply to work performed by teamsters. For an apprenticeable occupation in which no apprenticeship program had been approved by the Chief before January 1, 1995, up to one-half of the graduation percentage requirements above may be satisfied by skilled journeypersons who commenced working in the apprenticeable occupation before the Chief's approval of an apprenticeship program for that occupation in Placer County.

In addition to relying upon the Department of Apprenticeship Standards website for proof of journeymen graduated from DIR-approved apprenticeship programs, the Entity and its subcontractors may rely upon Union hiring hall representation that it holds a valid apprenticeship certificate for its dispatched members, which Union hiring hall representation shall be in writing and maintained by the Entity.

Section 8.03. No Tenancy.
All workers, subcontractors, or subcontractors' representatives are admitted to the Site only for the proper execution of the Work, and have no tenancy.

Section 8.04. Dismissal of Unsatisfactory Employees.
The Entity shall at all times enforce strict discipline and good order among all employees including compliance with the District Guidelines for Conduct on School Sites and shall not employ on the Work any unfit person or anyone not skilled in the assigned task as defined in Section 8.02. The Entity shall remove, or cause a subcontractor to remove from the Project, any incompetent employee, or any employee not skilled for the type of work required as defined in Section 8.02, or any employee who does not comply with the District Guidelines for Conduct on School Sites. The District may require that the Entity immediately remove from the Work any employee for cause.

Section 8.05. Personal Attention and Superintendence; Entity's Agent.
The Entity shall supervise the Work to the end that it shall be faithfully prosecuted. The Entity shall at all times while the Entity's scope of work is in progress keep a full-time superintendent who is fully empowered to act as agent for the Entity on the Site. The Entity shall advise the District in writing of its agent prior to the start of any work. The Entity shall be responsible for the faithful observation of all instructions delivered to its authorized agent(s).

Section 8.06. Not Used.

Section 8.07. Entity's Coordination of Work.
The District reserves the right to do other work in connection with the Project by separate contract or otherwise, including, without limitation, with respect to installing relocatable buildings. The District shall give the Entity written notice at least thirty (30) days in advance of any work to be done by the District's contractors, agents or employees. The Entity and the District shall at all times conduct their work so as to impose no hardship on the other and shall coordinate with each other so that no delays or discrepancies shall result in the whole Project.

Section 8.08. Fingerprinting.
Education Code section 45125.1 applies to this Agreement. Entity shall, prior to commencement of Work, require any person affiliated with Entity (or, in appropriate cases, himself or herself) to be fingerprinted by the Department of Justice ("DOJ") if that person will have unsupervised access to school campuses. Upon verification from DOJ that those persons fingerprinted have no record of a serious or violent felony, Entity will so certify by signing and submitting to the Governing Board of District the certification in the form provided by the District. In addition, Entity shall submit the names of those persons who have received clearance and are authorized to have unsupervised access to school campuses on a form provided by the District. Any person whose name is not on the cleared list may not have such access. In that case, Entity must make arrangements with District for appropriate access. No person with a violent or serious felony as reported by DOJ may have access to the school campuses.

Failure to comply with these terms, or permitting unsupervised access by an employee whose name has not been cleared by DOJ as certified by Entity shall constitute grounds for termination of this Agreement.

ARTICLE 9. INSPECTION AND TESTING

Section 9.01. Inspection.
Inspection shall be provided as required under CCR Title 24, latest Edition. All inspection costs will be paid for by the District, including special inspection required by Title 24, except as noted otherwise below. A list of required inspections for the Project is included in the Construction Documents.

The Project Inspector shall be approved by the District, DSA, the Architect and the Structural Engineer. The Project Inspector will be employed by the District and will perform all inspections in accordance with Title 24, parts 1-5.

Section 9.02. Authority of Project Inspector; Stop Work Notices.
The designated Project Inspector shall be considered to be a representative of the District. It is the Project Inspector's duty to inspect the Work.

The Project Inspector shall have the authority to order the work designated for inspection stopped if a determination is made that work is proceeding in violation of the Construction Documents or any orders issued by the District, District's Representative, or Architect. The failure of the Project Inspector to order the work stopped does not excuse the Entity from complying with the Construction Documents for that work.

Upon issuing a stop work notice, the Project Inspector shall notify the Architect, who shall review the work in question and determine whether it does or does not comply with the Construction Documents. The decision of the Architect shall be final, subject to the dispute resolution provisions in Article 23. The Entity shall thereafter comply with the instructions of the Architect regarding corrections needed to cure the defect. The suspended work shall be resumed only when the instructions are fulfilled. The Entity shall not be entitled to an extension of time in the event of such suspension of work if the stop work notice is determined to be validly supported by facts.

Section 9.03. Effect of Inspections.
Neither the final inspection and payment, nor any interim inspection or payment shall relieve the Entity of its obligation to fulfill the Work of the Project as required by the Facilities Lease and/or the Construction Documents.

Any work, materials or equipment not meeting the requirements and intent of the Construction Documents may be rejected, and unsuitable work or materials shall be made good, notwithstanding the fact that such work or materials may previously have been inspected and/or payment therefore may have been made.

Section 9.04. Inspection of Completed Work.
Should the District's Representative or the Architect determine that it is necessary or advisable to make an inspection of work already completed at any time before final inspection and acceptance of the Work, by removing or exposing any work, the Entity shall, upon instruction of the District's Representative, promptly furnish all necessary facilities, labor, and materials to do so. If the work is found to be defective in any respect due to the fault of the Entity or any subcontractor, the Entity shall bear all expenses of such examination and satisfactory reconstruction. If, however, the work is found to meet the requirements of the Construction Documents, the additional cost of labor and material necessarily involved in the examination and replacement shall be allowed the Entity and a Change Order shall be issued for such cost and any time extension justified by delays to the critical path.

Section 9.05. Notice to District of Inspection.
Where the Construction Documents, instructions by the Project Inspector, District's Representative or the Architect, laws, ordinances, or any public authority having jurisdiction require work to be inspected, tested or approved before the Work proceeds, such work shall not proceed, nor shall it be covered up without inspection. If any part of the Work is covered prior to inspection, the District may order the Work to be uncovered so that inspection may be accomplished. The Entity shall bear all expenses of such examination and satisfactory reconstruction.

The Entity shall provide notice to the Project Inspector at least six (6) hours in advance of the readiness for inspection.

All work shall be available for inspection and the Project Inspector shall have full access to review all work during all working times. The Entity shall provide all necessary means of access (e.g. ladders) for the Project Inspector to perform its duties. The Entity shall furnish the Project Inspector with any information necessary to fully inform him/her of conditions. Inspection does not relieve the Entity from fulfilling the requirements of the Facilities Lease and/or the Construction Documents.

Section 9.06. DSA Field Representative.
For projects requiring DSA approval, the Division of the State Architect will designate a field representative who will visit the Site periodically to review with the Project Inspector compliance of the Project with CCR Title 24 requirements. The DSA field representative may require certain modifications to the Project as constructed. In the event the Entity believes they are outside the scope of the Facilities Lease and/or Construction Documents, it shall proceed as provided in Section 5.05.

Section 9.07. Overtime Work.
Whenever the Entity arranges to work at night or any time when work is conducted other than the normal forty (40) hour week, or to vary the period during which work is carried on each day, it shall give the District's Representative and the Project Inspector a minimum of forty-eight (48) hours notice for weekend work and twenty-four (24) hours notice for daily work so that inspection may be provided. Additional inspection costs incurred because of overtime or shift work shall be paid by the District. If this overtime work is necessitated by the Entity's error or failure to perform, the cost of inspection will be borne by the Entity.

Section 9.08. Materials Which May be Tested.
The District reserves the right to require the Entity to provide samples, and to perform tests on any materials, articles, equipment, installations, or Construction performed by the Entity in addition to those specified in the Construction Documents. The District shall assume the cost of sampling and testing materials only when the Construction Documents do not require the Entity to do so.

Section 9.09. Testing.
All tests shall be performed under the supervision of the testing laboratory or consultant employed by the District, and approved by DSA and at such times as are convenient to the Project. The Entity shall provide written notice to the District's Representative at least twenty-four (24) hours prior to the need for off-site tests or inspections, and the District's Representative will arrange such tests or inspections. The Entity shall bear all expenses of tests performed where the Entity failed to provide this minimum notice.

Section 9.10. Selection of Samples.
All samples and specimens for testing shall be selected by the Project Inspector or by the testing laboratory, but not by the Entity.

Section 9.11. Delivery of Samples.
The Entity shall, at its sole cost and expense, furnish, package, mark, and deliver all samples to be tested at locations other than the Site. Samples shall be delivered either to the Project Inspector or to the testing laboratory or such other address specified by the District's Representative.

Delivery of all samples to the testing laboratory shall be made in ample time to allow the test to be made without delaying construction. No extra time will be allowed for the completion of the Work by reason of delay in testing samples required by the Construction Documents or due to the Entity's request for substitution.

The Entity shall allow free access at all times to the representatives of the testing laboratory to the Work, and shall point out the sources from which samples are taken.

All test reports shall be sent to all parties specified by the District's Representative.

Section 9.12. Approval of Samples.
No materials or work of which samples and/or tests are required shall be used or covered until the District's Representative informs the Entity that such samples and/or tests have been approved. If the Entity installs, uses, or covers any such material, article, or work prior to testing and approval, such shall be at the Entity's sole risk and expense, and it shall bear all costs of uncovering, repair, and replacement thereof.

The approval of any samples shall be for the characteristics thereof, or for the uses named in such approval, and no other. No approval of any samples shall be deemed a change or modification in any requirement of the Construction Documents. Upon testing of any sample of material or work, no additional sample shall be considered. All material or work installed after the sampling and testing is performed and approved shall be equal to or better than the approved sample in all respects and shall be accompanied by documentary proof that the materials and work sampled is representative of that installed.

Section 9.13. Damage Due to Testing.
The Entity shall, at its sole cost and expense, repair all damage resulting from testing specified in the Construction Documents. The District shall issue a Change Order for repair of damage due to sampling or testing other than specified in the Construction Documents.

The Entity shall not make any tests upon portions of the Project already completed, except with the prior written consent and under the direction and supervision of the District's Representative.

Section 9.14. Retesting.
If as a result of any test, whether originally specified or not, any material or work is found to be unacceptable, it shall be rejected, and all further sampling and testing required by the District or District's Representative shall be at the Entity's expense. The District shall pay initial costs; however the District may deduct that cost from a subsequent payment.

Section 9.15. Effect of Sampling and Testing.
The District assumes no obligation, and the Entity shall be relieved of no obligation undertaken pursuant to the Construction Documents by virtue of sampling and testing specified in this Article.

The responsibility for incorporating satisfactory materials and workmanship which meet the Construction Documents into the Work rest entirely with the Entity, notwithstanding any prior samples or tests.

ARTICLE 10. PROTECTION OF WORKERS, PUBLIC AND PROPERTY

Section 10.01. Safety Precautions and Programs.

The Entity shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work, for maintaining all safety and health conditions on the Site, and for ensuring against and/or correcting any hazardous conditions on the Site. Also, in no case shall the District, the District's Representative, the Architect, the Inspector, or their agents, employees or representatives, have either direct or indirect responsibility for the means, methods, techniques, sequences or procedures utilized by the Entity, or for safety precautions and programs in connection with the Work, or for maintaining any safety or health conditions on the Site, or for ensuring or correcting any hazardous conditions on the Site.

Certain work may be ongoing at the time school is in session; therefore, the Entity shall take precautions to prevent injury and access to children and staff and shall comply with the District's Guidelines for Onsite Safety. Material storage and vehicle access and parking shall be subject to District approval.

The Entity shall designate a responsible member of its organization at the Site whose duty shall be the prevention of accidents and overall jobsite safety for contractors'/subcontractors' employees, District's Representative, Architect, Project Inspector and visitors. This person shall be the Entity's superintendent unless otherwise designated by the Entity in writing to the District's Representative.

Section 10.02. Protection of Persons and Property.

The Entity shall at all times, until final acceptance and the Final Lease Payment, maintain adequate protection against injury to persons, including employees, or damage to property, on or near the Project, or adjacent to the Site. The Entity shall be responsible for maintaining all safety and health conditions on the Site and for ensuring against and/or correcting any hazardous conditions on the Site, except as stated in the Site Lease related to hazardous materials that are pre-existing on Site or brought to the Site by others for whom Entity is not liable. With respect to the Entity's operations and/or duties under this Facilities Lease, in no case shall the District, the District Representative, the Architect, the Inspector, or their agents, employees or representatives, have either direct or indirect responsibility for maintaining any safety or health conditions, or for ensuring against or correcting any hazardous conditions, on or near the Site, or adjacent to the Site.

The Entity shall provide a safe environment for all functions to be performed by the District's Representative, Architect and Project Inspector, and a safe place for all employees to work. The use of alcohol, drugs, or tobacco will not be permitted on the Site and/or on District property.

The Entity shall comply with all Occupational Safety laws, rules and regulations applicable to the Work.

Section 10.03. Protection and Repair of Work.

The Entity shall take all reasonable measures to protect the District's structures, facilities, equipment, tools, materials, and any other property on or adjacent to the Site against damage, loss, or theft by providing adequate security measures for its work. The Entity shall, until final completion of the Project and acceptance by the District, maintain protection of all of its work and work performed by others for the Work of the Project from damage, loss, defacement, or vandalism, except that if the District takes occupancy, in whole or in part, of any portion of the Project prior to the date of final completion, the Entity shall no longer have any obligation to protect the occupied portion(s) of the Project except (1) to the extent they may be affected by the Entity's ongoing work, and/or (2) as provided in Sections 10.01, 10.02, 10.04 through 10.10, and 10.12 through 10.14 hereof. The Entity shall provide protection of completed work (even if the District has taken beneficial occupancy) that may be subject to damage as a result of the Entity's failure to perform as scheduled.

Section 10.04. Protection of Workers.

The Entity shall take every precaution for the safety of all employees and others on the Work, and to comply with all applicable provisions of federal, state and local safety laws and building codes to prevent accidents or injury to persons on, about, or adjacent to the premises where the Work is being performed.

The Entity shall erect and properly maintain at all times, as required by the conditions and progress of the Work, all necessary safeguards for the protection of workers and the public, and shall post danger signs warning against hazards created by Construction including, but not limited to, protruding nails or reinforcing steel, hod hoists, elevator hatchways, scaffolding, window openings, stairways, and falling materials.

The Entity shall immediately replace or repair any unsafe ladder, scaffolding, shoring, or bracing, or correct any other dangerous or hazardous situation that may exist. In the event that such situation is due to a pre-existing condition of the facility, the Entity may be entitled to additional compensation under provisions of Article 15 to repair or replace such condition in order to maintain a sage worksite. The responsibility for maintaining a safe working site shall be the Entity's, and the District and District's Representative undertake no obligation to suspend the work or notify the Entity of any hazardous conditions or noncompliance with safety laws. In no case shall the District, the District's Representative, the Architect, the Inspector, or their agents, employees or representatives, have either direct or indirect responsibility for maintaining any safety or health conditions, or for ensuring against or correcting any hazardous conditions on the Site.

Section 10.05. Working Limits and Regulations.

The Entity shall confine its apparatus, storage and materials, and construction operations within the limits established by the District's Representative, and shall not unreasonably encumber the Site or adjacent areas with its materials and/or equipment.

The Entity shall enforce any reasonable instructions from the District's Representative or District regarding placement of signs, fires, danger signals, barricades, radios, noise and smoking, provided such instructions are in compliance with health and safety laws governing construction activities.

Section 10.06. Protection of Existing Improvements.

The Entity shall clean the portions of existing improvements and facilities which are used by, traversed or dirtied by the workers on the Work, normal maintenance due to use by District employees or the public excepted.

All existing improvements and facilities shall be protected from any damage resulting from the operations, equipment or workers of the Entity during the course of the construction.

The Entity shall take all necessary precautions to protect existing facilities against the effects of the elements and Entity shall be strictly liable for failure to adequately protect any facility.

All damaged improvements and facilities to the extent the damages is caused by the Entity or a party for whom the Entity is liable, shall be replaced, repaired, and restored to their original condition without additional cost to the District and without an extension of the Contract Time, subject to payment for damage by insurance proceeds for policies required to be carried under this Lease.

Section 10.07. Traffic Signals and Traffic Control.
Existing signs, lights, traffic signals, control boxes, hydrants, meters, and other similar items occurring within the street or sidewalk areas shall be kept free of obstructions and accessible at all times. All such items shall be protected from the Entity's operations and shall not be obliterated or obscured by its equipment or materials.

Should it be necessary to cover up, move, or alter such items, this shall be done only with permission of the authorities having jurisdiction over the items involved.

Should it be necessary to block a street or sidewalk, the Entity shall first notify the District's Representative and the police and fire departments and other agencies with jurisdiction, and shall comply with their instructions, including scheduling limitations.

Section 10.08. Security of the Site.
The Entity's attention is directed to Specification Section 01500 regarding requirements for fencing the Site, gates, and screening.

Section 10.09. Removal of Barricades.
Upon completion of the work, the Entity shall remove from the Site all materials used for barricades, temporary scaffolding, or any other temporary uses.

Section 10.10. Protection of Adjacent Property; Notices.
In addition to any requirements imposed by law, the Entity shall shore up, brace, underpin, and protect as may be necessary all foundations and other parts of all existing structures on the Site or adjacent to the Site which are in any way affected by the excavations or other operations connected with the completion of the Work.

Prior to excavation, the Entity shall notify all public utilities and governmental agencies of the work proposed, and shall ascertain from them the exact location of their utilities.

Prior to commencing any work which in any way affects adjoining or adjacent land or buildings thereon, or public utilities, the Entity shall notify the District's Representative, who will send the District and occupants thereof a notice, which specifies the type of work to be done, the schedule of the work, the impacts expected from the work and the protective measures being taken by the Entity. The notice shall also specify that any person receiving notice who has questions regarding it may contact the District's Representative.

Whenever any notice is required to be given to any adjoining or adjacent landowner, utility, governmental agency or other party before commencement of any work, the notice shall be given by the Entity at least seven (7) days in advance of the work, or longer if required by law or regulation, with a copy delivered to the District's Representative.

The Entity shall, at the written instruction of the District's Representative, meet with any recipient of such notice to explain and discuss the proposed work.

Section 10.11. Indemnification of Adjacent Property Owners.
In the event the Entity enters any agreement with the owners of any adjacent property to enter upon or adjacent to such property for the purpose of performing the Work, the Entity shall, unless a written agreement with the owners of the adjacent property provides otherwise, fully indemnify, defend and save harmless such person, firm, or Entity, state or other governmental agency which owns or has any interest in the adjacent property. The form and content of the indemnification agreement shall be approved by the District prior to commencement of any work on or about such property.

Section 10.12. Fire Protection.
The Entity shall take all steps necessary to protect all structures from fires and sparks originating from the Work, shall comply with all laws and regulations regarding fire protection, and shall comply with all instructions of the fire department with jurisdiction.

The Entity shall notify the District's Representative and the fire department in writing at least seventy-two (72) hours prior to disconnection of either water or electrical service to the Site, and shall comply with the fire department's instructions regarding fire safety.

The Entity must keep the fire intrusion detection systems operational throughout the duration and scope of its Work.

Section 10.13. Repairs or Replacement.
Any damage to existing conditions, or to any other improvement or property above or below the surface of the ground, whether private or public, arising from performance of this contract by the Entity or any party for whom the Entity is liable, shall be repaired within forty-eight (48) hours by the Entity without expense to the District (subject to coverage under insurance required to be procured by a party under this Lease and then in accordance with all applicable provisions in this Lease related to such insurance), unless disruption of school operation or creation of a safety hazard has occurred, in which case damage will be corrected immediately. If the work cannot be completed within forty-eight (48) hours, then the Entity must be able to show substantial progress toward completion within that time frame.

If, in the opinion of the Architect, the best interest of the District requires that repairs be made prior to the execution of any further work, the District's Representative will so notify the Entity who shall delay or discontinue that part of the Work until the necessary repair has been made. Such delay shall be considered non-compensable.

Upon the failure of the Entity to comply with any such order, or upon the Entity's failure to make immediate emergency repairs which are necessary to protect the Work, the District shall do that work itself as is necessary to protect life and property, in its sole discretion, and deduct the total cost of such work from the next Lease Payment. No prior notice to the Entity shall be necessary for the District to take this action.

Section 10.14. Emergency Safety Actions.
In an emergency affecting the safety of life or property, including adjoining property, the Entity, without previous instructions or authorizations from the District, is authorized and shall act at its discretion and risk to prevent such threatened loss or injury, and the Entity shall bear all costs of that action, unless such emergency is cause by the District's negligence or willful misconduct. The Entity shall immediately notify the District's Representative of such actions, and thereafter shall comply with any instructions issued by the District's Representative.

ARTICLE 11. SUBMITTALS, SUBSTITUTIONS AND MATERIALS

Section 11.01. Submittals.

The Entity, at its sole cost and expense, shall furnish to the District's Representative all submittals and other descriptive material as are required by the Specifications or requested by the Architect.

Shop drawings shall be done with sufficient detail to adequately describe items proposed to be furnished or methods of installation to enable the District and Architect to determine compliance with the Specifications and with the design and arrangement shown on the working drawings.

The Entity shall check and coordinate all submittals with the work of all trades involved before they are submitted. The Entity shall review each submittal for conformance with the requirements of the Construction Documents.

All submittals for the Project shall be made within thirty-five (35) days of the Notice to Proceed with Phase II or as otherwise agreed with the District; however, the Entity shall have the additional responsibility to coordinate the schedule of its submittals with the requirements of the Construction Schedule so as not to delay the Project. No delay claims related to submittals will be entertained on the Project for any submittal originally received after the thirty-five (35) day submittal period or such other period agreed upon by the District. The District shall not accept limitations in materials, colors, quality, or any other aspect of products or materials due to the Entity's failure to provide submittals as required. At the District's discretion, the Entity may be directed to furnish and install temporary materials until the District selected material is available. Further, the District may require the Entity to install the District selected materials during non-school hours/days without an increase in the Total Base Rent and without an extension of the Contract Time.

The Entity shall submit a schedule of submittals organized by Specification section required for the Project. It shall delineate whether product data, installation instructions, shop drawings, samples, extra stock or mock-ups are required. The schedule of Submittals shall indicate whether the Submittal will be in electronic format, as set forth below. In general, other than items requiring color selections, samples and shop drawings, Submittals will be in electronic format. This schedule of Submittals shall be submitted using an approved Excel Template within ten (10) calendar days of the issuance of the Notice of Intent to Award. Any omissions or inaccuracies shall not relieve the Contractor of the obligation for conforming to the requirements in the Contract Documents. The Contractor's Submittal schedule shall provide sufficient time for delivering the Submittal to the Architect, the Architect's review of each Submittal, delivering the Submittal to the Contractor and re-submittal as necessary. In no case shall the Contractor allow fewer than fourteen (14) days, exclusive of delivery time, for the District Representative and the Architect to review each Submittal.

Section 11.02. Submission of Submittals.

The Entity shall submit electronically. Electronic Submittals which are submitted together shall be compiled into a single, bookmarked PDF file, containing links to enable navigation to each item within the Submittal package. The Entity shall name the electronic Submittal file with a consistent project identifier, composed of the project name, bid package number, and specification section number. Electronic Submittals shall be transmitted via the District Representative's Collaboration Site address,. Submittals shall be submitted to the District Representative who will not review the Submittals for technical compliance, but may reject any Submittal found, in the District Representative's judgment, to be incomplete. The District Representative will maintain a Submittal log, and weekly meeting minutes shall note if Submittals have been accepted. Submittals requiring color selections, samples, or shop drawings will be logged.

For shop drawings, color selections and samples, the Entity shall submit no less than three (3) originals. All Submittals of shop drawings, color selections and samples shall be marked with the project name, the Contractor's name, and the specification section number, and shall be accompanied by a letter of transmittal to the District Representative. The letter of transmittal for shop drawings shall list the identifying number of the drawings submitted and cross-reference them to the page or sheet in the specifications and/or working drawings to which they are related.

By approving and submitting shop drawings, product data, manufacturer's installation instructions and samples, the Entity represents that it has determined and verified all materials, field measurements and field construction criteria related thereto and that it has checked and coordinated the information contained within those submittals with the requirements of the Work and to the Construction Documents. The Entity shall adhere to any supplementary processing and scheduling instructions pertaining to shop drawings as may be issued by the District's Representative.

The District's Representative will not accept shop drawings, product data or manufacturers' installation instructions, which are not sufficiently dimensioned and detailed to demonstrate compliance with the Construction Documents.

The Submittals shall be submitted promptly, so as to cause no delay in the Work. The Submittals shall be submitted so as to allow the District's Representative and the Architect a review period of no less than fourteen (14) days.

Section 11.03. Review of Submittals.

Following submission, the Submittals will be reviewed and returned with one or more of five possible responses by the District's Representative or Architect. These possible responses are as follows:

A. Unreviewed: If the Submittal is not required, or if it is not complete, or if it does not meet the form, format, and number requirements specified, it may be returned unreviewed. If the Submittal is not required, work may commence; if the Submittal was returned due to form requirements, it shall be resubmitted and approval obtained prior to commencement of the work.

B. Approved, Reviewed, or No exceptions taken: In the event the Submittal is acceptable as submitted, it will be returned with this status. Work may proceed upon receipt of approved Submittal.

C. Make Corrections Noted: If the Submittal is acceptable except for certain items, which have been noted by the Architect, it will be so designated. Work may proceed with the corrections made, and no resubmittal is necessary.

D. Revise and Resubmit: This status indicates that revisions are noted on the Submittal, and an additional Submittal is required to reflect those revisions and/or additional information. Work may not commence until the resubmittal is approved.

E. Rejected: A Submittal may be rejected if it is not in compliance with the Construction Documents, or if it proposes a substitution which is not acceptable to the Architect. A superseding Submittal shall be submitted and approved prior to commencement of the work.

Should the Entity proceed with the work shown on a Submittal before approval is received, it shall remove and replace or adjust any work which is not in accordance with the shop drawings or manufacturers' instructions as ultimately approved, and it shall be responsible for any resultant damage, defect, or added cost.

The Entity shall resubmit Submittals in categories "D" and "E" above after making any changes required so that Submittals will comply with the Construction Documents. When resubmitting, the Entity shall direct specific attention to deficient areas. Resubmittals shall be made within ten (10) days of return of previous Submittal, and in any event in sufficient time so as to avoid delay to the Work. No delay claims related to resubmittals will be entertained on the Project for any resubmittal originally received after the ten (10) days.

The Architect shall determine the adequacy and completeness of all Submittals. Where the Architect deems a Submittal to be inadequate, incomplete, or otherwise unsuitable for proper review, the Entity shall submit all additional information requested by the Architect. There shall be no change to the Contract Time or the Total Base Rent when such additional information is required.

Section 11.04 Submittals Showing Variation from Contract.

It shall be the responsibility of the Entity to specifically point out any variation or discrepancy between the shop drawings, product data or manufacturers' installation instructions submitted and the Construction Documents.

The Entity shall make specific mention of all variations, along with an explanation of why they are requested, in its letter of transmittal.

Failure by the Entity to identify in its letter of transmittal any variation, discrepancy, or conflict with the Construction Documents shall render the approval null and void, and the Entity shall bear all risk of loss and reconstruction costs or delays.

If any architectural, plumbing, mechanical, electrical, or structural modifications are required as a result of the approval of shop drawings or manufacturers' instructions, which deviate from or do not comply with the Construction Documents, those modifications shall be made without extra cost to the District, and without extension of the Contract Time. Any other resultant costs, including but not limited to design fees, and cost incurred by other contractors, or inspection fees, shall be at the expense of the Entity.

Section 11.05. Effect of Approval of Submittals.

The approval of Submittals or other descriptive material shall not relieve the Entity of the obligation for accuracy of dimensions and details or for conforming the Work to the requirements of the Construction Documents at no extra cost to the District, within the Contract Time.

Section 11.06. Substitutions.

Unless otherwise provided in the technical specifications, the Entity may make proposals for substitutions to materials and/or processes shown or specified. Substitutions approved in the creation of the TBR are not subject to this section 11.06.

A proposal for substitution shall include all information required by the Architect to evaluate the substitute material or process. All substitutions shall be submitted with an approved "Substitution Request Form". Such proposal constitutes a certification that the Entity:

A. Has investigated the proposed product and determined that it meets or exceeds the performance requirements of the specified product.

B. Will provide the same or better warranty for substitution as for specified product.

C. Will coordinate installation and make other changes, including relating to work of others, which may be required for the Work to be complete in all respects at no additional cost to the District.

D. Waives claims for additional costs and/or Contract time, which may subsequently become apparent.

The Architect then will evaluate whether or not the proposed material is equal in quality and utility to the material specified, make its recommendation to the Owner. Based on the Architect's recommendation, and following discussion amongst the project team, the Owner will render a decision. If the request is not accepted, the Entity shall provide the specified product.

Substitutions and Requests for Information that affect Structural Safety, Fire and Life Safety, or Access Compliance shall be submitted to DSA for review and approval.

Section 11.07. Not Used

Section 11.08. Samples and Testing of Proposed Substitutions; Costs of Adapting to Work.
When the District's Representative or Architect determines that samples and testing are required to evaluate a request for a substitution, the District's Representative shall so advise the Entity, and specify the materials or work to be sampled. The Entity shall, at no cost to the District, provide samples as required by Article 9, dealing with samples and testing, or the technical specifications.

The Entity shall bear all costs of sampling and testing required to decide a request for substitution.

Section 11.09. Effect of Approval of Substitution Request.
If the substitution request is approved, the Entity shall be solely and directly responsible for setting substituted materials and/or equipment into the available space, and for the proper operation of the substituted equipment with all other equipment with which it may be associated, all in a manner acceptable to the District.

Neither time extensions nor any increases in the Total Base Rent shall be granted on account of a substitution. In the event of a savings, the Total Base Rent shall be adjusted by the price difference between the substitution and the originally specified item.

Section 11.10. Quality of Materials and Products.
The Entity shall, if required by the Architect, Project Inspector, or District's Representative, furnish satisfactory evidence as to the kind and quality of materials provided.

The District's Representative may require, and the Entity shall submit if required, a list designating the source of supply of each item of materials incorporated into the Work, and in such event, those materials or products shall not be delivered to the Site or incorporated therein until after the District's Representative has approved the list.

The Entity shall certify that the materials and equipment installed comply with the Construction Documents and to the best of the Entity's knowledge, no installed materials or equipment contain asbestos.

Section 11.11. Better Material or Process.
In the event that the Entity furnishes a material, product, process, or article better than that specified in the Construction Documents, the difference in cost of that material, product, process, or article shall be borne by the Entity.

Section 11.12. Industry Standards.

A. Any material specified by reference to the number, symbol, or title of a specified standard such as a Commercial Standard, a Federal Specification, a Trade Association Standard, or other similar standard, shall comply with the requirements in the latest revision thereof, including any amendments or supplements thereto, in effect on the effective date of the Facilities Lease, except as limited to type, class, or grade, or modified in that reference.

B. The standard referred to, except as modified in the Specifications, shall have full force and effect as though printed in the Specifications.

1. Where Federal Specifications are referred to as a measure of quality and standard, they refer to Federal Specifications established by the Procurement Division of the United States Government and are available from the Superintendent of Documents, U.S. Government Printing Office.

2. Where Federal Specification numbers are used, they refer to the latest edition including amendments thereto.

3. Where Commercial Standards (CS) or Product Standards (PS) are referred to as a measure of quality, standard, and method of fabrication, they refer to Commercial Standards and Product Standards issued by the U.S. Department of Commerce.

4. Where ASTM serial numbers are used, they refer to the latest tentative specifications, standard specifications, standard method or standard methods of testing, issued by the American Society for Testing Materials, unless specifically noted.

Section 11.13. Original Packages or Containers; Labels.

All materials delivered to the Site shall be new, unless otherwise specified, of the type, capacity, and quality specified, and free from defects. All materials shall remain in their original packages or containers until ready for use. The labels of all packages or containers shall remain affixed, and kept legible. No product shall be stored in any container, the label of which does not accurately describe the contents of the container.

Section 11.14. Providing and Paying for Materials.

Except as otherwise specifically stated in the Construction Documents, the Entity shall provide and pay for all materials, products, articles, processes, labor, tools, equipment, and installation, and all associated superintendence of every nature whatsoever necessary to execute and complete the Work within the Contract Time.

Section 11.15. Warranty of Title.

No material, article, product, supplies, or equipment for the Work shall be subject to any chattel mortgage, or a conditional sale or other agreement by which an interest therein or in any part thereof is retained by the seller or supplier.

The Entity warrants good and sufficient title to all material, supplies, and equipment installed or incorporated in the Work, and agrees upon completion of the Work to deliver the premises, together with all improvements and appurtenances, constructed or placed thereon by the Entity, to District, free from any claims, liens, or charges.

The Entity agrees that neither it nor any person, firm, or Entity furnishing any materials or labor for any work covered by this contract shall have any right to a lien upon the premises or any improvement or appurtenances thereon; provided, however, that nothing contained in this Section shall defeat or impair the rights of persons furnishing materials or labor under the payment bond given by the Entity, nor any rights under any law permitting such persons to look to funds due to the Entity but retained by District.

The Entity shall cause the substance of these provisions to be included in all subcontracts and material contracts executed by the Entity and notice of this provision shall be given to all persons furnishing materials for the Work.

This Section shall not disallow the Entity's installing any devices or equipment of utility companies or of governmental agencies, the title to which is commonly retained by the utility company or the agency.

Section 11.16. Patents and Royalties.

The Entity and its sureties shall protect, indemnify and hold harmless the District, the District's Representative, the Project Inspector, the Architect, and its consultants and each of their respective officers, agents, and employees against any and all demands made for such fees or claims and against any and all suits, demands, claims or causes of action brought or made by the holder of any invention, patent, copyright, or trademark, or arising from any alleged infringement of any invention, patent, copyright, or trademark by the Entity in the course of its performance under this Facilities Lease.

Section 11.17. Payment of Federal or State Taxes.

Any federal, state or local tax, specifically including sales and use taxes, payable on materials furnished by the Entity pursuant to the Construction Documents shall be paid by the Entity.

ARTICLE 12. LEASE PAYMENTS

Section 12.01. Lease Payments.

The schedule of Lease Payments is set forth Exhibit C to the Facilities Lease. All Lease Payments are subject to the terms and conditions of the Facilities Lease, including its exhibits.

Section 12.02. Schedule of Values.

Within ten (10) days of the Notice to Proceed with Phase II, the Entity shall submit to the District's Representative a Schedule of Values broken down by phase, and within each phase by building, in sufficient detail to evaluate progress and costs at any point in the Work. In no event shall an individual line item on the schedule of values exceed five percent of the Total Base Rent unless so approved by the District's Representative in advance. Costs shall be segregated by phase and, within each phase by building. Labor, material and subcontract costs shall be shown separately. It is expressly acknowledged that the purpose of the Schedule of Values is not to establish the amount due for any Lease Payment but is for the District's internal cost tracking purposes and to assist with evaluation of the progress of the construction of the Project.

Section 12.03. Submissions Required for Lease Payments During Construction.

No later than five (5) days prior to the date for each Lease Payment for the construction phase established in the Lease Payment Schedule (Exhibit C to the Facilities Lease), and as a condition of each Lease Payment, the Entity shall submit all of the following to the District's Representative:

A. Entity shall submit a conditional waiver and release on progress payment under Civil Code section 8132 covering all work, labor, materials and equipment and an unconditional waiver and release on progress payment under Civil Code section 8134 for all work through the prior lease payment. Entity, for itself and all of its Subcontractors and Suppliers shall submit, as a requirement for Final Construction Lease Payment only, a conditional waiver and release on final payment under Civil Code section 8136 covering all work, labor, materials and equipment provided on the Project. Within ten (10) business days following receipt of Final Construction Lease Payment, Entity, for itself and all of its Subcontractors and Suppliers, shall provide an unconditional waiver and release on final payment for all Project work, labor, materials and equipment. For purposes of this paragraph, "Final Construction Lease Payment" shall mean the Lease Payment made following Entity's submittal of conditional lien releases on final payment for Subcontractors and Suppliers. If Entity fails to submit all required unconditional waivers and releases on final payment, then District may withhold some or all of the Lease Payments following the Final Construction Lease Payment in an amount that is necessary, in the District's sole discretion, to protect the District from potential subcontractor and supplier claims, until the required unconditional waivers and releases are submitted. .

B. Copy of the schedule of values, marked to show the percentage of completion.

C. Schedule updates.

D. Skilled and trained workforce report(s), covering Entity and all subcontractors for which a report is required by Public Contract Code section 2602, for the full month immediately preceding the month in which the Lease Payment documentation is submitted.

Section 12.04. Effect of Lease Payments.

Neither the payment, the withholding, nor the retention of all or any portion of any Lease Payment claimed to be due and owing to the Entity shall operate in any way to relieve the Entity from its obligations under the

Facilities Lease and/or the Construction Documents. Except to the extent provided otherwise in the Facilities Lease or applicable law, in the event of a District default, the Entity shall continue diligently to prosecute the Work without reference to the payment, withhold, or retention of any Lease Payment. Except as provided in the Facilities Lease or applicable law, the payment, withhold, or retention of any Lease Payment shall not be grounds for an extension of the Contract Time.

ARTICLE 13. TIME OF WORK

Section 13.01. Construction Schedule Development.

Within seven (7) days after receiving the Notice to Proceed with Phase II, the Entity shall submit a detailed proposed Construction Schedule consistent with its Preliminary Project Schedule developed during Phase I presenting an orderly and realistic plan for completion of the Work, in conformance with the requirements of this Article.

The Contract Schedule shall furnish and comply with the following requirements:

A. A time scaled CPM type schedule prepared in Primavera or MS Project Software. Submit the project schedule electronically in native software format inclusive of all aspects of the constructed schedule- and hard copy in pdf format

B. No activity on the schedule shall have a duration longer than fourteen (14) days, with the exception of fabrication and procurement activities, unless otherwise approved by the District Representative. Activity durations shall be the total number of actual days required to perform that activity including consideration of weather impact on completion of that activity.

C. Procurement of major equipment, through receipt and inspection at the job site, identified as a separate activity.

D. Owner furnished materials and equipment if any, identified as separate activities.

E. Dependencies (or relationships) between activities.

F. Processing/approval of submittals and shop drawings for major equipment. Activities that are dependent on submittal acceptance and/or material delivery shall not be scheduled to start earlier than the expected acceptance or delivery dates.

G. Separate buildings and other independent project elements shall be individually identified in the network.

H. Fourteen (14*)* days for developing punch list(s), completion of punch list items, and final clean up for the work or any designated portion thereof. No other activities shall be scheduled during this period.

I. Interface with the work of other Contractors (or entities).

No unspecified milestones, contractor-designated Constraints, Float suppression techniques, or use-of-Activity durations, logic ties and/or sequences deemed unreasonable by the District Representative shall be used in the Project Schedule.

The Entity shall submit the reports and the number of copies as required under Section 13.05 of these General Construction Terms and Conditions.

The District Representative will review the proposed Construction Schedule for conformance with the requirements of the Facilities Lease and the Construction Documents. Within ten (10) days after receipt, the

District's Representative will accept the Construction Schedule or will return it with comments. If the Proposed Construction Schedule is not accepted, the Entity shall revise the schedule to incorporate comments and become the Construction Schedule. The Entity shall have the right to modify the schedule to alter sequences or durations of work in the interests of the Project provided it gives timely notice to the District of such modifications. The District shall have the right to reasonably object to any modifications. In the event of such objection by the District, the Entity will not make the modification(s).

The Construction Schedule shall be the basis for evaluating job progress and time extension requests and for District planning purposes. The responsibility for developing the Construction Schedule and monitoring actual progress as compared to the schedule rests with the Entity.

Failure of the Construction Schedule to include any element of the Work or any inaccuracy in the Construction Schedule will not relieve the Entity from responsibility for accomplishing all the Work in accordance with the Facilities Lease and the Construction Documents.

Acceptance of the Construction Schedule will not relieve the Entity of the responsibility for accomplishing the Work in accordance with the Facilities Lease and the Construction Documents.

Section 13.02. Not Used.

Section 13.03. Monthly Updates.

The Entity shall submit to the District's Representative each month an up-to-date status report of the Work. The status report shall include:

A. The Entity's estimated percentage complete and remaining duration for each activity not yet complete.

B. Actual start/finish dates for activities as appropriate.

C. Identification of processing errors, if any on the previous update reports.

D. Revisions, if any, to the assumed activity durations including revisions for weather impact for any activities due to the effect of the previous update on the schedule.

E. Best efforts to identify activities that are affected by Proposed Change Orders issued during the update period. The parties recognize that depending on the nature, amount, or timing of changes this may be difficult to accomplish. (See Network Window, Section 13.04).

F. Best efforts to resolve any conflicts between actual work progress and schedule logic. When out of sequence activities develop in the Construction Schedule because of actual construction progress, the Entity shall submit revision to schedule logic to conform to current status and direction. The parties recognize that depending on the nature, amount, or timing of changes this may be difficult to accomplish.

The Construction Schedule shall be updated on a monthly basis throughout the entire construction period until Project completion is achieved. No Lease Payments will be made without the required monthly update of the Construction Schedule.

The District's Representative will review the updated information and meet with the Entity each month at the Site to determine the status of the Work. If agreement cannot be reached on any issue, the Entity will use the Architect's determination in the processing of the update.

Section 13.04. Schedule Revisions.

If the sequence of construction differs significantly, as determined by the District's Representative, from the Construction Schedule, the Entity shall submit within fifteen (15) days a revised schedule to the District's Representative for acceptance. Updating the Construction Schedule to reflect actual progress shall not be considered revisions to the Construction Schedule.

When a Proposed Change Order is issued which has the potential to impact specified completion dates, Fragnet shall be prepared by the Entity to reflect the impact of such changes as expeditiously as is reasonably possible in light of the nature, quantity and timing of potential changes. The District's Representative will promptly review and act on the Fragnet. If the Fragnet has been accepted by the Owner and the Entity permitted by the Owner to proceed with the Proposed Change Order, the Fragnet shall be incorporated into the Construction Schedule. Time extensions will be considered only to the extent there is insufficient remaining float to accommodate these changes, and pursuant to Article 14 of these General Construction Terms and Conditions. No additional cost beyond that provided in Article 15 will be allowed for the incorporation of approved Proposed Change Orders into the Construction Schedule, except that, if Owner Initiated Changes, as defined and described in Section 15.02, exceed twelve percent (12%) of the Total Base Rent, the Entity shall be entitled to compensation for its added costs of updating and maintaining the schedule as a result of such changes. Such added costs must be properly substantiated by supporting data.

Should the Entity, after acceptance of the Construction Schedule, intend to change its plan of Construction, it shall submit their requested revisions to the District's Representative, along with a written statement of the revision, including a description of the logic for rescheduling the Work, methods of maintaining adherence to Intermediate milestones and other specific dates and the reasons for the revisions. If the requested changes are acceptable to the District's Representative, they will be incorporated into the Construction Schedule in the next reporting period.

Schedule revisions shall be submitted at least seven (7) days prior to the date of submission of update information. The Owner will have seven (7) days to review the revisions.

Section 13.05. Construction Schedule Reports.

Together with the monthly schedule updates, the Entity shall submit the following reports for the proposed Construction Schedule, Construction Schedule Updates, Construction Schedule Revisions and Recovery Schedules:

A. A Schedule Logic Report listing the activities, their early/late and actual start and finish dates, duration, float and the logic relationship of activities sorted by early start.

B. Network Plots presenting time scaled network diagram showing activities and their relationships.

C. A narrative providing additional clarification/explanation of items such that District is informed of the approach used to plan and sequence the work, coordinate with other contractors to the extent applicable, and an updated Construction Schedule showing the current status of construction. Upon written request of the District, the updated Construction Schedule shall be resource and cost loaded. This narrative shall also address the following: (1) description of Work performed during the

reporting period; (2) Description of the primary, secondary and tertiary Critical Paths; (3) description of the Work anticipated to be performed during the next reporting period; (4) number of days ahead/behind the Completion Date; (5) discussion of the changes to the primary Critical Path since the prior month's update; (6) description of problem areas and anticipated problem areas; (7) current and anticipated delays including cause of delay, corrective actions taken, and impact of the delay on other activities, milestones, and completion dates; (8) the actual weather days used (9) pending items (change orders, requests for time extensions, etc) and status thereof.

D. A Project Schedule Calculation Summary Report which includes listing of constraints, open-ends, out-of-sequence work, and scheduling statistics. This report is computer generated when the Construction Schedule is calculated upon completion of inputting all activity progress at the month end processing.

The Entity shall provide four (4) copies of all reports. The reports shall include one (1) reproducible and three (3) copies.

The Entity shall also provide flash drives containing all the schedule files in the original electronic format and in pdf format.

Section 13.06. Short Interval Schedules.

The Entity shall prepare a Short Interval Schedule (SIS) to be used throughout the duration of Work. The SIS shall include all current activities and projected activities for the succeeding two (2) weeks. The SIS shall include actual start/finish dates for the preceding one (1) week and it shall be tied to the updated Construction Schedule. The SIS shall be submitted to the District's Representative prior to the weekly construction meeting. The Entity shall participate in short interval scheduling coordination during the weekly construction meetings.

Section 13.07. Time of Essence.

Time is of the essence. The Entity shall, to the fullest extent possible, carry on the various classes or parts of the Work concurrently, and shall not defer construction of any portion of the Work in favor of any other portion of the Work, without the express approval of the District's Representative.

Section 13.08 Date of Completion.

The Entity shall fully and satisfactorily complete the Work within the Contract Time. The Date of Completion is set forth in the Facilities Lease, as it may be revised in the Notice to Proceed.

Section 13.09 Responsibility for Completion.

The Entity shall furnish sufficient manpower, materials, facilities and equipment and shall work sufficient hours, including night shifts, overtime operations, Sundays and holidays as may be necessary to insure the prosecution and completion of the Work in accordance with the accepted Construction Schedule. Unless there are excusable and/or compensable grounds for delay, if work on the critical path is seven (7) days or more behind the currently updated Construction Schedule and it becomes apparent that the Work will not be completed within the Contract Time, the Entity will implement whatever steps it deems necessary to make up all lost time. If the Entity's solution is not successful, it will make further attempts using the following sequence of events:

A. Reschedule activities to achieve maximum practical concurrence of accomplishment of activities.

B. If the above cannot be achieved then;

1. The Entity shall increase manpower in such quantities and crafts as will substantially eliminate, in the judgment of the District's Representative, the backlog of work; or increase the number of working hours, shifts per working day, working days per week or the amount of equipment or any combination of the foregoing sufficiently to substantially eliminate in the judgment of the District's Representative the backlog of work.

2. In addition, the District's Representative may require the Entity to submit a recovery schedule demonstrating its program and proposed plan to make up a lag in scheduled progress and to ensure completion of the Work within the Contract Time. If the District's Representative finds the proposed recovery schedule unacceptable, it may require the Entity to submit a new plan. If the actions taken by the Entity or the second plan proposed are unsatisfactory, the District's Representative may require the Entity to take any of the actions set forth in the previous paragraph without additional cost to the District to make up the lag in scheduled progress.

Float, the amount of time an activity can be delayed without affecting the Completion Date, is considered a project commodity jointly shared between District and Entity and shall be used in the best interest of completing the Project on time by the party who needs it first.

Failure of the Entity to comply with the requirements of this Section 13.09 shall be considered grounds for a determination by the District, pursuant to the Facilities Lease and these General Construction Terms and Conditions, that the Entity is failing to prosecute the Work with such diligence as will ensure its completion within the time specified.

Section 13.10. Daily Reports.

No less than on a weekly basis, the Entity's superintendent shall submit to the District Representative daily reports on the District's furnished form or approved format. If possible, the Entity shall place the daily report in a 'locked' status, on a weekly basis, such that it may no longer be modified. The daily reports shall include, without limitation, the identity of subcontractors on the Site; an accurate headcount of workers on the Site; materials and equipment delivered to, or removed from, the Site; visitors to the Site; and any problems encountered.

ARTICLE 14. DELAYS AND EXTENSIONS OF TIME

Section 14.01. Extensions of Time; Unavoidable Delays.
The Entity shall not be granted an extension of time except on the issuance of a Change Order by the Board of Education, upon a finding of good cause for such extension.

A. As used herein, the following terms shall have the following meanings:

1. "Excusable Delay" means any delay in completion of the Work beyond the expiration of the Contract Time caused by conditions beyond the control and without the fault or negligence of the Entity or the District or its agents. These events may include strikes, embargoes, fire, unavoidable casualties, national emergency, and stormy and inclement weather conditions beyond the number of days included in the weather allowance in Article 3.3 of the Facilities Lease in which the District's Representative and Project Inspector agree that work on the critical path cannot continue. The financial inability of the Entity or any Subcontractor or supplier and any default of any Subcontractor, without limitation, shall not be deemed conditions beyond the Entity's control. An Excusable Delay will entitle the Entity to an extension of the Contract Time, in accordance with this Section of the General Construction Term and Conditions and shall not entitle the Entity to any adjustment of the Total Base Rent or use of the Construction Contingency.

2. "Compensable Delay" means any delay in the completion of the Work beyond the expiration date of the Contract Time caused solely by the wrongful acts of the District or its agents, including but not limited to the District's architect, and which delay is unreasonable under the circumstances and not within the contemplation of the parties. A Compensable Delay entitles the Entity to an extension of the Contract Time and an adjustment of the General Conditions at the time of the contract extension based on actual General Conditions costs as allowed by the Contract Documents but not to exceed the daily rate of **One thousand five hundred dollars ($1,500.00)** for every work day of delay. Except as provided herein, the Entity shall have no claim for damage or compensation for any delay, interruption, hindrance, or disruption.

3. "Inexcusable Delay" means any delay in completion of the Work beyond the expiration of the Contract Time resulting from causes other than those listed in Subparagraphs A1 and A2, above. An Inexcusable Delay will not entitle the Entity to an extension of the Contract Time or an adjustment of the Total Base Rent or any Lease Payment and subjects the Entity to liquidated damages.

B. The Entity may make a claim for an extension of the Contract Time, for an Excusable Delay or a Compensable Delay, subject to the following:

1. If an Excusable Delay and a Compensable Delay occur concurrently, the maximum extension of the Contract Time shall be the number of days from the commencement of the first delay to the cessation of the delay which ends last. Any adjustment of the Lease Payments shall be based on an adjustment of the General Conditions at the time of the contract extension based on actual General Conditions costs as allowed by the Contract Documents but not to exceed the daily rate of **One thousand five hundred dollars ($1,500.00)**. An adjustment based on the non-concurrent portion of any Compensable Delay is a permitted use of the District Contingency. An increase in the Total Base Rent shall be based only on the non-concurrent portion of any Compensable Delay and only after the Construction Contingency is exhausted.

2. If an Inexcusable Delay occurs concurrently with either an Excusable Delay and/or a Compensable Delay, the maximum extension of the Contract Time shall be the number of days, if any, from commencement of the first Excusable and/or Compensable Delay to the cessation of the Excusable Delay and/or the Compensable Delay. For the concurrency period, regardless of whether it is concurrent with an Excusable or Compensable Delay, the Entity shall not be entitled to an adjustment of Lease Payments or use of the Construction Contingency. An increase in the Total Base Rent shall be based only on the non-concurrent portion of any Compensable Delay, and only after the District Contingency is exhausted. The non-concurrent Inexcusable Delay will not entitle the Entity to an extension of the Contract Time or an adjustment of the Total Base Rent or any Lease Payment and subjects the Entity to liquidated damages.

Delays in the prosecution of parts or classes of the Work, which do not prevent or delay the completion of the whole Work within the Contract Time, are not to be considered Excusable or Compensable.

Section 14.02. Notice of Delays; Requests for Time Extensions.
Whenever the Entity foresees any delay in the prosecution of the Work, and in any event immediately upon the occurrence of any delay which the Entity regards as good cause for an extension of time, the Entity shall notify the District's Representative in writing of the delay. No later than ten (10) calendar days from the initial notice, if the following information is not provided in the initial notice, the Entity shall provide notice specifying with detail the cause asserted by the Entity to constitute good cause for an extension and a quantification of the length of the requested extension of time, to the extent known. Failure of the Entity to submit such timely notice shall constitute a waiver by the Entity of any request for extension to the extent of any prejudice to the District on account of such delay, and no extension shall be granted as a consequence of such delay.

The District shall consider and respond promptly to time extension requests that comply with the terms of the Facilities Lease and the Construction Documents. The District shall not be responsible or liable to the Entity for any constructive acceleration due to failure of the District to grant time extensions should the Entity fail to reasonably comply with the submission and justification requirements of the Construction Documents for time extension requests.

Section 14.03. Investigation; Procedure.
Upon receipt of a request for extension, the District's Representative shall conduct an investigation of the facts asserted by the Entity to constitute good cause for an extension. The District's Representative shall report the results of this investigation, as well as the propriety of the time extension requested, to the Entity in writing within ten (10) days of receipt of the request and shall indicate whether it will recommend for or against the extension.

Upon receiving the District's Representative's recommendation, the Entity may either concur in the recommendation, or reject the recommendation and proceed with a claim as provided for in Article 23.

Section 14.04. Discretionary Time Extensions for Best Interest of District.
The District reserves the right to extend the time for completion of the Work if the Board of Education determines that such extension is in the best interest of the District. In the event that a discretionary extension is granted at the request of the Entity, the District shall have the right to charge to the Entity all or any part, as the Board of Education may deem proper, of the actual cost of project management, engineering, inspection, supervision, incidental and other overhead expenses that accrue during the period of the extension, and to deduct all or any portion of that amount from the Final Lease Payment.

In the event a discretionary time extension is ordered over the objection of the Entity, and the decision rests solely with the Board of Education and is not legally compelled for any cause, the Entity shall be entitled to a Change Order adjusting the price paid to reflect the actual costs incurred by the Entity as a direct result of the delay, upon its written application therefore, accompanied with such verification of costs as the District's Representative requires. The decision of the Board of Education on any discretionary time extension and the costs thereof shall be final and binding on the District and the Entity.

Section 14.05. Liquidated Damages.
If the Work is not completed by the Entity in the time specified in the Facilities Lease, or within any period of extension authorized pursuant to this Article, the Entity acknowledges and admits that the District will suffer damage, and that it is impracticable and infeasible to fix the amount of actual damages. Therefore, it is agreed by and between the Entity and the District that the Entity shall pay to the District as fixed and Liquidated Damages, and not as a penalty, the sum specified in the Facilities Lease, and that both the Entity and the Entity's surety shall be liable for the total amount thereof, and that District may deduct Liquidated Damages from any monies due or that may become due to the Entity.

Pursuant to Government Code Section 4215, the Entity shall not pay fixed and Liquidated Damages for delay in completing the Project caused by the failure of the District or the owner of utility facilities located on the Project Site to provide for removal or relocation of such facilities.

Section 14.06. Extension of Time Not a Waiver.
Any extension of time granted the Entity pursuant to this Article shall not constitute a waiver by the District of, nor a release of the Entity from the Entity's obligation to perform its Work in the time specified by the Facilities Lease, as modified by the particular extension in question.

The District's decision to grant a time extension due to one circumstance set forth in one request, shall not be construed as a grant of an extension for any other circumstance or the same circumstance occurring at some other time, and shall not be viewed by the Entity as a precedent for any other request for extension.

Section 14.07. Effect of Stop Work Notice.
If the District issues a Stop Work Notice pursuant to Article 9, the days on which the suspension is in effect shall be included in determining the required completion date, and shall not otherwise modify or extend the time within which the Entity is to perform. In such event, the Entity shall not be entitled to any damages or compensation on account of such suspension or delay, unless the Entity can establish that Stop Work Notice was not warranted.

ARTICLE 15. CHANGES TO THE WORK

Section 15.01. No Changes Without Consent.

Subject to the Entity's right to access the Contingencies and Allowances, Entity will complete the Project for the compensation stated in the Facilities Lease except as provided below. Entity agrees, for itself and on behalf of its Subcontractors and Suppliers, that no increase in the Facilities Lease will be made for work that Entity or its Subcontractors and Suppliers might otherwise claim as a Change Order or extra work unless Entity establishes that the additional cost is the result of one of the following: (a) a material change in the scope of work directed or authorized by Owner; (b) a change required by regulatory authorities (including inspections) that was not reasonably ascertainable from the Contract Documents and not reasonably inferable from Entity's or Subcontractor's knowledge of local practices or circumstances; (c) regulatory fees not included in the Total Base Rent; (d) Differing Site Conditions; (e) whenever costs are more than or less than Allowances and District's Contingency, the compensation shall be adjusted accordingly by Change Order, the amount of the Change Order shall reflect the difference between actual costs and the Allowances and District's Contingency; (f) design errors beyond those reasonably observable in the Plans and Specifications by an experienced construction professional; or (g) wrongful acts of District or a separate contractor employed by District, or by damage to the Work caused by fire or other unavoidable casualties not the fault of the Entity or Subcontractors, Suppliers, or delay authorized by District pending mediation or dispute resolution. Entity further acknowledges that its contractual obligation to indemnify District extends to claims asserted by Subcontractors or Suppliers seeking compensation for alleged Change Orders or extra work for which District is not liable to Entity as a result of these provisions. Subject to the provisions in Article 4 of the Facilities Lease, nothing in this section shall foreclose Entity from access to the Construction Contingency for properly incurred Costs of the Work that are attributable to causes for which a Change Order is prohibited by this section.

No extra work shall be performed, and no change shall be made, except pursuant to a written Change Order or Proposed Change Order, signed by the District, or by a Directive (signed by either the District or the District's Representative) stating that the extra work or change is authorized, or by a fully executed Contingency Draw Authorization, and no claim for any addition to the Total Base Rent or Contract Time shall be valid unless so authorized; provided, however, that nothing in this Article shall excuse the Entity from proceeding with the prosecution of the work so changed. The Entity shall furnish an itemized breakdown of the quantities and prices used in computing the value of any change, including permitted uses of Contingencies and Allowances requested by the Entity, or that may have been ordered by the District, including all items listed in Section 15.06 and 15.07, below.

Change Orders and Contingency Draw Authorizations shall specify the cost adjustments associated therewith, and in no case shall the District pay or become liable to pay any sums different than those specified or those established under Section 15.06 and 15.07.

Substitutions may be considered Construction Change Directives, if DSA approval is required.

Section 15.02. Change Orders.

The District may require changes in, additions to, or deductions from the Work to be performed or the materials to be furnished pursuant to the Construction Documents. Changes may be made pursuant to a written Change Order or Contingency Draw Authorization (either of which must be signed by the District), which shall state the agreement of the District, the Entity, and the Architect, all of the following:

A. The scope of the change in the Work;

B. The amount of the adjustment in the Total Base Rent, if any; and

C. The extent of the adjustment in the Contract Time, if any.

The District may delete from the Work any item of work. The Entity will be paid for all work done toward the completion of the item prior to such deletion, as provided herein, but in no event will the amount paid exceed the Schedule of Values amount less the value of the deleted work. The Entity shall make no claim, nor receive any compensation for profits, for loss of profit, for damages, or for any extra payment whatever because of any deleted items of work.

The District may also issue unilateral Change Orders based upon a previously issued Directive. Unilateral Change Orders shall be approved by the District, the Architect and the District Representative, but need not be signed by the Entity.

All adjustments to the Total Base Rent or the Contract Time must be approved by the District Board of Education.

Signature by the Entity on the Change Order or Contingency Draw Authorization constitutes its agreement with and acceptance of the adjustments in the Total Base Rent and Contract Time, if any, set forth in the Change Order or Contingency Draw Authorization as full and complete satisfaction of any direct or indirect additional cost and/or time incurred by the Entity in connection with performance of the changed work.

Section 15.03. Not Used.

Section 15.04. Change Orders Regarding Time for Completion.
Any time extension authorized by the District pursuant to Article 14 hereof shall be set forth in a Change Order signed by the District.

Section 15.05. Construction Change Directive/Directive.
Changes also may be made pursuant to a Directive, which shall direct a change in the Work and state a proposed basis for adjustment, if any, in the Total Base Rent or Contract Time, or both. A Directive shall be used in the absence of total agreement on the terms of a Change Order or Contingency Draw Authorization, or when time does not permit processing of a Change Order or Contingency Draw Authorization prior to implementation of the change. Directives shall be approved by the District and the Architect, but need not be signed by the Entity. Only Construction Change Documents or CCD's that affect Structural Safety, Fire Life Safety or Access Compliance require submittal to DSA under the cover of the DSA-140 form. See DSA IR A-6.

Upon receipt of a Directive, the Entity shall promptly proceed with the change in the Work involved. It is the intent of the District that all Directives will be converted to a Change Order or Contingency Draw Authorization.

When a Directive is used because time does not permit processing of a Change Order or Contingency Draw Authorization prior to implementation of the change, signature by the Entity on the Directive constitutes its agreement with and acceptance of the adjustments in the Total Base Rent and Contract Time, if any, set forth in the Directive as full and complete satisfaction of any direct or indirect additional cost and/or time incurred by the Entity in connection with performance of the changed work.

If the Entity disagrees with the method for adjustment in the Total Base Rent or application of a contingency or allowance, the adjustment shall be determined by the District Representative on the basis of any of the methods described in Section 15.06A, Paragraphs 2, 3, or 4.

Section 15.06. Pricing of Changes.

A. The following pricing methods shall apply to (1) permitted uses of any Contingency or Allowance or (2) any change order or Directive that provides for an adjustment to the Total Base Rent:

1. Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
2. Unit prices as mutually agreed upon;
3. The District Representative's estimate of the value of the change; or
4. A "cost plus" adjustment subject to the limitations in Section 15.08.

Section 15.07. Allowable Costs.

A. Allowable costs for any Change Order or permitted use of contingency or allowance shall be limited to the following:

1. Costs of labor, including social security, Medicare and unemployment insurance, fringe benefits required pursuant to Article 7, and workers' compensation insurance;
2. Costs of first line supervision labor, including labor burden as described in Paragraph 1. "First Line Supervision" shall mean a working foreman or lead craft worker other than the project superintendent;
3. Actual cost of the project superintendent associated with any period of compensable delay caused by issuance of the Change Order. In the absence of a compensable delay, all of the project superintendent's time is considered to have been paid for as part of the Overhead;
4. Actual costs of materials, including sales tax and delivery;
5. Rental costs of machinery and equipment, exclusive of small tools, whether rented from the Entity or others;
6. Overhead and Profit as specified below. "Overhead" shall include the following:

   Preparation of all paperwork related to changes in the Work, including field review, estimating and cost breakdown; coordination and supervision, both office and field, including the project superintendent; vehicles including gas and maintenance; small tools, incidentals and consumables; engineering, detailing, and revisions to shop drawings and as-built drawings; general office and administrative expense; extended and unabsorbed home office overhead; warranty; costs of bonds, liability insurance, builder's risk insurance, all taxes; and all other expenses not specifically included in Paragraph A above.

B. For changes above the Total Base Rent, the following markups shall apply: (1) the Entity's combined Overhead and Profit for Work performed by its own forces shall be fifteen percent (15 %) of the costs specified in Section 15.07A (1)-(5); (2) if the changed Work is performed by a Subcontractor, the Subcontractor shall be entitled to an allowance of fifteen percent (15%) of its labor, material and rental costs for Overhead and Profit, and the Entity shall be allowed to mark-up the Subcontractor's price five percent (5%) for its Overhead and Profit. Cumulative total markup for all tiers of contractors and subcontractors shall not exceed twenty-five percent (25%).

C. For permitted use of the Contingencies or Allowances included in the TBR, the following markups shall apply: (1) the Entity's combined Overhead and Profit for Work performed by its own forces shall be its actual fee as noted in its Proposal in response to the RFP plus its actual percentage as noted in its Proposal in response to the RFP for costs for bonds and insurance of the costs specified in Section 15.07 (1) – (5) unless previously paid; (2) If the changed Work is performed by a Subcontractor, the Subcontractor shall be entitled to an allowance of up to fifteen percent (15%) as determined by the Entity, for its labor, material and rental costs for Overhead and Profit and the Entity shall be allowed to markup the Subcontractor's price its actual fee as noted in the RFP plus its actual percentage as noted in the RFP of costs for bonds and insurance for its Overhead and Profit. Cumulative total markup for all tiers of contractors and subcontractors shall not exceed twenty two percent (22%).

D. If the net value of a change results in a credit from the Entity or subcontractor, the credit shall be the actual net cost. When both additions and credits covering related work or substitutions are involved in any one change, the allowance for Overhead and Profit shall be figured on the basis of the net increase or decrease, if any, with respect to the change.

Section 15.08. Time and Materials Adjustment.

A. Record Keeping. In the event that the pricing method selected is the "time and materials" method described in Section 15.06A, Paragraph 4, the pricing shall be calculated using the formula and costs set forth in Section 15.07, except that time and material (T&M) labor rates shall be pre-approved by the District Representative for T&M work. The Entity shall keep and present daily, in such form as the District Representative may prescribe, an itemized accounting together with appropriate invoices and other supporting data of the labor, materials, and equipment used during that day. All labor shall be recorded on separate time sheets clearly identified with the Directive number and scope of extra work involved. These time sheets shall be signed daily by the District's Representative. No costs will be allowed for time not recorded and signed the same day the work takes place. The Entity and the District's Representative shall discuss and attempt to resolve any disputes concerning the Entity's daily records at the time the report is submitted.

B. Reconciliation. The Entity shall on a monthly basis accompanying its Lease Payment submissions submit a reconciliation for all work performed under a cost plus Directive during the period of the Lease Payment. A final reconciliation shall be submitted within thirty (30) days after the work of the Directive is completed. The reconciliation shall recap all costs and appropriate markups for the period. No costs will be allowed for work not included in a reconciliation within the time periods specified.

Section 15.09. Effect on Sureties.

All changes authorized by the Construction Documents may be made without notice to or consent of the sureties on the contract bonds, and shall not reduce the sureties' liability on the bonds.

The District reserves the right to require additional payment or performance bonds to secure a Change Order.

Section 15.10. Differing Site Conditions.

If the Construction Documents require the digging of trenches or other excavations that extend deeper than four feet below the existing surface, the following provision shall apply to those trenches or excavations:

A. In the event that any of the following described conditions is suspected to exist in the trench or excavation, the Entity shall promptly, and before the condition is disturbed, notify the District's Representative, in writing, of any:

1. Material that the Entity believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.
2. Subsurface or latent physical conditions at the Site differing materially from those indicated in the Construction Documents.
3. Unknown physical conditions at the Site of any unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Construction Documents.

B. Upon receipt of notice from the Entity, the District's Representative, the District and the Architect shall promptly investigate the conditions, and if it is determined that the conditions do materially so differ or do involve hazardous waste, and cause a decrease or increase in the Entity's cost of, or the time required for, performance of any part of the work shall issue a Change Order or Directive under the procedures described in the Construction Documents.

C. In the event that a dispute arises between the District and the Entity as to whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Entity's cost of, or time required for, performance of any part of the Work, the Entity shall not be excused from any scheduled completion date provided for by the Construction Documents, but shall proceed with all Work to be performed under the Construction Documents. The Entity shall retain any and all rights provided either by the Construction Documents or by law, which pertain to the resolution of disputes and protests between the contracting parties.

D. No cost or time adjustment, which results in a benefit to the Entity, will be allowed unless the Entity has provided the required written notice under Paragraph A of this Section 15.10.

E. No cost or time adjustment will be allowed under the provisions specified in this Section for any effects caused on unchanged work.

As between the Entity and the District, the District is responsible for the timely removal, relocation, or protection of existing main or trunkline utility facilities located on the Site if such utilities are not identified in the Plans and Specifications. If the Entity, while performing its work, discovers utility facilities not identified in the Plans or Specifications, it shall immediately notify the District and the associated utility in writing. Thereafter, and provided it has given such notice, the Entity shall be entitled to an adjustment of the Total Base Rent and an extension of the Contract Time, in accordance with Articles 14 and 15 of these General Construction Terms and Conditions, for the costs of locating, repairing damage not due to the failure of the Entity to exercise reasonable care, and removing or relocating such utility facilities not indicated in the Plans and Specifications with reasonable accuracy, and for equipment on the project necessarily idled during such work when such costs and time are caused by the failure of the District or the owner of the utility to provide for removal or relocation of such utility facilities. Notwithstanding anything to the contrary herein, the District is not required to indicate the presence of existing service laterals or appurtenances whenever the presence of such utilities on the Site can be inferred from the presence of other visible facilities, such as buildings, meter and junction boxes, on or adjacent to the Site. Nothing herein shall preclude the District from pursuing any appropriate remedy against the utility for delays which are the responsibility of the utility.

ARTICLE 16. NOT USED

ARTICLE 17. REJECTION AND REPLACEMENT OF WORK AND MATERIALS

Section 17.01. Rejection of Materials and Workmanship.
The District shall have the right to reject materials and workmanship, which are determined, by the District's Representative, the Architect, or the Project Inspector to be defective or fail to comply with the Construction Documents. Rejected workmanship shall be corrected to the satisfaction of the District and/or Architect, and rejected materials shall be removed from the premises and replaced, all without added cost or time to the District, or use of Contingency.

If the Entity does not correct such rejected work and/or materials within a reasonable time, fixed by the District's Representative or the Architect in a written notice to the Entity, the District may correct the same and charge the expense to the Entity, and deduct such expense from the next Lease Payment otherwise payable to the Entity.

If the District determines that it is in its best interest not to correct defective workmanship and/or materials, or work not done in accordance with the Construction Documents, the Entity agrees that an equitable deduction from the Total Base Rent shall be made therefore.

Section 17.02. Correction of Work.
The Entity shall promptly correct all work rejected by the District's Representative, Project Inspector or the Architect as defective or as failing to conform to the Construction Documents, whether observed before or after final completion and whether or not fabricated, installed or completed. The Entity shall bear all costs of correcting such rejected work including compensation for the Architect's, Project Inspector's and the District's Representative's additional services.

If within two (2) years after the Date of Completion and acceptance of the Work or within such longer period of time as may be prescribed by law or by the terms of any applicable special warranty required by the Construction Documents, any of the Work is found to be defective or not in accordance with the Construction Documents, the Entity shall correct any or all such work, together with any other work which may be displaced in so doing, without expense to the District, promptly after receipt of a written notice from the District unless the District has previously given the Entity a written acceptance of such condition. The District shall issue a correction notice promptly after discovering the condition. The Entity shall notify the District upon completion of repairs. This obligation shall survive termination of the Facilities Lease with respect to work in place prior to termination.

The Entity shall bear the cost of making good work destroyed or damaged by such correction or removal.

Nothing contained in this Section shall be construed to establish a period of limitation with respect to any other obligations which the Entity might have under the Construction Documents or by operation of law. The establishment of the time period of two (2) years after the Date of Completion, or such longer period of time as may be prescribed by law or by the terms of any warranty required by the Construction Documents, relates only to the specific obligation of the Entity to correct the Work and has no relationship to the time within which an action may be commenced to establish the Entity's liability with respect to its obligations other than specifically to correct the work.

ARTICLE 18. NOT USED

ARTICLE 19. PRESERVATION AND CLEANING

Section 19.01. Periodic Cleaning of Project.

The Entity shall properly clean its Work and the Site, and maintain its Work area in an orderly manner. The Entity shall remove all dirt, debris, waste, rubbish, and implements of service from the Project, the adjacent sidewalks and streets, and the working area daily or as directed by the District's Representative. Debris, waste, or unused construction materials shall not be left under, in, or about the Project, nor allowed to accumulate on the Site or in the working area.

The Entity, at its sole cost, shall contract with a disposal company to remove all rubbish, and shall have the refuse containers emptied at frequent enough intervals so that waste does not overflow the containers.

If the Entity fails to clean up during progress or upon completion of the Work, the District may perform the clean up at the Entity's expense and reduce the amount of the Total Base Rent, including any Lease Payment(s) due or to become due, accordingly.

Section 19.02. Final Cleaning of Project.

Prior to final acceptance, the Entity shall thoroughly clean the interior and exterior of the buildings, and the Site and adjacent areas, of all material related to its performance of the Work, including spots, stains, paint spots, trade markings and labels, and accumulated dust and dirt. In the event the Entity fails to do so, the District may cause this work to be done at the Entity's expense and reduce the amount of the Total Base Rent, including any Lease Payment(s) due or to become due, accordingly.

The following list is not inclusive but to act as a guideline to include:

A. Removal of all paint spots, stains, rubbish, debris, tools and equipment from all areas and broom clean. Steam clean all carpets and mop floors.

B. Cleaning interior and exterior of the buildings including all windows in any area affected by the Work.

C. Brush off, broom sweep, dust and clean ledges, stairs, doors, hardware, chalk board trays and any adjoining rooms or areas that were affected by the Work.

D. The Entity shall clear grounds and exterior paved areas and walks of all construction debris, dirt and dust and shall repair any Site areas damaged during the course of construction.

Prior to final completion or Owner occupancy, the Entity shall conduct an inspection of sight-exposed surfaces, and all work areas, to verify that the entire work is clean. In the event the Entity fails to do so, the District may cause this work to be done at the Entity's expense and reduce the amount of the Total Base Rent, including any Lease Payment(s) due or to become due, accordingly.

See also Section 01 7700 Closeout Procedures

ARTICLE 20. COMPLETION, INSPECTION, AND OCCUPANCY BY DISTRICT

Section 20.01. Inspection.
When the Entity believes that its construction Work is complete, it shall request in writing a final inspection. Before calling for final inspection, the Entity shall determine that the following work has been performed:

A. General construction has been completed.

B. Mechanical and electrical work complete, tested, commissioned, and fully functional, and fixtures and portables, in place, connected and ready for tryout and test.

C. Electrical circuits scheduled in panels and disconnect switches labeled.

D. Painting and special finishes complete.

E. Doors complete with hardware, cleaned of protective film and relieved of sticking or binding and in working order.

F. Tops and bottoms of doors sealed, if needed.

G. Floors waxed and polished to the extent specified.

H. Broken glass replaced and glass cleaned.

I. Grounds cleared of Entity's equipment, raked clean of debris, and trash removed from the Site.

J. Work cleaned, free of stains, scratches, and other foreign matter, replacement of damaged and broken material.

K. Finish and decorative work shall have marks, dirt and superfluous labels removed.

Final inspection will be made upon written notification from the Entity to District that the Work has been completed. The Entity shall receive a list (punch list) of items found unacceptable and shall promptly correct them. Upon written notification from the Entity that all items have been corrected, re-inspection for final acceptance of the Project will be made. Failure of the Entity to complete punch list items will necessitate further re-inspection. Costs of re-inspection will be deducted from any amounts due to the Entity.

Section 20.02. Use of Work Prior to Acceptance.
Whenever, in the opinion of the District, the Work or any part thereof, is in a condition suitable for use, and the best interests of the District require such use, the District may take possession of, connect to, and open for public or District use that portion of the Work. The District shall provide Entity not less than ten (10) days' notice of such possession or use.

Section 20.03. Repairs or Renewal in the Work.
Prior to the Date of Completion, the Entity shall make all repairs or renewals in the portion of the Work occupied pursuant to Section 20.02 made necessary due to defective material or workmanship, or the operations of the Entity, ordinary wear and tear accepted.

Section 20.04. Effect of Occupancy.
The District's occupancy as contemplated in this Article shall not constitute acceptance by the District of the Work or any part thereof. Such use shall neither relieve the Entity of any of its responsibilities under the Construction Documents, nor act as a waiver by the District of any of the terms or conditions of the Construction Documents. Except as provided in Article 10 of Exhibit D, any damage done by the District is the responsibility of the District, warranties applicable to the portion of the work occupied will commence upon that occupancy, and the Entity shall not be required to continue to maintain builder's risk insurance for any facilities occupied by the District under this Article before completion of all of the Work.

Section 20.05. Coordination with Other Activities.
The Entity shall conduct its operations so as not to interfere unreasonably with the District's use of the occupied portions of the Site. The Entity shall submit periodic schedules to the District's Representative proposing the times, areas, and types of work to be done within such areas.

If the Work produces conditions rendering the occupied portions of building, the Site, or other areas uninhabitable, either because of noise, dust, vibration, smoke, fumes, or for any other cause whatsoever, the District's Representative may suspend the Work or request the Entity to modify the Construction Schedule, and the Entity shall comply.

If the District takes occupancy pursuant to Section 20.02 it shall not unreasonably interfere with the Entity's ability to complete its work in a timely and efficient manner.

Except as provided by Change Order, the Entity shall not be entitled to a time extension or increase in the Total Base Rent by virtue of conflicts between the Entity's work and the District's occupancy.

ARTICLE 21. PROJECT CLOSEOUT

Section 21.01. Entity's Certificate of Completion.
When the Entity determines that the Project is complete and all items on the punch list have been satisfied, the Entity shall submit a Certificate of Completion to the District's Representative.

Section 21.02. Additional Submissions.
Simultaneously with the Entity's Certificate of Completion, the Entity shall submit the following items to the District's Representative:

A. As-built drawing information pursuant to Section 5.06.

B. Two (2) sets of documentation completely covering the operation and maintenance of the mechanical and electrical installation, elevators, kitchen equipment, and all other equipment required by the technical specifications to be furnished with such manuals. The documentation shall include charts, diagrams, performance curves, catalog information, lubrication manuals, and details pertaining to the functioning of various items of equipment. The documentation shall be divided logically into "systems" on the basis of operation, without respect to trades, subcontractors or arbitrary specifications sections. The relationship of the "systems" shall be clearly and concisely detailed.

C. Hazardous material documentation if required.

D. DSA Form 6C - Final Verified Report.

E. All other required DSA, California Department of Education, State Allocation Board and Office of Public School Construction forms.

F. Any extra stock material and equipment and manufacturer warranties/guarantees as required by the contract documents.

G. Other items as required in the Construction Administrative Procedures Manual.

Section 21.03. Final Lease Payment.
The Final Lease Payment shall be made at the expiration of the Lease Term in accordance with the Lease Payment Schedule, but in no event earlier than the expiration of the post construction lease period, as that period may be extended, specified in Section 4.2 of the Facilities Lease, which post construction lease period shall not commence until a) receipt by the District of the submittals required by this Article and the Entity's Certification of Completion, b) verification that all of the Work is complete, including all punch list items, in accordance with the Facilities Lease and the Construction Documents, and c) acceptance by the District of the Project.

ARTICLE 22. GUARANTEES

Section 22.01. Guarantee Required.

Neither the final Lease Payment nor any provision in the Construction Documents shall relieve the Entity of responsibility for faulty materials or workmanship incorporated in the Project. The Entity warrants that all Work done and facilities constructed pursuant to these General Construction Terms and Conditions and the Construction Documents will be free of faulty materials or workmanship and hereby agrees, immediately upon receiving notification from District, to remedy, repair or replace, without cost to District, all defects which may appear as a result of faulty materials or workmanship in the Project, at any time, or from time to time, during a period beginning with commencement of the Project and ending two (2) years after the Notice of Completion date for the Project or early occupancy by the District of the portion of the Project on which the warranty claim is made, whichever is earlier. The foregoing warranty of the Entity applies to the remedy, repair or replacement of defects which may appear as a result of faulty designs prepared by the Entity and/or any party retained by, through or under the Entity in connection with the Project, but the foregoing warranty of Entity does not guarantee against damage to the Project sustained by lack of normal maintenance or as a result of changes or additions to the Project made or done by parties not directly responsible to the Entity, except where such changes or additions to the Project are made in accordance with the Entity's directions. No guarantee furnished by a party other than the Entity with respect to equipment manufactured or supplied by such party shall relieve the Entity from the foregoing warranty obligation of the Entity. The warranty period set forth hereinabove shall not apply to latent defects appearing in the Project, and with respect to such defects, the applicable statute of limitations shall apply.

In the event of failure of the Entity to comply with above mentioned conditions within one (1) week after being notified in writing, the District is hereby authorized to proceed to have defects repaired and made good at expense of the Entity who hereby agrees to pay reasonable costs and charges therefore immediately on demand.

If, in the opinion of the District, defective work creates a dangerous condition or requires immediate correction or attention to prevent further loss to the District, the District will attempt to give the notice required by this Article. If the Entity cannot be contacted or does not comply with the District's requirements for correction within a reasonable time as determined by the District, the District may, notwithstanding the provisions of this Article, proceed to make such correction and the reasonable cost shall be charged against the Entity. Such action by the District will not relieve the Entity of the guarantee provided in this Article or elsewhere in the Facilities Lease and/or Construction Documents.

This Article does not in any way limit the guarantee on any items for which a longer guarantee is specified or on any items for which a manufacturer gives a guarantee for a longer period. The Entity shall furnish District all appropriate guarantee and warranty certificates upon completion of the Project.

The guarantee period for corrected defective work shall continue for a duration equivalent to the original guarantee period.

The guarantee is in addition to, and not in lieu of, the District's rights under the Facilities Lease, these General Construction Terms and Conditions and/or the Construction Documents.

ARTICLE 23. CLAIMS AND DISPUTES

Claims shall be subject to the requirements of Public Contract Code sections 20104 *et seq.* and 9204. A summary of those provisions is set forth below in Sections 23.02 and 23.03. A waiver of the rights granted by the referenced statutes is void and contrary to public policy, provided, however, that (1) upon receipt of a Claim, the parties may mutually agree to waive, in writing, mediation and proceed directly to the commencement of a civil action or binding arbitration, as applicable; and (2) the District may prescribe reasonable change order, claim, and dispute resolution procedures and requirements in addition to the statutory requirements, so long as the contractual provisions do not conflict with or otherwise impair the statutory timeframes and procedures. To the extent that the summary below is inconsistent with any requirement of those statutes, the statutes shall control. The terms below are intended to be consistent with the governing statutes, and any modifications shall be understood as lawful modifications or additions to the statutory requirements if at all possible.

Section 23.01. Notice of Potential Claim.

The Entity shall promptly provide a written Notice of Potential Claim to the District upon discovery of concealed or unknown conditions or discovery of facts regarding any disagreement, protest, direction, situation, event, or occurrence that may result in a claim, including but not limited to changes in work and delays. The written Notice of Potential Claim shall set forth the reasons for which the Entity believes adjustment to the TBR or time for construction will or may be due, the nature of the costs and/or time involved, and, insofar as possible, the amount of the potential claim. The Notice shall be submitted as soon as practical, but no more than five (5) working days after the discovery of any facts or event that does or may give rise to the claim, unless a different period for notice is specified in this Facilities Lease. **Failure to timely submit the Notice of Potential Claim constitutes acknowledgement that the condition(s), fact(s), occurrence(s) or event(s) did not cause any increase in cost or time to perform and waives any Claim that the Entity otherwise may have had the right to submit based on such condition(s), fact(s), occurrence(s) or event(s).**

Section 23.02. Definitions.

"Claim" means a separate demand by Entity sent by registered mail or certified mail with return receipt requested, for one or more of the following:

(A) a time extension for construction of the Project, including, without limitation, for relief from damages or penalties for delay assessed by the District under the Facilities Lease.

(B) payment by the District of money or damages arising from construction work done by, or on behalf of, Entity pursuant to the Facilities Lease and payment for which is not otherwise expressly provided or to which the claimant is not otherwise entitled.

(C) payment of an amount related to construction of the Project that the District disputes.

"Mediation" means any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation.

"Subcontractor" means any type of contractor within the meaning of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code who either is in direct contract with the Entity or is a lower tier subcontractor.

Section 23.03. Claims Procedure.

All Claims under the Facilities Lease shall be resolved using the following procedure.

23.03.01 The Claim shall be in writing and include the documents necessary to substantiate the Claim. The evaluation of the Entity's Claim will be based on the District's records and the Claim documentation submitted by the Entity, which shall include but not be limited to the following: an explanation of the background; a chronology (including dates of all key events and date(s) that the Notice of Potential Claim was given); an explanation of the Entity's position; supporting documentation of merit; analysis of delay for any claimed additional time, including CPM schedules; and a calculation of damages or additional amounts claimed, if any. Supporting documentation of merit may include, but not be limited to, Construction Documents, correspondence, conference or meeting notes, shop drawing logs, survey books, inspection reports, delivery schedules, test reports, daily reports, subcontracts, CPM schedules, photos, RFIs, Directives, and other such records. Supporting documentation of damages may include, but not be limited to, certified payroll reports; purchase orders; invoices; project as-planned and as-built costs; Subcontractor payment releases; quantity reports; other related records; general ledger and any other accounting materials.

Claims must be submitted within thirty (30) days of when the Entity becomes aware of the facts giving rise to the Claim, except that the Claim must be submitted no later than thirty (30) days from the date that a Notice of Completion is filed. Any Claim shall be certified under penalty of perjury and in compliance with the California False Claims Act, as set forth in Section 23.04 below. Failure to include these required certifications will constitute grounds for immediate rejection of the Claim and shall be deemed a waiver and absolute bar of the Claim, including any right to pursue the Claim further.

23.03.02 If a Subcontractor, including a lower tier Subcontractor, lacks legal standing to assert a Claim against the District because privity of contract does not exist, then the Entity may present a Claim on behalf of such a Subcontractor. A first-tier Subcontractor may request in writing, either on its own behalf or on behalf of a lower tier Subcontractor, that the Entity present a Claim on behalf of the Subcontractor for work that was performed by the Subcontractor. The Subcontractor requesting that the claim be presented shall furnish reasonable documentation to support the Claim. Within forty-five (45) days of receipt of this written request, the Entity shall notify the Subcontractor in writing as to whether the Entity presented the Claim and, if the Entity did not present the Claim, provide the Subcontractor with a statement of the reasons for not having done so.

23.03.03 Upon receipt of a Claim, the District shall conduct a reasonable review of the Claim. Within thirty (30) days of receipt of the Claim, the District may request, in writing, any additional documentation supporting the Claim or relating to defenses to the Claim that the District may have against the claimant. Where additional information is requested by the District, the time in which the District must respond to a Claim shall be tolled until all requested information is provided. If additional information is thereafter required, then it shall be requested and provided upon mutual agreement of the District and the Entity.

23.03.04 Within forty-five (45) days of receipt of the Claim, as that time may be tolled as provided in Section 23.03.03 above, the District shall provide the Entity with a written statement identifying what portion of the Claim is disputed and what portion is undisputed. Upon receipt of a Claim, the District and the Entity may, by mutual agreement, extend the time period for a response. Failure by the District to respond to a Claim within the time periods described herein shall result in the Claim being deemed rejected in its entirety. A Claim that is denied by failure of the District to respond shall not constitute an adverse finding with regard to the merits of the Claim or the responsibility or qualifications of the claimant.

23.03.05 Any payment due on an undisputed portion of the Claim shall be processed and made within sixty (60) days after the District issues its written statement. The District shall not fail to pay money as to any portion of a claim which is undisputed except as otherwise provided in the Facilities Lease.

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

23.03.07 Within ten (10) business days following the conclusion of the meet and confer conference, if the Claim or any portion of the Claim remains in dispute, then the District shall provide the Entity a written statement identifying the portion of the Claim that remains in dispute and the portion that is undisputed. Failure by the District to provide the written statement within the time periods described herein shall result in the remaining Claim issues being deemed rejected in their entirety. Denial by failure of the District to respond shall not constitute an adverse finding with regard to the merits of the remaining Claim issues or the responsibility or qualifications of the claimant. Any payment due on an undisputed portion of the Claim shall be processed and made within sixty (60) days after the District issues its written statement.

23.03.08 Any remaining disputed portion of the Claim following the meet and confer conference shall be submitted to nonbinding mediation, with the District and the Entity sharing the associated costs equally. The District and Entity shall mutually agree to a mediator within ten (10) business days after the disputed portion of the Claim has been identified in writing. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the Claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator. Unless otherwise agreed to by the District and the Entity in writing, the mediation conducted pursuant to this Section shall excuse any further obligation under Public Contract Code Section 20104.4 to mediate after

litigation has been commenced. This Section does not preclude arbitration if mediation under this Section does not resolve the parties' dispute.

23.03.09 If mediation is unsuccessful, then the Entity may file a claim as provided in Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code with respect to the parts of the Claim remaining in dispute. For purposes of those provisions, the running of the period of time within which a claim must be filed shall be tolled from the time the Entity submits his or her written Claim pursuant to Section 23.03.01 until the time that mediation of disputed portions of that Claim is completed. This Section does not apply to tort claims, and nothing in this Section is intended nor shall be construed to change the time periods for filing tort claims or actions specified by Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code.

23.03.10 Amounts not paid in a timely manner as required by this Section shall bear interest at seven percent (7%) per year.

23.03.11 Claims of $375,000 or less are subject to the following procedures for civil actions filed to resolve the claims:

(a) The case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1141.11 of that code. The Civil Discovery Act (Title 4 (commencing with Section 2016.010) of Part 4 of the Code of Civil Procedure) shall apply to any such proceeding, consistent with the rules pertaining to judicial arbitration.

(b) The parties stipulate that the arbitrator shall be experienced in construction law and shall be paid necessary and reasonable hourly rates of pay not to exceed their customary rate, and such fees and expenses shall be paid equally by the parties, except in the case of arbitration where the arbitrator, for good cause, determines a different division. In no event shall these fees or expenses be paid by state or county funds.

(c) In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, any party who, after receiving an arbitration award, requests a trial *de novo* but does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, pay the attorneys' fees of the other party arising out of trial *de novo.*

(d) The court may, upon request by any party, order any witnesses to participate in arbitration process.

In any suit filed under Public Contract Code Section 20104.4, the District shall pay interest at the legal rate on any arbitration award or judgment. The interest shall begin to accrue on the date the suit is filed in a court of law.

Section 23.04. Claim Certification.
Entity acknowledges that it has read and is familiar with the provisions of the False Claims Act (California Government Code Sections 12650 *et seq*.). Submission by Entity of any claim (as the term "claim" is defined in False Claims Act) to the District in connection with the Project, whether on its behalf or on behalf of a subcontractor or material supplier, shall constitute a representation by Entity to the District that submission of the claim does not, in any respect, violate the False Claims Act. Any party with an interest in the claim, including Entity and any subcontractor or material supplier, shall certify under penalty of perjury the validity and accuracy of any claim submitted to the District, as provided below. Compliance with this claims certification requirement shall be a condition precedent to any obligation District might otherwise have to review the claim and failure to provide such certification shall constitute a waiver of the claim.

CLAIM CERTIFICATION

Under penalty of perjury, and with specific reference to the California False Claims Act, Government Code sections 12650 *et seq*., I certify that submission of the attached claim is made in good faith; that the supporting data prepared by the undersigned company are accurate and complete to the best of my knowledge and belief; that submission of the claim to the District does not violate the False Claims Act; and that I am duly authorized to certify the claim on behalf of the claimant.

Dated:_____ _____
(Company)

_____
(Signature)

Title:_____

Section 23.05. Continuance of Work.
In the event of a dispute between the parties as to performance of the Work or the interpretation of the Construction Documents, or payment or nonpayment for Work performed or not performed, the parties shall attempt to resolve the dispute. Pending resolution of this dispute, the Entity agrees to continue the Work diligently to completion. If the dispute is not resolved, except as provided otherwise in the Facilities Lease, the Entity agrees it will neither rescind the Facilities Lease, nor stop the progress of the Work on the Project.

ARTICLE 24. ADDITIONAL PROVISIONS

Section 24.01. Conflict of Interest.

No official of the District who is authorized on behalf of the District to negotiate, make, accept, or approve, any architectural, engineering, inspection, Construction, or materials supply contract, or any subcontract in connection with the Construction of the Project, or any land acquisition in connection with the Project, shall become directly or indirectly interested personally in the contract or in any part thereof.

No officer, employee, architect, attorney, consultant, engineer, or inspector of or for the District who is authorized on behalf of the District to exercise any executive, supervisory, or other similar function in connection with the Construction of the Project shall become directly or indirectly interested personally in the contract or any part thereof.

Section 24.02. No Oral Agreements.

No oral agreement or conversation with any officer, agent, or employee of the District, either before, during, or after the execution of the Facilities Lease and/or the Construction Documents shall affect or modify any term or condition contained in the Facilities Lease and/or Construction Documents, nor shall such oral agreement or conversation entitle the Entity to any additional payment or time to perform whatsoever under the terms thereof.

Section 24.03. Anti-Trust Assignment.

By execution of the Construction Documents, or any Subcontract awarded by the Entity, the Entity or any Subcontractor offers and agrees to assign and hereby does assign to the District all rights, title, and interest in and to all causes of action the Entity or Subcontractor may have under Section 4 of the Clayton Act (15 USC section 15) or under the Cartwright Act (Chapter 2 of Part 2 of Division 7 of the Business and Professions Code, commencing with Section 16700), arising from purchases of goods, services, or materials pursuant to the Facilities Lease, Construction Documents or subcontract. This assignment shall be made and shall become effective at the time the District tenders the Final Lease Payment to the Entity, without further acknowledgement by the parties.

Section 24.04. Entity Not Agent, Nor Employee.

Neither the Entity nor any subcontractor, or any officer, agent, or employee of either, is, nor shall they represent themselves to be, an officer, agent, or employee of the District for any purpose whatsoever. No person employed by the Entity, or by any subcontractors, are, nor shall they be construed to be in any manner or for any purpose whatsoever, employees of the District.

Section 24.05. Access to Records.

All accounting records shall be maintained on a generally accepted accounting basis. The District or the District's Authorized Representative shall have access, upon reasonable notice, during normal business hours, to any books, contracts, documents, accounting records, papers, project correspondence, project files, scheduling information and other relevant records of the Entity and all subcontractors directly or indirectly pertinent to the Work (including without limitation preconstruction services, original work, and changed or claimed extra work), to verify and evaluate the accuracy of percentage completion of preconstruction services, cost and pricing data submitted with any permitted use of the Contingencies or Allowances, Change Order prospective or executed, or any claim for which additional compensation has been requested. Such access shall include the right to examine and audit such records, and make excerpts, transcriptions and photocopies at the District's cost. Records shall be maintained for three years following termination of this Facilities Lease.

GENERAL REQUIREMENTS

The following constitute the General Requirements applicable to the construction of the Project.

All references herein to "Contractor" or "the Contractor" shall be deemed to apply to the Entity.

EXHIBIT E

INSURANCE REQUIREMENTS

Section I. Insurance.

The Entity shall obtain, and maintain during the entire Lease Term, and for any extended length of time identified under these requirements, all insurance required by Sections III and IV; Entity shall obtain, and maintain during the entire construction phase of Phase II of the Facilities Lease, all insurance required by Section VI. Certificates of Insurance and required endorsements, including but not limited to Additional Insured Endorsements and Waivers of Subrogation in favor of the District, the Architect, the Construction Manager, and any other District Consultants, and each of their officers, officials, directors, trustees, agents, employees and volunteers (herein after collectively referred to as "Additional Insureds"), shall be delivered to the District a) within five (5) days of execution of the Facilities Lease by the District for insurance required by Sections III and IV and b) within five (5) days of issuance of the Notice to Proceed with Phase II for insurance required by Section VI. The Entity shall not commence work until all required insurance documentation has been submitted to and accepted by the District. If the District requests copies of the Insurance Policy or Policies, the Entity agrees to provide certified copies within 30 days of the District's request.

Every policy shall be endorsed or shall provide in the policy form to state that the policy shall not be canceled, materially reduced, or non-renewed without thirty (30) days prior written notice to District (ten [10] days for non-payment of premium).

Failure of Entity to maintain all required insurance as required during the Lease Term shall constitute a default entitling the District to all rights and remedies that exist under this Agreement and/or by law.

The insurance required in this agreement shall be with carriers, on forms, and in amounts acceptable to the District and shall be subject to the approval of the District. Any acceptance of insurance certificates by the District, however, shall in no way limit or relieve the Entity of duties and responsibilities in this agreement.

Section II. Effective Date of Policies.

The insurance required by Sections III and IV of this Exhibit shall be maintained by the Entity in full force and effect at all times during prosecution of the work and, in regards to the insurance required by Section IV, for the period of time the District may be held liable for the Entity's work; evidence of such will be provided to the District for a period of time no less than four (4) years after the final completion and acceptance thereof by District. This requirement includes, but is not limited to, Entity's obligation to maintain Products & Completed Operations coverage for itself and the Additional Insureds. The insurance required by Section VI of this Exhibit (Builder's Risk) shall be maintained by the Entity in full force and effect from the time of Notice to Proceed with Phase II of the work until acceptance of the Project by the District.

Section III. Workers' Compensation and Employers' Liability Insurance.

In accordance with the provisions of Section 3700 of the Labor Code, the Entity, and each Subcontractor, shall secure the payment of compensation to its employees. The Entity and each Subcontractor shall provide Workers' Compensation insurance and occupational disease insurance, as required by law, and Employer's Liability insurance with minimum limits of $1,000,000 covering all workplaces involved in the Construction Documents.

The Entity shall sign and file with the District the following certificate on the form provided by the District:

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

The Entity shall require each Subcontractor to file such statement prior to allowing that Subcontractor to commence Work.

The Entity shall furnish a certificate of insurance or a certificate of permission to self-insure under the Workers' Compensation and Employers' Liability Insurance statutes of the State of California. The certificate shall provide that at least thirty (30) days' prior written notice (ten [10] days for non-payment of premium) shall be served on District prior to the cancellation or change of such insurance or self-insurance. Said certificate shall also include an endorsement evidencing that the insurer shall waive all rights of subrogation against the District, the Architect, the Construction Manager, and any other District Consultants, and each of their officers, officials, directors, trustees, agents, employees and volunteers for losses arising from work performed by or on behalf of the Entity for the District. Such insurance shall be delivered to the District Representative within five (5) days of being notified of the intent to award the Contract, and before the District will execute the Facilities Lease.

With the exception of insurance provided by The State Compensation Insurance Fund of California, insurance is to be placed with insurers approved by the State of California Department of Insurance or otherwise authorized to transact insurance business in California and with a Bests' rating of no less than A-VII.

Any deductibles or self-insured retentions must be declared to and approved by the District.

Section IV. Liability Insurance.

Insurance is to be placed with insurers approved by the State of California Department of Insurance to transact insurance business in California and with a Bests' rating of no less than A- VII.

A. The Entity shall procure and maintain insurance on all of their operations with insurance companies and on forms acceptable to District for the following minimum insurance coverages:

1. **Commercial General Liability** Occurrence form insurance policy (ISO CG 00 01 or equivalent) covering all operations by or on behalf of Entity, not excluding coverage for:
    a. Premises and Operations
    b. Products and Completed Operations
    c. Contractual Liability insuring the obligations assumed by the Entity in this agreement or Blanket Contractual Liability Coverage
    d. Broad Form Property Damage (including Completed Operations)
    e. Explosion, Collapse, Subsidence, and Underground Hazards
    f. Personal Injury Liability

Commercial General Liability Limits shall not be less than:

$2,000,000 Each Occurrence (Combined Single Limit for Bodily Injury & Property Damage)
$2,000,000 Personal Injury Liability Each Occurrence
$4,000,000 Aggregate for Products and Completed Operations
$4,000,000 General Aggregate

The required General Liability limits must be present on the primary General Liability policy and cannot be met with Excess Liability limits.

2. **Commercial Automobile Liability** insurance policy (ISO CA 00 01 or equivalent) covering Bodily Injury, Property Damage and Contractual Liability coverage for "Any Auto" (Symbol 1) which includes coverage for any owned, hired, borrowed and non-owned automobile, trailer, and equipment coverage, with combined single limit of not less than $1,000,000. The District and the "Additional Insured" entities shall be named as additional insureds on a primary and non-contributory basis, with subrogation rights waived against each.

3. **Excess Liability** The Entity shall have in place an Umbrella or Excess Liability Policy in the amount of $10,000,000 "Following Form" in excess of the above captioned policies and Workers' Compensation Employer's Liability. Evidence of this coverage shall be provided on the certificate of insurance.

4. **Professional Liability** Should any work in the Entity's contract contain any element of design or any professional element that would not otherwise be covered under Entity's General Liability policy, Entity shall obtain at its own expense Professional Liability (Errors & Omissions) coverage to protect, defend, and hold harmless the District and its officers, officials, directors, trustees, agents, employees and volunteers from all claims arising out of the professional services provided by the Entity under the Contract Documents. Entity's policy shall have limits of not less than $5,000,000 and shall agree to waive all rights of subrogation against the District and the "Additional Insured" entities designated in this contract. Entity shall maintain coverage for this policy and retroactive dates that will continue coverage for a period of at least five (5) years from the completion of the project. The District may require higher limits by written request.

5. **Pollution Liability** Should any work include any elements that may give rise to a Pollution claim, the Entity shall be required to carry Pollution Liability coverage with limits no less than $5,000,000 per pollution event. The District may require higher limits by written request. The policy shall be endorsed to include by name the Additional Insureds, as defined by Section I, as additional insureds and shall include a waiver of subrogation endorsement in favor of the Additional Insureds.

B. Additional coverages and/or limits may be required in the Facilities Lease. If the Facilities Lease requires limits of General Liability and Automobile Liability insurance exceeding those stated above, the Entity shall carry Excess or Umbrella Liability insurance providing excess coverage at least as broad as the underlying coverage with a limit equal to the amount stated in the Facilities Lease.

C. Should Entity or any of its Subcontractors or Consultants maintain broader coverage and/or limits than those listed in this contract, those limits/coverages are hereby required and shall be made available to the District.

D. The following terms shall be included in the General Liability and Auto Liability insurance, either within the policy or by endorsement:

1. General Liability and Excess Liability policies shall be endorsed to include by name Additional Insureds, as defined by Section I, as additional insureds (the General Liability endorsement shall be at least as broad as ISO form CG 20 10 11 85), and shall provide coverage for Ongoing Operations as well as Products & Completed Operations for the period of time the Additional Insureds may be held liable for the Entity's work, and shall state that these policies are primary and that any Insurance, Self Insurance or Memorandum of Liability Coverage (MDLC) maintained by District shall be in excess of the Entity's insurance and shall not be called upon to contribute to any loss. Evidence of such shall be provided to the District for a period of time no less than four (4) years after completion of the Project.

2. Except with respect to bodily injury and property damage included within the Products and Completed Operations hazards, the aggregate limit, where applicable, shall apply separately to the project under this subcontract.

3. All liability insurance shall be written on an "occurrence" basis and defense costs shall be outside the policy limits of liability. Modified Occurrence policies and sunset type clauses will not be accepted.

4. The Commercial Auto Policy shall include the District and the Additional Insured entities as additional insureds on a primary and non-contributory basis, with subrogation rights waived against each.

5. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Additional Insureds.

6. General Liability Coverage shall state that the Entity's insurance shall apply separately to each Insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability, and shall contain a severability of interest/cross liability clause to the effect that each Insured and Additional Insured is covered as if separate policies had been issued to each.

7. The insurer(s) issuing the required General Liability and Auto Liability policies shall, by separate endorsement, agree to waive all rights of subrogation against the Additional Insureds. The General Liability waiver of subrogation must apply to both ongoing operations and completed operations.

8. The policy must provide, by policy provisions or endorsement, that it shall not be canceled, suspended, voided, materially changed or any renewal or replacement policy be changed without thirty (30) days' prior written notice to the District (ten [10] for non-payment of premium). Evidence of such must be provided to the District.

9. The Contractual Liability coverage may be either on a blanket basis or a policy which specifically identifies this Agreement with a contractual liability endorsement.

10. Any deductibles or self-insured retentions must be declared to and approved by the District which amounts shall be no greater than $50,000. Any and all deductibles or self-insurance retentions in the above described liability insurance policies shall be assumed by and be for the account of, and at the sole risk of the Entity.

11. All policies and endorsements are subject to approval at the sole discretion of the District. Endorsements with expiration dates will not be accepted.

Section V. Subcontractor's Insurance.

With the exception of policy limits as outlined in this Section, the Entity shall require each and every Subcontractor to maintain insurance coverages commensurate to that which is required of the Entity per Sections I, II, III, and IV of this Exhibit. This includes, but is not limited to, the Additional Insured and Waiver of Subrogation provisions.

Subcontractors must carry General Liability Limits no less than as outlined below:

General Liability:
$1,000,000 Each Occurrence (Combined Single Limit for Bodily Injury & Property Damage)
$1,000,000 Personal Injury Liability Each Occurrence
$2,000,000 Aggregate for Products and Completed Operations
$2,000,000 General Aggregate

Commercial Automobile Liability: $1,000,000 Combined Single Limit

Employers Liability: $1,000,000

Excess Liability: $1,000,000

Any Subcontractors with any design-element to their work must provide evidence of Professional Liability insurance in an amount no less than $2,000,000 per claim; such policies shall contain a waiver of subrogation in favor of the District and the Additional Insured entities.

Should Subcontractor's work include any elements that may give rise to a Pollution claim, Subcontractor shall be required to carry Pollution Liability coverage with limits of at least $2,000,000 per pollution event. The District may require higher limits by written request. The policy shall be endorsed to include by name the Additional Insureds, as defined by Section I, as additional insureds and shall include a waiver of subrogation endorsement in favor of the Additional Insureds.

Should any Subcontractor maintain broader coverage and/or limits than those listed in this contract, those limits/coverages are hereby required and shall be made available to the District.

The Entity shall not allow any Subcontractor to commence work on its Subcontract until the Subcontractor has provided Entity with Certificates of Insurance and applicable endorsements as well as the signed statement acknowledging compliance with Section 3700 of the Labor Code, as required in Section III. It shall be the responsibility of the Entity to ensure that all Subcontractors comply with this provision, and to verify their compliance when requested by the District.

If requested by the District, the Entity shall deliver certificates of insurance or copies of the insurance policies and endorsements of all Subcontractors; provided, however, that this authority shall not relieve the Entity of its obligation to ascertain the existence of such insurance.

Section VI. Builder's Risk/Installation Floater Insurance. The Entity shall, at its sole expense, purchase, maintain and keep in force at all times during the construction phase of the Facilities Lease Phase II term, until the date of transfer of the insurable interest to and acceptance by the District, a Builder's Risk/Installation Floater policy (Property Insurance). Such insurance shall protect the District, the Contractor, Subcontractors, Sub-Subcontractors and Material Suppliers at every tier, as their interests may appear, from loss or damage to work in the course of construction. Property insurance shall be on a "Special Form" or equivalent policy and shall not exclude insurance against the perils of fire (with extended coverage) and physical loss or damage not excluding theft, vandalism, malicious mischief, collapse, earthquake (including full coverage for all losses caused by "Acts of God," as defined by California Public Contract Code section 7105), flood, windstorm, falsework, mechanical breakdown or electrical damage including testing and startup, magnetic disturbance, changes in temperature or humidity, temporary buildings, loss that ensues from defective material or workmanship, explosion, and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for the District's Representative's, Architect's, Construction Manager's, other District Consultants' and Contractor's services and expenses required as a result of such insured loss in the amount of one hundred percent (100%) of the replacement cost of the Project. In addition there shall be coverage in the amount of twenty percent (20%) of the replacement cost for Extra Expense and Loss of Use and thirty percent (30%) of the replacement cost for Soft Costs coverage.

A. The following terms shall apply to such coverage:

1. Coverage shall be written on a replacement cost, completed value, non-reporting form and shall cover the property against all risks of physical loss or damage required above.

2. The property covered shall include the work and improvements of the Project, including any materials, equipment or other items to be incorporated therein while the same are located at the construction Site, with reasonable sub-limits for materials stored offsite, or while in transit. The policy shall contain a provision that the Entity and the District are Named Insureds under this policy and that the Subcontractors, Sub-Subcontractors, and Material Suppliers at every tier are Named Insureds or Additional Insureds as their interest may appear. A loss insured under the Builder's Risk/Installation Floater policy shall be adjusted by the Entity as fiduciary and made payable to the Entity as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause. The Entity shall pay Subcontractors their just shares of insurance proceeds received by the Entity, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their sub-subcontractors in similar manner.

3. When stated in the Facilities Lease, Builder's Risk/Installation Floater insurance shall include Delay in Opening coverage with limits of liability, and for the period of time, as set forth in the Facilities Lease. Coverage shall include interest and/or principal payments that become due and payable by the District upon completion of Construction or other date as set forth in the Facilities Lease, debt service, expense, loss of earnings or rental income or other loss incurred by the District, without deduction, due to the failure of the Project being completed on schedule.

4. The maximum deductible for earth movement, Acts of God, and flood allowable under this policy shall not be more than five percent (5%) of the values in place at the time loss per occurrence. The maximum deductible for all other perils allowable under this policy shall be one hundred thousand dollars ($100,000). All deductibles shall be borne solely by the Entity, and the District shall not be responsible to pay any deductible in whole or in part.

B. The insurer shall by separate endorsement or policy provisions agree to waive all rights of subrogation against the District, the other "Additional Insureds," as defined by Section I., the Entity, Subcontractors, Sub-Subcontractors, and Material Suppliers at every tier for losses covered by the policy. If the policies of insurance referred to in this Section require an endorsement or consent of the insurance company to provide for continued coverage where there is a waiver of subrogation, the owners of such policies will cause them to be so endorsed to obtain such consent.

C. The Entity shall provide a copy of the Builder's Risk/Installation Floater policy to the District for approval. Such policy shall provide all the coverages required of this section as well as conform to the requirements of this agreement.

D. If not covered by Builder's Risk/Installation Floater policy or any other property or equipment insurance required by the Facilities Lease, the Entity shall, at its sole expense, purchase, maintain and keep in force at all times during the term of the Facilities Lease property insurance for portions of the Entity's work and/or equipment to be incorporated therein stored offsite or in transit.

E. The District shall maintain in effect during the term of this Lease property insurance, including the perils of fire and flood on all pre-existing utilities, buildings, structures, paving, and equipment on the Site. The District shall cause this policy to have a waiver of subrogation for the benefit of the Entity and its Subcontractors and sub-subcontractors at all tiers pursuant to the terms of the Site lease. During the lease-back period, the District shall assume responsibility for maintaining these coverages at the Site.

Exhibit F
General Conditions Costs

A		Item				UNIT COSTS				TOTAL COSTS					
L	DETAILS	Code	Description	Qty.	Manhours/	Labor	Material	Equip.	Sub	Labor	Material	Equip.	Sub	Line Item	Item
T					Unit	$	$	$	$	$	$	$	$	Unit$	Total $
Report DOES NOT include Taxes & Insurance or Indirect Costs.															
Administrative requirements															
			Site permits By Owner		LSUM										
			Mailing & shipping		MO										
			Drug testing & finger printing program		LS										
Administrative requirements															
Minor Item Code 01310.000 Project management and coordination															
			Project Manager		Week										
			Superintendent-full time		Week										
			Project engineer		Week										
			Project coordinator		Week										
			Certified payroll clerk		Week										
			Building layout		MH										
			Site layout		MH										
Project management and coordination															
Construction progress documentation															
			Project photographs & videos		LS										
			Schedule		Week										
			Expediting		Week										
			Job office supplies		MO										
			As-built drawings		LSUM										
			O & M manuals		EACH										
Construction progress documentation															
Administrative requirements															

Exhibit F, Facilities Lease

A		Item				UNIT COSTS				TOTAL COSTS					
L	DETAILS	Code	Description	Qty.	Manhours/	Labor	Material	Equip.	Sub	Labor	Material	Equip.	Sub	Line Item	Item
T					Unit	$	$	$	$	$	$	$	$	Unit$	Total $
Temporary facilities and controls															
Temporary utilities															
			Construction electrical utilities		Month										
			Temp Power		MO										
			Temp elect is in place		LS										
			Elect Distribution		Sq ft										
			Temporary Lighting		Sq ft										
			Construction water utilities		Month										
			Drinking water & ice		WEEK										
			Water distribution		WK										
Temporary utilities															
Construction facilities															
			Weekly SWPPP		Week										
			Job office trailer for IOR		Month										
			Temporary toilet		MO										
			Project plans by District		LSUM										
			Temporary telephone		mo										
			Construction cellular phones		Month										
01520.000 Construction facilities															
01540.000 Construction aids															
			Equipment Rental		MO										
			Expendable tools & equip		LS										
			Gas, oil & grease		MO										
			Weather protection not included		ls										
			Temporary heat not included		ls										
			Forklifts		Month										

01540.000 Construction aids															
A		Item				UNIT COSTS				TOTAL COSTS					
L	DETAILS	Code	Description	Qty.	Manhours/	Labor	Material	Equip.	Sub	Labor	Material	Equip.	Sub	Line Item	Item
T					Unit	$	$	$	$	$	$	$	$	Unit$	Total $
Temporary barriers and enclosures															
			Construction fencing		LNFT										
			Temp fire protection		MO										
			Safety work		LS										
Temporary barriers and enclosures															
Project identification															
			Project sign		Each										
			Other signs		Each										
Project identification															
Temporary facilities and controls															
Execution requirements															
Cleaning															
			Housekeeping		WK										
			Final Cleaning		WK										
			Final clean-up – sub		LS										
			Dumpsters		Month										
Cleaning															
Execution requirements															
ESTIMATE TOTALS															

EXHIBIT G – CONSTRUCTION SCHEDULE

(Insert Schedule)

END OF DOCUMENT

EXHIBIT H
PRECONSTRUCTION SERVICES

A. Entity's General Duties and Status:

Entity covenants with the District to furnish Entity's best skill and judgment and to cooperate with any other consultants and any design professionals employed by the District in connection with the Project. Entity agrees to perform the Preconstruction Services in the best way and in the most expeditious and economical manner consistent with the interests of the District.

Entity shall supervise and direct the Preconstruction Services using its best skill and attention, and shall be responsible for coordinating all portions of its Preconstruction Services. Entity shall be responsible to the District for the acts and omissions of its employees, subcontractors, and their agents and employees, and other persons performing any of the Preconstruction Services under a contract with Entity. Entity shall at all times enforce strict discipline and good order among its employees, and shall not employ on the Project any unfit person or anyone not skilled in the task assigned to him or her.

Entity affirms that, to the best of its knowledge, there exists no actual or potential conflict between family, business, or financial interests of Entity and performance of the Preconstruction Services. In the event of change in either interests or services under this Agreement, Entity affirms that it will raise with the District any question regarding possible conflict of interest which may arise as a result of such change.

B. Items of Preconstruction Services:

1. *Collaboration/Meetings*: Entity, with Architect, shall jointly schedule and attend regular meetings with the District and the District's consultants. Entity shall collaborate with Architect, the District and the District's consultants regarding site use and improvements, and the selection of materials, building systems and equipment. Entity shall provide on-going review and recommendations on construction feasibility; actions designed to minimize adverse effects of labor or material shortages; time requirements for procurement, installation and construction completion; and factors related to construction cost, including estimates of alternative designs or materials, preliminary budgets, and possible economies. Entity also shall participate in developing a construction plan to address project risk and minimize disruptions to the District's educational programs at the Project site.

   The recommendations and advice of Entity concerning design alternatives shall be subject to the review and approval of the District and the District's professional consultants. It is not Entity's responsibility to ascertain that the drawings and specifications are in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations. However, if Entity

recognizes, or should reasonably have recognized, that portions of the drawings and specifications are at variance therewith, Entity shall promptly notify Architect and the District in writing.

2. *Site Investigation*: Entity shall carefully examine the site at which the work will be performed and all of the documents included in the contract documents; perform all reasonable investigations essential to a full understanding of the difficulties that may be encountered in performing the work; and acquaint itself through reasonable discovery with the conditions under which the work is to be performed, including, without limitation, local labor conditions, local weather patterns, restriction in access to and from the Project site, prior work performed by others on the Project, and obstructions and other conditions relevant to the work, the site of the work and its surroundings. With the exception of subsurface conditions or other conditions which qualify under the differing site condition clause, if any, Entity expressly assumes the risk of any variance between the actual conditions, either discovered or discoverable through reasonable investigation in the performance of Preconstruction Services hereunder, and the conditions shown or represented in the contract documents.

   Notwithstanding the foregoing, Entity may need to perform site investigation to confirm utilities and other infrastructure impacted or incorporated into the design to confirm location and or condition at the District's discretion. Entity's fee includes an allowance of $15,000 to be used on a time and material basis for this site investigation to be used at the District's discretion. Any unused allowance amount will be returned to the District via a deductive amendment.

3. *Preliminary Project Schedule*: Entity shall prepare and update a preliminary Project schedule for the District's review and approval consistent with the timeline dates noted herein. The schedule shall provide for expeditious and practicable execution of the Project. As design proceeds, the preliminary Project schedule shall be updated as needed to indicate proposed activity sequences and durations, milestone dates for receipt and approval of pertinent information, submittal of the TBR and Lease Payment Schedule, preparation and processing of shop drawings and samples, delivery of materials or equipment requiring long-lead time procurement, and proposed date of final completion of the Project and any discrete portions of the Project (if different). Entity shall provide a detailed Construction CPM schedule that identifies the critical path within the construction phase. A minimum of one week of float for the District's use needs to be identified.

4. *Preliminary Cost Estimates*: Entity shall provide estimating services as needed throughout development of the construction documents. Depending on the stage of document development, the scope and nature of the estimating services may change. Entity will be expected to provide estimating of portions of the work, systems being considered, details as they

are developed, and other estimating exercises that the District, Architect and Entity deem advisable. Entity also will be required to provide detailed estimates of the Work at each design phase milestone for the different increments based on the drawings and specifications received from the Architect, and shall set forth any assumptions or interpretations that Entity used in making the estimate. Entity also will be required to participate in estimate reconciliation meetings to review any discrepancies from the Architect's estimates.

5. *Value Engineering*: While providing its Preconstruction Services, Entity shall be continuously pursuing opportunities to create additional value by identifying options to reduce capital or life cycle cost, improve constructability and functionality, or provide operational flexibility, while satisfying the District's programmatic needs. Entity shall develop value engineering proposals ("VEP") for the District's and Architect's approval for alternative systems, means, methods, finishes, equipment and the like that satisfy the general design criteria of the Project, but which result in savings of time or money in constructing or operating and maintaining the Project. Each VEP shall describe the proposed change, identify all aspects of the Project directly or indirectly affected by the change, specify the cost or time savings to be achieved if the VEP is accepted, and detail any anticipated effect on the Project's service life, economy of operation, ease of maintenance, appearance, design or safety standards. Formal VEP will be required of the Entity to be submitted for consideration as determined by the District's Representative.

6. *Constructability Review of Construction Documents*: During development of the plans and specifications, Entity shall continually review the design and construction documents for clarity, consistency, constructability and coordination among the design disciplines' drawings, the Project construction phases (if any), and the construction trades, and shall collaborate with Architect and the District in developing solutions to any identified issues.

   No later than three (3) weeks after submission of construction documents to DSA for approval, Entity shall commence a formal, documented constructability review. The formal constructability review shall be completed within two (2) weeks so that the comments therein can be evaluated and incorporated as appropriate prior to DSA approval. Entity shall also perform a "back-check" prior to DSA approval to ensure the design team has addressed the review comments. The purpose of all of Entity's constructability reviews, including those before submission of the construction documents to DSA for approval and the formal constructability review(s), is to determine that the design comprises complete, accurate and fully coordinated drawings and specifications for construction, and thereby reduce the risk of disruption, delay, change orders and potential claims. Entity will focus on accuracy, completeness, sequencing and coordination. Entity's reviews also will seek out alternative construction materials and

systems that may result in a cost or time savings to the District. The results of the reviews shall be provided in writing and as notations on the construction documents. Nothing in the contract documents shall relieve the Architect and the other design professionals from their obligation to perform their services and design the Project in accordance with the terms of their respective contracts and the applicable standard of care, and final decision on all such cost or time saving reviews shall be with the District and/or its separately retained construction management or design consultants.

Entity shall engage those subcontractors it deems necessary to participate in the constructability reviews. Regardless of whether Entity engages subcontractors, Entity shall remain fully responsible for the constructability reviews.

7. *Development of Total Base Rent*: Following DSA approval of the Project Plans and Specifications, Entity shall develop the TBR through a public competitive sub-bid selection process for any scope of work of at least one-half of one percent of the cost of the construction. Entity shall prepare a plan to develop the TBR, including without limitation a bidding approach and schedule to obtain competitive bids (at least 3 bids per trade) from potential subcontractors and suppliers, and submit the plan to the District for approval sufficiently prior to DSA approval to allow for District review and comment and any revision by the time DSA approval is secured. The plan shall include at least the following elements:

   a. Entity shall seek to develop subcontractor interest in the Project and shall collaborate with the District and Architect to develop a list of possible subcontractors, including suppliers, from whom bids will be requested for each principal portion of the work;

   b. Entity shall prepare bid packages for the complete scope of work for all trades that will be subcontracted, other than those for which a subcontractor or supplier was listed in Entity's Proposal;

   c. Entity shall provide public notice (under the District's public works notice procedures) of availability of work to be subcontracted, including a fixed date and time on which qualifications statements, bids, or proposals will be due. Entity will submit a copy of the bid advertisement and any addenda affecting the bid date to the District;

   d. Entity shall establish reasonable qualification and selection criteria and standards, and state such criteria in its solicitation documents;

   e. Entity shall require prequalification if required by law or by the District. Mechanical, electrical, and plumbing subcontractors (those with any of the following license classifications: C-4, C-7, C-10, C-16, C-20, C-34, C-36, C-38, C-42, C-43 and C-46) must be prequalified prior to

submitting bids for the Project. Entity shall work with the District in prequalifying such subcontractors, using the District's standard Prequalification Questionnaire and uniform rating system;

f. Entity shall require all potential subcontractors, truckers and any suppliers and/or vendors subject to California's prevailing wage laws to be registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 at the time of bidding;

g. If Entity plans to self-perform any work, Entity must submit a sealed bid directly to the District a minimum of 48 hours in advance of the bid due date for the subcontractors;

h. Local participation of District boundary subcontractors and suppliers is required (minimum participation is set at 20% of the direct costs of construction), and must be noted in the solicitation document. Entity shall provide its plan to achieve this goal. Bids must identify associated zip codes for location of business address and business owner home address to identify such local subcontractors and suppliers;

i. DVBE goal of 3% (or Good Faith Effort) is required and must be noted in the solicitation document; Entity shall provide its plan to achieve this goal;

j. Entity shall specify how it will determine that the subcontractor or supplier has the financial resources, qualifications, and experience to complete the work for which it is proposed;

k. Entity shall propose award of subcontracts in accordance with the stated qualification criteria and standards either to the lowest responsible bidder or to the subcontractor providing the best value;

l. District shall have the right to review the proposed subcontractors and to object to or reject any proposed subcontractor or supplier;

m. For any work under one-half of one percent (0.5%) or $5,000, whichever is greater that is not required to be bid, Entity shall provide a detailed estimate of the cost of the work. The cumulative amount for such work that can be self-performed by Entity will be no more than $50,000;

n. Entity shall propose a TBR, which shall be the sum of the i) general conditions cost as bid, ii) the cost of any actual construction work performed by Entity's own forces, iii) the cost of all subcontract bids, iv) Entity's fee, as bid, v) costs of bonds and insurance, vi) contingencies and allowances, and vii) financing costs.

o. Entity shall develop a final price proposal to include the written rationale for the price and objectively-verifiable documentation of its costs to perform the construction work under the Facilities Lease. The documentation shall include:

- A written evaluation for each of the portions of work, including a summary of the bids received, the actual bid proposals, and identify the subcontract bidder(s) that Entity recommends;

- For any DVBEs listed in the proposal, documentation supporting the DVBE's price, including a written rationale explaining why the price is reasonable;

- "Good Faith Efforts" documentation to reflect DVBE outreach (by the Entity and its selected subcontractors) if the 3% DVBE participation goal is not met (see Attachment 1 hereto);

- A list of the drawings and specifications, including all addenda, that were used in preparation of the price proposal;

- The proposed TBR broken down by element comprising the TBR, including a statement of the estimated cost and a schedule of values organized by trade categories;

- A list of the clarifications and assumptions made by Entity in preparing the final proposed TBR to supplement the information contained in the drawings and specifications;

- The date of commencement and the date of completion upon which the proposed TBR is based;

- A list of allowances and a statement of their basis; and

- A detailed cost breakdown of all general conditions and jobsite management expenses included in the TBR.

p. Entity shall develop a proposed Lease Payment Schedule based on its proposed TBR.

Entity shall meet with the District and Architect to review the final price proposal, proposed TBR, and proposed Lease Payment Schedule and the written statement of its basis. If the District or Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify Entity, who shall make appropriate adjustments to the documentation.

Entity shall be present at the Board meeting at which the TBR and Lease Payment Schedule is proposed for approval and be available to answer any Board questions regarding the TBR or Lease Payment Schedule. The cost of any revisions to the proposed TBR or Lease Payment Schedule or supporting documentation or analysis required by the Board as a condition of approval of Phase II of the Work is included in Preconstruction Services.

8. *Long Lead Time Items*: Entity shall recommend to the District and Architect a schedule for procurement of any long-lead time items which will constitute part of the work as required to meet the Project schedule. The Facilities Lease includes an allowance of ninety-nine thousand dollars ($99,000) for purchase of long lead time items during preconstruction services, which may be exercised at the District's sole and absolute discretion. If such long-lead time items are procured by the District, they shall be procured on terms and conditions acceptable to Entity. Upon Notice to Proceed with Phase II of the Work, all contracts for such items shall be assigned by the District to Entity, who shall accept responsibility for such items as if procured by Entity. Entity shall expedite the delivery of long-lead time items to ensure delivery and installation to meet the scheduled completion date.

C. Term, Progress and Completion:

Time is of the essence. The District desires to submit the construction documents to DSA no later than November 2022 DSA approval is estimated to occur no later than March 2023. The District anticipates directing the Entity to begin development of the Total Base Rent prior to final DSA approval and, if the Entity is so directed, the District will include an allowance for any changes made necessary due to final DSA revisions. Development and approval of the Total Base Rent and Lease Payment Schedule is anticipated to require approximately eight weeks. The District desires to submit the proposed Total Base Rent and Lease Payment Schedule to the Board for approval no later than the meeting scheduled for May 2023. Entity shall perform all of its Preconstruction Services consistent with these timelines.

D. Compensation:

The District shall compensate Entity for performing the Preconstruction Services as follows: the fixed fee of **$_____,** divided as follows among the required preconstruction services:

Service	Fee
Collaboration	
Site Investigation	
Preliminary Project Schedule	
Preliminary Cost Estimates	

Value Engineering	
Constructability Review	
Development of Total Base Rent	
Identifying Long Lead Time Items*	
Anticipated Expenses	

* This line item does not include the cost of purchasing the items, for which the District may elect to use the long-lead-time item allowance.

Entity shall submit an invoice monthly to the District for the fee, itemized by percentage of completion for the different tasks identified above, and reimbursable expenses incurred for the billing period. No expenses above those included above in the fixed fee amounts are to be charged to the District or will be allowable. The District shall pay Entity one hundred percent of the approved invoiced amount within thirty (30) calendar days of the District's receipt of the invoice.

The District may withhold, or on account of subsequently-discovered evidence nullify, the whole or a part of any payment as may be necessary to protect the District from loss, including costs and attorneys' fees, which may arise for reasons including, but not limited to, the following: 1) defective or deficient work not remedied; 2) failure of Entity to make payments properly to its employees or subcontractors; 3) a reasonable doubt that the Preconstruction Services can be completed for the then-unpaid balance of the contract price; 4) failure to achieve sufficient progress with the Preconstruction Services such that Entity is unlikely to achieve timely completion; or 5) failure of Entity to provide required certificates of insurance.

If the District adds Preconstruction Services by change order, the following rates shall apply to such additional work, unless otherwise agreed by Entity and the District:

Classification	**Rates**
Principal in Charge	
Project Executive	
Pre-Construction Manager	
Senior Estimator	
Estimator/Buyer	
MEP Manager	
Purchasing Agent	
Administrative Asst.	
Project Manager	

Graphics Specialist	
Project Engineer	

E. Changes/Extra Work:

The District may order changes in the Preconstruction Services within the general scope thereof, consisting of additions, deletions, or other revisions. The compensation stated above shall be adjusted accordingly, which may or may not include an extension of the time for performance. All such changes in the Preconstruction Services, including changes in the compensation and/or time for performance, shall be authorized only by written change order, signed by the District. If Entity claims that performance of any work entitles it to additional compensation or affects the time for performance of the Preconstruction Services, Entity shall provide written notice to the District of any such claim prior to undertaking such work. If the District refuses to issue a change order for such work, Entity shall perform that work and shall submit a complete and specific claim for additional compensation or extension of the time for performance within ten (10) days after such work is performed. Failure to provide written notice of claim prior to undertaking such work, or failure to submit timely a complete and specific claim for additional compensation or extension of the time for performance, shall be deemed a waiver and abandonment of any such claim. No claim, dispute or controversy shall interfere with the progress or performance of the Preconstruction Services, and Entity shall proceed with the Preconstruction Services as directed by the District. Failure to so proceed shall be a default.

F. Dispute Resolution:

Initially, and promptly after identification of a claim or dispute, the District's and Entity's project managers shall meet face-to-face to review and consider the claim or dispute. If the District's and Entity's project managers are unable to resolve the claim or dispute, a senior representative from the District and a senior representative from Entity each shall review the matter in detail, and then shall meet face-to-face as soon as practicable to discuss and resolve the matter. If the senior representatives are unable to resolve the matter, then the parties agree to submit the dispute to mediation as a condition precedent to the institution of legal or equitable proceedings by either party.

G. Fingerprinting:

The District shall, pursuant to Education Code section 45125.1 and District policy and guidelines, determine whether fingerprinting is required of Entity or its employees for purposes of performing Preconstruction Services. If such fingerprinting is required, then the Entity shall comply with fingerprinting requirements stated in Exhibit D, General Construction Terms and Conditions, prior to performing any Preconstruction Services for which fingerprinting is required.

Attachment 1
DVBE Good Faith Efforts Outreach Requirements

Definitions:

"Disabled Veteran Business Enterprise" (DVBE) means a business concern that is certified as a DVBE by the Department of General Services, Office of Small Business and Disabled Veteran Business Enterprise Services (OSDS).

"Entity" means the Lease-Leaseback Entity that will construct the Project.

"Participation Goal" or "Goal" means a numerically expressed DVBE objective that the Entity is required to make efforts to achieve in accordance with Section 17076.11 of the Education Code.

"Good Faith Efforts" means that the Entity took all necessary and reasonable steps to achieve the DVBE Participation Goal which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DVBE participation, even if they were not fully successful. Good Faith Efforts are further delineated below.

DVBE Certification:

In accordance with Education Code section 17076.11, this District has a Participation Goal for DVBEs of three percent (3%) per year. For any work performed by a DVBE subcontractor (including materials suppliers) to be counted toward meeting the DVBE Participation Goal, such business concern must possess current and valid certification as a DVBE through the OSDS. In addition, the work must conform to the most current regulations and requirements as published by the California Department of General Services (DGS) and/or OSDS.

A DVBE cannot self-certify. A printout from the DGS certification website (https://caleprocure.ca.gov/pages/PublicSearch/supplier-search.aspx) verifying current DVBE status must be provided for each DVBE participating in the contract. The website printout must be provided with the Proposal (for DVBEs proposed with the Proposal) or during establishment of the Total Base Rent. The District will not give Entity DVBE credit for any DVBE for which Entity fails to provide the required status verification.

Good Faith Efforts

The Entity shall either commit to meeting the Participation Goal or demonstrate Good Faith Efforts to do so, as described below. All DVBEs for which the Entity is claiming credit (including the Entity itself if it is a DVBE) must be listed on the Subcontractor listing form and identified as DVBEs, even if the work to be performed is less than one-half of one percent (0.5%) of the bid amount, involves supply of materials, or is to be performed by a lower-tier subcontractor.

Although Good Faith Efforts have been eliminated from Public Contract Code sections 10115 *et seq*., the District's obligation is separately stated under Education Code section 17076.10, so the District may find Entity to have complied with the DVBE requirements if it establishes Good Faith Efforts. In order to establish Good Faith Efforts, Entity must demonstrate at least the following directly and/or through bidders for the subcontracts:

1. Select portions of the work for which to solicit DVBEs in order to increase the likelihood that the DVBE goals will be achieved. This may include breaking out contract work items into smaller units.
2. Search at least the OSDS DVBE database to identify DVBEs to solicit to perform the portions of work identified. Print the search results to include with the Good Faith Efforts documentation.
3. Advertise for DVBE participation in focus or trade publications reasonably expected to reach DVBEs in the region as early in the process as is practicable. Depending on the project and results, multiple advertisements may be appropriate. Generally, the first publication should occur no later than one week before bids are due, whichever is earlier. Submit a copy of the advertisement(s) with the Good Faith Efforts documentation.
4. Solicit interest from identified DVBEs (from the OSDS database or otherwise) as early in the bidding process as practicable to allow the DVBEs to respond to the solicitation and submit a timely bid. Solicitations may be by phone, fax, email, letter, or other reasonable means, but must be documented. Submit documentation of all outreach efforts with the Good Faith Efforts documentation. Include copies of all DVBE responses.
5. Follow up initial solicitations. Document all such efforts and DVBE responses as part of the Good Faith Efforts documentation.
6. Work with interested DVBEs, including providing adequate information about the project and portions of work available and negotiating in good faith with interested DVBEs to assist them with being able to bid. Document all such efforts with the Good Faith Efforts documentation.

Substitutions

Entity and its subcontractors must use the DVBE subcontractor(s) and/or supplier(s) proposed unless Entity requests and receives authorization to substitute from the District. A DVBE subcontractor or supplier shall be replaced by another DVBE if possible. At a minimum, any request for substitution must include:

(1) The reason for the substitution, which shall be limited to the circumstances permitted under Public Contract Code section 4107(a).
(2) The identity of the listed DVBE and the name, address, contractor number, and DIR registration number of the proposed replacement.
(3) If a DVBE cannot be identified as a replacement, documentation of efforts to find available DVBEs.

The DVBE shall be given the rights afforded by Public Contract Code section 4107 prior to the District acting on a requested substitution.

EXHIBIT I

Monthly Skilled and Trained Workforce Report

Public Contract Code § 2602

Unless the Entity is exempt, the following report must be provided to the District's Board by the Entity for itself and all subcontractors of every tier, on a monthly basis while the Project is being performed. Receipt of this report is a condition on entitlement to payments under the contract, and, as mandated by Public Contract Code section 2602(b), the District must immediately cease making contract payments if a compliant report is not provided, or if the report is incomplete, until a complete, compliant report is submitted. If the report is incomplete due to the failure of a subcontractor to provide a report, then the District will withhold only an amount equal to 150% of the value of the monthly work for the subcontractor(s) for which no information is provided.

Project Name_____ Month: _____, 20___

PRIME CONTRACTOR AND ALL TRADE/ SUBCONTRACTORS (all tiers) (if a contractor performs work in multiple apprenticeable occupations, list each on a separate line)	**LICENSE NUMBER**	**< 10 HOURS WORKED BY JOURNEY-PERSONS? (Y) OR (N)**	**COMPLIANCE BY HOURS OR PERCENT OF WORKFORCE? (H) OR (%)**	**FOR EACH TRADE, THE PERCENTAGE OF SKILLED JOURNEYPERSON WORK OR HOURS WORKED BY GRADUATES OF AN APPROVED APPRENTICESHIP PROGRAM (This Month / Cumulative Project Total)**
				/
				/
				/
				/
				/
				/
				/

				/
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				/
				/
				/

Note: To calculate monthly percentage **by hours**, divide the contractor's total graduate-journeyperson hours for the month (per occupation) by the contractor's total journeyperson hours in the occupation on the project that month. To calculate cumulative percentages **by hours**, divide the contractor's total graduate-journeyperson hours of work on the project (per occupation) by the contractor's total journeyperson hours in the occupation on the project. To calculate monthly percentages by **percent workforce**, divide the contractor's total number of graduate journeypersons on the project (per occupation) that month by the contractor's total number of journeypersons in the occupation on the project that month. To calculate cumulative percentages by **percent workforce**, add the contractor's number of graduate journeypersons on the project (per occupation) used for each month's report and divide by the sum of the contractor's total number of journeypersons per occupation used for each month's report. For example, if a contractor reported monthly journeypersons as follows: 1/3, 2/4, 3/5, and 2/5, then the cumulative total would be 8/17 or 47%. The District may ask to review the calculation(s).

Under penalty of perjury, and with specific reference to the California False Claims Act, Government Code sections 12650 *et seq*., I certify that 1) **all** of the workers used on the Project in the past month were either a) skilled journeypersons under Public Contract Code section 2601(e) or b) apprentices registered in an apprenticeship program approved by the Chief of the Division of Apprenticeship Standards of the Department of Industrial Relations; 2) submission of the above report is made in good faith; 3) that I have made reasonable investigation to verify the accuracy of data reported above; 4) that the information is accurate and complete to the best of my knowledge and belief; and 5) that I am duly authorized to certify the report on behalf of the company identified below. I acknowledge that submission of this report is an express condition on payment.

Dated: _____ Company_____

Signature _____

Title_____

This report is a public record under the California Public Records Act, Government Code sections 6250 et seq., and is open to public inspection.

EXPLANATION AND COMPLIANCE PLAN

If the above report shows that the required percentages were not met during the month for any contractor or trade, explain why the percentages were not met and how they will be met by the completion of construction. Pursuant to Public Contract Code section 2602, the District is required to withhold 150% of the value of the monthly billing of the contractor or a non-compliant subcontractor for any month in which they do not meet the requirements. The District will release withheld funds to the Entity once an acceptable plan to achieve substantial compliance with the skilled and trained workforce requirement by the end of the project is provided to the District, with respect to the relevant apprenticeable occupation(s), **or** the non-compliant subcontractor is substituted in accordance with Public Contract Code section 4107.

ATTACHMENT G

NON-COLLUSION AFFIDAVIT
TO BE EXECUTED BY RESPONDENT AND SUBMITTED WITH PROPOSAL

STATE OF CALIFORNIA)
) ss.
County of _____)

I, _____, declare that I am [position] _____ of _____, the party making the foregoing Proposal, that the Proposal is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the Proposal is genuine and not collusive or sham; that the Respondent has not directly or indirectly induced or solicited any other Respondent to put in a false or sham Proposal, and has not directly or indirectly colluded, conspired, connived, or agreed with any Respondent or anyone else to put in a sham Proposal, or to refrain from bidding; that the Respondent has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the Respondent or any other Respondent, or to fix any overhead, profit, or cost element of the bid price, or of that of any other Respondent. All statements contained in the Proposal are true. The Respondent has not, directly or indirectly, submitted its Proposal price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid, and has not paid, and will not pay, any person or entity for such purpose.

Any person executing this declaration on behalf of the Respondent that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to executed, and does execute, this declaration on behalf of the Respondent.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on _____[date] at _____[city], California.

_____ _____
Signature of Respondent Date

_____
Print Name

Exhibit H

PROPOSAL KEY SUBCONRACTOR LISTING FORM

LIST OF SUBCONTRACTORS FOR _____ [Proposer]

PROJECT: New District Office

Pursuant to the requirements of the Request for Proposals for the Project, the above-named Proposer hereby designates below the names, contractor license numbers, DIR registration numbers, and locations of the place of business of key subcontractors and the portion of work to be performed by the Subcontractor. Where not all work will be performed by a single subcontractor, Proposer may designate "partial" and further define the portion of the work to be performed. Listed subcontractors shall be entitled to the protections of Public Contract Code sections 4100 to 4114.

WORK TO BE PERFORMED[1]	NAME OF SUBCONTRACTOR	LICENSE NUMBER	DIR NUMBER	DVBE [Y/N]	LOCATION OF PLACE OF BUSINESS

[1] For DVBE subcontractors or suppliers, the work must be identified by description and a dollar amount. For second tier or lower subcontractors, identify the subcontractor with which the DVBE will be contracting.

_____

Signed

EXHIBIT I

IRAN CONTRACTING ACT CERTIFICATION

Pursuant to California Public Contract Code (PCC) section 2204, an Iran Contracting Act certification is required for solicitations of goods or services of $1,000,000 or more.

To submit a bid or proposal to the Roseville Joint Union High School District, you must complete **ONLY ONE** of the following two paragraphs. To complete paragraph 1, check the corresponding box **and** complete the certification for paragraph 1. To complete paragraph 2, simply check the corresponding box.

☐ 1. We are not on the current list of persons engaged in investment activities in Iran created by the California Department of General Services ("DGS") pursuant to PCC 2203(b), and we are not a financial institution extending twenty million dollars ($20,000,000) or more in credit to another person, for 45 days or more, if that other person will use the credit to provide goods or services in the energy sector in Iran and is identified on the current list of persons engaged in investment activities in Iran created by DGS.

OR

☐ 2. We have received written permission from the Roseville Joint Union High School District to submit a proposal pursuant to PCC 2203(c) or (d). *A copy of the written permission from the Roseville Union Joint High School District is included with our proposal.*

CERTIFICATION FOR PARAGRAPH 1:

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY, that I am duly authorized to legally bind the Proposer to the clause in paragraph 1. This certification is made under the laws of the State of California.

PROPOSER:_____ Date_____

BY: _____
Signature

_____
Type/Print Name

_____
Title

Executed in the County of _____, State of _____.