**Tustin Unified School District**
**300 South C Street, Tustin, CA 92780**

**June 10, 2025**

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**RFQ # 01**
**REQUEST FOR QUALIFICATIONS**
**FOR CONSTRUCTION SERVICES (LEASE-LEASEBACK) FOR DISTRICT PROJECTS**

The Tustin Unified School District ("**District**") issues this Request for Qualifications ("**RFQ**") to request the submission of:

- A completed prequalification questionnaire ("**Prequalification Questionnaire(s)"**); and
- A statement of qualifications ("**SOQ(s)**")

(collectively, "**Response(s)**") from qualified firms, associations, persons, or professional organizations ("**Contractor(s)**" or "**Firm(s)**"). The District will evaluate Responses and determine whether to include Contractors into its pool of qualified contractors to perform construction services and preliminary (preconstruction) services, for projects that the District constructs pursuant to the lease-leaseback delivery method as needed and directed by District ("**Project(s)**").

**Pool.** This RFQ is **not** a formal request for proposals or an offer by the District to contract with any Contractor that submits a Response. The District intends to create a pool of qualified Contractors that the District intends to maintain for **two (2) years**. From the pool, the District intends to solicit proposals for Projects at the District's discretion. **NOTE:** This pool applies only to Projects that the District procures through the lease-leaseback delivery method.

**CONTRACTORS THAT INTEND TO SUBMIT A RESPONSE MUST MEET THE FOLLOWING CRITERIA:**
- Prequalify through the District's prequalification process; and
- Hold a **Class B** Contractors License, which is current, valid, and in good standing with the California Contractor's State License Board; and
- A Firm can be located anywhere, but it must maintain a staffed office **within 50 miles of the District**.

**Responses.** Interested Contractors are invited to submit a Response as described below**.**

- **Prequalification Questionnaire.** All Contractors must complete the Prequalification Questionnaire by the date and time indicated in the RFQ Schedule set forth below. The Prequalification Questionnaire can be accessed at: https://www.tustin.k12.ca.us/departments/business-services/maintenance-operations-facilities/bids **("WEBLINK")**.

- **SOQs.** SOQs must be received by the date and time indicated in the RFQ Schedule. All submittals shall be transmitted via email in .pdf format to **Jairo Herrera** at **jherrera@tustin.k12.ca.us.**

**Questions.** Questions regarding this RFQ must be in writing and directed only to **Jairo Herrera** at **jherrera@tustin.k12.ca.us** by the date indicated in the RFQ Schedule. Contractors are directed to **not** contact any other person regarding this RFQ. **ATTEMPTS BY A CONTRACTOR TO CONTACT ANY OTHER PERSON OR VISIT A DISTRICT SITE MAY RESULT IN DISQUALIFICATION OF THAT CONTRACTOR.**

**RFQ Addenda.** If the District issues addenda to this RFQ, Contractors are solely responsible for and must acknowledge receipt of addenda in the Contractor's SOQ. Failure to acknowledge and respond to any addenda issued by the District may, in the District's sole discretion, render the Contractor's SOQ to be deemed non-

responsive and rejected.

**List of Attachments.** The following attachments are part of this RFQ:

| | |
|---|---|
| **Attachment 1** | District's Form of Lease-Leaseback Contract |

**RFQ Schedule.** All Contractors must adhere to the following schedule ("**RFQ Schedule**"). The District reserves the right to modify this RFQ Schedule and will issue an addendum if it modifies this RFQ Schedule.

| Event / Occurrence | Time / Date / Deadline |
|---|---|
| Deadline for Contractors to submit questions regarding this RFQ | June 17, 2025 |
| **DEADLINE FOR CONTRACTORS TO SUBMIT PREQUALIFICATION QUESTIONNAIRES** | June 24, 2025 |
| Deadline for contractor prequalification with the District | Prior to July 10, 2025 |
| **DEADLINE FOR CONTRACTORS TO SUBMIT SOQs** | July 10, 2025 |
| If District conducts interviews (District staff will email Contractors and identify a specific interview date, if applicable) | Week of July 14, 2025 |
| Tentative Board approval of Contractors for lease-leaseback pool | July 21, 2025 |

Thank you for your interest in working with the Tustin Unified School District.

## 1. General Information.

**1.1. General Services.** The District invites qualified Contractors to submit a Response related to their ability to provide the Services, as more fully indicated herein. Contractors must have extensive experience with the Office of Public School Construction ("**OPSC**"), California Building Standards Code (Title 24, California Code of Regulations), Department of Toxic Substances Control, and the Division of the State Architect ("**DSA**"). Contractors must have extensive experience in the construction of public school facilities, working with public school district representatives, working with architects, contractors and other school facility related consultants, and establishing project scope, project budgets, and bidding procedures under both the Public Contract Code's formal bidding process and under alternative construction delivery methods.

**1.2. Lease-Leaseback Structure.** A District lease-leaseback Project may be funded from various sources, and any agreement reached will conform to the statutory framework for the lease-leaseback delivery method. (Ed. Code, § 17406.) **The Contractor will be responsible for financing a portion of the construction of any Project.** During construction, the District shall pay tenant improvement payments. Once a project is complete, the Contractor shall subsequently lease the constructed facilities back to the District for a pre-determined monthly lease payment amount and lease period, plus interest. The District anticipates that the lease period will be approximately **twelve (12) months** for each Project. If a Contractor has questions regarding the payment structure for any lease-leaseback Project, please review Exhibit C of the Facilities Lease of the District's Form of Lease-Leaseback Contract attached hereto as **Attachment 1** ("**Contract**").

**1.3. Skilled and Trained Workforce.** For every lease-leaseback Project awarded to a Contractor, the Contractor and its subcontractors at every tier are required to use a skilled and trained workforce at minimum percentages, as defined in Public Contract Code section 2600, et seq. and required by Education Code section 17407.5 (collectively, "**SWF Statutes**"), to perform all work that falls within an apprenticeable occupation in the building and construction trades. A Contractor awarded a contract for any lease-leaseback Project will be required to provide monthly reports demonstrating compliance by itself and its subcontractors at every tier with the skilled and trained workforce requirements as prescribed by the SWF Statutes. If a Contractor has questions regarding the skilled and trained workforce requirements for a lease-leaseback Project, please review the "**Skilled and Trained Workforce Requirements**" section in Exhibit D to the Facilities Lease in the Contract (**Attachment 1**).

**1.4. Scope of Services.** The selected Contractor must be willing and able to, in good faith, perform any and all services as set forth in the Contract ("**Services**"). The Services will vary on a per Project basis. If a Project requires Preliminary Services, the Contractor will enter into the Preliminary Services Agreement (Exhibit L of the Facilities Lease of the Contract (**Attachment 1**)), which shall be incorporated into the Contract. After the Contractor's performance of some or all of those Preliminary Services, the District and Contractor shall amend the Contract to include a Guaranteed Project Cost (**"GPC" or "GMP"**) for the Project pursuant to the Subcontractor Procurement Process (Exhibit H of the Facilities Lease of the Contract (**Attachment 1**)) and other requirements in the Contract.

# PREQUALIFICATION

**2.** **Prequalification.**

**2.1.** **Contractor Prequalification.** Contractors must submit their Prequalification Questionnaires by the date and time indicated in the RFQ Schedule. A Contractor must maintain its prequalification status for the duration of the time it is included in the District's pool of qualified lease-leaseback Contractors and while it performs Services on a Project. **Contractors that have prequalified within a year of the deadline for the submittal of SOQs set forth in the RFQ Schedule do NOT need to submit the Prequalification Questionnaire.** The Prequalification Questionnaire can be accessed through the **WEBLINK ABOVE.**

**2.2.** **MEP Subcontractor Prequalification.** Mechanical, electrical, and plumbing subcontractors performing work under 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/or C-46 ("**MEP Subcontractors**") are **not** required to prequalify at this time. The District will require MEP Subcontractors to prequalify when the District solicits proposals in the future or during Preliminary Services at or before the Subcontractor Procurement Process and before the Contractor provides its GPC to construct the Project. Even so, **Contractors are encouraged to direct MEP Subcontractors to prequalify as soon as possible so that the MEP Subcontractors may get qualified to bid to perform on a Project**. **A subcontractor can prequalify now by submitting the District's Prequalification Questionnaire at the WEBLINK ABOVE.**

# STATEMENT OF QUALIFICATIONS

**3.** **Format and Contents of SOQ.** Contractor's SOQ must demonstrate Contractor's qualifications, be concise, well-organized, tabbed consistent with the structure below, and shall **be no longer than fifty (50) pages,** inclusive of résumés, forms, and pictures. Each Contractor's SOQ must address **all** areas indicated below:

**3.1.** **Table of Contents**. A table of contents of the material contained in the SOQ.

**3.2.** **Letter of Interest**. A dated Letter of Interest must be submitted, including the legal name of the Contractor, address, telephone, email(s), and the name, title, and signature of the person authorized to submit the SOQ on behalf of the Contractor. The Letter of Interest should provide a brief statement of the Contractor's experience and should indicate the unique background and qualities of the Contractor, its personnel, and what will make the Contractor a good fit for work in the District.

**3.3.** **Executive Summary**. An executive summary that outlines the Contractor's history, and, if a joint venture, of each participating entity, Contractor's philosophy, along with a brief summary of the Contractor's qualifications.

**3.4.** **Past Projects: Contractor's K-12 Experience/Lease-Leaseback Experience**. Describe the Contractor's experience and expertise performing projects for California K-12 public school districts for the **past seven (7) years**. Provide the following information for all projects Contractor has completed or is currently performing. You may limit your response to the **ten (10) most-recently completed** projects. Indicate in your SOQ, which of these projects were performed pursuant to a lease-leaseback structure or other alternative (**not** design-bid-build) structure. **This requirement is in addition to any past-project requirements in the**

**Prequalification Questionnaire.**

| |
|---|
| Project name/identification: |
| Project address/location: |
| Project owner, contact person, and telephone: |
| Project architect name and telephone number: |
| If Contractor was a subcontractor, name of general contractor and telephone number: |
| Scope of work: |
| Original completion date: |
| Date completed: |
| Initial contract value (as of time of contract award): |
| Final contract value: |
| Delivery Method (lease-leaseback, design-build, etc.): |
| Was there a project labor/stabilization/workforce agreement or a local capacity/local participation policy or program?: |
| Other project information: |

**3.5.** **Construction Schedule**. Discuss the Contractor's ability to prepare and meet achievable construction schedules for construction projects, Contractor's schedule management procedures, and how the Contractor has successfully handled potential and actual delays.

**3.6.** **Proposed Personnel/Contractor Team**. Please specifically identify and include the resumes of key personnel who would be performing Services for the District. Specifically, define the role of each person and outline his or her individual experience and responsibilities. Indicate personnel who will serve as primary contact(s) for the District and each person's availability to provide services to the District. Contractor should describe the experience the personnel have on previous projects, if any. Describe how Contractor's personnel will work with District staff during Preliminary Services (if any) and Construction phase services to ensure that Contractor effectively and efficiently completes a construction project. **The District expects that key personnel will perform services in connection with future solicitations for lease-leaseback projects, but recognizes Contractors might have turnover in staff.**

**3.7.** **Contractor's Ability to Perform Preliminary Services**. Describe the Contractor's ability and past experience performing the Preliminary Services as identified in the Contract (see Exhibit L to the Facilities Lease in the Contract (**Attachment 1**)). Specifically discuss Contractor's demonstrated success performing Preliminary Services. Identify subconsultants, if any, that Contractor expects will perform Preliminary Services for Contractor. The District reserves the right to adjust the scope of the Preliminary Services at the time of execution of the Preliminary Services Agreement in the Contract for any lease-leaseback project.

**3.8.** **Cost Savings / Value Engineering**. The District is seeking Contractors that have direct experience and/or can demonstrate an aptitude to "value engineer" or analyze a project's plans, components, and features, and find more efficient and cost-effective methods or alternatives. Describe Contractor's specific experience providing value engineering on Contractor's past projects, including amounts saved on previous projects, if possible. Describe generally the type of suggestions, recommendations, alternatives or other valuation determinations that the Contractor could implement on any project.

**3.9.** **Budget**. Discuss the Contractor's ability to manage costs and stay within budgets on comparable projects.

**3.10.** **Contractor's Experience with Skilled and Trained Workforce Requirements**.

**3.10.1.** Describe Contractor's experience complying with the skilled and trained workforce requirements of the SWF Statutes. Include a description of any disputes or claims arising out of the Contractor's compliance/non-compliance with the SWF Statutes, including any penalties assessed against Contractor or any of its subcontractors by the Labor Commissioner.

**3.10.2.** Include a copy of the form that you and your subcontractors intend to use to demonstrate compliance with the SWF Statutes. The District reserves the right to have the Contractor utilize a District-provided form.

**3.11.** **Subcontractor Procurement**. The District will require Contractors to solicit and procure subcontractors pursuant to the Subcontractor Procurement Process in Exhibit H to the Facilities Lease in the Contract (**Attachment 1**) after the performance of Preliminary Services. If a project does not require Preliminary Services, that Subcontractor Procurement Process will be incorporated into the District's solicitation for proposals in which the District requests final pricing for that project.

**3.11.1.** Describe how Contractor expects the open-book process for the solicitation of subcontractors to proceed, and the District and Contractor's role during this process.

**3.11.2.** Describe how Contractor ensures that any self-performed work is competitively priced with other subcontractors.

**3.11.3.** Describe the Contractor's process for ensuring that all subcontractor bid packages are full and complete, and how Contractor minimizes scope gaps**.**

**3.11.4.** Expressly indicate Contractor's agreement to abide by the District's Subcontractor Procurement Process on District's lease-leaseback projects.

**3.11.5. Local Subcontractor and Laborer Participation.** Describe Contractor's process and steps that will be taken to ensure local participation of laborers and subcontractors.

**3.12.** **Contractor's Current Work Commitments**. Specify the current and projected workload of Contractor. If applicable, provide a statement of all recent, current, or anticipated contractual obligations that relate in any way to similar work for the District that may have a potential to impede Contractor's ability to provide the Services for any District project. Please provide a list of projects for which Contractor is currently performing services, and those projects for which the Contractor is under contract, or anticipates being under contract, during the next two (2) years.

**3.13.** **Bonding Capacity**. Indicate Contractor's limitation or Surety restrictions related to the size of projects that Contractor can contract for and can effectively perform. Provide a letter from your surety or broker that states Contractor's current bonding capacity.

**3.14.** **Conflicts of Interest**. Contractors cannot submit, propose, bid, contract, subcontract, consult, or have any other economic interests in a project to which the Contractor may provide Services. Please identify whether the Contractor has any conflicts of interest preventing it from performing the Services.

**3.15.** **Safety**. Discuss the Contractor's safety program, the content and frequency of its safety meetings, the basis for its current experience modification rate ("**EMR**") number, its Injury and Illness Prevention Program and who the Contractor's safety officer would be and his/her

qualifications for that position. Please provide documentation showing the Contractor's current EMR number; this requirement is cumulative of any requirement in the Prequalification Questionnaire requiring Contractor to provide EMR information.

**3.16.** **References**. Contractor may include letters of reference or testimonials. Contractor should limit letters of references or testimonials to a **maximum of ten (10)**.

**3.17.** **Lease-Leaseback Contract**. If Contractor has any comments or objections to the Contract attached hereto as **Attachment 1**, it must provide those comments or objections, with specificity, in its SOQ. **PLEASE NOTE: The District will not consider any changes to the Contract if they are not submitted with the Contractor's SOQ. Any changes made to the Contract as a result of Contractor's comments to the SOQ shall apply to any District lease-leaseback solicitation and shall not be subject to renegotiation.**

**3.18.** **Additional Information**. Provide additional information about the Contractor as it may relate to Contractor's SOQ.

**3.19.** **Compensation**. The District is **not** asking that Contractors provide a specific proposal for a Project or a final price to construct a Project. At this time, Contractors must provide the following pricing information only. **Note: This pricing information that the Contractor provides in its SOQ shall be applicable to any proposal submitted by Contractor.**

| Item | Amount |
|---|---|
| **Staffing that would be part of Preliminary Services** | |
| Project Manager (hourly rate) | $_____ |
| Constructability Reviewer (hourly rate) | $_____ |
| Estimator (hourly rate) | $_____ |
| Scheduler (hourly rate) | $_____ |
| Other: _____ | $_____ |
| **Staffing that would be part of General Conditions** | |
| Project Executive (hourly rate) | $_____ |
| Project Manager (hourly rate) | $_____ |
| Project Superintendent (hourly rate) | $_____ |
| Project Engineer (hourly rate) | $_____ |
| Other: _____ | $_____ |
| **Mark-up on Subcontractor work** | _____% |
| **Mark-up on self-performed work** | _____% |
| | |

| | |
|---|---|
| **Mark-up on Subcontractor change order work** * | _____% |
| **Mark-up on self-performed change order work** * | _____% |
| **Fee / overhead & profit** (as a percentage of direct costs), if any in addition to the "Mark-ups" indicated above | _____% |
| **Bond & insurance cost** (as a percentage of direct costs) (no Builders Risk Coverage) | _____% |
| **Builder's Risk Insurance cost – <u>NO</u> Earthquake or Flood** (as a percentage of direct costs) | _____% |
| **Builder's Risk Insurance cost – <u>JUST</u> Earthquake and Flood** (i.e., added premium) (as a percentage of direct costs) | _____% |
| **Other costs** (identify in sufficient detail for evaluation, either as a lump sum or a percentage of direct costs) | $____ or _____% |
| **Financing Charge **** (The Contractor's charge for interest on the Lease Payments the District must pay.) | _____% |

*** <u>Change Order Mark-Up.</u>** Contractor must agree to utilize this same mark-up percentage for change orders during any project.

**** <u>Financing.</u>** The District shall make Lease Payments to the Contractor over a twelve (12) month period **after** completion of a project. Those Lease Payments will be part of the GPC and are anticipated to be no more than **five percent** (**5%**) of the GPC. State the Contractor's proposed interest charge (financing percentage) for a project for those Lease Payments for twelve (12) months. **Contractor's financing cost shall be applicable to any proposal submitted by Contractor.**

**USE ADDITIONAL SHEETS AS NECESSARY**

# DISTRICT'S EVALUATION

**4.** **<u>District's Evaluation / Best Value Selection Process</u>**. The District will evaluate Contractor's Responses based on a best value determination process. The District wishes to retain Contractors that have the financial strength, management and expertise to deliver a Project within a proposed schedule and within an established budget and a proven track record for cost-efficient and timely work.

**4.1.** **STEP 1 (Prequalification).** Contractors must be prequalified pursuant to the District's prequalification process. This is a "pass" or "fail" **STEP**.

**4.2.** **STEP 2 – STEP 4 (Responses, Interviews & References)**. The District will evaluate each Contractor's SOQ based on the process indicated below. To move on to the next **STEP** in the evaluation process, the Contractor must receive the minimum required points in the previous **STEP**. The District may elect to finish the evaluation process after scoring SOQs (**STEP 2**), or may elect to conduct interviews (**STEP 3**) and/or contact and score references (**STEP 4**), each in the District's sole discretion. The District will select Contractor(s) to be included in the District's pool of qualified lease-leaseback contractors, that receive the minimum required score at the final **STEP** at which the District ends its evaluation.

**4.3.** **Scoring.** The following table indicates how the District will score **STEPS 2 – 4.** Only Contractors that receive the minimum qualification points as required at each **STEP** will move to the next **STEP**. The District may, at its sole discretion, interview some or all of the Contractor(s) that submit a Response and/or contact references of Contractor(s).

| | |
|---|---|
| **STEP 1: Scoring of Prequalification Questionnaire** | Only prequalified Contractors will proceed to **STEP 2**. |
| **STEP 2: Scoring of SOQs** | Minimum points required in **STEP 2** for Contractors to proceed to **STEP 3**: **700 points.**<br>Total maximum possible points from **STEP**: **1000 points.**<br>**The District reserves the right to select Contractors to include in the District's pool at this step.** |
| **STEP 3: Scoring of Interviews (Optional)** | The District will only interview Contractors (if it conducts interviews of Contractors) that have the required minimum score after **STEP 2**. The District, at its discretion, may elect to forego conducting interviews. If the District conducts interviews, then the following shall apply:<br>Minimum points required in **STEP 3** for Contractors to qualify: **265 points.**<br>Total maximum possible points from **STEP 3**: **375 points.** |
| **STEP 4: Scoring of Reference Checks (Optional)** | The District will only contact references (if it conducts reference checks) of Contractors that have the required minimum score after **STEP 2**. The District, at its discretion, may elect to forego conducting reference checks. If the District conducts reference checks, then the following shall apply:<br>Minimum points required in **STEP 4** for Contractors to qualify: **100 points.**<br>Total maximum possible points from **STEP 4**: **130 points** |

**DISTRICT'S BEST VALUE DETERMINATION**

If the District qualifies contractors for the pool or selects contractors for Projects, it will do so as follows:

- If the District does not conduct interviews and does not conduct reference checks, the District shall use the points from **STEP 2** as the basis for its best value determination.
- If the District conducts interviews and does not conduct reference checks, the District shall use the points from **STEP 3** as the basis for its best value determination, assuming the Contractor has the minimum number of required points.
- If the District conducts reference checks and does not conduct interviews, the District shall use the points from **STEP 2 added with the points from STEP 4** as the basis for its best value determination, assuming the Contractor has the minimum number of required points.
- If the District conducts interviews and conducts reference checks, the District may

choose to do either in any order it determines. The District shall use the points from **STEP 2 added with the points from STEP 3 or STEP 4, whichever occurs last,** as the basis for its best value determination, assuming the Contractor has the minimum number of required points for both **STEPS**.

**District staff reserve the right to create a panel of evaluators to score Contractors, and then average those scores at each STEP to determine Contractors' scores.**

**4.4.** **Notification**. The District will notify Contractor(s) of their status upon completion of the process via email from the District as listed in the RFQ Schedule.

**4.5.** During the evaluation of the Responses, contact shall only be through the individual identified in the RFQ. Contractor(s) shall neither contact nor lobby evaluators during the evaluation process. Attempts by a Contractor to contact and/or influence the District may result in disqualification of that Contractor.

**4.6.** The District reserves the right to reject any Response as non-responsive, and to not contract with any Contractor for any Services in a subsequent proposal. The District makes no representation that participation in the RFQ process will lead to an award of contract or any consideration whatsoever. The District reserves the right to seek Responses from or to contract with any Contractor not participating in this process. The District shall in no event be responsible for the cost of preparing any Response. The District reserves the right to adjust the structure of the Project(s) and to request a successful Contractor provide initial pricing information, fee(s) for preliminary services, general conditions, partial construction services, etc., for a Project or a phase within a Project.

**4.7.** All Responses will become the property of the District and subject to the California Public Records Act, Government Code sections 6250, et seq. Those elements in a Response that are trade secrets as that term is defined in Civil Code section 3426.1 (d) or otherwise exempt by law from disclosure and which are prominently marked as "Trade Secret," "Confidential," or "Proprietary" may not be subject to disclosure. The District shall not be liable or responsible for the disclosure of any such records including, without limitation, those so marked if disclosure is deemed to be required by law or by an order of a Court. A Contractor that indiscriminately identifies all or most of its Response as exempt from disclosure without justification may be deemed non-responsive. In the event the District is required to defend an action on a Public Records Act request for any of the contents of a Response marked "Trade Secret," "Confidential," or "Proprietary," the Contractor agrees, by submission of its Response, to defend and indemnify the District from all costs and expenses, including attorneys' fees, in any action or liability arising under the Public Records Act.

## 5. District's Appeal Process

**5.1.** A Contractor may appeal the District's "best value" determination. If a Contractor decides to appeal the District's determination, it must follow the following procedure. Failure of a Contractor to timely follow all appeal steps shall be a waiver of the Contractor's right to appeal the District's determination.

**5.1.1.** The Contractor shall submit, in writing, within **two (2) business days** after receipt of notice of the District's determination ("**Action**"), a written request for a response from the District to explain the District's determination.

**5.1.2.** Within **two (2) business days** from receipt of the District's response to the Contractor's request, Contractor(s) may request in writing a meeting, which will be restricted to no

more than two (2) persons from the Contractor to have a discussion with District staff regarding that Contractor's Response. All meetings will take place via a virtual conference, teleconference, or an in-person meeting, at the District's sole discretion. Contractor may submit with the request any and all information that it believes supports a finding that District's Action should be changed.

**5.1.3.** If the Contractor continues to contest the District's Action after that meeting with District staff, then the Contractor may address the District's governing board ("Board") at the next public noticed meeting of the Board, pursuant to the Board's procedures for public comment. In order for a Contractor to preserve its right to challenge the District's Action, the Contractor must address the Board at the next public noticed meeting of the Board after the Contractor's meeting with District staff.

**5.2.** The above appeals process does not apply to the prequalification process, which will be done pursuant to the process in the Prequalification Questionnaire, if any.

**ATTACHMENT 1**

**DISTRICT'S FORM OF LEASE-LEASEBACK CONTRACT**

**[INSERT/ATTACH FORM OF CONTRACT]**

# INSTRUCTIONS – FOR DISTRICT STAFF ONLY;
# DELETE PRIOR TO FINALIZING THIS DOCUMENT FOR A PROJECT

**ORBACH HUFF & HENDERSON (OHH) RECOMMENDS THAT THE DISTRICT ADDRESS THE FOLLOWING INFORMATION PRIOR TO USING THIS SET OF LEASE-LEASEBACK CONTRACT DOCUMENTS THE FIRST TIME AND PRIOR TO ITS USE FOR EACH SUBSEQUENT INDIVIDUAL PROJECT.**

- **Search & Replace.** The following phrases must be searched/replaced in this set of documents:

  | | | |
  |---|---|---|
  | @District | : | Replace with the District's full name |
  | @Contractor | : | Replace with the Contractor's full name |
  | @ProjectName | : | Replace with a phrase that describes the individual project that is being constructed |

- **Prompts**: There are prompts in this set of documents that are **[bracketed and highlighted]**, which District staff must address for each individual project. Note: It is not recommended to make any alterations to other provisions. While not highlighted, the District should also ensure that its risk manager reviews and approves all insurance requirements and limits.

- **Exhibit H:** This exhibit is a subcontractor procurement process that Contractors must follow. This process allows Contractors great leeway in situations when Contractors are competing with each other on a final price. But there are specific limitations on a Contractor in situations when a Contractor is providing a final price after the District has selected that Contractor and that Contractor is no longer competing with any other contractors.

- **Exhibit I:** This exhibit includes a reduced set of Division 1 documents. Most architects prepare Division 1 documents. Please ensure you provide to OHH any other Division 1 document prepared by the Project Architect so we can review them for any potential conflicting provisions.

- **Exhibit K:** As noted above, it is not recommended to make alterations to many documents. For revisions to most documents, use **Exhibit K** to the Facilities Lease ("Revisions to Contract Documents"). In addition, District staff must make revisions to the **Exhibit K** for each individual project.

- **Exhibit L:** This exhibit is the preliminary services (preconstruction services) agreement. Note that this version of the preliminary services agreement includes expanded scope for value engineering and constructability review.

- **Section Breaks.** When the District is editing this set of documents for each individual project, please do not remove section breaks because that will adversely change the pagination, footers, etc.

- **Procurement Process and Prequalification**. Finally, the District must only these contract documents in conjunction with a procurement process consistent with Education Code § 17406 including, without limitation, advertising in the newspaper and in trade journal and prequalifying the contractors/proposers pursuant to Public Contract Code § 20111.6. Please coordinate these steps with OHH.

Form Agreement

**SITE LEASE**

This Site lease ("**Site Lease**") dated _____, 20___ ("**Effective Date**"), is made and entered into by and between the **@District**, as lessor ("**District**"), and **@Contractor**, as lessee ("**Contractor**") (together, the "**Parties**").

**WHEREAS**, the District currently owns a parcel or parcels of land located at:

| School Site(s) | Address |
|---|---|
| _____ **School** | _____, _____, CA 9_____ |

and as more particularly described in **Exhibit A** attached hereto and incorporated herein by this reference ("**School Site(s)**"); and

**WHEREAS**, the District desires to provide for the construction of **@ProjectName** ("**Project(s)**"); and

**WHEREAS**, the District determines that a **portion** of the School Site(s) are adequate to accommodate the Project, as more particularly described in **Exhibit A** ("**Project Site(s) or Site(s)**") attached hereto and incorporated herein by this reference; and

**WHEREAS**, District desires to have the construction of the Project completed and to lease it back, as more particularly described in the facilities lease between the Parties dated as of the Effective Date whereby the Contractor agrees to perform the work of the Project and then lease the Project Site(s) back to the District ("**Facilities Lease**"), which Facilities Lease is incorporated herein by this reference; and

**WHEREAS**, the Board of Education of the District ("**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 Project Site(s) to Contractor and by immediately entering into the Facilities Lease under which the Contractor will perform the work of the Project and the District will lease back the Project from Contractor; and

**WHEREAS**, the District further determines that it has entered into this Site Lease and the Facilities Lease pursuant to Education Code section 17406 as the best available and most expeditious means for the District to satisfy its substantial need for the facilities to be provided by the Project and to accommodate and educate District students; and

**WHEREAS**, the District is authorized under Education Code section 17406 to lease the Project Site(s) to Contractor and to have Contractor develop and cause the construction of the Project thereon and lease the Project Site(s) back to the District by means of the Facilities Lease, and the Board has duly authorized the execution and delivery of this Site Lease in order to effectuate the foregoing, based upon a finding that it is in the best interest of the District to do so; and

**WHEREAS**, Contractor as lessee is authorized and competent to lease the Project Site(s) from District and to develop and cause the construction of the Project on the Project Site(s), and has duly authorized the execution and delivery of this Site Lease; and

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

**NOW, THEREFORE**, in consideration of the promises and of the mutual agreements and covenants contained herein, and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties

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hereto do hereby agree as follows:

1. **Definitions**. Unless the context clearly otherwise requires, or expressly stated otherwise, all words and phrases defined in the Facilities Lease, and attachments thereto, shall have the same meaning in this Site Lease.

2. **Exhibits.** The following Exhibits are attached to and by reference incorporated and made a part of this Site Lease.

   **2.1. Exhibit A: Project Site(s) Information and Project(s) Information**

3. **Lease of the Project Site(s).** The District hereby leases to the Contractor, and the Contractor hereby leases from the District, the Project Site(s), subject only to Permitted Encumbrances, in accordance with the provisions of this Site Lease, to have and to hold for the term of this Site Lease. This Site Lease shall only take effect if the Facilities Lease is executed by the District and Contractor within three (3) days of execution of this Site Lease. The Parties hereby acknowledge and confirm that the District is only leasing the Project Site(s) to the Contractor, and not the whole School Site(s).

   **3.1. Work in Phases.** If the Work of the Project is to be performed in phases, then the only areas bound by the terms of this Site Lease are:

   3.1.1. As indicated to be within specific phases of the Project and

   3.1.2. For which portions of the Lease Payments as provided for in the Facilities Lease are still owing,

4. **Leaseback of the Project Site(s).** The Parties agree that the Project Site(s) will be leased back to the District pursuant to the Facilities Lease for the term thereof.

5. **Term**. The term of this Site Lease shall commence as of the Effective Date and shall terminate on the last day of the Term of the Facilities Lease, provided the District has paid to the Contractor, or its assignee, all payments which may be due under the Facilities Lease, and provided this Site Lease has not been terminated pursuant to the termination provisions of the Facilities Lease.

6. **Payment**. In consideration for the lease of the Project Site(s) by the District to the Contractor and for other good and valuable consideration, the Contractor shall pay **One Dollar ($1.00)** per year to the District upon execution of this Site Lease until the expiration or early termination of this Site Lease and/or the Facilities Lease.

7. **Termination.** This Site Lease may be terminated only as permitted in the Facilities Lease. If the District terminates the Facilities Lease pursuant to the provisions in the Facilities Lease, then this Site Lease shall also terminate.

8. **Title to School Site(s).** During the term of this Site Lease, the District shall hold fee title to the School Site(s), including the Project Site(s), and nothing in this Site Lease or the Facilities Lease shall change, in any way, the District's ownership interest in the School Site(s).

9. **Improvements.** Title to all improvements made on the Project Site(s) during the term hereof shall be held, vest and transfer pursuant to the terms of the Facilities Lease.

10. **No Merger.** The leaseback of the Project Site(s) by the Contractor to the District pursuant to the Facilities Lease shall not effect or result in a merger of the estates of the District in the Project Site(s), and the Contractor shall continue to have a leasehold estate in the Project Site(s) pursuant to this Site Lease throughout the term hereof.

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11. **Right of Entry.** The District reserves the right for any of its duly authorized representatives to enter upon the Project Site(s) at any reasonable time to inspect the same, provided the District follows all safety precautions required by the Contractor.

12. **Quiet Enjoyment.** Subject to any rights the District may have under the Facilities Lease (in the absence of an Event of Default) to possession and enjoyment of the Project Site(s), the District hereby covenants and agrees that it will not take any action to prevent the Contractor from having quiet and peaceable possession and enjoyment of the Project Site(s) during the term hereof and will, at the request of the Contractor, to the extent that it may lawfully do so, join in any legal action in which the Contractor asserts its right to such possession and enjoyment.

13. **Waste**. The Contractor agrees that at all times that it is in possession of the Project Site(s), it will not commit, suffer or permit any waste on the Project Site(s), and that it will not willfully or knowingly use or permit the use of the Project Site(s) for any illegal purpose or act.

14. **Further Assurances and Corrective Instruments**. The Parties shall, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Project Site(s) hereby leased or intended so to be or for carrying out the expressed intention of this Site Lease and the Facilities Lease.

15. **Representations of the District**. The District represents, covenants and warrants to the Contractor as follows:

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

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

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

**15.4. CEQA Compliance.** The District has complied with all requirements imposed upon it by the California Environmental Quality Act (Public Resource Code Section 21000 *et seq.* ("**CEQA**") in connection with the Project, and no further environmental review of the project is necessary pursuant to CEQA before the construction of the Project may commence.

**15.5. No Litigation**. To the best of the District's actual knowledge, there is no pending or threatened action or proceeding before any court or federal, state, municipal, or other government authority or administrative agency which will materially adversely affect the ability of District to perform its obligations under this Site Lease.

**15.6. Condemnation Proceedings**.

15.6.1. District covenants and agrees, but only to the extent that it may lawfully do so, that so long as this Site Lease remains in effect, the District will not seek to exercise the power of eminent

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domain with respect to the Project so as to cause a full or partial termination of this Site Lease and the Facilities Lease.

15.6.2. If for any reason the foregoing covenant is determined to be unenforceable or in some way invalid, or if District should fail or refuse to abide by such covenant, then, to the extent they may lawfully do so, the Parties agree that the financial interest of Contractor shall be as indicated in the Facilities Lease.

**15.7. Use and Zoning**. To the best of the District's actual knowledge, the Project Site(s) is properly zoned for its intended purpose and the use or activities contemplated by this Site Lease will not conflict with local, state or federal law.

**15.8. Taxes**. To the best of the District's actual knowledge, all taxes and assessments are paid current and such taxes and assessments will continue to be paid to the extent that the District is not exempt.

**15.9. Hazardous Materials**. District is not currently aware of any contamination to the Project Site(s) by Hazardous Materials, except for Hazardous Materials of which District has already informed Contractor. If District becomes aware of any act or circumstance which would change or render this representation incorrect, in whole or in part, District will give immediate written notice of such changed fact or circumstance to Contractor.

**16. Representations of the Contractor**. The Contractor represents, covenants and warrants to the District as follows:

**16.1. Due Organization and Existence**. The Contractor is a California corporation licensed to provide such services in the state of California, duly organized and existing under the laws of the State of California, has authority to enter into this Site Lease and the Facilities Lease; is possessed of the full authority to lease, leaseback, and hold real and personal property and has duly authorized the execution and delivery of all of the aforesaid agreements.

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

**16.3. No Violations**. Neither the execution and delivery of this Site Lease or the Facilities Lease, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the Contractor is now a party or by which the Contractor 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 Contractor, or upon the Project Site(s), except for Permitted Encumbrances.

**16.4. No Bankruptcy**. Contractor is not now nor has it ever been in bankruptcy or receivership.

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

**17. Insurance and Indemnity**. The Contractor and the District shall comply with the insurance requirements and the indemnity requirements as indicated in the Facilities Lease.

**18. Assignment and Subleasing**. This Site Lease may be assigned and/or the Project Site(s) subleased, as a whole or in part, by the Contractor only upon the prior written consent of the District to such assignment or

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sublease, which shall not be unreasonably withheld.

19. **Restrictions on District**. The District agrees that it will not mortgage, sell, encumber, assign, transfer or convey the Project Site(s) or any portion thereof during the term of this Site Lease in any way that would interfere with or diminish Contractor's interests indicated in this Site Lease.

20. **Liens and Further Encumbrances**. Contractor agrees to keep the Project Site(s) and every part thereof free and clear of any and all encumbrances and/or liens, including without limitation, pledges, charges, encumbrances, claims, mechanic liens and/or other liens for or arising out of or in connection with work or labor done, services performed, or materials or appliances used or furnished for or in connection with the Project Site(s) or the Project. Pursuant to the Facilities Lease, Contractor further agrees to pay promptly and fully and discharge any and all claims on which any encumbrance and/or lien may or could be based, and to save and hold District free and harmless from any and all such liens, mortgages, and claims of liens and suits or other proceedings pertaining thereto. This subsection does not apply to Permitted Encumbrances.

21. **Notices**. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed to have been received as indicated below and to the parties indicated below.

**21.1.** If notice is given by personal delivery thereof, it shall be considered delivered on the day of delivery.

**21.2.** If notice is given by overnight delivery service, it shall be considered delivered one (1) day after date deposited, as indicated by the delivery service.

| | |
|---|---|
| **If to District:**<br>**@District**<br>_____<br>_____, CA 9_____<br>ATTN: _____ | **If to Contractor:**<br>**@Contractor**<br>_____<br>_____, CA 9_____<br>ATTN: _____ |
| **With a copy to:**<br>Orbach Huff & Henderson LLP<br>6200 Stoneridge Mall Rd., Ste. 225<br>Pleasanton, CA 94588<br>ATTN: Philip Henderson, Esq. | **With a copy to:**<br>_____<br>_____<br>_____, CA 9_____<br>ATTN: _____ |

The Contractor and the District, by notice given hereunder, may designate different addresses to which subsequent notices, certificates or other communications will be sent.

22. **Binding Effect**. This Site Lease shall inure to the benefit of and shall be binding upon the Contractor and the District and their respective successors and assigns.

23. **No Additional Waiver Implied by One Waiver**. In the event any agreement contained in this Site 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 future compliance with any term hereof or any other breach hereunder.

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

25. **Amendments, Changes and Modifications.** Except as to the termination rights of both Parties as indicated in the Facilities Lease, this Site Lease may not be amended, changed, modified, altered or terminated without the written agreement of both Parties hereto.

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

27. **Contractor and District Representatives.** Whenever under the provisions of this Site Lease approval by the Contractor or the District is required, or the Contractor 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 Contractor by the Contractor Representative and for the District by the District Representative, and any party hereto shall be authorized to rely upon any such approval or request.

28. **Applicable Law.** This Site Lease shall be governed by and construed in accordance with the laws of the State of California, and venue shall be in the County within which the Site(s) is located.

29. **Attorney's Fees**. If either party brings an action or proceeding involving the Site(s) or to enforce the terms of this Site Lease or to declare rights hereunder, each party shall bear the cost of its own attorneys' fees.

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

31. **Prior Agreements**. This Site Lease and the corresponding Facilities Lease collectively contain all of the agreements of the Parties hereto with respect to any matter covered or mentioned in this Site Lease and no prior agreements or understanding pertaining to any such matter shall be effective for any purpose.

32. **Further Assurances**. Parties shall promptly execute and deliver all documents and instruments reasonably requested to give effect to the provisions of this Site Lease.

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

34. **Time of the Essence**. Time is of the essence with respect to each of the terms, covenants, and conditions of this Site Lease.

35. **Force Majeure**. A party shall be excused from the performance of any obligation imposed in this Site Lease as indicated in the Facilities Lease.

36. **Interpretation**. None of the Parties hereto, nor their respective counsel, shall be deemed the drafters of this Site Lease or the Facilities Lease for purposes of construing the provisions of each. The language in all parts of this Site Lease shall in all cases be construed according to its fair meaning, not strictly for or against any of the Parties hereto.

**IN WITNESS WHEREOF**, the Parties have accepted and agreed to this Site Lease, as of the Effective Date, and have directed and authorized their respective officers to execute this Site Lease:

| **@District** | **@Contractor** |
|---|---|
| By: _____ | By: _____ |
| Print Name: _____ | Print Name: _____ |
| Print Title: _____ | Print Title: _____ |

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**EXHIBIT A**
**TO SITE LEASE**

***(IDENTICAL TO EXHIBIT A TO THE FACILITIES LEASE)***

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**FACILITIES LEASE**

This Facilities lease ("**Facilities Lease**"), dated _____, 20___ ("**Effective Date**"), is made and entered into by and between the **@Contractor**, sublessor ("**Contractor**"), and the **@District**, as sublessee ("**District**") (together, the "**Parties**").

**RECITALS**

**WHEREAS**, the District currently owns a parcel or parcels of land located at:

| School Site(s) | Address |
|---|---|
| _____ **School** | _____, _____, CA 9_____ |

and as more particularly described in **Exhibit A** attached hereto and incorporated herein by this reference ("**School Site(s)")**; and

**WHEREAS**, the District desires to provide for the construction of **@ProjectName** ("**Project (s)**"); and

**WHEREAS**, the District has determined that a **portion** of the School Site(s) are adequate to accommodate the Project, as more particularly described in **Exhibit A** ("**Project Site(s) or Site(s)**") attached hereto and incorporated herein by this reference; and

**WHEREAS**, District has retained the following architects (individually and collectively referred to as "**Architect**") to prepare plans and specifications ("**Plans and Specifications**") for the Project Site(s), and as the architects/engineers of record for the Project as follows:

- [Architect Name]

**WHEREAS**, District and Contractor have executed a site lease at the same time as this Facilities Lease whereby the District is leasing the Project Site(s), and not the entire School Site(s) to the Contractor ("**Site Lease**"); and

**WHEREAS,** Contractor represents that it has the expertise and experience to perform the services set forth in this Facilities Lease; and

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

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

**WHEREAS**, the Board of Education 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 Project Site(s) to Contractor and by simultaneously entering into this Facilities Lease under which the District will lease back the Project Site(s) and the Project from Contractor and make Lease Payments as indicated in **Exhibit C** attached hereto and incorporated herein by reference; and

**WHEREAS**, the Parties have performed all acts, conditions and things required by law to exist, to have happened and to have been performed precedent to and in connection with the execution and entering into of this Facilities Lease and all those conditions precedent do exist, have happened and have been performed in regular and due

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time, form and manner as required by law, and the Parties hereto are now duly authorized to execute and enter into this Facilities Lease; and

**WHEREAS**, the District further acknowledges and agrees that it has entered into the Site Lease and the Facilities Lease pursuant to Education Code Section 17406 as the best available and most expeditious means for the District to satisfy its substantial need for the facilities to be provided by the Project and to accommodate and educate District students and to utilize its facilities proceeds expeditiously.

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

**1. Definitions**. In addition to the terms and entities defined above or subsequent provisions defined herein, and unless the context otherwise requires, or unless expressly stated otherwise, the terms defined in this section shall, for all purposes of this Facilities Lease, have the meanings herein specified.

**1.1.** "**Contractor**" or "**Lessor**" means **@Contractor**, a Corporation, organized and existing under the laws of the State of California, and its successors and assigns.

**1.2.** "**Contractor's Representative**" means the Managing Member of Contractor, or any person authorized to act on behalf of Contractor under or with respect to this Facilities Lease.

**1.3.** "**Contract Documents**" are defined in **Exhibit D** to this Facilities Lease.

**1.4.** "**District**" or "**Lessee**" means the **@District**, a school district duly organized and existing under the laws of the State of California.

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

**1.6.** "**Permitted Encumbrances**" means, as of any particular time:

1.6.1. Liens for general and valorem taxes and assessments, if any, not then delinquent, or which the District may permit to remain unpaid;

1.6.2. The Site Lease;

1.6.3. This Facilities Lease,

1.6.4. 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.

1.6.5. 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 Contractor and the District consent in writing which will not impair or impede the operation of the Project Site(s); and

**2. Exhibits.** The following Exhibits are attached to and by reference incorporated and made a part of this Facilities Lease ("**Exhibit(s)"**):

**2.1. Exhibit A: Project Site(s) Information and Project(s) Information**

**2.2. Exhibit B: [RESERVED]**.

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**2.3. Exhibit C: Guaranteed Project Cost and Other Project Cost(s), Funding, and Payment Provisions for Each of the Leased Project Site(s):** A detailed description of the Guaranteed Project Cost and the provisions related to the payment of that amount by the District to the Contractor.

**2.4. Exhibit D: General Construction Provisions:** The provisions generally describing the Project's construction.

**2.5. Exhibit E: Memorandum of Commencement Date for the Facilities Lease for Each of the Leased Project Site(s):** The Memorandum, prepared by the District, that will memorialize the commencement and expiration dates of the Term.

**2.6. Exhibit F: Construction Schedules for each of the Project Site(s):** The Construction Schedule(s) shall be submitted in computer generated network format and shall be organized by Activity Codes representing the Contractor's intended sequencing of the Work, and with time scaled network diagrams of activities. The Preliminary Construction Schedule(s) shall include activities such as mobilization, preparation of submittals, specified review periods, procurement items, fabrication items, milestones, and all detailed construction activities.

**2.7. Exhibit G: Schedule(s) of Values for Each of the Project Site(s)**

**2.8. Exhibit H: Subcontractor Procurement Process**

**2.9. Exhibit I: Certificates and Bonds to Lease-Leaseback Documents and Division 1 Documents to Lease-Leaseback Documents**

**2.10. Exhibit J: Plans, Technical Specifications, and Drawings**

**2.11. Exhibit K: Revisions to Contract Documents**

**2.12. Exhibit L: Agreement for Preliminary Services [IF APPLICABLE]**

## 3. Contract Documents / Order of Precedence

**3.1.** Questions concerning the intent, precedence, or meaning of the Contract Documents, including the Drawings or Specifications, shall be submitted to the District for interpretation. Inconsistencies in the Contract Documents shall be resolved by giving precedence in the following order:

3.1.1. District-approved modifications, beginning with the most recent (if any);
3.1.2. Exhibit K: Revisions to Contract Documents;
3.1.3. Exhibit D: General Construction Provisions ;
3.1.4. Facilities Lease;
3.1.5. Site Lease;
3.1.6. Exhibit C: GPC and Other Project Costs;
3.1.7. Remaining Exhibits to the Facilities Lease;
3.1.8. Division 1 Documents (Documents beginning with "01");
3.1.9. Division 2 through Division 49 documents (Technical Specifications);
3.1.10. Figured dimensions;
3.1.11. Large-scale drawings; and
3.1.12. Small-scale drawings.

In case of conflict, the greater quantity and/or higher standard of workmanship shall apply unless the District expressly states in writing (e.g., via a Change Order) accepting a lesser quantity or lower quality of workmanship and the Contract Price is adjusted accordingly. The decision of the District in the matter shall be

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final.

**3.2. Integration / Modification.** The Contract Documents and any documents specifically incorporated by reference are completely integrated as the complete and exclusive statement of the terms of the Agreement. This Facilities Lease and Site Lease supersedes all previous contracts, agreements, and / or communications, both oral and written, and constitutes the entire understanding of the District and Contractor. No extrinsic evidence whatsoever shall be admissible or used to explain or supplement the terms of the Contract, Contract Documents, or any items incorporated by reference. No changes, amendments or alterations shall be effective unless in writing, signed by both Parties, and unless provided otherwise by the Contract Documents.

**4. Lease of Project and Project Site(s).**

**4.1.** Contractor hereby leases the Project and the Project Site(s) to the District, and the District hereby leases said Project and Project Site(s) from Contractor upon the terms and conditions set forth in this Facilities Lease.

**4.2.** The leasing by Contractor to the District of the Project Site(s) shall not affect or result in a merger of the District's leasehold estate pursuant to this Facilities Lease and its fee estate as lessor under the Site Lease. Contractor shall continue to have and hold a leasehold estate in the Project Site(s) pursuant to the Site Lease throughout the term thereof and the term of this Facilities Lease.

**4.3.** As to the Project Site(s), this Facilities Lease shall be deemed and constitute a sublease.

**4.4. No Disruption to Educational Activities**
**[REVISE AS NECESSARY IF THE SITE IS NOT AN ACTIVE SCHOOL SITE]**

4.4.1. **Occupied School Site(s).** The Contractor acknowledges that portions of the School Site(s) shall, at all times, be occupied by the District as an operating school. The Parties have agreed to a plan and process whereby the Contractor's activities shall be kept separate from the operating school even though the operating school may be within the Project Site(s). The specifics of the plan and process are as indicated in **Exhibit K.**

4.4.2. **Work During Instructional Time.** Contractor affirms that Work may be performed during ongoing instruction in existing facilities. If so, Contractor agrees to cooperate to the best of its ability to minimize any disruption to the School Site(s) up to, and including, rescheduling specific work activities, at no additional cost to the District.

4.4.3. **Student Testing**. Contractor shall, at no additional cost to the District and at the District's request, coordinate its Work to not disturb District students when students at the School Site(s) are taking State-required tests. No extensions to the Contract Time shall be accommodated as a result of State-required tests, and Contractor shall account for State-required testing when preparing the Construction Schedule(s).

**5. Term**.

**5.1. Facilities Lease is Legally Binding.** This Facilities Lease is legally binding on the Parties upon execution by the Parties and the District Board's approval of this Facilities Lease. The Term of this Facilities Lease for the purposes of District's occupancy shall commence after the Parties have satisfied all preconditions for the Parties execution of the Memorandum of Commencement Date as set forth in "Timing of Lease Payments" in **Exhibit C**, and then on the earlier of the following two (2) events ("**Commencement Date**"), and shall terminate **twelve (12) months** after the Commencement Date (the "**Term**"):

5.1.1. The date the District takes Beneficial Occupancy of the entire Project; or

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5.1.2. The date of Project Completion, as defined in **Exhibit D** to this Facilities Lease.

**5.2.** On the Commencement Date, the District shall prepare and the Parties shall execute the Memorandum of Commencement Date attached hereto as **Exhibit E** to memorialize the commencement and expiration dates of the Term. Notwithstanding this Term, the Parties hereby acknowledge that each has obligations, duties, and rights under this Facilities Lease that exist upon execution of this Facilities Lease and prior to the Commencement Date of the Term.

**5.3.** The Parties expressly agree that the District's obligation to make Tenant Improvement Payments for Work performed on the Project arises upon the Effective date of this Facilities Lease, and shall be made pursuant to the "Payment of the Guaranteed Project Cost" Provisions as indicated in **Exhibit C**.

**5.4.** The Parties expressly agree that the District's obligation to make Lease Payments, notwithstanding the Commencement Date, is conditioned on the Contractor completing and satisfying all conditions indicated in **Exhibit C,** that are required prior to the District being obligated to make the first Lease Payment.

**5.5.** The Term may be extended or shortened upon the occurrence of the earliest of any of the following events, which shall constitute the end of the Term:

5.5.1. An Event of Default by District as defined herein and Contractor's election to terminate this Facilities Lease as permitted herein, or

5.5.2. An Event of Default by Contractor as defined herein and District's election to terminate this Facilities Lease as permitted herein, or

5.5.3. A third-party taking of the Project under Eminent Domain, only if the Term is ended as indicated more specifically herein.

5.5.4. Damage or destruction of the Project, only if the Term is ended as indicated more specifically herein.

**6. Payment**. In consideration for the lease of the Project Site(s) by the Contractor back to the District and for other good and valuable consideration, the District shall make the Tenant Improvements Payments and Lease Payments pursuant to the "Payment of the Guaranteed Project Cost" Provisions as indicated in **Exhibit C**.

**7. Termination.**

**7.1. Termination Due to Default of the Contractor.**

7.1.1. The District, in its sole discretion, may terminate the Facilities Lease and/or terminate the Contractor's right to perform the work of the Contract based upon Contractor's default.

7.1.2. Default of Contractor includes, without limitation:

7.1.2.1. Contractor refuses or fails to execute the Work or any separable part thereof with sufficient diligence as will ensure its completion within the time specified or any extension thereof, or

7.1.2.2. Contractor fails to complete said Work within the time specified or any extension thereof, or

7.1.2.3. Contractor persistently fails or refuses to perform Work or provide material of sufficient quality as to be in compliance with Contract Documents; or

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7.1.2.4. Contractor files a petition for relief as a debtor, or a petition is filed against the Contractor without its consent, and the petition is not dismissed within sixty (60) days; or

7.1.2.5. Contractor makes a general assignment for the benefit of its creditors, or a receiver is appointed on account of its insolvency; or

7.1.2.6. Contractor persistently or repeatedly refuses or fails, except in cases for which extension of time is provided, to supply enough properly skilled workers or proper materials to complete the Work in the time specified; or

7.1.2.7. Contractor fails to make prompt payment to Subcontractors, or for material, or for labor; or

7.1.2.8. Contractor persistently disregards laws, or ordinances, or instructions of District; or

7.1.2.9. Contractor fails to supply labor, including that of Subcontractors, that can work in harmony with all other elements of labor employed or to be employed on the Work; or

7.1.2.10. Contractor or its Subcontractor(s) is/are otherwise in breach, default, or in substantial violation of any provision of this Contract.

7.1.3. Upon termination, District may immediately serve written notice of tender upon Surety whereby Surety shall have the right to takeover and perform this Contract only if Surety:

7.1.3.1. Within three (3) days after service upon it of the notice of tender, gives District written notice of Surety's intention to takeover and perform this Contract; and

7.1.3.2. Commences performance of the Contract within seven (7) days from date of serving of its notice to District.

7.1.4. If Surety fails to notify District or begin performance as indicated herein, District may takeover the Work and execute the Work to completion by any method it may deem advisable at the expense of Contractor and/or its Surety. Contractor and/or its Surety shall be liable to District for any excess cost or other damages the District incurs thereby. Time is of the essence in the Contract. If the District takes over the Work as herein provided, District may, without liability for so doing, take possession of and utilize in completing the Work such materials, appliances, plan, and other property belonging to Contractor as may be on the Site of the Work, in storage, or previously paid for.

**7.2. Termination Due to Default by District.** If District defaults pursuant to the provision(s) of the Facilities Lease, the Contractor, or its assignee, will have the right, for the then remaining term of the Site Lease, to:

7.2.1. Take possession of the Project Site(s);

7.2.2. If it deems it appropriate, cause appraisal of the Project Site(s) and a study of the then reasonable uses thereof; and

7.2.3. Relet the Project Site(s).

**7.3. Termination of Contractor for Convenience.** The District in its sole discretion may terminate for convenience this Facilities Lease upon three (3) days written notice to the Contractor. In case of a termination for convenience, the Contractor shall have no claims against the District except the actual portion of the Guaranteed Project Cost expended for labor, materials, and services performed that is unpaid and can be documented through timesheets, invoices, receipts, or otherwise, up to and until the date of termination, plus

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necessary and reasonable documented demobilization costs.

**7.4. Lease Terminable Only as Set Forth Herein.** Except as otherwise expressly provided in this Facilities Lease and the "Termination and Suspension and Scope Reduction" section of **Exhibit D** to this Facilities Lease, this Facilities Lease shall not terminate, nor shall District have any right to terminate this Facilities Lease or be entitled to the abatement of any all necessary payments pursuant to the "Payment of Guaranteed Project Cost" Provisions as indicated in **Exhibit C** or any reduction thereof. The obligations hereunder of District shall not be otherwise affected by reason of any damage to or destruction of all or any part of the Project; the taking of the Project or any portion thereof by condemnation or otherwise; the prohibition, limitation or restriction of District's use of the Project; the interference with such use by any private person or Contractor; the District's acquisition of the ownership of the Project (other than pursuant to an express provision of this Facilities Lease); any present or future law to the contrary notwithstanding. It is the intention of the Parties hereto that all necessary payments pursuant to the "Payment of Guaranteed Project Cost Provisions" as indicated in **Exhibit C** shall continue to be payable in all events, and the obligations of the District hereunder shall continue unaffected unless the requirement to pay or perform the same shall be terminated or modified pursuant to an express provision of this Facilities Lease.

**7.5.** Nothing contained herein shall be deemed a waiver by the District of any rights that it may have to bring a separate action with respect to any Event of Default by Contractor hereunder or under any other agreement to recover the costs and expenses associated with that action. The District covenants and agrees that it will remain obligated under this Facilities Lease in accordance with its terms.

**7.6.** Following Project Completion, and to the extent applicable, the District will not take any action to terminate, rescind or avoid this Facilities Lease, notwithstanding the bankruptcy, insolvency, reorganization, composition, readjustment, liquidation, dissolution, winding-up or other proceeding affecting Contractor or any assignee of Contractor in any such proceeding, and notwithstanding any action with respect to this Facilities Lease which may be taken by any trustee or receiver of Contractor or of any assignee of Contractor in any such proceeding or by any court in any such proceeding. Following Project Completion, except as otherwise expressly provided in this Facilities Lease, District waives all rights now or hereafter conferred by law to quit, terminate or surrender this Facilities Lease or the Project or any part thereof.

**7.7.** District acknowledges that Contractor may assign an interest in some or all of the necessary payments pursuant to the "Payment of Guaranteed Project Cost Provisions" as indicated in **Exhibit C** to a lender in order to obtain financing for the cost of constructing the Project and that the lender may rely on the foregoing covenants and provisions in connection with such financing.

**8. Title**.

**8.1.** During the Term of this Facilities Lease, the District shall hold fee title to the School Site(s), including the Project Site(s), and nothing in this Facilities Lease or the Site Lease shall change, in any way, the District's ownership interest.

**8.2.** During the Term of this Facilities Lease, Contractor shall have a leasehold interest in the Project Site(s) pursuant to the Site Lease.

**8.3.** During the Term of this Facilities Lease, the Contractor shall hold title to the Project improvements provided by Contractor which comprise fixtures, repairs, replacements or modifications thereto.

**8.4.** If the District makes all necessary payments under the Guaranteed Project Cost Provisions indicated in **Exhibit C**, all right, title and interest of Contractor, its assigns and successors in interest in and to the Project and the Project Site(s) shall be transferred to and vested in the District at the end of the Term. Title shall be transferred to and vested in the District hereunder without the necessity for any further instrument of transfer; provided, however, that Contractor agrees to execute any instrument requested by District to

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memorialize the termination of this Facilities Lease and transfer of title to the Project.

**9. Quiet Enjoyment**. Upon District's possession of the Project, Contractor shall thereafter provide the District with quiet use and enjoyment of the Project, and the District shall during the Term peaceably and quietly have and hold and enjoy the Project, without suit, trouble or hindrance from Contractor, except as otherwise may be set forth in this Facilities Lease. Contractor will, at the request of the District and at Contractor's cost, join in any legal action in which the District asserts its right to such possession and enjoyment to the extent Contractor may lawfully do so. Notwithstanding the foregoing, Contractor shall have the right to inspect the Project and the Project Site(s) as provided herein.

**10. Representations of the District**. The District represents, covenants and warrants to the Contractor as follows:

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

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

**10.3. No Violations**. Neither the execution and delivery of this Facilities Lease nor 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 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 Project Site(s), except Permitted Encumbrances

**10.4. CEQA Compliance.** The District has complied with all requirements imposed upon it by the California Environmental Quality Act (Public Resource Code Section 21000 *et seq.* ("**CEQA**") in connection with the Project, and no further environmental review of the project is necessary pursuant to CEQA before the construction of the Project may commence. Contractor shall comply will all applicable mitigation measures, if any, adopted by any public agency with respect to this Project pursuant to the California Environmental Quality Act. (Public Resources Code section 21000 et. seq.).

**10.5. No Litigation**. Except for a validation action related to this transaction that the District may file, there is no pending or, to the knowledge of District, threatened action or proceeding before any court or federal, state, municipal, or other government authority or administrative agency which will materially adversely affect the ability of District to perform its obligations under this Facilities Lease.

**10.6. Condemnation Proceedings**.

10.6.1. District covenants and agrees, but only to the extent that it may lawfully do so, that so long as this Facilities Lease remains in effect, the District will not seek to exercise the power of eminent domain with respect to the Project so as to cause a full or partial termination of this Facilities Lease.

10.6.2. If for any reason the foregoing covenant is determined to be unenforceable or in some way invalid, or if District should fail or refuse to abide by such covenant, then, to the extent it may lawfully do so, District agrees that the financial interest of Contractor shall be as indicated in Section 6.1 of this Facilities Lease.

**11. Representations of the Contractor**. The Contractor represents, covenants and warrants to the District as follows:

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**11.1.** **Due Organization and Existence**. The Contractor is a California corporation licensed to provide such services in the state of California, duly organized and existing under the laws of the State of California, has the power to enter into this Facilities Lease and the Site Lease; is possessed of full power to lease, lease back, and hold real and personal property and has duly authorized the execution and delivery of all of the aforesaid agreements.

**11.2.** **Authorization**. Contractor has the full power and authority to enter into, execute and deliver this Facilities Lease; to perform all of its duties and obligations hereunder; and has duly authorized the execution of this Facilities Lease.

**11.3.** **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 Contractor is now a party or by which Contractor 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 Contractor, or upon the Project Site(s), except Permitted Encumbrances.

**11.4.** **No Bankruptcy**. Contractor is not now and has never been in bankruptcy or receivership.

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

**11.6.** **No Encumbrances**. Contractor shall not pledge any District payments of any kind, related to the Site Lease, this Facilities Lease, or in any way derived from the Project Site(s), and shall not mortgage or encumber the Project Site(s), except as may be specifically permitted pursuant to the provisions of this Facilities Lease related to Contractor's financing the construction of the Project.

**11.7.** **Continued Existence**. Contractor shall not voluntarily commence any act intended to dissolve or terminate the legal existence of Contractor, at or before the latest of the following:

11.7.1. Eighteen (18) months following Project Completion,

11.7.2. After dismissal and final resolution of any and all disputes between the Parties and/or any third-party claims related, in any way, to the Project,

Contractor shall give District sixty (60) days written notice prior to dissolving or terminating the legal existence of Contractor.

**11.8.** **Infectious Disease.** Contractor shall comply with all provisions related to Infectious Disease as indicated in **Exhibit D**.

**12. Preliminary Services [IF APPLICABLE]**

**12.1.** The terms and conditions pertaining to the performance of Preliminary Services, if any, under this Facilities Lease, are set forth in the Agreement for Preliminary Services (**Exhibit L)** to this Facilities Lease. To the extent any terms and conditions set forth therein conflict with terms and conditions in the body of the Facilities Lease, the terms and conditions contained in **Exhibit L** shall control regarding the performance of Preliminary Services.

**12.2.** The payment provisions for the Preliminary Services, if any, under this Facilities Lease, are set forth in

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**Exhibit C** and **Exhibit L** to this Facilities Lease.

**12.3.** Notwithstanding any provision contained in this Facilities Lease, Contractor shall not be required to perform any Preliminary Services for which a contractor is required to be licensed pursuant to Article 5 (commencing with Section 7065) of Chapter 9, Division 3 of the Business and Professions Code and/or for which DSA approval is required unless and until the District receives DSA approval for the Project.

## 13. Construction of Project

**13.1. Project Site(s) Conditions and Contract Documents**. Contractor acknowledges that it has and will perform certain special services in preparation to construct the Project.

**13.2. Construction of Project**.

13.2.1. After the District's issuance of a Notice to Proceed, Contractor agrees to cause the Project to be developed, constructed, and installed in accordance with the terms hereof and the Construction Provisions set forth in **Exhibit D**, including those things reasonably inferable in the Construction Provisions as being within the scope of the Project and necessary to produce the stated result even though no mention is made in the Construction Documents.

13.2.2. **Contract Time / Construction Schedule.**

13.2.2.1. The Construction shall be performed pursuant to the construction schedule(s), attached hereto as **Exhibit F** ("**Construction Schedule(s)**")**.** The time period between the **Notice to Proceed** for construction of the Project and **Completion** shall be the total Contract time ("**Contract Time**").

13.2.2.2. The Construction Schedule must be approved by the District prior to execution of this Facilities Lease. District and Contractor may, if agreed to in writing, approve changes in the Construction Schedule.

13.2.3. **Schedule of Values.** The Contractor has provided a schedule of values, approved by the District, which attached hereto as **Exhibit G** ("**Schedule(s) of Values**")**.** The Schedule of Values must be approved by the District prior to the District's approval of the Contractor's first Application for Tenant Improvement Payment.

13.2.4. **Liquidated Damages**: Time is of the essence for all work Contractor must perform to obtain Project Completion. It is hereby understood and agreed that it is and will be difficult and/or impossible to ascertain and determine the actual damage that the District will sustain in the event of and by reason of Contractor's delay; therefore, pursuant to Government Code section 53069.85 and Public Contract Code section 7203, Contractor shall forfeit and pay to District the following sum(s) as liquidated damages ("**Liquidated Damages**"): **$2,000 per day** as liquidated damages for each and every day's delay beyond the Contract Time for each School Site(s).

13.2.4.1. **[USE IF PROJECT INVOLVES MULTIPLE SCHOOL SITES]** Each portion of the Liquidated Damages shall be calculated cumulatively. For example, if two of the School Site(s) are delayed as indicated here, the daily liquidated damage amount is two times (2x) the daily rate; three of the School Site(s), three times (3x), etc.

13.2.4.2. It is hereby understood and agreed that neither the total cumulative Liquidate Damages amount nor any portion of the Liquidated Damage amount are penalties.

13.2.4.3. In the event any portion of the liquidated damages is not paid to the District, the District may deduct that amount from any money due or that may become due the Contractor

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under this Facilities Lease. The District's right to assess liquidated damages is as indicated herein and in the **Exhibit D**. Contractor and Surety shall be liable for and pay to District the entire amount of Liquidated Damages including any portion that exceeds the amount of the Contract Price then held, retained or controlled by District.

13.2.4.4. The time during which the construction of the Project is delayed for cause as hereinafter specified may extend the Contract Time for a reasonable time as the District may grant. This provision does not exclude the recovery of damages for delay by either party under other provisions in this Facilities Lease.

13.2.5. **Guaranteed Project Cost**. Contractor will cause the Project to be constructed within the Guaranteed Project Cost as set forth and defined in the Guaranteed Project Cost provisions indicated in **Exhibit C** and Contractor will not seek additional compensation from District in excess of that amount.

13.2.6. **Modifications.** If the DSA requires changes to the Contract Documents submitted by District to Contractor, and those changes change the construction costs and/or construction time for the Project, then those changed costs will be handled as a change in the Work pursuant to the provisions of **Exhibit D**.

13.2.7. Contractor shall cooperate with the District's efforts to obtain State funding for the Project by complying with any State requirements as reasonably requested by the District.

13.2.8. **Compliance Monitoring and Enforcement by the Department of Industrial Relations.**

13.2.8.1. District hereby provides notice of the requirements described in Labor Code section 1771.1, subdivision (a), which states the following:

> "A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded."

13.2.8.2. Contractor acknowledges that, for purposes of Labor Code section 1725.5, this work is a public work to which Labor Code section 1771 applies. Contractor shall comply with Labor Code section 1725.5, including without limitation the registration requirements. Additionally, all "subcontractors" (as defined by Labor Code section 1722.1) shall comply with Labor Code section 1725.5 to be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of the Project. Contractor represents to the District that all "subcontractors" (as defined by Labor Code section 1722.1) are registered pursuant to Labor Code section 1725.5.

13.2.8.3. The Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. Contractor shall post job site notices, as prescribed by regulation. Contractor shall comply with all requirements of Labor Code section 1771.4, except the requirements that are exempted by the Labor Commissioner for the Project.

**14. Maintenance**. Following delivery of possession of the Project by Contractor to District, the repair, improvement, replacement and maintenance of the Project and the Project Site(s) shall be at the sole cost and

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expense and the sole responsibility of the District, subject only to all warranties against defects in materials and workmanship of Contractor as provided in **Exhibit D**. The District shall pay for or otherwise arrange for the payment of the cost of the repair and replacement of the Project resulting from ordinary wear and tear. The District waives the benefits of subsections 1 and 2 of Section 1932 of the California Civil Code, but such waiver shall not limit any of the rights of the District under the terms of this Facilities Lease.

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

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

**17. Insurance**

**17.1. Contractor's Insurance**. The Contractor shall comply with the insurance requirements as indicated herein**.**

17.1.1. **Commercial General Liability and Automobile Liability Insurance.** Contractor shall procure and maintain, during the life of the Project, Commercial General Liability Insurance and Automobile Liability Insurance that shall protect Contractor, District, and the State, from all claims for bodily injury, property damage, personal injury, death, advertising injury, and medical payments arising from operations under the Project. Contractor shall ensure that Products Liability and Completed Operations coverage, Fire Damage Liability, and Any auto including owned and non-owned, are included within the above policies and at the required limits, or Contractor shall procure and maintain these coverages separately.

17.1.2. **Umbrella Liability Insurance**

17.1.2.1. Contractor shall procure and maintain, during the life of the Contract, an Excess Liability and/or Umbrella Liability Insurance Policy. Any Umbrella Liability Insurance Policy shall protect Contractor, District, State, Construction Manager(s), Program Manager(s), and Architect(s) in the amounts indicated herein, and shall comply with all requirements for Commercial General Liability and Automobile Liability, Employers' Liability Insurance, and Sexual Molestation and Abuse Liability. This coverage shall be provided in a form at least as broad as the Insurance Services Office (ISO) standard form.

17.1.2.2. There shall be no gap between the per occurrence amount of any underlying policy and the start of the coverage under the Umbrella Liability Insurance Policy.

17.1.2.3. Whether this Excess Liability and/or Umbrella Liability Insurance Policy is written on a "follow form" or "stand alone" form, the coverages shall be equal or greater than the Contractor's Commercial General Liability and Automobile Liability, Employers' Liability Insurance, and Sexual Molestation and Abuse Liability with no exclusions that reduce or eliminate coverage items.

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17.1.3. **Subcontractor:** Contractor shall require its Subcontractor(s), if any, to procure and maintain Commercial General Liability Insurance, Automobile Liability Insurance, and Umbrella Liability Insurance with minimum limits as agreed to by the District's risk manager.

17.1.4. **Workers' Compensation and Employers' Liability Insurance**

17.1.4.1. In accordance with provisions of section 3700 of the California Labor Code, the Contractor and every Subcontractor shall be required to secure the payment of compensation to its employees.

17.1.4.2. Contractor shall procure and maintain, during the life of the Project, Workers' Compensation Insurance and Employers' Liability Insurance for all of its employees engaged in work under the Project, on/or at the Site of the Project. This coverage shall cover, at a minimum, medical and surgical treatment, disability benefits, rehabilitation therapy, and survivors' death benefits. Contractor shall require its Subcontractor(s), if any, to procure and maintain Workers' Compensation Insurance and Employers' Liability Insurance for all employees of Subcontractor(s). Any class of employee or employees not covered by a Subcontractor's insurance shall be covered by Contractor's insurance. If any class of employee or employees engaged in Work under the Project, on or at the Site of the Project, is not protected under the Workers' Compensation Insurance, Contractor shall provide, or shall cause a Subcontractor to provide, adequate insurance coverage for the protection of any employee(s) not otherwise protected before any of those employee(s) commence work.

17.1.5. **Sexual Molestation and Abuse Liability Insurance.** Contractor shall procure and maintain, during the life of this Contract, sexual molestation and abuse insurance. Contractor shall require its Subcontractor(s), if any, to procure and maintain sexual molestation and abuse insurance for any and all employee(s) of Subcontractor(s). Any class of employee or employees not covered by a Subcontractor's insurance shall be covered by Contractor's insurance. If any class of employee or employees engaged in Work under the Contract, on or at the Site of the Project, are not covered under the sexual molestation and abuse insurance, Contractor shall provide, or shall cause a Subcontractor to provide, adequate insurance coverage to cover any employee(s) not otherwise covered before any of those employee(s) commence work.

17.1.6. **Contractor's Risk Insurance: Contractor's Risk "All Risk" Insurance (NO Earthquake or Flood).**

17.1.6.1. Contractor (Builder) shall procure and maintain, during the life of the Project, Contractor's Builders Risk (Course of Construction), or similar first party property coverage acceptable to the District, issued on a replacement cost value basis. The cost shall be consistent with the total replacement cost of all insurable Work of the Project included within the Contract Documents.

17.1.6.2. Coverage is to insure against all risks of accidental physical loss and shall include without limitation the perils of vandalism and/or malicious mischief (both without any limitation regarding vacancy or occupancy), sprinkler leakage, civil authority, sonic disturbance, collapse, wind, fire, lightning, and smoke. Coverage shall include debris removal, demolition, increased costs due to enforcement of all applicable ordinances and/or laws in the repair and replacement of damaged and undamaged portions of the property, and reasonable costs for the Architect's and engineering services and expenses required as a result of any insured loss upon the Work and Project, including completed Work and Work in progress, to the full insurable value thereof.

17.1.6.3. **Earthquake and Flood Coverage.** The District may require the Contractor to include coverage for "earthquake(s)" and/or "flood" and Contractor shall provide the price for those

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additional coverages for the District's consideration prior to including or charging the District for those coverages.

17.1.6.4. Coverage shall be maintained until final payment has been made as provided under the Contract Documents or until no person or entity other than the District has an insurable interest in the property to be covered, whichever is later. This insurance shall cover as insureds the District, Contractor, all Subcontractors of every tier on the Project, and all vendors and suppliers.

17.1.6.5. **Offsite Storage.** Coverage must also be maintained for any materials stored offsite that will be incorporated into the Project.

17.1.6.6. The deductible for this insurance shall be paid by Contractor.

17.1.7. **Professional Liability Insurance**. This insurance shall cover the Contractor and his/her sub-consultant(s) for professional liability in at least the amounts set forth herein below. Additionally, the policy must contain terms or endorsements extending coverage that requires the insurer to defend and indemnify for acts which happen before the effective date of the policy provided the claim is first made during the policy period, coverage to continue through Project Completion plus "tail" coverage for two (2) years thereafter.

17.1.8. **Property of Others Insurance (if not expressly stated as part of above insurance policies).** If equipment and material are stored off-site and are in the Contractor's possession, the Contractor shall procure and maintain, during the storage of equipment and material, insurance coverage acceptable to the District that shall protect Contractor and District from all claims for Project equipment and materials stored off-site that is lost, stolen, or damaged. The District shall be named as a loss payee for this insurance coverage. The insurance coverage shall include a "loss payable endorsement" stating that all amounts payable will be paid as a joint-check to the Contractor and District. If approved in advance by District, this required insurance may be obtained by an "Employee Theft Protection Insurance Policy" or an "Employee Theft Protection Bond."

17.1.9. **Proof of Insurance and Other Requirements: Endorsements and Certificates**

17.1.9.1. Contractor shall not commence Work nor shall it allow any Subcontractor to commence Work under the Project, until Contractor and its Subcontractor(s) have procured all required insurance and Contractor has delivered in duplicate to the District all insurance certificates indicating the required coverages have been obtained, and the District has approved these documents. If the District requests copies of Contractor's insurance policies and/or endorsements from Contractor, Contractor shall provide them within fourteen (14) days.

17.1.9.2. Endorsements, certificates, and insurance policies shall include the following:

17.1.9.2.1. A clause stating:

"This policy shall not be amended, canceled or modified and the coverage amounts shall not be reduced until notice has been mailed to the District and Construction Manager stating date of amendment, modification, cancellation or reduction. Date of amendment, modification, cancellation or reduction may not be less than thirty (30) days after date of mailing notice."

17.1.9.2.2. Language stating in particular those insured, extent of insurance, location and operation to which insurance applies, expiration date, to whom cancellation and reduction notice will be sent, and length of notice period.

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17.1.9.3. All endorsements, certificates and insurance policies shall state that District, its Board members, employees and agents, and the State of California, Construction Manager(s), Program Manager(s), Inspector(s) and Architect(s) are named additional insureds under all policies except Workers' Compensation Insurance, Professional Liability Insurance, and Employers' Liability Insurance. After the Project has reached Completion, the Contractor need only retain the named additional insureds on the Completed Operations Policy.

17.1.9.4. Contractor's and Subcontractors' insurance policy(s) shall be primary and non-contributory to any insurance or self-insurance maintained by District, its trustees, employees and/or agents, the State of California, Construction Manager(s), Project Manager(s), Inspector(s), and/or Architect(s).

17.1.9.5. All endorsements, except for Professional Liability, shall waive any right to subrogation against any of the named additional insureds, except Architect.

17.1.9.6. All policies shall be written on an occurrence form, except for Professional Liability which shall be on a claims-made form.

17.1.9.7. All of Contractor's insurance shall be with **ADMITTED** insurance companies with an A.M. Best rating of no less than **A: VII.** Contractor shall provide documentation to the District demonstrating this rating.

17.1.10. **Insurance Policy Limits.** The limits of insurance shall not be less than the following amounts or as per the District's standard attached:

| | | |
|---|---|---|
| **Commercial General Liability** (Includes: Bodily Injury, Property Damage, Personal & Advertising Injury, Product Liability and Completed Operations) | Combined Single Limit<br><br><br><br>General Aggregate<br>Product Liability and Completed Operations | $2,000,000<br><br><br><br>$4,000,000<br>$2,000,000 |
| **Automobile Liability – Any Auto** | Combined Single Limit<br>**NO** General Aggregate | $2,000,000 |
| **Excess Liability (Umbrella)** | | $6,000,000 per occurrence; $6,000,000 aggregate |
| **Workers Compensation** | | Statutory limits pursuant to State law |
| **Employers' Liability** | | $2,000,000 each incident |
| **Sexual Abuse / Molestation** | | $1,000,000 each incident; $2,000,000 policy limit |
| **Contractors Risk (Course of Construction)** | | Issued for the value and scope of Work indicated herein, until the Project has reached Completion |
| **Property of Others** | Combined Single Limit<br>General Aggregate | Issued for the value and scope of Work stored off-site. |

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| | |
|---|---|
| **Professional Liability, if required by the District and either:**<br>- the premium is approved by the District, or<br>- by each subconsultant and/or designer of documents produced by Contractor. | $1,000,000 per occurrence and annual aggregate |

**17.2. District's Insurance**.

17.2.1. Upon the execution of the Memorandum of Commencement Date, the District will include the facilities constructed as part of the Project to be thereafter a facility that the District is leasing and that will thereafter be covered by the insurance program in which the District currently participates. If requested by Contractor, District shall provide portions of the District's current insurance documents for the following. At the Contractor's request, District shall request the District's insurance administrator to include Contractor as an additional covered party on those policies, but the District will not ensure that the District's insurance administrator will agree to the request:

17.2.1.1. Property Program Liability Coverage
17.2.1.2. Interruption of Business / Extra Expense and Rental Value Coverage

**18. Indemnification**.

**18.1. Contractor's Indemnity Obligation**.

18.1.1. To the furthest extent permitted by California law, Contractor shall indemnify, defend with legal counsel reasonably acceptable to the District, keep and hold harmless the District and its consultants, the Architect and its consultants, the Construction Manager and its consultants, separate contractors, and their respective board members, officers, representatives, contractors, agents, and employees, in both individual and official capacities ("Indemnitees"), against all suits, claims, damages, losses, and expenses, including but not limited to attorney's fees, caused by, arising out of, resulting from, or incidental to, the performance of the Work by Contractor, its Subcontractors, vendors, or suppliers, including, without limitation, any such suit, claim, damage, loss, or expense attributable to, without limitation, bodily injury, sickness, disease, death, alleged patent violation or copyright infringement, or to injury to or destruction of tangible property (including damage to the Work itself) including the loss of use resulting therefrom, except to the extent caused by the sole negligence, active negligence, or willful misconduct of the Indemnitees, and/or to any extent that would render these provisions void or unenforceable. This agreement and obligation of Contractor shall not be construed to negate, abridge, or otherwise reduce any right or obligation of indemnity that would otherwise exist as to any party or person described herein. This indemnification, defense, and hold harmless obligation includes, without limitation:

18.1.1.1. Any failure or alleged failure by Contractor to comply with any provision of law, any failure or alleged failure to timely and properly fulfill all of its obligations under the Contract Documents in strict accordance with their terms, and without limitation, any stop payment notice actions or liens, including liens by the California Department of Labor Standards Enforcement.

18.1.1.2. Any claim arising (including protests) from any errors or mistakes in Contractor's documents provided to Subcontractors.

18.1.2. Contractor shall give prompt notice to the District in the event of any injury (including death), loss, or damage included herein. Without limitation of the provisions herein, if Contractor's agreement to indemnify, defend, and hold harmless the Indemnitees as provided herein against liability for damage arising out of bodily injury to persons or damage to property caused by or resulting from the negligence of any of the Indemnitees shall to any extent be or be determined to be void or unenforceable, it is the intention of the parties that these circumstances shall not otherwise affect the validity or enforceability of Contractor's agreement to indemnify, defend, and hold harmless the rest of the Indemnitees, as provided

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herein, and in the case of any such suits, claims, damages, losses, or expenses caused in part by the default, negligence, or act or omission of Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, and in part by any of the Indemnitees, Contractor shall be and remain fully liable on its agreements and obligations herein to the full extent permitted by law.

18.1.3. In any and all claims against any of the Indemnitees by any employee of Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, Contractor's indemnification obligation herein shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

18.1.4. The defense and indemnification obligations hereunder shall survive the Completion of Work, including the warranty/guarantee period, and/or the termination of the Contract.

**18.2. District's Indemnity Obligation**.

18.2.1. District shall indemnify, but shall not be obligated to defend, Contractor from and against any claims, damages, expenses or liabilities connected with this Facilities Lease, only:

18.2.1.1. If those claims, damages, expenses or liabilities relate to District's status as a sublessee under this Facilities Lease;

18.2.1.2. To the extent that those claims, damages, expenses or liabilities arise from the negligence or willful acts or omissions of District, its officers, agents or employees; and

18.2.1.3. If those claims, damages, expenses or liabilities are unrelated to District's obligations to pay the Guaranteed Project Cost.

18.2.2. After the Commencement Date, the District shall also indemnify and defend Contractor from and against any claims, damages, expenses or liabilities including third-party tort or contract claims that arise from the District's use of the Facilities and that are not caused by the Contractor's Work on the Project or are not covered by Contractor's warranty(s) or guarantee(s) and.

18.2.3. Under no circumstances does the District's indemnity obligation herein include any obligation to indemnify the Contractor from any claims, damages, expenses or liabilities connected in any way with a third-party's challenge to the validity of the Site Lease and/or the Facilities Lease.

**18.3.** The Parties understand and acknowledge that the indemnity obligations stated herein may be mutual, comparative or contributory depending on the facts of specific circumstances.

**19. Eminent Domain**.

**19.1. Total Taking After Project Delivery.** If, following delivery of possession of the Project by Contractor to District, all of the Project and the Project Site(s) is taken permanently under the power of eminent domain, the Term shall cease as of the day possession shall be so taken.

19.1.1. The financial interest of Contractor shall be limited to the amount of principal payments pursuant to the Guaranteed Project Cost Provisions indicated in **Exhibit C** that are then due or past due together with all remaining and succeeding principal payments pursuant to the Guaranteed Project Cost Provisions indicated in **Exhibit C** for the remainder of the original Term.

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19.1.2. The balance of the award, if any, shall be paid to the District.

**19.2. Total Taking Prior to Project Delivery.** If all of the Project and the Project Site(s) is taken permanently under the power of eminent domain and the Contractor is still performing the work of the Project and has not yet delivered possession of the Project to District, the Term shall cease as of the day possession shall be so taken. The financial interest of Contractor shall be the amount Contractor has expended to date for work performed on the Project, subject to documentation reasonably satisfactory to the District.

**19.3. Partial Taking.** If, following delivery of possession of the Project by Contractor to District, less than all of the Project and the Project Site(s) is taken permanently, or if all of the Project and the Project Site(s) or any part thereof is taken temporarily, under the power of eminent domain:

19.3.1. This Facilities Lease shall continue in full force and effect and shall not be terminated by virtue of that partial taking and the Parties waive the benefit of any law to the contrary, and

19.3.2. There shall be a partial abatement of any principal payments pursuant to the Guaranteed Project Cost Provisions indicated in **Exhibit C** as a result of the application of the net proceeds of any eminent domain award to the prepayment of those payments hereunder. The Parties agree to negotiate, in good faith, for an equitable split of the net proceeds of any eminent domain award and a corresponding reduction in the payments required pursuant to the Guaranteed Project Cost Provisions indicated in **Exhibit C**, and

**20. Damage and Destruction**. If, following delivery of possession of the Project by Contractor to District, the Project is totally or partially destroyed due to fire, acts of vandalism, flood, storm, earthquake, Acts of God, or other casualty beyond the control of either party hereto, the Term shall end and District shall no longer be required to make any payments required pursuant to the Guaranteed Project Cost Provisions indicated in **Exhibit C** that are then due or past due or any remaining and succeeding principal payments pursuant to the Guaranteed Project Cost Provisions indicated in **Exhibit C** for the remainder of the original Term. The Contractor shall still be due any funds, payments, or disbursements from the District's rental interruption insurance to pay for the amounts that would otherwise have been due and owing from the District under **Exhibit C.**

**21. Abatement**.

**21.1.** If, after the Parties have executed the Memorandum of Commencement Date attached hereto as **Exhibit E,** the Project becomes destroyed or damaged beyond repair, the District may determine its use of the Project abated. Thereafter, the District shall have no obligation to make, nor shall the Contractor have the right to demand, any future Lease Payments as indicated in the Guaranteed Project Cost Provisions indicated in **Exhibit C** to this Facilities Lease. The Term shall cease at that time.

**21.2.** The Parties hereby agree that the net proceeds of the District's rental interruption insurance that the District must maintain during the Term, as required herein, shall constitute a special fund for the payment of the Lease Payments indicated in the Guaranteed Project Cost Provisions indicated in **Exhibit C**.

**21.3.** The District shall as soon as practicable after such event, at its discretion, apply the net proceeds of its insurance policy intended to cover that loss ("**Net Proceeds**"), either to:

21.3.1. Repair the Project to full use;

21.3.2. Replace the Project, at the District's sole cost and expense, with property of equal or greater value of the Project immediately prior to the time of the destruction or damage, with that replacement, once completed, shall be substituted in this Facilities Lease by appropriate endorsement; or

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**21.4.** The District shall notify the Contractor of which course of action it desires to take within thirty (30) days after the occurrence of the destruction or damage. The Net Proceeds of all insurance payable with respect to the Project shall be available to the District and shall be used to discharge the District's obligations under this Section.

**22. Access**

**22.1. By Contractor**.

22.1.1. Contractor shall have the right at all reasonable times to enter upon the Project Site(s) and any designated laydown areas to construct the Project pursuant to this Facilities Lease. Following the acceptance of the Project by District, Contractor 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 Contractor.

22.1.2. **Laydown Area.** Contractor's use of any designated laydown area is subject to the reservations, terms and conditions stated in the Contract Documents, including, but not limited to, Contractor's indemnity and hazards control obligations and is for the sole purposes of staging, fabrication, lay-down, and storage of materials and equipment relating to the Work. Any designated laydown area is provided to Contractor in its "AS-IS" condition and District makes no warranty or representations regarding the suitability of those areas for Contractor's purposes. On or before Completion of the Work, Contractor, at its sole expense, shall remove all improvements, equipment and debris from the laydown areas placed on or by or resulting from the activities of Contractor, its agents, representatives, or Subcontractors, and return the laydown area to District in good order and in a clean condition. Notwithstanding anything herein to the contrary, it is understood and agreed that District shall have the right from time to time to relocate, to other portions of the Project Site as designated by the District and reasonably acceptable to the Contractor, all or any portion of the laydown area. Any relocation shall be performed in a manner that does not materially interfere with Contractor's Work. District will provide Contractor with written notice of any proposed relocation and District and Contractor agree to meet with the other, at either's request, to discuss the proposed relocation and any matters that may be appropriate to determine whether the proposed relocation can or should be modified to limit any material adverse effects on the Work that are reasonably likely to occur in connection with the proposed relocation.

**22.2. By District**. The District shall have the right to enter upon the Project Site(s) at all times. District shall comply with all safety precautions and procedures required by Contractor.

**23. Assignment, Subleasing**

**23.1. Assignment and Subleasing by the District**. Any assignment or sublease by District shall be subject to all of the following conditions:

23.1.1. This Facilities Lease and the obligation of the District to make the payments required pursuant to the Guaranteed Project Cost Provisions indicated in **Exhibit C** shall remain obligations of the District; and

23.1.2. The District shall, within thirty (30) days after the delivery thereof, furnish or cause to be furnished to Contractor a true and complete copy of any assignment or sublease; and

**23.2. Assignment by Contractor.** Contractor may assign its right, title and interest in this Facilities Lease, in whole or in part to one or more assignees, only after the written consent of District, which District will not unreasonably withhold. No assignment shall be effective against the District unless and until the District has consented in writing. Notwithstanding anything to contrary contained in this Facilities Lease, no consent from

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the District shall be required in connection with any assignment by Contractor to a lender for purposes of financing the Project as long as there are not additional costs to the District.

**24. Event(s)s of Default of District**

**24.1. Event(s) of Default by District Defined**. The following shall be "Events of Default" of the District under this Facilities Lease. The terms "Event of Default" and "Default" shall mean, whenever they are used as to the District in the Site Lease or this Facilities Lease, shall only be one or more of the following events:

24.1.1. Failure by the District to pay payments required pursuant to the "Payment of the Guaranteed Project Cost" Provisions as indicated in **Exhibit C**, and the continuation of such failure for a period of forty-five (45) days.

24.1.2. Failure by the District to perform any material covenant, condition or agreement in this Facilities Lease and that failure continues for a period of forty-five (45) days after Contractor provides District with written notice specifying that failure and requesting that the failure be remedied; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, Contractor 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.

**24.2. Remedies on District's Default**. If there has been an Event of Default on the District's part, the Contractor may exercise any and all remedies available pursuant to law or granted pursuant to this Facilities Lease; provided, however, there shall be no right under any circumstances to accelerate any of the payments required pursuant to the Guaranteed Project Cost Provisions indicated in **Exhibit C** or otherwise declare those payments not then past due to be immediately due and payable.

24.2.1. Contractor may rescind its leaseback of the Project Site(s) to the District under this Facilities Lease and re-rent the Project Site(s) to another lessee for the remaining Term for no less than the fair market value for leasing the Project Site(s), which shall be:

24.2.1.1. An amount determined by a mutually-agreed upon appraiser, or

24.2.1.2. If an appraiser cannot be agreed to, an amount equal to the mean between a District appraisal and a Contractor appraisal for the Project Site(s), both prepared by an MAI-certified appraiser.

24.2.2. District's obligation to make the payments required pursuant to the Guaranteed Project Cost Provisions indicated in **Exhibit C** shall be:

24.2.2.1. Increased by the amount of costs, expenses, and damages incurred by the Contractor in re-renting the Project Site(s), and

24.2.2.2. Decreased by the amount of rent Contractor receives in reletting the Project Site(s).

24.2.3. The District agrees that the terms of this Facilities Lease constitute full and sufficient notice of the right of Contractor to re-rent the Project Site(s) in the Event of Default without effecting a surrender of this Facilities Lease, and further agrees that no acts of Contractor in performing a re-renting as permitted herein shall constitute a surrender or termination of this Facilities Lease, but that, on the contrary, in the event of an Event of Default by the District the right to re-rent the Project Site(s) shall vest in Contractor as indicated herein.

**24.3. District's Continuing Obligation.** Unless there has been damage, destruction, a Taking as described

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above, or the Contractor is in Default as indicated herein, the District shall continue to remain liable for the payments required pursuant to the Guaranteed Project Cost Provisions indicated in **Exhibit C** and those amounts shall be payable to Contractor at the time and in the manner as therein provided.

**24.4. No Remedy Exclusive**. No remedy herein conferred upon or reserved to Contractor 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 Contractor to exercise any remedy reserved herein, it shall be necessary to give notice, as indicated in this Facilities Lease and by law.

**25. Event(s) of Default of Contractor**

**25.1. Event(s) of Default by Contractor Defined.** The terms "Event of Default" and "Default", whenever they are used as to the Contractor in the Site Lease or this Facilities Lease, shall be one or more of the events identified in the "**Termination Due to Default of the Contractor"** section above.

**25.2. Remedies on Contractor's Default**. If there has been an Event of Default on the Contractor's part, the District may, without waiver of or prejudice to any other right or remedy, terminate the Site Lease and Facilities Lease.

25.2.1. If District terminates the Site Lease and the Facilities Lease pursuant to this section, the Project Site(s) and any improvements built upon the Project Site(s) shall vest in District upon termination of the Site Lease and Facilities Lease, and District shall thereafter be required to pay only the principal amounts then due and owing pursuant to the Guaranteed Project Cost Provisions indicated in **Exhibit C**, less any damages incurred by District due to Contractor's Default.

25.2.2. The District shall retain all rights it possesses as indicated in **Exhibit D** including, without limitation,

25.2.2.1. The right to assess liquidated damages due as permitted herein;

25.2.2.2. All rights the District holds to demand performance pursuant to the Contractor's required performance bond;

**26. Notices**. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed to have been received as indicated below and to the persons indicated below:

**26.1.** If notice is given by personal delivery thereof, it shall be considered delivered on the day of delivery.

**26.2.** If notice is given by overnight delivery service, it shall be considered delivered one (1) day after date deposited, as indicated by the delivery service.

| | |
|---|---|
| **If to District:**<br>**@District**<br>_____<br>_____, CA 9_____<br>ATTN: _____ | **If to Contractor:**<br>**@Contractor**<br>_____<br>_____, CA 9_____<br>ATTN: _____ |
| **With a copy to:**<br>Orbach Huff & Henderson LLP<br>6200 Stoneridge Mall Rd., Ste. 225<br>Pleasanton, CA 94588 | **With a copy to:**<br>_____<br>_____<br>_____, CA 9_____ |

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| | |
|---|---|
| ATTN: Philip Henderson, Esq. | ATTN: _____ |

The Contractor and the District, by notice given hereunder, may designate different addresses to which subsequent notices, certificates or other communications will be sent.

**27. Binding Effect**. This Facilities Lease shall inure to the benefit of and shall be binding upon Contractor and the District and their respective successors, transferees and assigns.

**28. 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.

**29. 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.

**30. Amendments, Changes and Modifications.** Except as to the termination rights of both Parties as indicated herein, this Facilities Lease may not be amended, changed, modified, altered or terminated without the written agreement of both Parties hereto.

**31. 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.

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

**33. Applicable Law.** This Facilities Lease shall be governed by and construed in accordance with the laws of the State of California, and venue for any action arising therefrom shall be in the County within which the School Site(s) is located.

**34. Attorney's Fees**. If either party brings an action or proceeding involving the Property or to enforce the terms of this Facilities Lease or to declare rights hereunder, each party shall bear the cost of its own attorneys' fees.

**35. 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.

**36. Prior Agreements**. This Facilities Lease and the corresponding Site Lease collectively contain all of the agreements of the Parties hereto with respect to any matter covered or mentioned in this Facilities Lease and no prior agreements or understanding pertaining to any such matter shall be effective for any purpose.

**37. Further Assurances**. Parties shall promptly execute and deliver all documents and instruments reasonably requested to give effect to the provisions of this Facilities Lease.

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

**39. Time of the Essence**. Time is of the essence with respect to each of the terms, covenants, and conditions of this Facilities Lease.

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**40. Force Majeure**. A party shall be excused from the performance of any obligation imposed in the Contract for any period and to the extent that a party is prevented from performing those obligation(s), in whole or in part, as a result of a Force Majeure Event consistent with the provisions of **Exhibit D.** A Force Majeure event shall not be a basis for a default hereunder or a ground for termination of the Facilities Lease.

**41. Interpretation**. None of the Parties hereto, nor their respective counsel, shall be deemed the drafters of this Facilities Lease for purposes of construing the provisions thereof. The language in all parts of this Facilities Lease shall in all cases be construed according to its fair meaning, not strictly for or against any of the Parties hereto.

**IN WITNESS WHEREOF**, the Parties have accepted and agreed to this Facilities Lease, as of the Effective Date, and have directed and authorized their respective officers to execute this Facilities Lease:

| **@District** | **@Contractor** |
|---|---|
| By: _____ | By: _____ |
| Print Name: _____ | Print Name: _____ |
| Print Title: _____ | Print Title: _____ |

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**EXHIBIT A**
**TO FACILITIES LEASE**

**PROJECT SITE(S) INFORMATION**
**AND**
**PROJECT(S) INFORMATION**

**1. DESCRIPTION OF PROJECT SITE(S):**

**[EXAMPLE]:**



**Project Site(s) Description**: The area outlined in **red** in the above image is the Project Site. This is the only **portion** of the School Site(s) that the District is leasing to the Contractor and that is subject to the Site Lease and the Facilities Lease and upon which Contractor will construct the Project(s). The District has the legal description of the School Site(s) and/or the APN for the School Site(s) at the District Office, which is incorporated, for reference only, into this **Exhibit A**. To avoid any ambiguity, the Parties expressly acknowledge and agree that the APN for the School Site(s) is referenced for the sole purpose of identifying the School Site(s) on which the Project Site(s) is situated and is not intended to identify the legal description of the Project Site and/or Contractor's leasehold interest created by this Facilities Lease.

**Laydown Area & Access:** The area outlined and identified in **blue** in the above image is a laydown area adjacent to the Project Site(s) and the pathway for Contractor's access to the laydown area and the Project Site(s), and which the Contractor shall secure and provide a barrier around in the same manner that the Contractor is securing the Project Site(s). Contractor shall have full access to and use of this area during construction, but this area is **neither** part of the Project Site **nor** is this area subject to the Site Lease and the Facilities Lease.

**2. DESCRIPTION OF THE PROJECT**

**[DESCRIBE PROJECT(S); EXAMPLE]: _____ Project consists of _____ phases. Phase _____ is demolition of _____. Phase _____ is the Construction of _____**

**[INCLUDE IF CONTRACTOR PERFORMS PRELIMINARY SERVICES AND PARTIES AMEND FOR GPC]**
**CONTRACTOR SHALL NOT BEGIN WORK ON THE CONSTRUCTION PHASE OF THE PROJECT UNTIL THE PARTIES HAVE AMENDED THE AGREEMENT TO INCLUDE A GUARANTEED PROJECT COST, AND THE DISTRICT HAS ISSUED A NOTICE TO PROCEED FOR CONSTRUCTION TO THE CONTRACTOR.**

**Note:** If Contractor or any of its subcontractors intend to use on the Project any In-Use-Off-Road Deisel-Fueled Fleets, as that term is defined in Title 13, California Code of Regulations, section 2449(b)(1), then Contractor must submit a Certificate of Reported Compliance for the each of the fleets and subcontractors listed in the Agreement

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**EXHIBIT B**
**TO FACILITIES LEASE**
**[RESERVED]**

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**EXHIBIT C**
**TO FACILITIES LEASE**

**GUARANTEED PROJECT COST AND**
**OTHER PROJECT COST, FUNDING, AND PAYMENT PROVISIONS**

**1. Preliminary Services Payments. [IF APPLICABLE]** The terms and conditions pertaining to the payment for Preliminary Services, if any, under the Facilities Lease, are set forth in the Agreement for Preliminary Services (**Exhibit L** to the Facilities Lease).

**2. Site Lease Payments.** Pursuant to the Site Lease, Contractor shall pay **$1.00** per year to the District as consideration for the Site Lease until the expiration or termination of the Site Lease and/or the Facilities Lease.

**3. Guaranteed Project Cost (or Guaranteed Maximum Price)**. Pursuant to the Facilities Lease, Contractor will cause the Project to be constructed for **$**_____), ("**Guaranteed Project Cost" or "GPC" or "Guaranteed Maximum Price" or "GMP**"). Except as indicated herein for modifications to the Project approved by the District pursuant to **Exhibit D**, or by written amendment, Contractor will not seek additional compensation from District in excess of the GPC. District shall pay the GPC to Contractor in the form of Tenant Improvement Payments and Lease Payments. District shall also pay the accrued interest on Lease Payments as indicated herein. The GPC shall be calculated as follows, and shall include the following components, as further detailed below:

| **DETAILED GPC TABLE** | | | |
|---|---|---|---|
| **Item** | **Component** | **Percentage** | **Amount** |
| **COST TO PERFORM WORK & GENERAL CONDITIONS** | | | |
| (A) | **Cost to Perform Work**<br>(Subcontractor costs plus costs of Contractor-performed work) | | **$** |
| (B) | **General Conditions**<br>(Including all General Requirements) | | **$** |
| **(C)** | **SUBTOTAL OF COST TO PERFORM WORK & GENERAL CONDITIONS** | | **$** |
| **MARK-UPS** | | | |
| (D) | **Bonds** (Proposed & agreed-upon % multiplied by **(C)**) | % | **$** |
| (E) | **Insurance** (Proposed & agreed-upon % multiplied by **(C)**) | **%** | **$** |
| (F) | **Overhead & Profit** (Proposed & agreed-upon % multiplied by **(C)**) | **%** | **$** |
| **(G)** | **TOTAL INITIAL MARK-UP** | | **$** |
| **CONTINGENCIES(S) / ALLOWANCES** | | | |
| (H) | **Contingency**<br>(Only if agreed to and indicate as a set amount, not a percentage) | | **$** |
| (I) | **Allowance(s)**<br>(Only if agreed to and indicate as a set amount, not a percentage) | | **$** |
| **(J)** | **TOTAL CONTINGENCIES & ALLOWANCES** | | **$** |
| | **TOTAL GPC (C) + (G) + (J)** | | **$** |

| | | |
|---|---|---|
| | **Interest on Lease Payments**<br>(**FOR PARTIES INFORMATION**, identify total anticipated amount here) | **$** |
| | **TOTAL GPC + Anticipated Interest on Lease Payments** | **$** |

**3.1. Cost to Perform Work.**

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3.1.1. **Subcontract Costs.** Payments made by the Contractor to Subcontractors, which payments shall be made in accordance with the requirements of the Contract Documents. The final, contracted-for amount between the Contractor and each Subcontractor shall be the exact amount that is put into the final GPC, after all leveling between trades and subcontractors and without any added allowances or contingencies, unless specifically identified and approved, in advance, by the District.

3.1.2. **Contractor-Performed Work.** Costs incurred by the Contractor for self-performed work, if approved in advance by the District and procured pursuant to the Contract Documents.

**3.2.** **General Conditions.** The fixed amount to be paid for all costs for labor, equipment and materials for the items identified therein which are necessary for the proper management of the Project, and shall include all costs paid or incurred by the Contractor (except for insurance); all fees, permits, assessments and charges that are required to be paid to other agencies or entities to permit, authorize or entitle construction, reconstruction or completion of the Project; taxes; and all contributions, assessments and benefits, holidays, vacations, retirement benefits, and incentives, whether required by law or collective bargaining agreements or otherwise paid or provided by Contractor to its employees. The District reserves the right to request changes to the personnel, equipment, or facilities provided as General Conditions as may be necessary or appropriate for the proper management of the Project, in which case, the cost of General Conditions shall be increased or reduced accordingly.

**3.3.** **Bonds.** Mark-up for Bonds shall be [**Insert Number**] **percent (X%)** calculated against the Costs to Perform Work and General Conditions, but **NOT** against the Contingency and Allowance(s) amount(s).

**3.4.** **Insurance**. Mark-up for Insurance shall be [**Insert Number**] **percent (X%)** calculated against the Costs to Perform Work and General Conditions, but **NOT** against the Contingency and Allowance(s) amount(s).

**3.5.** **Overhead and Profit**. Mark-up for Overhead and Profit shall be [**Insert Number**] **percent (X%)** calculated against the Costs to Perform Work and General Conditions, but **NOT** against the Contingency and Allowance(s) amount(s).

**3.6.** **Contingency**.

[**OPTIONAL. AMOUNTS OF THE CONTINGENCY ARE TO BE NEGOTIATED AT THE TIME THE GUARANTEED PROJECT COST IS SET**]

3.6.1. **Contingency Amount.** A contingency of **$_____** ("**Contingency**") is included in the Guaranteed Project Cost and may be used at the Contractor's request only upon obtaining the District's prior written approval consistent with the requirements herein.

3.6.2. **Mark-Up Contingency Only When Used.** When the Parties establish the Guaranteed Project Cost, Contractor shall **NOT** calculate mark-up for Bonds, Insurance, and Overhead and Profit for the Contingency. When Contractor is pricing any Work paid from the Contingency, Contractor may mark-up its pricing in the same structure it can for a Change Order (see the "Format for Proposed Change Order" section in **Exhibit D)**, but only if the Contractor did not include the Contingency amount when it priced its Fee, bonds and insurance, overhead or profit to establish the GPC.

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3.6.3. **Requests for Use of Contingency.** Prior to performing any Work that Contractor intends to be paid for out of any portion of the Contingency, Contractor must submit to the District a written request for the Contractor's use of the Contingency that shall include:

3.6.3.1. The same detail and requirements as a Proposed Change Order as indicated in **Exhibit D**; and

3.6.3.2. Substantiation enabling the District to determine that the proposed use of the Contingency covers one of the items below for an "Allowable Contingency Use" and "Conditions for Contingency Use."

3.6.4. **Allowable Contingency Use.** The Contingency shall only be used for the following items:

3.6.4.1. Scope gaps;

3.6.4.2. Costs to address unforeseen safety items not contemplated by the Parties at the time of the execution of the Contract;

3.6.4.3. Construction associated with the refinement of incomplete design information within the Plans and Specifications ("**Missing Design Information**") that **could** have been identified by the District and corrected prior to the District's issuance of the request for proposal (or request for qualifications and proposals) for this Project. If Contractor performed Preliminary Services including constructability review, the preceding shall only apply if the Missing Design Information **could not** have been reasonably identified by Contractor at that time.

3.6.4.4. Damage that has occurred between trades during construction, excluding: (i) costs of repairing or correcting Work damaged or improperly executed by workers; (ii) work that was improperly or incorrectly performed by Contractor or its subcontractors or suppliers; or (iii) damage that is covered by Contractor's or Subcontractor's insurance, excluding the District's insurance; or

3.6.4.5. Other items requested by the Contractor if approved by the District in writing, in the District's sole discretion.

3.6.5. **Conditions for Contingency Use.** The Contingency shall only be used if **all** the following conditions are satisfied:

3.6.5.1. If Contractor demonstrates that the item was not otherwise in its or its Subcontractors' pricing for the Project; and

3.6.5.2. Only if the cost of the Work is not recoverable by Contractor from any other available funding source, including, without limitation, from others, by insurance or otherwise.

3.6.6. **Substantiating Contingency Use.** Contractor shall prepare documents for its use of Contingency through the "Changes in the Work" section of **Exhibit D**. Any PCO shall identify that Contractor shall be compensated out of the Contingency. Contractor shall prepare an updated Schedule of Values that includes a line item for the Work approved by the District in connection with the PCO. Unless the Contingency is not within the Guaranteed Project Cost, the District does not need to issue a Change Order to

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authorize the use of Contingency, and may instead provide Contractor written authorization for the use of Contingency.

3.6.7. **Contingency Exhaustion.** If Contractor depletes the Contingency, any costs for items referenced in this "Contingency" section shall be at the Contractor's sole expense.

3.6.8. **End of Project Reconciliation.** The unused portion of the Contingency shall be retained by the District at the end of the Project and will be documented by the District through any reasonable means, including, without limitation, a deductive Change Order.

**3.7. Allowances.**

3.7.1. Allowances in the amount of **$_____** for the specific scopes and amounts as indicated below ("**Allowance(s)**"), are included in the Guaranteed Project Cost and may be used at the Contractor's request only upon obtaining the District's prior written approval consistent with the requirements herein.

**LIST ANY, IF APPLICABLE; IDENTIFY SPECIFIC SCOPES AND AMOUNTS]**

| | |
|---|---|
| Allowance to _____<br>**[LIST SCOPE OF ALLOWANCE, IF APPLICABLE]** | $_____<br>**[LIST AMOUNT OF ALLOWANCE]** |
| Allowance to _____<br>**[LIST SCOPE OF ALLOWANCE, IF APPLICABLE]** | $_____<br>**[LIST AMOUNT OF ALLOWANCE]** |
| Allowance to _____<br>**[LIST SCOPE OF ALLOWANCE, IF APPLICABLE]** | $_____<br>**[LIST AMOUNT OF ALLOWANCE]** |

3.7.2. **Mark-Up Allowance(s) Only When Used.** When the Parties establish the Guaranteed Project Cost, Contractor shall **NOT** calculate mark-up for Bonds, Insurance, and Overhead and Profit for the Allowance(s). When Contractor is pricing any Work paid from the Allowance(s), Contractor may mark-up its pricing in the same structure it can for a Change Order (see the "Format for Proposed Change Order" section in **Exhibit D),** but only if the Contractor did not include the Allowances amount when it priced its Fee, bonds and insurance, overhead or profit to establish the GPC.

3.7.3. **Requesting Use of Allowance(s).** District may authorize the use Allowance(s) in its discretion. Contractor may request to use Allowance(s), but must do so by submitting to the District a written request for the use of an Allowance that shall include:

3.7.3.1. The same detail and requirements as a Proposed Change Order as indicated in **Exhibit D**;

3.7.3.2. An explanation in sufficient detail demonstrating to the District's satisfaction that the use of the Allowance is necessary to complete the Project; and

3.7.3.3. Substantiation enabling the District to determine that the proposed use of the Allowance covers one of the scopes of the Allowances above

3.7.4. **Cost of Allowance Work Exceeds Allowance.** Contractor acknowledges and agrees that it prepared the Allowance(s) amounts. If the actual cost of Work for any portion of the Allowance exceeds the amount identified by Contractor for that Work in the Allowance, Contractor shall be solely responsible for all additional costs unless otherwise provided by the Contract Documents.

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3.7.5. **End of Project Reconciliation.** The unused portion of the Allowance(s) shall be retained by the District at the end of the Project and will be documented by the District through any reasonable means, including, without limitation, a deductive Change Order.

**4. Payment of Guaranteed Project Cost**. District shall pay the Guaranteed Project Cost to Contractor in the form of Tenant Improvement Payments and Lease Payments plus interest as indicated herein.

**4.1. Tenant Improvement Payments**. Prior to the District's taking delivery or occupancy of the Project, the District shall pay to Contractor **$_____** ("**Tenant Improvement Payment(s)**"), based on the amount of Work satisfactorily performed and approved by the District less the total amount to be paid as Lease Payments, according to the Contractor's Schedule of Values (**Exhibit G** to the Facilities Lease) and pursuant to the provisions in **Exhibit D** to the Facilities Lease.

**4.2. Lease Payments Plus Interest**. Thirty (30) days after the Parties execute the Memorandum of Commencement Date attached to the Facilities Lease as **Exhibit E** and the Contractor has completed and satisfied the conditions indicated below, the District shall pay to Contractor **$_____** ("**Lease Payment(s)**") plus interest, as indicated below.

4.2.1. It is the intent of the Parties that the Lease Payments plus interest will be kept from the Contractor's final payment application(s), including payment application(s) seeking payment of any Retention held pursuant to the Contract Documents.

4.2.2. The Lease Payments plus interest shall be consideration for the District's rental, use, and occupancy of the Project and the School Site(s) and shall be made in equal monthly installments for the duration of the Term.

4.2.3. The District represents that the total annual Lease Payment plus interest obligation does not surpass the District's annual budget and will not require the District to increase or impose additional taxes or obligations on the public that did not exist prior to the execution of the Facilities Lease.

4.2.4. **Fair Rental Value**. District and Contractor have agreed and determined that the total Lease Payments plus interest constitute adequate consideration for the lease term in the Facilities Lease and are reasonably equivalent to the fair rental value of the Project. In making such determination, consideration has been given to the obligations of the Parties under the Facilities Lease and Site Lease, the uses and purposes which may be served by the Project and the benefits therefrom which will accrue to the District and the general public.

4.2.5. **Each Payment Constitutes a Current Expense of the District.**

4.2.5.1. The District and Contractor understand and intend that the obligation of the District to pay Lease Payments plus interest 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.

4.2.5.2. Lease Payments plus interest due hereunder shall be payable only from current funds which are budgeted and appropriated or otherwise made legally

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available for this purpose. This Facilities Lease shall not create an immediate indebtedness for any aggregate payments that may become due hereunder.

4.2.5.3. The District covenants to take all necessary actions to include the estimated Lease Payments plus interest in each of its final approved annual budgets.

4.2.5.4. The District further covenants to in good faith make all necessary appropriations (including any supplemental appropriations) from any source of legally available funds of the District for the actual amount of Lease Payments plus interest that come due and payable during the period covered by each such budget. Contractor acknowledges that the District has not pledged the full faith and credit of the District, State of California or any state agency or state department to the payment of Lease Payments plus interest 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.

4.2.5.5. The Contractor cannot, under any circumstances, accelerate the District's payments under the Facilities Lease, but the District may elect to buyout the Facilities Lease as provided for herein.

4.2.6. **Timing of Lease Payments.** The first Lease Payment is due only after the following conditions have been completed and satisfied:

4.2.6.1. The Final Tenant Improvement Payment has been paid;
4.2.6.2. All applicable Retention (less the Lease Payments) has been paid pursuant to the terms of the Contract Documents;
4.2.6.3. The Parties have executed the Memorandum of Commencement Date, attached to the Facilities Lease as **Exhibit E**; and
4.2.6.4. The Contractor has provided a duly completed and executed "**Unconditional Waiver and Release upon Final Payment**" compliant with Civil Code section 8138 from all subcontractors of any tier and suppliers that each has been paid all amounts owing to it from the Contractor for all work on the Project.

4.2.7. The Lease Payment Amount shall be paid pursuant to the following structure and the annual interest rate shall be at _____ **percent**. To the extent that the Term runs into a subsequent calendar year, the interest rate shall not adjust, unless agreed upon by the District in writing. The first payment is due 30 Days after execution of the Memorandum of Commencement Date and the above conditions have been completed and satisfied.

| Date of Payment | **(A)** Lease Payments | **(B)** Interest Due on Lease Payment | Amount Due by District to Contractor **(A + B)** |
|---|---|---|---|
| First Payment | 1/12 of Lease Payment | $___ | $___ |
| 30 days thereafter | 1/12 of Lease Payment | $___ | $___ |
| 30 days thereafter | 1/12 of Lease Payment | $___ | $___ |
| 30 days thereafter | 1/12 of Lease Payment | $___ | $___ |

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| | | | |
|---|---|---|---|
| 30 days thereafter | 1/12 of Lease Payment | $___ | $___ |
| 30 days thereafter | 1/12 of Lease Payment | $___ | $___ |
| 30 days thereafter | 1/12 of Lease Payment | $___ | $___ |
| 30 days thereafter | 1/12 of Lease Payment | $___ | $___ |
| 30 days thereafter | 1/12 of Lease Payment | $___ | $___ |
| 30 days thereafter | 1/12 of Lease Payment | $___ | $___ |
| 30 days thereafter | 1/12 of Lease Payment | $___ | $___ |
| 30 days thereafter | 1/12 of Lease Payment | $___ | $___ |
| **Total** | **$___** | **$___** | **$___** |

4.2.8. **Financed Portion of Lease Payments.** The District requires the Contractor to finance a portion of the Lease Payments and that financing is reflected in the table above.

**4.3.** In no event shall the cumulative total of the Tenant Improvement Payments and the Lease Payments plus interest ever exceed the Guaranteed Project Cost as defined herein, unless modified pursuant to **Exhibit D** to the Facilities Lease.

**5. Changes to Guaranteed Project Cost.**

**5.1.** As indicated in the Facilities Lease, the Parties may add or remove specific scopes of work from the Project. Based on these change(s), the Parties may agree to a reduction or increase in the Guaranteed Project Cost. If a cost impact or a change is agreed to by the Parties, it shall be reflected as a reduction or increase in the Tenant Improvement Payments and paid upon the payment request from the Contractor when the work is performed or deducted from the next payment request from the Contractor, as applicable. Any change to the Guaranteed Project Cost shall not affect the Lease Payments, nor the interest rate, unless expressly agreed upon by the District in writing.

**5.2.** The Parties acknowledge that the Guaranteed Project Cost is based on the Construction Documents, including the Plans and Specifications, as identified in **Exhibit J** to the Facilities Lease.

**5.3.** **Cost Savings.** Contractor shall work cooperatively with Architect, subcontractors and District, in good faith, to identify appropriate opportunities to reduce Project costs and promote cost savings. Any identified cost savings from the Guaranteed Project Cost shall be identified by Contractor, and if approved in writing by the District, that cost savings shall be deducted from the Guaranteed Project Cost. If any cost savings require revisions to the Construction Documents, Contractor shall work with the District with respect to revising the Construction Documents and, if necessary, obtaining the approval of DSA with respect to those revisions. At the District's discretion, any reasonable cost incurred by District and/or the Contractor for those revisions may be paid for out of the identified savings before it is deducted from the Guaranteed Project Cost. Contractor shall be entitled to an extension of Contract Time equal to the delay in Project Completion caused by any cost savings adopted by District, if requested in writing before the approval of the cost savings.

**5.4.** **Insurance and Bond Reimbursements.** At Project Completion, Contractor shall require reimbursement from its insurance brokers and/or insurers and its bond brokers and/or sureties, all portions of Contractor's bond premiums, either paid or to be paid, that are not at-risk due to a reduction in the Guaranteed Project Cost. All amounts of premium reimbursement that Contractor receives from the Contractor's insurance brokers and/or insurers and its bond brokers and or sureties, shall be withheld by District from Contractor's Lease Payment(s). The District shall estimate this amount until Contractor indicates what the total amount of this reimbursement.

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**6. Future Buyout of Facilities Lease.** The District may choose to buyout the Lease Payments in a lump sum during the term of the Facilities Lease. The Parties agree that any buyout will be memorialized in writing and serve to terminate the Site Lease and the Facilities Lease and will reduce the interest owed based on the time of the buyout. Under no circumstances can this buyout occur until at least sixty (60) days after Project Completion or the Execution of the Memorandum of Commencement Date, whichever is later. In no event shall any buyout increase the total amount of Lease Payment amounts, plus interest in excess of the amounts included in the Project's Guaranteed Project Cost.

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**EXHIBIT D**
**TO FACILITIES LEASE**

**GENERAL CONSTRUCTION PROVISIONS**
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**This Exhibit D constitutes the "General Construction Provisions" (sometimes called the "General Conditions") that govern the overall construction and Project Completion by Contractor.**

## 1. CONTRACT TERMS AND DEFINITIONS

### 1.1. Definitions

**Wherever used in the Contract Documents, the following terms shall have the meanings indicated, which shall be applicable to both the singular and plural thereof:**

**1.1.1. Adverse Weather**: Shall be only weather that satisfies all of the following conditions: (1) unusually severe precipitation, sleet, snow, hail, heat, or cold conditions in excess of the norm for the location and time of year it occurred, and (2) at the Project Site(s).

**1.1.2. Allowance(s)**: Amount(s) that are within the GPC that, if used at all consistent with the requirements of the Contract Documents, will be to pay for the cost or construction of a scope of work identified in **Exhibit C** at the time the Allowance(s) is utilized. The Allowance(s) for the Project are in **Exhibit C**.

**1.1.3. Approval, Approved, and/or Accepted**: Refer to written authorization, unless stated otherwise.

**1.1.4. Architect**: The individual, partnership, corporation, joint venture, or any combination thereof, named as Architect, who will have the rights and authority assigned to the Architect in the Contract Documents. The term Architect means the District's Architect on this Project or the Architect's authorized representative.

**1.1.5. As-Built Drawings**: A reproducible full-size sets of drawings to be prepared on a monthly basis, and upon Project Completion, pursuant to the Contract Documents, that reflect changes made during the performance of the Work, recording differences between the original design of the Work and the Work as constructed.

**1.1.6. Beneficial Occupancy**: Occupancy of the Project by the District for its intended purpose and which produces relatively little interference with the Contractor in completing construction. There is no "Substantial Completion" for this Project.

**1.1.7. Change Order**: A written order to the Contractor authorizing an addition to, deletion from, or revision in the Work, and/or authorizing an adjustment in the Guaranteed Project Cost or Contract Time as described in the "Changes in the Work" section of this **Exhibit D**. If a Change Order is required to be approved by DSA, the District may call it a Construction Change Document.

**1.1.8. Completion** (or "**Project Completion")**: Where the Work to construct the Project is 100% complete, including all punch list items. Final DSA approval of the Project is not required for Project Completion. There is no "Substantial Completion" for this Project. The Parties acknowledge that if the phrase "substantial completion" is in any Contract Document, that substantial completion is not a Project or Contract milestone.

**1.1.9. Construction Manager** (or "**Project Manager**"): The individual, partnership, corporation, joint venture, or any combination thereof, or its authorized representative, named as such by the District. If no Construction Manager is used on the Project that is the subject of this Contract, then all references to Construction Manager herein shall be read to refer to District.

**1.1.10. Construction Schedule**: The progress schedule of construction of the Project prepared and

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provided by Contractor and approved by District, consistent with the requirements of the Contract Documents. The updated Construction Schedule submitted monthly by Contractor as required in this **Exhibit D** may be referred to as the "**Monthly Progress Schedule**".

**1.1.11. Contract, Contract Documents**: The Contract consists exclusively of the documents evidencing the agreement of the District and Contractor, identified as the Contract Documents. The Contract Documents consist of the following documents:

1.1.11.1. Site Lease
1.1.11.2. Facilities Lease, with all of its Exhibits
1.1.11.3. These General Construction Provisions
1.1.11.4. Noncollusion Declaration
1.1.11.5. Certifications to be Completed by Contractor
1.1.11.6. Disabled Veterans Business Enterprise Participation Certification
1.1.11.7. Criminal Background Investigation/Fingerprinting Certification
1.1.11.8. Performance Bond
1.1.11.9. Payment Bond (Contractor's Labor & Material Bond)
1.1.11.10. All Division 1 Documents, which shall only supplement these General Construction Provisions, but shall not control if their provisions contradict these Construction Provisions
1.1.11.11. All Plans, Technical Specifications, and Drawings
1.1.11.12. Any and all addenda to any of the above documents
1.1.11.13. Any and all change orders or written modifications to the above documents if approved in writing by the District

**1.1.12. Contract Time**: The time period stated in **Exhibit F** for Project Completion.

**1.1.13. Contractor**: The licensed person, entity, or entities identified in the Facilities Lease as contracting to perform the Work to be done under this Contract.

**1.1.14. Daily Job Report(s)**: Daily Project reports prepared by the Contractor's employee(s) who are present on Site, which shall include the information required herein.

**1.1.15. Day(s)**: Unless otherwise designated, day(s) means calendar day(s). "**Business Days**" shall mean days except Saturday, Sunday, a day that is federally-recognized holiday, or a day that is a California-recognized holiday

**1.1.16. Defective or Nonconforming Work**: Defective or nonconforming Work is any Work which is unsatisfactory, faulty or deficient by: (a) not conforming to the requirements of the Contract Documents; (b) not conforming to the standards of workmanship of the applicable trade; (c) not being in compliance with the requirements of any inspection, reference, standard, test, or approval required by the Contract Documents; or (d) not conforming with applicable codes or regulations; or (e) damage to Work occurring prior to Completion.

**1.1.17. District**: The public agency or the school district for which the Work is performed. The governing board of the District or its designees will act for the District in all matters pertaining to the Contract. The District may, at any time,

1.1.17.1. Direct the Contractor to communicate with or provide notice to the Construction Manager or the Architect on matters for which the Contract Documents indicate the Contractor will communicate with or provide notice to the District; and/or

1.1.17.2. Direct the Construction Manager or the Architect to communicate with or direct the

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Contractor on matters for which the Contract Documents indicate the District will communicate with or direct the Contractor.

**1.1.18. Drawings** (or **"Plans"**): The graphic and pictorial portions of the Contract Documents showing the design, location, scope and dimensions of the work, generally including plans, elevations, sections, details, schedules, sequence of operation, and diagrams.

**1.1.19. DSA:** Division of the State Architect.

**1.1.20. Force Account Directive**: A process that may be used when the District and the Contractor cannot agree on a price for a specific scope of work or before Contractor prepares a price for the scope of work and Contractor is directed in writing by the District to perform on a time and materials basis.

**1.1.21. Force Majeure** (or "**Force Majeure Event**"):

1.1.21.1. The terms "Force Majeure" or "Force Majeure Event" mean one (1) or more of the following events that prevents the District's or the Contractor's performance and is beyond the reasonable contemplation of the Parties at the time the District awarded the Contract: fires; floods; lightning; explosion; windstorms; tornadoes; earthquakes; other natural catastrophes which neither Party can prevent; acts of nature or public enemy (including acts of terrorism); war (declared or undeclared); riot or similar civil disturbance; blockade; insurrections; revolution; epidemics; pandemics; viral outbreaks; quarantine restrictions; strikes; lockouts and other labor disputes; fuel shortages; or freight embargoes. Force Majeure Events may include the actions or omissions of third parties not under control of the Contractor or the District. Notwithstanding the preceding, Force Majeure Events will not include (a) strikes or lockouts involving the Contractor or Contractor's employees, (b) strikes or lockouts involving the Contractor's Subcontractors or Subcontractors' employees unless Contractor has taken all diligent efforts to avoid or minimize the strikes or lockouts, (c) poor air quality, regardless of the cause.

1.1.21.2. Notwithstanding the foregoing, Contractor agrees that the Contract Price and Contract Time is based on Contractor's full compliance with all applicable and existing federal, state, and/or local statutes, orders, rules, regulations, ordinances, and/or directives relating to construction site safety in connection with any Infectious Disease (as defined below). Therefore, any delay associated with any Infectious Disease, or any federal, state, or local order relating thereto, will not be considered a Force Majeure Event.

**1.1.22. Guaranteed Project Cost (**or **"GPC"** or **"Guaranteed Maximum Price"** or **"GMP")**: The total monies payable to the Contractor under the terms and conditions of the Contract Documents. The Guaranteed Project cost is in **Exhibit C** and may only be adjusted consistent with the requirements of the Contract Documents. The "**Contract Price**" shall refer to the Guaranteed Project Cost as defined herein.

**1.1.23. Liquidated Damages**: The amount set forth in the Facilities Lease that District may assess against Contractor for each day of delay past the date for Project Completion, consistent with the terms of these Contract Documents.

**1.1.24. Plans and Specifications**: The final DSA approved "**Plans**" and "**Specifications**" as each are defined in this **Exhibit D**, and as further described in **Exhibit J.**

**1.1.25. Product(s):** New material, machinery, components, equipment, fixtures and systems forming the Work, including existing materials or components required and approved by the District for reuse.

**1.1.26. Product Data**: Illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate a material, product, or system

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for some portion of the Work.

**1.1.27. Project**: The construction of the public works identified in the Facilities Lease and further described in the Contract Documents, including, without limitation, the Plans and Specifications in **Exhibit J**.

**1.1.28. Project Inspector** (or "**Inspector**" or "**IOR**"): The individual(s) retained by the District in accordance with title 24 of the California Code of Regulations to monitor and inspect the Project. If no Project Inspector is used on the Project, then all references in the Contract Documents to Project Inspector shall be read to refer to the District.

**1.1.29. Program Manager**: The individual, partnership, corporation, joint venture, or any combination thereof, or its authorized representative, named as such by the District. If no Program Manager is designated for Project that is the subject of this Contract, then all references to Program Manager herein shall be read to refer to District.

**1.1.30. Provide**: Shall include "provide complete in place," that is, "furnish and install," and "provide complete and functioning as intended in place" unless specifically stated otherwise.

**1.1.31. Request for Information (**or **"RFI")**: A written request prepared by the Contractor requesting that the Architect provide additional information necessary to clarify or amplify an item in the Contract Documents that the Contractor believes is not clearly shown or called for in the Drawings or Specifications or other portions of the Contract Documents, or to address problems that have arisen under field conditions.

**1.1.32. Request for Substitution**: A request by Contractor to substitute an equal or superior material, product, thing, or service for a specific material, product, thing, or service that has been designated in the Contract Documents by a specific brand or trade name**.**

**1.1.33. Safety Orders**: Written and/or verbal orders for construction issued by the California Division of Industrial Safety ("**CalOSHA**") or by the United States Occupational Safety and Health Administration ("**OSHA**").

**1.1.34. Safety Plan**: Contractor's safety plan specifically adapted for the Project. Contractor's Safety Plan shall comply with all provisions regarding Project safety, including all applicable provisions in these General Construction Provisions.

**1.1.35. Samples**: Physical examples that illustrate materials, products, equipment, finishes, colors, or workmanship and that, when approved in accordance with the Contract Documents, establish standards by which portions of the Work will be judged.

**1.1.36. Shop Drawings**: All drawings, prints, diagrams, illustrations, brochures, schedules, and other data that are prepared by the Contractor, a subcontractor, manufacturer, supplier, or distributor, that illustrate how specific portions of the Work shall be fabricated or installed.

**1.1.37. Site**: The Project Site(s) as identified in **Exhibit A** and further depicted in the Drawings.

**1.1.38. Specifications**: That portion of the Contract Documents, Division 1 through Division 49, and all technical sections, and addenda to all of these, if any, consisting of written descriptions and requirements of a technical nature of materials, equipment, construction methods and systems, standards, and workmanship.

**1.1.39. Standard of Care.** Contractor shall perform all of its Services, including all due diligence tasks,

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constructability reviews, value engineering recommendations and Preliminary Services, pursuant to the standard of care of a contractor performing similar tasks for California school districts, which shall not include any design, architectural, or engineering responsibility for the Project.

**1.1.40. Subcontractor**: A contractor and/or supplier who is under contract with the Contractor or with any other subcontractor, regardless of tier, to perform a portion of the Work of the Project.

**1.1.41. Submittal Schedule:** The schedule of submittals as provided by Contractor and approved by District.

**1.1.42. Surety**: The person, firm, or corporation that executes as surety the Contractor's Performance Bond and Payment Bond, and must be a California admitted surety insurer as defined in the Code of Civil Procedure section 995.120.

**1.1.43. Unforeseen Site Conditions**: Conditions actually encountered on the Site that were reasonably unforeseeable based on all the information available to Contractor prior to the Parties agreeing to the Guaranteed Project Cost, **and** that are one (1) **or more** of the following:

1.1.43.1. Subsurface or latent physical conditions at the Site differing materially from those indicated in any information provided to the Contractor by the District and/or Architect, including the Plans and Specifications; or

1.1.43.2. Unknown physical conditions at the Site of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in Work of the character provided for in the Contract Documents; or

1.1.43.3. Unknown Hazardous Materials on the Site.

**1.1.44. Unilateral Change Order**: A written order prepared and issued by the District, the Construction Manager, and/or the Architect and signed by the District and the Architect, directing a change in the Work. **A Unilateral Change Order is NOT a Construction Change Document (which is defined above as a Change Order that DSA must approve).**

**1.1.45. Work**: All labor, materials, equipment, components, appliances, supervision, coordination, and services required by, or reasonably inferred from, the Contract Documents, that are necessary for Project Completion.

**1.2. Meaning of General Terms**

The term "provide" means "provide complete in place" or to "furnish and install" such item. Unless otherwise provided in the Contract Documents, the terms "approved;" "directed;" "satisfactory;" "accepted;" "acceptable;" "proper;" "required;" "necessary" and "equal" shall mean as approved, directed, satisfactory, accepted, acceptable, proper, required, necessary and equal, in the opinion of the District. The terms "shall", "will", or "must" are mandatory, and "may" is permissive.

**1.3. Laws Concerning The Contract**

Contract is subject to all provisions of the Constitution and laws of California governing, controlling, or affecting District, or the property, funds, operations, or powers of District, and such provisions are by this reference made a part hereof. Any provision required by law to be included in this Contract shall be deemed to be inserted.

**1.4. No Oral Agreements**

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No oral agreement or conversation with any officer, agent, or employee of District, either before or after execution of Contract, shall affect or modify any of the terms or obligations contained in any of the documents comprising the Contract.

**1.5. No Assignment**

Except as specifically permitted in the Facilities Lease, Contractor shall not assign this Contract or any part thereof including, without limitation, any services or money to become due hereunder without the prior written consent of the District. Assignment without District's prior written consent shall be null and void. Any assignment of money due or to be come due under this Contract shall be subject to a prior lien for services rendered or material supplied for performance of work called for under this Contract in favor of all persons, firms, or corporations rendering services or supplying material to the extent that claims are filed pursuant to the Civil Code, Code of Civil Procedure, Government Code, Labor Code, and/or Public Contract Code, and shall also be subject to deductions for liquidated damages or withholding of payments as determined by District in accordance with this Contract. Contractor shall not assign or transfer in any manner to a Subcontractor or supplier the right to prosecute or maintain an action against the District.

**1.6. Notice And Service Thereof**

Any notice from one party to the other or otherwise under Contract shall be in writing and shall be dated and signed by the party giving notice or by a duly authorized representative of that party. Any notice shall be served as indicated in the Facilities Lease.

**1.7. No Waiver**

The failure of District in any one or more instances to insist upon strict performance of any of the terms of this Contract or to exercise any option herein conferred shall not be construed as a waiver or relinquishment to any extent of the right to assert or rely upon any such terms or option on any future occasion. No action or failure to act by the District, Architect, or Construction Manager shall constitute a waiver of any right or duty afforded the District under the Contract, nor shall any action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

**1.8. Substitutions for Specified Items**

Contractor shall not substitute any items identified in the Contract Documents without complying with the procedures indicated in the Contract Documents and without prior written approval of the District.

**1.9. Materials and Work**

**1.9.1.** Except as otherwise specifically stated in this Contract, Contractor shall provide and pay for all materials, labor, tools, equipment, transportation, supervision, temporary constructions of every nature, and all other services, management, and facilities of every nature whatsoever necessary to execute and complete this Contract within the Contract Time.

**1.9.2.** Unless otherwise specified, all materials shall be new and the best of their respective kinds and grades as noted or specified, and workmanship shall be of good quality.

**1.9.3.** Materials shall be furnished in ample quantities and at such times as to ensure uninterrupted progress of Work and shall be stored properly and protected as required.

**1.9.4.** For all materials and equipment specified or indicated in the Drawings, the Contractor shall provide all labor, materials, equipment, and services necessary for complete assemblies and complete working systems, functioning as intended, including incidental items not indicated on Drawings, nor

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mentioned in the Specifications, that can legitimately and reasonably be inferred to belong to the Work described, or be necessary in good practice to provide a complete assembly or system. In all instances, material and equipment shall be installed in strict accordance with each manufacturer's most recent published recommendations and specifications.

**1.9.5.** Contractor shall, after award of Contract by District and after relevant submittals have been approved, place orders for materials and/or equipment as specified so that delivery of same may be made without delays to the Work. Contractor shall, upon demand from District, present documentary evidence showing that orders have been placed. Failure of Contractor to comply with this provision shall not be a basis for an extension to the Contract Time.

**1.9.6.** District reserves the right but has no obligation, for any neglect in complying with the above instructions, to place orders for such materials and/or equipment as it may deem advisable in order that the Work may be completed at the date specified in the Facilities Lease, and all expenses incidental to the procuring of said materials and/or equipment shall be paid for by Contractor or withheld from payment(s) to Contractor.

**1.9.7.** Contractor warrants good title to all material, supplies, and equipment installed or incorporated in Work and agrees upon Project Completion to deliver the Site to District, together with all improvements and appurtenances constructed or placed thereon by it, and free from any claims, liens, or charges. Contractor further agrees that neither it nor any person, firm, or corporation furnishing any materials or labor for any work covered by the Contract shall have any right to lien any portion of the School Site or any improvement or appurtenance thereon, except that Contractor may install metering devices or other equipment of utility companies or of political subdivision, title to which is commonly retained by utility company or political subdivision. In the event of installation of any such metering device or equipment, Contractor shall advise District as to owner thereof.

**1.9.8.** Nothing contained in this Article, however, shall defeat or impair the rights of persons furnishing materials or labor under any bond given by Contractor for their protection or any rights under any law permitting such protection or any rights under any law permitting such persons to look to funds due Contractor in hands of District (e.g., stop payment notices), and this provision shall be inserted in all subcontracts and material contracts and notice of its provisions shall be given to all persons furnishing material for work when no formal contract is entered into for such material.

**1.9.9.** Title to new materials and/or equipment for the Work of this Contract and attendant liability for its protection and safety shall remain with Contractor until incorporated in the Work of this Contract and Title is transferred to the District pursuant to the Facilities Lease. No part of any materials and/or equipment shall be removed from its place of storage except for immediate installation in the Work of this Contract. Contractor shall keep an accurate inventory of all materials and/or equipment in a manner satisfactory to District or its authorized representative and shall, at the District's request, forward it to the District.

**1.9.10.** **Storage of Items Off-Site.** The District may request that Contractor procure and store off-site certain equipment, supplies, and or materials. In addition, the Contractor may request that it be permitted to procure and store off-site certain equipment, supplies, and or materials. In either case, and before the District issues payment for those item(s), the Contractor shall comply with the insurance and/or bond requirements herein related to the storage of off-site items that the District has paid for and that the Contractor remains in possession of.

## 2. ARCHITECT

**2.1.** The Architect shall represent the District during the Project and will observe the progress and quality of the Work on behalf of the District. Architect shall have the authority to act on behalf of District to the extent

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expressly provided in the Contract Documents and to the extent determined by District. Architect shall have authority to reject materials, workmanship, and/or the Work whenever rejection may be necessary, in Architect's reasonable opinion, to insure the proper execution of the Contract.

**2.2.** Architect shall, with the District and on behalf of the District, determine the amount, quality, acceptability, and fitness of all parts of the Work, and interpret the Specifications, Drawings, and shall, with the District, interpret all other Contract Documents.

**2.3.** Architect shall have all authority and responsibility established by law, including title 24 of the California Code of Regulations.

**2.4.** Contractor shall provide District and the Construction Manager with a copy of all written communication between Contractor and Architect at the same time as that communication is made to Architect, including, without limitation, all RFIs, correspondence, submittals, claims, and proposed change orders.

## 3. CONSTRUCTION MANAGER

**3.1.** If a Construction Manager is used on this Project, the Construction Manager will provide administration of the Contract on the District's behalf. After execution of the Contract, all correspondence and/or instructions from Contractor and/or District shall be forwarded through the Construction Manager. The Construction Manager will not be responsible for and will not have control or charge of construction means, methods, techniques, sequences, or procedures or for safety precautions in connection with the Work, which shall all remain the Contractor's responsibility.

**3.2.** The Construction Manager, however, will have authority to reject materials and/or workmanship not conforming to the Contract Documents, as determined by the District, the Architect, and/or the Project Inspector. The Construction Manager shall also have the authority to require special inspection or testing of any portion of the Work, whether it has been fabricated, installed, or fully completed. Any decision made by the Construction Manager, in good faith, shall not give rise to any duty or responsibility of the Construction Manager to the Contractor, any Subcontractor, their agents, employees, or other persons performing any of the Work. The Construction Manager shall have free access to any or all parts of Work at any time.

**3.3.** If the District does not use a Construction Manager on this Project, all references to Construction Manager or CM shall be read as District.

## 4. INSPECTOR, INSPECTIONS, AND TESTS

### 4.1. Project Inspector

**4.1.1.** One or more Project Inspector(s), including special Project Inspector(s), as required, will be assigned to the Work by District, in accordance with requirements of title 24, part 1, of the California Code of Regulations, to enforce the building code and monitor compliance with Plans and Specifications for the Project previously approved by the DSA. Duties of Project Inspector(s) are specifically defined in section 4-342 of said part 1 of title 24.

**4.1.2.** No Work shall be carried on except with the knowledge and under the inspection of the Project Inspector(s). The Project Inspector(s) shall have free access to any or all parts of Work at any time. Contractor shall furnish Project Inspector(s) reasonable opportunities for obtaining such information as may be necessary to keep Project Inspector(s) fully informed respecting progress and manner of work and character of materials. Inspection of Work shall not relieve Contractor from an obligation to fulfill this Contract. Project Inspector(s) and the DSA are authorized to stop work whenever the Contractor and/or its Subcontractor(s) are not complying with the Contract Documents. Any work stoppage by the Project Inspector(s) and/or DSA shall be without liability to the District. Contractor shall instruct its

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Subcontractors and employees accordingly.

**4.1.3.** If Contractor and/or any Subcontractor requests that the Project Inspector(s) perform any inspection off-site, this shall only be done if it is allowable pursuant to applicable regulations and DSA. If the off-site inspections are more frequent than are reasonable for the type of off-site inspection, those inspections shall be at the expense of the Contractor.

**4.1.4. Limitations on Project Inspector Authority**. The Project Inspector does not have authority to interpret the Contract Documents or to modify the Work depicted in the Contract Documents. No Work inconsistent with the Contract Documents shall be performed solely on the basis of the direction of the Project Inspector, and the Contractor shall be liable to the District for the consequences of all Work performed on such basis.

**4.1.5.** In addition to the requirements in the Contract Documents related to cooperation with and authority of the DSA Project Inspector(s) for the Project, Contractor must comply with the requirements of the most recent versions of DSA document PR 13-01. Below are provisions of this document from PR 13-01 (rev 08/21/17).

4.1.5.1. The contractor shall carefully study the DSA-approved documents and shall plan a schedule of operations well ahead of time.

4.1.5.2. If at any time it is discovered that work is being done which is not in accordance with the DSA-approved construction documents, the contractor shall correct the work immediately.

4.1.5.3. Verify that DSA 152 and, when applicable, DSA 152-IPI forms were issued for the project prior to the commencement of construction.

4.1.5.4. Meet with the design team, the Laboratory of Record and the project inspector to mutually communicate and understand the structural/material and fire/life safety testing and inspection program, and the methods of communication appropriate for the project.

4.1.5.5. Notify the project inspector and, when applicable, in-plant inspector, in writing, of the commencement of construction of each and every aspect of the work at least 48 hours in advance by submitting Commencement/Completion of Work Notification (form DSA 156), or other agreed-upon written documents, to the project inspector.

4.1.5.6. Notify the project inspector and, when applicable, the in-plant inspector, of the completion of construction of each and every aspect of the work by submitting form DSA 156 (or other agreed-upon written documents) to the project inspector.

4.1.5.7. Consider the relationship of the signed-off blocks and sections of the form DSA 152 and the commencement of subsequent work. Until the project inspector has signed off applicable blocks and sections of the form DSA 152, the contractor may be prohibited from proceeding with subsequent construction activities that cover up the unapproved work. Any subsequent construction activities that cover up the unapproved work will be subject to a "Stop Work Order" from DSA or the school district (see IR A-13 for additional information), and are subject to removal and remediation if found to be in noncompliance with the DSA-approved construction documents.

4.1.5.8. Submit the final verified report. All prime contractors are required to submit final Contractor Verified Reports (form DSA 6-C).

**4.2. <u>Tests and Inspections</u>**

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**4.2.1.** Tests and Inspections shall comply with title 24, part 1, California Code of Regulations, group 1, article 5, section 4-335, and with the provisions of the Specifications.

**4.2.2.** If the Contract Documents, laws, ordinances or any public authority with jurisdiction over the Work requires the Work, or any portion thereof, to be specially tested, inspected or approved, the Contractor shall give the Architect, the Construction Manager and the Project Inspector written notice of the readiness of such Work for observation, testing or inspection at least seventy-two (72) hours prior to the time for the conducting of such test, inspection or observation. If inspection, testing or observation is by authority other than the District, the Contractor shall inform the Project Inspector and the Construction Manager not less than seventy-two (72) hours prior to the date fixed for such inspection, test or observation. The Contractor shall not cover up any portion of the Work subject to tests, inspections or observations prior to the completion and satisfaction of the requirements of such test, inspection or observation. In the event that any portion of the Work subject to tests, inspection or approval shall be covered up by Contractor prior to completion and satisfaction of the requirements of such tests, inspection or approval, Contractor shall be responsible for the uncovering of such portion of the Work as is necessary for performing such tests, inspection or approval without adjustment of the Contract Price or the Contract Time on account thereof.

**4.2.3.** The District will select an independent testing laboratory to conduct the tests. Selection of the materials required to be tested shall be by the laboratory or the District's representative and not by the Contractor. The Contractor shall notify the District's representative a sufficient time in advance of its readiness for required observation or inspection.

**4.2.4.** The Contractor shall notify the District's representative a sufficient time in advance of the manufacture of material to be supplied under the Contract Documents, that must by terms of the Contract Documents be tested, in order that the District may arrange for the testing of same at the source of supply. This notice shall be, at a minimum, seventy-two (72) hours prior to the manufacture of the material that needs to be tested. These notifications shall be submitted in all instances via hard copy and, if requested by the Project Inspector(s), also electronically via an internet-based notification/reporting system.

**4.2.5.** Any material shipped by the Contractor from the source of supply prior to having satisfactorily passed such testing and inspection or prior to the receipt of notice from said representative that such testing and inspection will not be required, shall not be incorporated into and/or onto the Project.

**4.2.6.** The District will select and pay testing laboratory costs for all tests and inspections. Costs of tests of any materials found to be not in compliance with the Contract Documents shall be paid for by the District and reimbursed by the Contractor or deducted from the Guaranteed Project Cost.

### 4.3. Costs for After Hours and/or Off Site Inspections

If the Contractor performs Work outside the Inspector's regular working hours, over a period of more than eight (8) hours per day by any single person, on weekends/holidays or requests the Inspector to perform inspections off Site, then the costs of any inspections required outside regular working hours, over a period of more than eight (8) hours per day by any single person, on weekends/holidays or off Site, shall be borne by the Contractor and may be invoiced to the Contractor by the District or the District may deduct those expenses from the next Tenant Improvement Payment.

## 5. CONTRACTOR

Contractor shall construct the Work for the Contract Price including any adjustment(s) to the Guaranteed Project Cost pursuant to provisions herein regarding changes to the Guaranteed Project Cost. Except as otherwise indicated herein, Contractor shall provide and pay for all labor, materials, equipment, permits, fees, licenses,

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facilities, transportation, taxes, and services necessary for the proper execution and Project Completion..

**5.1. Status of Contractor**

**5.1.1.** Contractor is and shall at all times be deemed to be an independent contractor and shall be wholly responsible for the manner in which it and its Subcontractors perform the services required of it by the Contract Documents. Nothing herein contained shall be construed as creating the relationship of employer and employee, or principal and agent, between the District, or any of the District's employees or agents, and Contractor or any of Contractor's Subcontractors, agents or employees. Contractor assumes exclusively the responsibility for the acts of its employees as they relate to the services to be provided during the course and scope of their employment. Contractor, its Subcontractors, agents, and its employees shall not be entitled to any rights or privileges of District employees. District shall be permitted to monitor the Contractor's activities to determine compliance with the terms of this Contract.

**5.1.2.** As required by law, Contractor and all Subcontractors shall be properly licensed and regulated by the Contractors State License Board, located at 9821 Business Park Drive, Sacramento, California 95827, with a mailing address of Post Office Box 26000, Sacramento, CA 95826, and with a website at http://www.cslb.ca.gov.

**5.2. Contractor's Supervision**

**5.2.1.** During progress of the Work, Contractor shall keep on the School Site, and at all other appropriate locations where any Work related to the Contract is being performed, minimum staffing as indicated in **Exhibit K** to the Facilities Lease. These persons shall each comply with the following:

5.2.1.1. Each shall be an employee of the Contractor, to whom the District does not object.

5.2.1.2. Each shall speak fluently English, written and verbal, and the predominant language of the Contractor's employees.

**5.2.2.** Before commencing the Work herein, Contractor shall give written notice to District of the name of its project manager and construction superintendent. Neither the Contractor's project manager nor construction superintendent shall be changed except with prior written notice to District, unless the Contractor's project manager and/or construction superintendent proves to be unsatisfactory to Contractor, District, any of the District's employees, agents, the Construction Manager, or the Architect, in which case, Contractor shall notify District in writing or if such project manager or construction superintendent are no longer employed by Contractor. The Contractor's project manager and construction superintendent shall each represent Contractor, and all directions given to Contractor's project manager and/or construction superintendent shall be as binding as if given to Contractor.

**5.2.3.** Contractor shall give efficient supervision to the Work, using its best skill and attention. Contractor shall carefully study and compare all Contract Documents, Drawings, Specifications, and other instructions and shall at once report to District, Construction Manager, and Architect any error, inconsistency, or omission that Contractor or its employees and Subcontractors may discover, in writing, with a copy to District's Project Inspector(s).

**5.2.4.** The Contractor's project manager shall devote sufficient time to the Project on site, and in the Contractor's home office to pre-plan activities to meet the Construction Schedule and fulfill all Contract obligations. This includes making timely submittals, issuing and disseminating necessary RFI's, promptly processing and distributing bulletins, change orders and payments, keeping required logs current etc. If any of these activities fall behind contract requirements or dates necessary to complete the Project on time, the Contractor must provide a full time project manager on site dedicated solely to the Project, until the deficiencies are corrected.

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**5.2.5.** The Contractor shall verify all indicated dimensions before ordering materials or equipment, or before performing work. The Contractor shall take field measurements, verify field conditions, and shall carefully compare such field measurements and conditions and other information known to the Contractor with the Project Documents before commencing work. Errors, inconsistencies or omissions discovered shall be reported to the District at once. Upon commencement of any item of work, the Contractor shall be responsible for dimensions related to such item of work and shall make any corrections necessary to make work properly fit at no additional cost to District. This responsibility for verification of dimensions is a non-delegable duty and may not be delegated to subcontractors or agents.

**5.2.6.** Contractor shall not be relieved from performing work related to omissions from the plans, drawings or specifications, or misdescriptions of details of work which are manifestly necessary to carry out the intent of the plans, drawings and specifications, or which are customarily performed. Contractor shall perform this work as if fully and correctly set forth and described in the plans, drawings and specifications.

**5.2.7.** The Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction. The Contractor shall be responsible to see that the finished work complies accurately with the Contract Documents.

**5.3. <u>Duty to Provide Fit Workers / Required Personnel</u>**

**5.3.1.** Contractor and Subcontractor(s) shall at all times enforce strict discipline and good order among their employees and shall not employ or work any unfit person or anyone not skilled in work assigned to that person. It shall be the responsibility of Contractor to ensure compliance with this requirement. District may require Contractor to permanently remove unfit persons from Project Site(s).

**5.3.2.** Contractor, Contractor's employees, Subcontractors, Subcontractors' employees, or any person associated with the Work shall conduct themselves in a manner appropriate for a school site. The District will not permit any (1) verbal or physical contact with neighbors, students, and faculty; (2) profanity, or inappropriate attire or behavior; (3) photographing, videoing, or audio recording of any neighbors, students, and faculty or any posting of any photographs, videos, or audio recordings of any neighbors, students, and faculty on any internet site, social media platform of any kind, regardless of source of any photograph, video, or audio recording. The District may require Contractor to permanently remove noncomplying persons from Project Site.

**5.3.3.** Any person in the employ of Contractor or Subcontractor(s) whom District may deem incompetent or unfit shall be excluded from working on the Project and shall not again be employed on the Project except with the prior written consent of District.

**5.3.4.** The Contractor shall furnish labor that can work in harmony with all other elements of labor employed or to be employed in the Work.

**5.3.5.** If Contractor intends to make any change in the name or legal nature of the Contractor's entity, Contractor must first notify the District. The District shall determine if Contractor's intended change is permissible while performing this Contract.

**5.3.6.** All persons working for Contractor and Subcontractor(s) shall refrain from using profane or vulgar language, or any other language that is inappropriate on the job site.

**5.3.7.** The Contractor shall employ a full-time superintendent and necessary assistants who shall have complete authority to represent and act on behalf on the Contractor on all matters pertaining to the Work. The superintendent shall be competent and have a minimum of five (5) years' experience in

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construction supervision on projects of similar scale and complexity. The superintendent shall be satisfactory to the District and, if not satisfactory, shall be replaced by the Contractor with one that is acceptable. The superintendent shall not be changed without the written consent of the District unless the superintendent ceases to be employed by the Contractor.

**5.3.8.** The Contractor shall employ a competent estimator and necessary assistants, or contract for sufficient services of an estimating consultant and to process proposed change orders. The estimator shall have a minimum of five (5) years' experience in estimating. The estimator shall be satisfactory to the District and, if not satisfactory, shall be replaced by the Contractor with one that is acceptable. The Contractor shall submit PCO's requested by the District within fourteen (14) Days.

**5.3.9.** The Contractor shall employ a competent scheduler and necessary assistants, or contract for sufficient services of a scheduling consultant. The scheduler shall have a minimum of five (5) years' experience in scheduling. The scheduler shall be satisfactory to the District and, if not satisfactory, shall be replaced by the Contractor with one that is acceptable.

**5.3.10.** Contractor shall at all times enforce strict discipline and good order among Contractor's employees, and shall not employ on the Project any unfit person or anyone not skilled in the task assigned.

**5.3.11.** If Contractor or any Subcontractor on the Project site fails to comply with any provision of paragraph 6.4, the District may have the offending person(s) immediately removed from the site, and such person(s) shall be replaced within three (3) days, at no additional expense to the District. Contractor, on behalf of it and its subcontractors, hereby waives any claim that the provisions of this paragraph or the enforcement thereof interferes, or has the potential to interfere, with its right to control the means and methods of its performance and duties under this Contract.

**5.4. <u>Prohibition on Harassment</u>**

**5.4.1.** In addition to the non-discrimination requirements in the Contract Documents, the Contractor and all Subcontractors must comply with these provisions prohibiting harassment at the Site.

**5.4.2.** The District is committed to providing a campus and workplace free of sexual harassment and harassment based on factors such as race, color religion, national origin, ancestry, age, medical condition, marital status, disability or veteran status. Harassment includes without limitation, verbal, physical or visual conduct which creates an intimidating, offensive or hostile environment such as racial slurs; ethnic jokes; posting of offensive statements, posters or cartoons or similar conduct. Sexual harassment includes without limitation the solicitation of sexual favors, unwelcome sexual advances, or other verbal, visual or physical conduct of a sexual nature.

**5.4.3.** Contractor shall take all reasonable steps to prevent harassment from occurring, including without limitation affirmatively raising the subject of harassment among its employees, expressing strong disapproval of any form of harassment, developing appropriate sanctions, informing employees of their right to raise and how to raise the issue of harassment and informing complainants of the outcome of an investigation into a harassment claim.

**5.4.4.** Contractor shall not permit any person, whether employed by Contractor or a Subcontractor or any other person or entity, performing any Work at or about the Site to engage in any prohibited form of harassment. Any person performing or providing Work on or about the Site engaging in a prohibited form of harassment directed to any student, faculty member or staff of the District or directed to any other person on or about the Site shall be subject to immediate removal and shall be prohibited thereafter from providing or performing any portion of the Work. Upon the District's receipt of any notice or complaint that any person employed directly or indirectly by Contractor on any Subcontractor in performing or

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providing the Work has engaged in a prohibited form of harassment, the District will promptly undertake an investigation of such notice or complaint. In the event that the District, after such investigation, reasonably determines that a prohibited form of harassment has occurred, the District shall promptly notify the Contractor of the same and direct that the person engaging in such conduct be immediately removed from the Site. Unless the District's determination that a prohibited form of harassment has occurred is grossly negligent or without reasonable cause, District shall have no liability for directing the removal of any person determined to have engaged in a prohibited form of harassment nor shall the Contract Price or the Contract Time be adjusted on account thereof. The indemnity provisions of the Contract Documents apply to any assertion by any person dismissed from performing or providing work at the direction of the District pursuant to this provision; or (ii) the assertion by any person that any person directly or indirectly under the employment or direction of the Contractor has engaged in a prohibited form of harassment directed to or affecting such person. The obligations of the Contractor and the Surety under the preceding sentence are in addition to, and not in lieu of, any other obligation of defense, indemnity and hold harmless whether arising under the Contract Documents, at law or otherwise; these obligations survive completion of the Work or the termination of the Contract.

**5.5. Conferences and Meetings.**

**5.5.1.** In addition to the conference and meeting requirements in the Specifications, Contractor's supervisory personnel for the Work and the Contractor's management personnel shall attend all required meetings as required by the Contract Documents or as requested by the District. The Contractor's personnel participating in conferences and meetings relating to the Work shall be authorized to act on behalf of the Contractor and to bind the Contractor. The Contractor is solely responsible for arranging for the attendance by Subcontractors and Material Suppliers at meetings and conferences relating to the Work as necessary, appropriate or as requested by the District.

**5.5.2. Preconstruction Conference.** The Contractor's representatives (and representatives of Subcontractors as requested by the District) shall attend a preconstruction conference at such time and place as designated by the District. The preconstruction conference will generally address the requirements of the Work and Contract Documents, and to establish construction procedures. Subject matters of the preconstruction conference will include as appropriate: (a) administrative matters, including an overview of the respective responsibilities of the District, Architect, Construction Manager, Contractor, Subcontractors, Project Inspector, and others performing any part of the Work or services relating to the Work; (b) Submittals; (c) Changes; (d) employment practices, including Certified Payroll preparation and submission and prevailing wage rate responsibilities of the Contractor and Subcontractors; (e) Progress Schedule development and maintenance; (f) development of Schedule of Values and payment procedures; (g) implementation of BIM, if applicable; (h) communication procedures, including the handling of Requests for Information; (i) emergency and safety procedures; (j) Site visitor policies; (k) conduct of Contractor/Subcontractor personnel at the Site; and (l) Completion, Punchlist and closeout procedures.

**5.5.3. Progress Meetings.** Progress meetings will be conducted on regular intervals (weekly unless otherwise expressly indicated elsewhere in the Contract Documents). The Contractor's representatives and representatives of Subcontractors (as requested by the District) shall attend progress meetings. Progress Meetings will be chaired by the District or the Construction Manager and will generally include as agenda items: Site safety, field issues, coordination of Work, construction progress and impacts to timely Completion, if any. The purposes of the progress meetings include: a formal and regular forum for discussion of the status and progress of the Work by all Project participants, a review of progress or resolution of previously raised issues and action items assigned to the Project participants, and reviews of the Progress schedule and submittals. Contractor shall prepare and submit at each progress meeting a three (3) week look-ahead schedule identifying all planned activities for the next three (3) weeks and any deviations from activities in the current Construction Schedule.

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**5.5.4. Special Meetings.** As deemed necessary or appropriate by the District, special meetings will be conducted with the participation of the Contractor, Subcontractors and other Project participants as requested by the District.

**5.5.5. Minutes of Meetings.** following conclusion of the preconstruction conference, progress meetings and special meetings, the Architect or the Construction Manager will prepare and distribute minutes reflecting the items addressed and actions taken at a meeting or conference. Unless the Contractor notifies the Architect and the Construction Manager in writing of objections or corrections to minutes prepared hereunder within five (5) days of the date of distribution of the minutes, the minutes as distributed shall constitute the official record of the meeting or conference. No objections or corrections of any Subcontractor or Material Supplier shall be submitted directly to the Architect or the Construction Manager; such objections or corrections shall be submitted to the Architect and the Construction Manager through the Contractor. If the Contractor timely interposes objections or notes corrections, the resolution of such matters shall be addressed at the next scheduled progress meeting.

**5.6. Purchase of Materials and Equipment**

**5.6.1.** The Contractor is required to order, obtain, and store materials and equipment sufficiently in advance of its Work at no additional cost or advance payment from District to assure that there will be no delays. All materials and equipment shall be stored on-Site and secured by Contractor unless otherwise approved in writing by the District.

**5.6.2. Off-Site Storage of Materials and Equipment Only Upon District's Written Consent**. If Contractor intends to store materials and/or equipment off-site after the District has paid for those materials and/or equipment, Contractor must first obtain the District's express, written consent. If Contractor receives District's consent to store materials and/or equipment off site ("**Stored Materials**"), Contractor shall comply with all of the following:

5.6.2.1. **Property of Others Insurance**. Contractor shall procure and maintain, during the entire time Stored Materials are in off-site storage, insurance coverage acceptable to the District that shall protect Contractor and District from all claims for Stored Materials that are lost, stolen, or damaged. The District shall be named as a loss payee for this insurance coverage. The insurance coverage shall include a "loss payable endorsement" stating that all amounts payable will be paid as a joint-check to the Contractor and District. If approved in advance by District, this required insurance may be obtained by an "Employee Theft Protection Insurance Policy" or an "Employee Theft Protection Bond."

5.6.2.2. **Payment for Stored Materials**. District shall only make payment to Contractor for Stored Materials if agreed upon in advance, in writing, by the District and provided that Contractor submits an itemized list of all Stored Materials with Contractor's Application for Payment. Contractor's itemized list of all Stored Materials shall be supported by all of the following:

5.6.2.2.1. Itemized breakdown of the Stored Materials for the purpose of requesting partial payment, identifying the serial numbers and exact storage location of each piece of equipment and material; and

5.6.2.2.2. Verified invoices for the Stored Materials;

5.6.2.2.3. Original copy of Property of Others Insurance, Employee Theft Protection Insurance Policy, or an Employee Theft Protection Bond based on the type of insurance required by the District. These documents shall include certificates and endorsements stating the coverage and that the District is a loss payee or obligee, as appropriate; and

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5.6.2.2.4. An express, signed document from Contractor indicating that the District may, at any time and at its sole discretion, have unhindered and unqualified access to all Stored Materials and to remove the Stored Materials.

**5.7. Documents on Work**

**5.7.1.** Contractor shall at all times keep on the Work Site, or at another location as the District may authorize in writing, one legible copy of all Contract Documents, including Addenda Change Orders, Unilateral Change Orders, Construction Change Documents, and current titles 19 and 24 of the California Code of Regulations, the specified edition(s) of the California Building Standards Code, all approved Drawings, Plans, Schedules, and Specifications, and all codes referred to in the Specifications, and made part thereof. These documents shall be kept in good order and available to District, Construction Manager, Architect, Architect's representatives, the Project Inspector(s), and all authorities having jurisdiction. Contractor shall be acquainted with and comply with the provisions of these titles as they relate to this Project. (See particularly the duties of Contractor, title 24, part 1, California Code of Regulations, § 4-343.) Contractor shall also be acquainted with and comply with all California Code of Regulations provisions relating to conditions on this Project, particularly titles 8 and 17. Contractor shall coordinate with Architect and Construction Manager and shall submit its verified report(s) according to the requirements of title 24.

**5.7.2. Daily Job Reports.**

5.7.2.1. Contractor shall maintain, at a minimum, at least one (1) set of Daily Job Reports on the Project. These must be prepared by the Contractor's employee(s) who are present on Site, and must include, at a minimum, the following information:

5.7.2.1.1. A detailed description of all Work performed by the Contractor and Subcontractor(s) on that day.
5.7.2.1.2. A summary of all other pertinent events and/or occurrences on that day.
5.7.2.1.3. The weather conditions on that day.
5.7.2.1.4. A list of all Subcontractor(s) working on that day,
5.7.2.1.5. A list of each Contractor employee working on that day and the total hours worked for each employee.
5.7.2.1.6. A complete list of all major equipment on Site that day, whether in use or not.
5.7.2.1.7. All complete list of all materials, supplies, and equipment delivered on that day.
5.7.2.1.8. A complete list of all inspections and tests performed on that day.

5.7.2.2. On or before 8:00 A.M. each day, Contractor shall provide a copy of the previous day's Daily Job Report to the District or the District's Construction Manager.

**5.8. Preservation of Records**

The District shall have the right to examine and audit all Daily Job Reports or other Project records of Contractor's project manager(s), project superintendent(s), and/or project foreperson(s), all certified payroll records and/or related documents including, without limitation, payroll, payment, timekeeping and tracking documents; all books, estimates, records, contracts, documents, cost data, subcontract job cost reports, and other data of the Contractor, any Subcontractor, and/or supplier, including computations and projections related to estimating, negotiating, pricing, or performing the Work or Contract modification, in order to evaluate the accuracy, completeness, and currency of the cost, manpower, coordination, supervision, or pricing data at no additional cost to the District. These documents may be duplicative and/or be in addition to any documents held in escrow by the District. The Contractor shall make available at all reasonable times the materials described in this paragraph for the examination, audit, or reproduction until three (3) years after final payment under this Contract. Notwithstanding the provisions above, Contractor shall provide any

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records requested by any governmental agency, if available, after the time set forth above.

**5.9. Integration of Work**

**5.9.1.** Contractor shall do all cutting, fitting, patching, and preparation of Work as required to make its several parts come together properly, to fit it to receive or be received by work of other contractors, and to coordinate tolerances to various pieces of work, showing upon, or reasonably implied by, the Drawings and Specifications for the completed structure, and shall conform them as District and/or Architect may direct.

**5.9.2.** All cost caused by defective or ill-timed Work shall be borne by Contractor, inclusive of repair work.

**5.9.3.** Contractor shall not endanger any work performed by it or anyone else by cutting, excavating, or otherwise altering work and shall not cut or alter work of any other contractor except with consent of District.

**5.10. Obtaining Licenses**

Except for DSA fees or charges, Contractor shall secure and pay for all of its required licenses, and certificates necessary for prosecution of Work before the date of the commencement of the Work or before the licenses, and certificates are legally required to continue the Work without interruption. The Contractor shall obtain and pay, only when legally required, for all licenses and certificates required to be obtained from or issued by any authority having jurisdiction over any part of the Work included in the Contract. All final permits and certificates shall be delivered to District before demand is made for final payment.

**5.11. Work to Comply With Applicable Laws and Regulations and Standard of Care**

**5.11.1.** Contractor shall give all notices and comply with the following specific laws, ordinances, rules, and regulations and all other applicable laws, ordinances, rules, and regulations bearing on conduct of Work as indicated and specified, including but not limited to the appropriate statutes and administrative code sections. If Contractor observes that Drawings and Specifications are at variance therewith, or should Contractor become aware of the development of conditions not covered by Contract Documents that will result in finished Work being at variance therewith, Contractor shall promptly notify District in writing and any changes deemed necessary by District shall be made as provided in Contract for changes in Work.

5.11.1.1. National Electrical Safety Code, U. S. Department of Commerce
5.11.1.2. National Board of Fire Underwriters' Regulations
5.11.1.3. California Building Standards Code, latest addition, and the California Code of Regulations, Title 24, including amendments
5.11.1.4. Manual of Accident Prevention in Construction, latest edition, published by A.G.C. of America
5.11.1.5. Industrial Accident Commission's Safety Orders, State of California
5.11.1.6. Regulations of the State Fire Marshall (title 19, California Code of Regulations) and Pertinent Local Fire Safety Codes
5.11.1.7. Americans with Disabilities Act
5.11.1.8. Education Code of the State of California
5.11.1.9. Government Code of the State of California
5.11.1.10. Labor Code of the State of California, division 2, part 7, Public Works and Public Agencies
5.11.1.11. Public Contract Code of the State of California
5.11.1.12. California Art Preservation Act
5.11.1.13. U. S. Copyright Act

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5.11.1.14. U. S. Visual Artists Rights Act

**5.11.2.** Contractor shall comply with all applicable mitigation measures, if any, adopted by any public agency with respect to this Project pursuant to the California Environmental Quality Act ("**CEQA**") (Public Resources Code section 21000 et seq.)

**5.11.3.** If Contractor performs any Work that it knew, or through exercise of reasonable care should have known, to be contrary to any applicable laws, ordinance, rules, or regulations, Contractor shall bear all costs arising therefrom.

**5.11.4.** Where Specifications or Drawings state that materials, processes, or procedures must be approved by the DSA, State Fire Marshall, or other body or agency, Contractor shall be responsible for satisfying requirements of such bodies or agencies.

**5.11.5.** Contractor's performance of Work shall comply with the Standard of Care. The District's acceptance of any submittals, deliverables, construction Work, or other work product of Contractor will not be construed as assent that Contractor has complied, nor in any way relieve Contractor of, compliance with (i) the applicable standard of care, (ii) applicable statutes, regulations, rules, guidelines, and requirements, or and/or (iii) the Contract Documents.

**5.12. <u>Safety/Protection of Persons and Property</u>**

**5.12.1.** Contractor will be solely and completely responsible for conditions of the Work Site, including safety of all persons and property during performance of the Work. This requirement will apply continuously and not be limited to normal working hours.

**5.12.2.** The wearing of hard hats will be mandatory at all times for all personnel on Site. Contractor shall supply sufficient hard hats to properly equip all employees and visitors.

**5.12.3.** Any construction review of the Contractor's performance is not intended to include review of the adequacy of the Contractor's safety measures in, on, or near the Work Site.

**5.12.4.** Implementation and maintenance of safety programs shall be the sole responsibility of the Contractor.

**5.12.5.** The Contractor shall furnish to the District a copy of the Contractor's safety plan within the time frame indicated in the Contract Documents and specifically adapted for the Project.

**5.12.6.** Contractor shall be responsible for all damages to persons or property that occur as a result of its fault or negligence in connection with the prosecution of this Contract and shall take all necessary measures and be responsible for the proper care, Project Completion and final acceptance by District. Contractor shall not be responsible for damage to the Work caused by "acts of God" as defined in Public Contract Code section 7105.

**5.12.7.** Contractor shall take, and require Subcontractors to take, all necessary precautions for safety of workers on the Project and shall comply with all applicable federal, state, local, and other safety laws, standards, orders, rules, regulations, and building codes to prevent accidents or injury to persons on, about, or adjacent to School Site where Work is being performed and to provide a safe and healthful place of employment. Contractor shall furnish, erect, and properly maintain at all times, all necessary safety devices, safeguards, construction canopies, signs, nets, barriers, lights, and watchmen for protection of workers and the public and shall post danger signs warning against hazards created by such features in the course of construction.

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**5.12.8. Hazards Control**. Contractor shall store volatile wastes in covered metal containers and remove them from the Site regularly, which shall be daily when appropriate for the type of hazardous wastes to be removed. Contractor shall prevent accumulation of wastes that create hazardous conditions. Contractor shall provide adequate ventilation during use of volatile or noxious substances.

**5.12.9.** Contractor shall designate a responsible member of its organization on the Project, whose duty shall be to post information regarding protection and obligations of workers and other notices required under occupational safety and health laws, to comply with reporting and other occupational safety requirements, and to protect the life, safety, and health of workers. Name and position of person so designated shall be reported to District by Contractor.

**5.12.10.** Contractor shall correct any violations of safety laws, rules, orders, standards, or regulations. Upon the issuance of a citation or notice of violation by the Division of Occupational Safety and Health, Contractor shall correct such violation promptly.

**5.12.11. Storm Water Permits**. Contractor shall comply with any District storm water requirements that are approved by the District and applicable to the Project, at no additional cost to the District.

5.12.11.1. Contractor shall perform the Work of the Project related to being the District's Qualified SWPPP (Storm Water Pollution Prevention Plan) Practitioner ("**QSP**").

5.12.11.2. As the District's QSP, Contractor shall be responsible for storm water and non-storm water visual observations, sampling, and analysis per the District's SWPPP.

5.12.11.3. Contractor shall strictly follow the requirements to implement all the provisions of the SWPPP including, without limitation, preparation of monitoring and recording reports and providing those to the District.

5.12.11.4. Contractor's indemnity obligations as indicated in the Facilities Lease are applicable to any damages, penalties, fees, charges, or related expenses assessed or charged to the District by any water boards or agencies with jurisdiction related to compliance with the Storm Water Permits.

**5.12.12.** In an emergency affecting safety of life or of work or of adjoining property, Contractor, without special instruction or authorization, shall act, at its discretion, to prevent such threatened loss or injury. Any compensation claimed by Contractor on account of emergency work shall be determined by agreement.

**5.12.13.** All salvage materials will become the property of the Contractor and shall be removed from the Site unless otherwise called for in the Contract Documents. The District reserves the right to designate certain items of value that shall be turned over to the District.

**5.12.14.** All connections to public utilities and/or existing on-site services shall be made and maintained in such a manner as to not interfere with the continuing use of same by the District during the entire progress of the Work.

**5.12.15.** Contractor shall provide such heat, covering, and enclosures as are necessary to protect all Work, materials, equipment, appliances, and tools against damage by weather conditions, such as extreme heat, cold, rain, snow, dry winds, flooding, or dampness.

**5.12.16.** The Contractor shall protect and preserve the Work from all damage or accident, providing any temporary roofs, window and door coverings, boxing, or other construction as needed. The Contractor shall be responsible for existing structures, walks, roads, trees, landscaping, materials, equipment, furnishings, and/or improvements in working areas; and shall provide adequate protection therefore. If

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temporary removal is necessary of any of the above items, or damage occurs due to the Work, the Contractor shall replace same at his expense with same kind, quality, and size of Work or item damaged. This shall include any adjoining property of the District and others.

**5.12.17.** Contractor shall take adequate precautions to protect existing roads, sidewalks, curbs, pavements, utilities, adjoining property, and structures (including, without limitation, protection from settlement or loss of lateral support), and to avoid damage thereto, and repair any damage thereto caused by construction operations of the Contractor.

**5.12.18.** Contractor shall confine apparatus, the storage of materials, and the operations of workers to limits indicated by law, ordinances, permits, or directions of the District, Construction Manager or Architect, and shall not interfere with the Work or unreasonably encumber the School Site or overload any structure with materials. Contractor shall enforce all instructions of District and Architect regarding signs, advertising, fires, and smoking, and require that all workers comply with all regulations while on Project Site(s).

**5.12.19.** Contractor shall take care to prevent disturbing or covering any survey markers, monuments, or other devices marking property boundaries or corners. If such markers are disturbed, Contractor shall have a civil engineer, registered as a professional engineer in California, replace them at no cost to District.

**5.12.20.** In the event that the Contractor enters into any agreement with owners of any adjacent property to enter upon the adjacent property for the purpose of performing the Work, Contractor shall fully indemnify, defend, and hold harmless each person, entity, firm, or agency that owns or has any interest in adjacent property. The form and content of the agreement of indemnification shall be approved by the District prior to the commencement of any Work on or about the adjacent property. The Contractor shall also indemnify the District as provided in the indemnification provision herein. These provisions shall be in addition to any other requirements of the owners of the adjacent property.

**5.12.21. Infectious Disease Compliance Provisions**

5.12.21.1. **Compliance with Orders**. Contractor and its Subcontractors, agents and employees thereof, are responsible for complying with all applicable and existing federal, State, and/or local statutes, orders, rules, regulations, ordinances, and/or directives in any way relating to construction site safety, the Work, the Project, and Site, in connection with any infectious and communicable disease in any form, whether bacterial or viral, including, without limitation, MSRA, influenza, COVID-19, and/or any similar virus or derivative strain ("**Infectious Disease**"). Contractor's obligations hereunder shall include, without limitation providing personal protective equipment ("**PPE**") to its employees and to ensure that its subcontractors provide PPE to its employees to prevent the spread of an Infectious Disease at the Project Site(s).

5.12.21.2. **Infectious Disease and Contract Time**. Contractor agrees that the Contract Time is based on Contractor's full compliance with all applicable and existing federal, State, and/or local statutes, orders, rules, regulations, ordinances, and/or directives relating to construction site safety, the Work, the Project, and the Site in connection with an Infectious Disease. Any dispute concerning the Contract Time in connection with any delay associated with an Infectious Disease shall be resolved pursuant to the Claims procedures in these General Conditions.

5.12.21.3. **Infectious Disease Release**. Contractor acknowledges that it is voluntarily and freely entering into the Contract for this Project and deciding to perform the Work which will require Contractor to enter upon and into the Site and that Contractor use of the Site includes the possible exposure to and illness from an Infectious Disease. Contractor further acknowledges the dangers involved and with full knowledge of these dangers, voluntarily agrees to assume all risks of bodily

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injury, death, or property damage, whether those risks are known or unknown. Contractor hereby releases the District, its agents, representatives, officers, consultants, employees, trustees, and volunteers from any and all liabilities, causes of action, lawsuits, claims, demands, or damages of any kind whatsoever that Contractor, its staff, participants, relatives, children, spouse, partner, household members, family members, employees, guests, invitees, volunteers, agents, consultants, Subcontractors, and any other person tracing exposure or illness to Contractor, now have, or may have in the future, for injury, trauma, illness, loss, unwanted contact, harassment, disability, death or property damages related to being exposed to or contracting an Infectious Disease while using the Site for the performance of the Work. Contractor shall include this paragraph in all subcontracts with Subcontractors.

5.12.21.4. Contractor shall ensure it has supervisor employees onsite that are trained and knowledgeable of all of these requirements to ensure full compliance on Project Site(s).

5.12.21.5. Any cost to comply with these "Infectious Disease Compliance Provisions" shall be at Contractor's sole expense, but may be included in the Contract Price.

**5.12.22. Photos, Videos and Use of Drones**.

5.12.22.1. Contractor may photograph or video the progress of the Work and shall provide all of those photos and videos to the District at the District's request. Contractor may utilize drones or similar aerial equipment to photograph, video or monitor the progress of the Work and for security purposes, but Contractor must comply with all legal requirements of the Federal government, the State of California, and the County and City in which the Project is located, applicable to the use of drones or similar aerial equipment. In addition, Contractor shall ensure that no photographs, videos or digital recordings of any kind are taken of District students or staff.

5.12.22.2. If Contractor utilizes drones or any other unmanned aircraft during construction operations, Contractor must either ensure its insurance coverage includes unmanned aircraft operations or procure and maintain a separate aircraft liability policy to cover unmanned aircraft operations.

**5.13. Working Evenings and Weekends**

Contractor may be required to work evenings and/or weekends at no additional cost to the District. Contractor shall give the District seventy-two (72) hours' notice prior to performing any evening and/or weekend work. Contractor shall perform all evening and/or weekend work only upon District's approval and in compliance with all applicable rules, regulations, laws, and local ordinances including, without limitation, all noise and light limitations. Contractor shall reimburse the District for any Inspector and custodial charges necessitated by the Contractor's evening and/or weekend work.

**5.14. Demolition**

**5.14.1.** If any of the Work requires the demolition of existing structures, Contractor must perform all Work reasonably required for removal or demolition, whether or not structures are fully detailed in the Drawings and Specifications.

**5.14.2.** The demolition component of the Work may include the removal of existing materials and components which, depending on the age and design of the structures existing at the Site may contain Hazardous Materials, the full extent of which may not yet be determined. The District has provided Contractor for its reference Site information. Contractor shall plan for and execute the demolition, redesign, and reconstruction of the Work taking into account any uncertainty with respect to Hazardous Materials.

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## 5.15. Noise and Dust Control

**5.15.1.** In addition to the noise control, dust control and related requirements in the Specifications, Contractor shall control the noise and dust at the Site as indicated here.

**5.15.2. Noise Control.** The Contractor shall install noise reducing devices on construction equipment. Contractor shall comply with the requirements of the city and county having jurisdiction with regard to noise ordinances governing construction sites and activities. Construction equipment noise at the Site shall be limited as required by applicable law, rule or regulation. If classes are in session at any point during the progress of the Work, and, in the District's reasonable discretion, the noise from any Work disrupts or disturbs the students or faculty or the normal operation of the school at the Site, at the District's request, the Contractor shall schedule the performance of that Work around normal school hours or make other arrangements so that the Work does not cause disruption or disturbance. In no event shall those arrangements result in adjustment of the Contract Price or the Contract Time.

**5.15.3. Dust Control.** The Contractor shall be fully and solely responsible for maintaining and upkeeping all areas of the Site and adjoining areas, outdoors and indoors, free from flying debris, grinding powder, sawdust, dirt and dust as well as any other product, product waste or work waste, that by becoming airborne may cause respiratory inconveniences to persons, particularly to students and District personnel. Additionally, the Contractor shall take specific care to avoid deposits of airborne dust or airborne elements. Those protection devices, systems or methods shall be in accordance with the regulations set forth by the EPA and OSHA, and other applicable law, rule or regulation. Additionally, the Contractor shall be responsible to regularly and routinely clean up and remove any and all deposits of dust and other elements. Damage and/or any liability derived from the Contractor's failure to comply with these requirements shall be exclusively at the cost of the Contractor, including, without limitation, any and all penalties that may be incurred for violations of applicable law, rule or regulation, and any amounts expended by the District to pay such damages shall be due and payable to the District on demand. Contractor shall replace any damages property or part thereof and professionally clean any and all items that become covered or partially covered to any degree by dust or other airborne elements. If classes are in session at any point during the progress of Work, and, in the District's reasonable discretion, flying debris, grinding powder, sawdust, dirt or dust from any Work disrupts or disturbs the students or faculty or the normal operation of the school, at the District's request, the Contractor shall schedule the performance of all that Work around normal school hours and make other arrangements so that the Work does not cause disruption or disturbance. In no event shall those arrangements result in adjustment of the Contract Price or the Contract Time.

**5.15.4. Contractor Failure to Comply.** If the Contractor fails to comply with the requirements for dust control, noise control, or any other maintenance or clean up requirement of the Contract Documents, the District, Architect, Project Inspector, or Construction Manager shall notify the Contractor in writing and the Contractor shall take immediate action. Should the Contractor fail to respond with immediate and responsive action and not later than twenty-four (24) hours from that notification, the District shall have the absolute right to proceed as it may deem necessary to remedy such matter. Any and all costs incurred by the District in connection with those actions shall be the sole responsibility of, and be borne by, the Contractor; the District may deduct those amounts from the Contract Price then or thereafter due the Contractor.

## 5.16. Archaeological Finds / Human Remains

**5.16.1.** If Contractor discovers any archeological artifacts during excavation and/or construction, Contractor will immediately stop all affected Work and notify the District immediately, who will:

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5.16.1.1. Call in a qualified archaeologist to assess the discovery and suggest further mitigation, as necessary.

5.16.1.2. Be responsible for contacting the county coroner and a qualified archaeologist.

**5.16.2.** If any remains are determined to be Native American, the District will contact the appropriate tribal representative.

**5.17. Cleaning Up**

**5.17.1.** The Contractor shall provide all services, labor, materials, and equipment necessary for protecting the Work, all school occupants, furnishings, equipment, and building structure from damage until Project Completion and final acceptance by District. Dust barriers shall be provided to isolate dust and dirt from construction operations. Upon Project Completion, Contractor shall clean to the original state any areas beyond the Work area that become dust laden as a result of the Work. The Contractor must erect the necessary warning signs and barricades to ensure the safety of all school occupants. The Contractor at all times must maintain good housekeeping practices to reduce the risk of fire damage and must make a fire extinguisher, fire blanket, and/or fire watch, as applicable, available at each location where cutting, braising, soldering, and/or welding is being performed or where there is an increased risk of fire.

**5.17.2.** Contractor at all times shall keep Site free from debris such as waste, rubbish, and excess materials and equipment caused by the Work. Contractor shall not leave debris under, in, or about the School Site, but shall promptly remove same from the School Site on a daily basis. If Contractor fails to clean up, District may do so and the cost thereof shall be charged to Contractor. If Contract is for work on an existing facility, Contractor shall also perform specific clean-up on or about the School Site upon request by the District as it deems necessary for the continuing education process. Contractor shall comply with all related provisions of the Specifications.

**5.17.3.** If the Construction Manager, Architect, or District observes the accumulation of trash and debris, the District will give the Contractor a 24-hour written notice to mitigate the condition.

**5.17.4.** Should the Contractor fail to perform the required clean-up, or should the clean-up be deemed unsatisfactory by the District, the District will then perform the clean-up. All cost associated with the clean-up work (including all travel, payroll burden, and costs for supervision) will be deducted from the Guaranteed Project Cost, or District may withhold those amounts from payment(s) to Contractor.

**6. SUBCONTRACTORS**

**6.1.** Contractor shall provide the District with information for all of Contractor's Subcontracts and Subcontractors.

**6.2.** No contractual relationship exists between the District and any Subcontractor, supplier, or sub-subcontractor by reason of this Contract.

**6.3. Bidding for Subcontractor Work**

**6.3.1. CONTRACTOR SHALL SOLICIT AND PROCURE SUBCONTRACTORS PURSUANT TO THE SUBCONTRACTOR PROCUREMENT PROCESS ATTACHED TO THE FACILITIES LEASE AS EXHIBIT H.**

**6.3.2.** Contractor agrees and acknowledges that the Subcontractor Procurement Process is integral to the Parties negotiating in good faith to agree upon a GMP. If Contractor fails to comply with any of its obligations to procure Subcontractors in the Contract Documents, it will be considered a material breach

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and Default of the Facilities Lease, and the District shall have the right to terminate the Facilities Lease.

**6.3.3.** After Contractor solicits Subcontractors, Contractor shall prepare the Guaranteed Project Cost as set forth in **Exhibit C** and **Exhibit H.**

**6.4.** Contractor agrees to bind every Subcontractor by terms of Contract as far as those terms are applicable to Subcontractor's work. If Contractor shall subcontract any part of this Contract, Contractor shall be as fully responsible to District for acts and omissions of any Subcontractor and of persons either directly or indirectly employed by any Subcontractor, as it is for acts and omissions of persons directly employed by Contractor. The divisions or sections of the Specifications are not intended to control the Contractor in dividing the Work among Subcontractors or limit the work performed by any trade.

**6.5.** District's consent to, or approval of, or failure to object to, any Subcontractor under this Contract shall not in any way relieve Contractor of any obligations under this Contract and no such consent shall be deemed to waive any provisions of this Contract.

**6.6.** Contractor is directed to familiarize itself with sections 1720 through 1861 of the Labor Code of the State of California, as regards the payment of prevailing wages and related issues, and to comply with all applicable requirements therein all including, without limitation, section 1775 and the Contractor's and Subcontractors' obligations and liability for violations of prevailing wage law and other applicable laws. Prevailing wage rates are on file with the District and are available to any interested party on request or at **www.dir.ca.gov/oprl/statistics_and_databases.html**.

**6.7.** The Contractor shall be responsible for the coordination of the trades, Subcontractors, sub-subcontractors, and material or equipment suppliers working on the Project.

**6.8.** Contractor is solely responsible for settling any differences between the Contractor and its Subcontractor(s) or between Subcontractors.

**6.9.** Contractor must include in all of its subcontracts the assignment provisions as indicated in the Termination section of these General Construction Provisions.

## 7. OTHER CONTRACTS/CONTRACTORS

**7.1.** District reserves the right to let other contracts, and/or to perform work with its own forces, in connection with other portions of the Project or other construction or operations at or about the Site. Contractor shall afford other contractors reasonable opportunity for introduction and storage of their materials and execution of their work and shall properly coordinate and connect Contractor's Work with the work of other contractors.

**7.2.** In addition to Contractor's obligation to protect its own Work, Contractor shall protect the work of any other contractor that Contractor encounters while working on the Site.

**7.3.** If any part of Contractor's Work depends for proper execution or results upon work of District or any other contractor, the Contractor shall inspect and promptly report to the District in writing before proceeding with its Work any defects in District's or any other contractor's work that render Contractor's Work unsuitable for proper execution and results. Contractor shall be held accountable for damages to District for District's or any other contractor's work that Contractor failed to inspect or should have inspected. Contractor's failure to inspect and report shall constitute Contractor's acceptance of all District's or any other contractor's work as fit and proper for reception of Contractor's Work, except as to defects that may develop in District's or any other contractor's work after execution of Contractor's Work.

**7.4.** To ensure proper execution of its subsequent work, Contractor shall measure and inspect work already in

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place and shall at once report to the District in writing any discrepancy between that executed work and the Contract Documents.

**7.5.** Contractor shall ascertain to its own satisfaction the scope of the Project and nature of District's or any other contracts that have been or may be awarded by District in prosecution of the Project to the end that Contractor may perform this Contract in light of the other contracts, if any.

**7.6.** Nothing herein contained shall be interpreted as granting to Contractor exclusive occupancy of the Project Site, the School Site, or of the Project. Contractor shall not cause any unnecessary hindrance or delay to the use and/or school operation(s) of the School Site and/or to District or any other contractor working on the Project. If simultaneous execution of any contract or school operation is likely to cause interference with performance of Contractor's Contract, Contractor shall coordinate with those contractor(s), person(s), and/or entity(s) and shall notify the District of the resolution.

## 8. DRAWINGS AND SPECIFICATIONS

**8.1.** A complete list of all Drawings for the Project is to be found as an index on the Drawings themselves, and/or may be provided to the Contractor and/or in the Table of Contents.

**8.2.** Materials or Work described in words that so applied have a well-known technical or trade meaning shall be deemed to refer to recognized standards, unless noted otherwise.

**8.3.** Drawings and Specifications are intended to comply with all laws, ordinances, rules, and regulations of constituted authorities having jurisdiction, and where referred to in the Contract Documents, the laws, ordinances, rules, and regulations shall be considered as a part of the Contract within the limits specified. Contractor shall bear all expense of correcting work done contrary to said laws, ordinances, rules, and regulations and for which the Contractor knew or reasonably should have known did not comply with those laws, ordinances, rules, and regulations.

### 8.4. Trade Name or Trade Term

**8.4.1.** It is not the intention of this Contract to go into detailed descriptions of any materials and/or methods commonly known to the trade under "trade name" or "trade term." The mere mention or notation of "trade name" or "trade term" shall be considered a sufficient notice to Contractor that it will be required to complete the work so named, complete, finished, and operable, with all its appurtenances, according to the best practices of the trade.

**8.4.2.** The naming of any material and/or equipment shall mean furnishing and installing of same, including all incidental and accessory items thereto and/or labor therefor, as per best practices of the trade(s) involved, unless specifically noted otherwise.

**8.4.3.** Contract Documents are complementary, and what is called for by one shall be binding as if called for by all. As such, Drawings and Specifications are intended to be fully cooperative and to agree. However, if Contractor observes that Drawings and Specifications are in conflict, Contractor shall promptly notify District and Architect in writing, and any necessary changes shall be made as provided in the Contract Documents.

### 8.5. Ownership of Drawings

All copies of Plans, Drawings, Designs, Specifications, and copies of other incidental architectural and engineering work, or copies of other Contract Documents furnished by District, are the property of District. They are not to be used by Contractor in other work and, with the exception of signed sets of Contract Documents, are to be returned to District on request at completion of Work, or may be used by District as it

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may require without any additional costs to District. Neither the Contractor nor any Subcontractor, or material or equipment supplier shall own or claim a copyright in the Drawings, Specifications, and other documents prepared by the Architect. District hereby grants the Contractor, Subcontractors, sub-subcontractors, and material or equipment suppliers a limited license to use applicable portions of the Drawings prepared for the Project in the execution of their Work under the Contract Documents.

## 9. CONTRACTOR'S SUBMITTALS AND SCHEDULES

Contractor's submittals shall comply with the provisions and requirements of the Contract Documents including, without limitation Submittals. No submittal, unless approved in writing by the District as acceptable and complete, shall be a Contract Document. All submittals and schedules must be approved by the District before Contractor can rely on them as a basis for payment or for any other purpose identified in the Contract Documents.

### 9.1. Construction Schedule

The Contractor shall prepare a detailed Construction Schedule that complies with the construction schedule attached to the Facilities Lease as **Exhibit F** and in compliance with the provisions of the **"Construction Schedule – Network Analysis"** provisions indicated in **Exhibit I** and shall provide all schedules and construction progress documentation as required in the Contract Documents**.** The initial, detailed Construction Schedule shall either be attached to the Facilities Lease in **Exhibit F,** or be submitted to the District for written approval as indicated in the Contract Documents. If the initial detailed Construction Schedule is submitted to the District for written approval, the District approved detailed Construction Schedule shall be the Construction Schedule for the Project.

**9.1.1.** All items on the Schedule of Values must have a specific completion date on the Construction Schedule, or District has approved the Construction Schedule and the Construction Schedule is fully cost-loaded and resource-loaded, unless waived by the District in writing, and detailed as required by the Contract Documents.

**9.1.2.** Contractor must provide all schedules both in hard copy and electronically, in a format (e.g., Microsoft Project or Primavera) approved in advance by the District.

**9.1.3.** The District will review the schedules submitted and the Contractor shall make changes and corrections in the schedules as requested by the District and resubmit the schedules until approved by the District.

### 9.2. Schedule of Values

The Contractor has provided and the District has approved a Schedule of Values as **Exhibit G** ("Schedule(s) of Values") for all of the Work, which is comprised of quantities and prices of items aggregating the Guaranteed Project Cost and subdivided into component parts. The Schedule of Values includes, at a minimum, the following information and the following structure:

**9.2.1.** The District expects the Schedule of Values to follow the most current breakdown of scope and categories found in the most recent Construction Specifications Institute ("CSI") MasterFormat documentation. At a minimum, the Contractor must include at least the following categories:

9.2.1.1. Overhead and profit;
9.2.1.2. Supervision;
9.2.1.3. General conditions;
9.2.1.4. Layout;
9.2.1.5. Mobilization;
9.2.1.6. Submittals;

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9.2.1.7. Bonds and insurance;
9.2.1.8. Closeout documentation;
9.2.1.9. Demolition;
9.2.1.10. Installation;
9.2.1.11. Rough-in;
9.2.1.12. Finishes;
9.2.1.13. Testing;
9.2.1.14. Punch list and acceptance.

**9.2.2.** Divided by each of the following areas:

9.2.2.1. Site work;
9.2.2.2. By each building and phase;
9.2.2.3. By each floor.
9.2.2.4. By division of work.

**9.2.3.** The Schedule of Values shall not provide for values any greater than the following percentages of the Guaranteed Project Cost:

9.2.3.1. Mobilization and layout combined to equal not more than 1%;
9.2.3.2. Submittals, samples and shop drawings combined to equal not more than 2%,
9.2.3.3. Bonds and insurance combined to equal not more than 3%.
9.2.3.4. Punchlist and acceptance value combined to equal not less than 1%.
9.2.3.5. No item on the Schedule of Value (except noted above) to equal more than 3%.

**9.2.4.** Closeout Documentation shall have a value in the schedule of values of not less than 5%. The value for Closeout Documentation shall be in addition to and shall not be a part of the Lease Payments.

**9.2.5.** The preliminary Schedule of Values shall either be attached to the Facilities Lease in **Exhibit G,** or be submitted to the District for written approval as indicated in the Contract Documents. If the preliminary Schedule of Values is submitted to the District for written approval, the District approved Preliminary Schedule of Values shall become the Schedule of Values. The Schedule of Values shall not be modified or amended by the Contractor without the prior consent and approval of the District, which may be granted or withheld in the sole discretion of the District. The Schedule of Values shall only be modified by an executed Change Order.

**9.2.6.** The District shall have the right at any time to revise the Schedule of Values if, in the District's sole opinion, the Schedule of Values does not accurately reflect the value of the Work performed.

**9.3. <u>Safety Plan</u>**

Contractor's Safety Plan specifically adapted for the Project. Contractor's Safety Plan shall comply with the following requirements and shall be submitted to the District for information purposes only:

**9.3.1.** All applicable requirements of CalOSHA and/or of OSHA.

**9.3.2.** All provisions regarding Project safety, including all applicable provisions in these General Construction Provisions.

**9.3.3.** Contractor's Safety Plan shall be in English and in the language(s) of the Contractor's and its Subcontractors' employees.

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**9.4. Complete Subcontractor List**

The name, address, telephone number, email address, California State Contractors License number, Department of Industrial Relations registration number, classification, and monetary value of all Subcontracts for parties furnishing labor, material, or equipment for Project Completion, plus all information required in the Contract Documents. This includes the subcontractor bid and fully executed Contract.

**9.5. Monthly Progress Schedule(s)**

**9.5.1.** Contractor must provide monthly to District an updated Monthly Progress Schedule. The first Monthly Progress Schedule shall be based on, and update, the approved detailed Construction Schedule. Thereafter, the Monthly Progress Schedule shall update the last Monthly Progress Schedule. A Monthly Progress Schedule must show all Work completed and to be completed by Contractor. The Monthly Progress Schedule must be sent to the District, in a format acceptable to the District, and contain a written narrative of the progress of Work for that month and any changes, delays, or events that may affect the Work. The process for the District's approval of the Monthly Progress Schedule is the same as the process for approval of the Construction Schedule.

**9.5.2.** Contractor shall also submit Monthly Progress Schedule(s) with all payment applications.

**9.6. Safety Data Sheets (SDS) (formerly known as Material Safety Data Sheets, or MSDSs)**

Contractor is required to ensure Safety Data Sheets are available in a readily accessible place at the Work Site for any material requiring a Safety Data Sheet per the Federal "Hazard Communication" standard, or employees right to know law. The Contractor is also required to ensure proper labeling on substance brought onto the job site and that any person working with the material or within the general area of the material is informed of the hazards of the substance and follows proper handling and protection procedures. Two additional copies of the Safety Data Sheets shall also be submitted directly to the District.

**9.7. Logistics Plan**

Contractor shall provide a staging and logistics plan identifying laydown areas, loading and unloading areas, crane locations, fence locations, temporary utility connections, trailer locations, and emergency evacuation meeting area. This Logistics Plan must be approved by the District prior to the Contractor mobilizing on the Site and shall be updated and revised upon the District's request.

**9.8. Contractor Responsibility for Deviations**

The Contractor shall not be relieved of responsibility for correcting deviations from the requirements of the Contract Documents by the District's and Architect's review of submittals unless the Contractor has specifically informed the District in writing of such deviation at the time of submission of the submittal and the District has given written approval to the specific deviation. The Contractor shall not be relieved of responsibility for errors or omissions in submittals by the District's and Architect's review or comments thereon.

**10. SITE ACCESS, CONDITIONS, AND REQUIREMENTS**

**10.1. Site Investigation**

Contractor has made a careful investigation of the Site and is familiar with the requirements of the Contract and has accepted the known existing conditions of the Site.

**10.2. Geotechnical Investigation Report**

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**10.2.1.** When a geotechnical report is available, Contractor must review all geotechnical data provided and determine whether additional data or services are necessary to complete the Work. Such services include, without limitation, test borings, test pits, soil bearing values, percolation tests, water pollution and other environmental tests, ground corrosion and resistivity tests, and other necessary operations determining subsoil, air, and water conditions with reports and appropriate professional interpretations and recommendations thereof. Any information obtained from the geotechnical report made available by District is approximate only, is not guaranteed, does not form a part of the Contract, and Contractor may not rely thereon.

**10.2.2.** If additional services or investigations are deemed necessary by Contractor, Contractor must submit a request in writing to the District fully detailing the need for additional services. If the District approves the request, Contractor must coordinate directly with the District for performance of the requested services.

**10.3. <u>Soils Investigation Report & Site Due Diligence</u>**

**10.3.1.** When a soils investigation report obtained from test holes at Site is available, that report shall be available to the Contractor but shall not be a part of this Contract. Any information obtained from that report or any information given on Drawings as to subsurface soil condition or to elevations of existing grades or elevations of underlying rock is approximate only, is not guaranteed, does not form a part of this Contract. Contractor may reasonably rely thereon, however the Districts makes no warranty regarding the completeness or accuracy of any such report or other information regarding subsurface conditions. Contractor acknowledges that it has made visual examination of Site and has made whatever tests Contractor deems appropriate to determine underground condition of soil.

**10.3.2.** If Contractor encounters subsurface or latent conditions at Site materially differing from those shown on Drawings or indicated in Specifications, or Unforeseen Site Conditions, Contractor shall give notice to the District immediately before conditions are disturbed and in no event later than ten (10) days after first observance of the conditions.

10.3.2.1. The District will promptly investigate such conditions and, if they differ materially and cause an increase or decrease in Contractor's cost of, or time required for, performance of any part of the Work, will equitably adjustment the Contract Sum or Contract Time, or both.

10.3.2.2. If the District determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the District will notify Contractor in writing, stating the reasons.

10.3.2.3. If after receiving the response, Contractor still intends to pursue a Claim, it shall provide written notice within ten (10) days after it has received the decision.

10.3.2.4. Conditions will not be qualified as concealed or unknown if they were readily visible or reasonably observable.

**10.3.3. Contractor's Diligence.** Contractor's agreement to the Contract Price confirms that it has made a careful examination of the Contract Documents, that it has a complete understanding of the nature, extent, and location of Work to be performed and that it expressly represents that it has fully completed the following:

10.3.3.1. Contractor has visited the Project Site(s), and has examined thoroughly and understood the nature and extent of the Contract Documents, Work, Site, locality, actual conditions, as-built conditions, and all local conditions and federal, state and local laws, and regulations that in any manner may affect cost, progress, performance, or furnishing of Work or that relate to any aspect of

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the means, methods, techniques, sequences, or procedures of construction to be employed by Contractor and safety precautions and programs incident thereto;

10.3.3.2. Contractor has conducted or obtained and has understood all examinations, investigations, explorations, tests, reports, and studies that pertain to the subsurface conditions, as-built conditions, underground facilities, and all other physical conditions at or contiguous to the Site or otherwise that may affect the cost, progress, performance, or furnishing of Work, as Contractor considers necessary for the performance or furnishing of Work at the Guaranteed Project Cost, within the Contract Time, and in accordance with the other terms and conditions of Contract Documents, including specifically the provisions of the General Construction Provisions; and no additional examinations, investigations, explorations, tests, reports, studies, or similar information or data are or will be required by Contractor for such purposes;

10.3.3.3. Contractor has correlated its knowledge and the results of all such observations, examinations, investigations, explorations, tests, reports, and studies with the terms and conditions of the Contract Documents;

10.3.3.4. Contractor has given the District prompt written notice of all conflicts, errors, ambiguities, or discrepancies that it has discovered in or among the Contract Documents and the actual conditions, and the written resolution thereof by the District is acceptable to Contractor;

10.3.3.5. Contractor has made a complete disclosure in writing to the District of all facts bearing upon any possible interest, direct or indirect, that Contractor believes any representative of the District or other officer or employee of the District presently has or will have in this Contract or in the performance thereof or in any portion of the profits thereof;

10.3.3.6. Contractor is charged with all information and knowledge that a reasonable contractor would ascertain from having performed this required work, investigation, research, and analysis. The Guaranteed Project Cost includes entire cost of all work "incidental" to completion of the Work.

10.3.3.7. **Conditions Shown on the Contract Documents**: Information as to underground conditions, as-built conditions, or other conditions or obstructions, indicated in the Contract Documents, e.g., on Drawings or in Specifications, has been obtained with reasonable care, and has been recorded in good faith. However, District only warrants, and Contractor may only rely, on the accuracy of limited types of information.

10.3.3.7.1. As to above-ground conditions or as-built conditions shown or indicated in the Contract Documents, there is no warranty, express or implied, or any representation express or implied, that such information is correctly shown or indicated. This information is verifiable by independent investigation and Contractor is required to make such verification. Contractor shall rely on the results of its own independent investigation. Contractor shall not rely on District-supplied information regarding above-ground conditions or as-built conditions. Subject to Public Contract Code section 7104, Contractor shall be responsible for all repairs of any utilities underground damaged by Contractor.

10.3.3.7.2. As to any subsurface condition shown or indicated in the Contract Documents, Contractor may rely only upon the general accuracy of actual reported depths, actual reported character of materials, actual reported soil types, actual reported water conditions, or actual obstructions shown or indicated. District is not responsible for the completeness of such information for preparing a proposal or construction; nor is District responsible in any way for any conclusions or opinions of Contractor drawn from such information; nor is District responsible for subsurface conditions that are not specifically shown (for example, District is not responsible for soil conditions in areas contiguous to areas where a subsurface condition is

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shown).

**10.3.4. Conditions Shown in Reports and Drawings Supplied for Informational Purposes**: Reference is made to the document entitled Geotechnical Data (if attached), and the document entitled Existing Conditions (if attached), for identification of:

10.3.4.1. **Subsurface Conditions**: Those reports of explorations and tests of subsurface conditions at or contiguous to the Project Site(s) that have been utilized by Architect in preparing the Contract Documents; and

10.3.4.2. **Physical Conditions**: Those drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Project Site(s) that has been utilized by Architect in preparing the Contract Documents.

10.3.4.3. These reports and drawings are **not** Contract Documents and, except for any "technical" data regarding subsurface conditions specifically identified in Geotechnical Data and Existing Conditions, and underground facilities data, Contractor may not in any manner rely on the information in these reports and drawings. Subject to the foregoing, Contractor must make its own independent investigation of all conditions affecting the Work and must not rely on information provided by District.

**10.3.5. Failure to Investigate.** Any failure by Contractor and Subcontractors to acquaint themselves with information that is provided, information that could reasonably be obtained, or conditions which could be identified with reasonable investigation, will not relieve Contractor from responsibility to properly estimate the difficulty or cost to perform the Work.

**10.4. No Warranty**

**10.4.1.** There is no guarantee or warranty, either expressed or implied that the Site conditions indicated in the information provided by the District are comprehensively representative of those existing throughout the Site, or that Unforeseen Site Conditions or developments may not occur. Making such information available to Contractor will not be construed to be a waiver of this provision.

**10.5. Contract Adjustments**

**10.5.1.** Contractor agrees that no claim against the District will be made by Contractor for damages, and hereby waives any rights to damages, if during the progress of Work, Contractor encounters subsurface conditions at Site materially differing from those shown on Drawings or indicated in Specifications, unless that claim is as indicated in the provisions of these General Conditions regarding trenches and/or existing utility lines.

**10.5.2.** As it relates to all other differing Site conditions, Contractor agrees that no claim against the District will be made by Contractor for damages and hereby waives any right to damages if, during progress of the Work, Contractor encounters differing Site conditions, unless Contractor establishes by satisfactory evidence that the conditions were reasonably unforeseeable based on all the information available to Contractor or that could have been reasonably ascertained by Contractor prior to the Parties establishing the GPC.

**10.6. Access to Work**

District and its representatives shall at all times have access to Work wherever it is in preparation or progress, including storage and fabrication. Contractor shall provide safe and proper facilities for such access so that District's representatives may perform their functions.

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**10.7. Layout and Field Engineering**

**10.7.1.** All field engineering required for layout of this Work and establishing grades for earthwork operations shall be furnished by Contractor at its expense. This Work shall be done by a qualified, California-registered civil engineer and/or licensed surveyor (as appropriate) approved in writing by District and Architect.

**10.7.2.** The Contractor shall be responsible for having ascertained pertinent local conditions such as location, accessibility, and general character of the Site and for having satisfied itself as to the conditions under which the Work is to be performed. District shall not be liable for any claim for allowances because of Contractor's error or negligence in acquainting itself with the conditions at the Site.

**10.7.3.** Contractor shall protect and preserve established benchmarks and monuments and shall make no changes in locations without the prior written approval of District. Contractor shall replace any benchmarks or monuments that are lost or destroyed subsequent to proper notification of District and with District's approval.

**10.8. Utilities & Sanitary Facilities**

Utilities necessary to complete the Work and to completely perform all of the Contractors' obligations shall be obtained by the Contractor without adjustment of the Guaranteed Project Cost. The Contractor shall furnish and install necessary or appropriate temporary distributions of utilities, including utilities furnished by the District. Any such temporary distributions shall be removed by the Contractor upon completion of the Work. The costs of all such utility services, including the installation and removal of temporary distributions thereof, shall be borne by the Contractor and included in the Guaranteed Project Cost. Also refer to other utility requirements as indicated in the Specifications. At all times during Work at the Site, the Contractor shall obtain and maintain temporary sanitary facilities in conformity with applicable law, rule or regulation. The Contractor shall maintain temporary sanitary facilities in a neat and clean manner with sufficient toilet room supplies. Personnel engaged in the Work are not permitted to use toilet facilities at the Site. Also refer to other Sanitary facility requirements as indicated in the Specifications.

**10.9. Surveys**

Contractor shall provide surveys done by a qualified, California-registered civil engineer and/or licensed surveyor (as appropriate) to determine locations of construction, grading, and site work as required to perform the Work.

**10.10. Regional Notification Center**

The Contractor, except in an emergency, shall contact the appropriate regional notification center at least two (2) days prior to commencing any excavation if the excavation will be conducted in an area or in a private easement that is known, or reasonably should be known, to contain subsurface installations other than the underground facilities owned or operated by the District, and obtain an inquiry identification number from that notification center. No excavation shall be commenced and/or carried out by the Contractor unless an inquiry identification number has been assigned to the Contractor or any Subcontractor and the Contractor has given the District the identification number. Any damages arising from Contractor's failure to make appropriate notification shall be at the sole risk and expense of the Contractor. Any delays caused by failure to make appropriate notification shall be at the sole risk of the Contractor and shall not be considered for an extension of the Contract time.

**10.11. Existing Utility Lines**

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**10.11.1.** Pursuant to Government Code section 4215, District assumes the responsibility for removal, relocation, and protection of main or trunk utility lines and facilities located on the construction Site at the time of commencement of construction under this Contract with respect to any such utility facilities that are not identified in the Plans and Specifications. Contractor shall not be assessed for liquidated damages for delay in Project Completion caused by failure of District or the owner of a utility to provide for removal or relocation of such utility facilities.

**10.11.2.** Locations of existing utilities provided by District shall not be considered exact, but approximate within reasonable margin and shall not relieve Contractor of responsibilities to exercise reasonable care nor costs of repair due to Contractor's failure to do so. District shall compensate Contractor for the costs of locating, repairing damage not due to the failure of Contractor to exercise reasonable care, and removing or relocating such utility facilities not indicated in the Plans and Specifications with reasonable accuracy, and for equipment necessarily idle during such work.

**10.11.3.** No provision herein shall be construed to preclude assessment against Contractor for any other delays in Project Completion. Nothing in this Section shall be deemed to require District to indicate the presence of existing service laterals, appurtenances, or other utility lines, with the exception of main or trunk utility lines, whenever the presence of these utilities on the Site of the construction Project can be inferred from the presence of other visible facilities, such as buildings, meter junction boxes, trenches on or adjacent to the Site of the construction.

**10.11.4.** If Contractor, while performing Work under this Contract, discovers utility facilities not identified by District in Contract Plans and Specifications, Contractor shall immediately, but in no case longer than two (2) Business Days, notify the District and the utility in writing. The cost of repair for damage to above-mentioned visible facilities without prior written notification to the District shall be borne by the Contractor.

**10.11.5.** Notwithstanding the foregoing, Contractor must provide at least fourteen (14) Business Days' written notice to the District and receive the District Approval before interrupting any utility service at the Project, and all emergency power, etc., must be in place prior to disruption of service.

**10.11.6.** Should, during construction, Contractor disturb, damage, or disconnect any existing utilities or services identified by the District consistent with Government Code section 4215, Contractor is responsible, at no additional cost or time, to the District, for all expenses and consequential damages of every type arising from such disturbance or the replacement or repair thereof and must repair such items as required to maintain continuing service, including emergency repairs.

**10.12. Notification**

Contractor understands, acknowledges and agrees that the purpose for prompt notification to the District pursuant to these provisions is to allow the District to investigate the condition(s) so that the District shall have the opportunity to decide how the District desires to proceed as a result of the condition(s). Accordingly, failure of Contractor to promptly notify the District in writing, pursuant to these provisions, shall constitute Contractor's waiver of any claim for damages or delay incurred as a result of the condition(s).

**10.13. Hazardous Materials**

Contractor shall comply with all provisions and requirements of the Contract Documents related to hazardous materials including, without limitation, certifications related to hazardous materials in the document entitled Certifications to be Completed by Contractor.

**10.14. No Signs**

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Neither the Contractor nor any other person or entity shall display any signs not required by law or the Contract Documents at the Site, fences trailers, offices, or elsewhere on the Site without specific prior written approval of the District.

## 11. TRENCHES

### 11.1. Trenches Greater Than Five Feet

Pursuant to Labor Code section 6705, if the Guaranteed Project Cost exceeds $25,000 and involves the excavation of any trench or trenches five (5) feet or more in depth, the Contractor shall, in advance of excavation, promptly submit to the District and/or a registered civil or structural engineer employed by the District or Architect, a detailed plan showing the design of shoring for protection from the hazard of caving ground during the excavation of such trench or trenches.

### 11.2. Excavation Safety

If such plan varies from the Shoring System Standards established by the Construction Safety Orders, the plan shall be prepared by a registered civil or structural engineer, but in no case shall such plan be less effective than that required by the Construction Safety Orders. No excavation of such trench or trenches shall be commenced until said plan has been accepted by the District or by the person to whom authority to accept has been delegated by the District.

### 11.3. No Tort Liability of District

Pursuant to Labor Code section 6705, nothing in this Article shall impose tort liability upon the District or any of its employees.

### 11.4. No Excavation Without Permits

The Contractor shall not commence any excavation Work until it has secured all necessary permits including the required CAL OSHA excavation/shoring permit. Any permits shall be prominently displayed on the Site prior to the commencement of any excavation.

### 11.5. Discovery of Hazardous Waste, Unusual Conditions and /or Unforeseen Site Conditions

**11.5.1.** Pursuant to Public Contract Code section 7104, if the Work involves digging trenches or other excavations that extend deeper than four feet below the Surface, the Contractor shall immediately, but in no case longer than two (2) Business Days, and before the following conditions are disturbed, notify the District, in writing, of any:

11.5.1.1. Material that the Contractor 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.

11.5.1.2. Subsurface or latent physical conditions at the Site differing from those indicated.

11.5.1.3. Unknown physical conditions at the Site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract.

**11.5.2.** The District shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in the Contractor's cost of, or the time required for, performance of any part of the Work, shall issue a Change Order under

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the procedures described herein.

**11.5.3.** In the event that a dispute arises between District and the Contractor whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Contractor's cost of, or time required for, performance of any part of the Work, the Contractor shall not be excused from any scheduled Completion date provided for by the Contract, but shall proceed with all work to be performed under the Contract. The Contractor shall retain any and all rights provided by the Contract or by law that pertain to the resolution of disputes and protests, which include the requirement that Contractor complies with the notice and PCO provisions of the Contract Documents. Contractor's failure to submit a proposed change order pursuant to the terms of the Contract Documents shall be deemed a waiver of Contractor's right to an adjustment of the GPC of Contract Time.

## 12. INSURANCE AND BONDS

### 12.1. Contractor's Insurance

The Contractor shall comply with the insurance requirements as indicated in the Facilities Lease.

### 12.2. Contract Security - Bonds

**12.2.1.** Contractor shall furnish two surety bonds issued by a California admitted surety insurer as follows:

12.2.1.1. **Performance Bond**: A bond in an amount at least equal to one hundred percent (100%) of Contract Price as security for faithful performance of this Contract.

12.2.1.2. **Payment Bond**: A bond in an amount at least equal to one hundred percent (100%) of the Contract Price as security for payment of persons performing labor and/or furnishing materials in connection with this Contract.

**12.2.2.** Cost of bonds shall be included in the Guaranteed Project Cost.

**12.2.3.** All bonds related to this Project shall be on the forms provided in the Contract Documents and shall comply with all requirements of the Contract Documents.

## 13. WARRANTY/GUARANTEE/INDEMNITY

### 13.1. Warranty/Guarantee

**13.1.1.** The Contractor shall obtain and preserve for the benefit of the District, manufacturer's warranties on materials, fixtures, and equipment incorporated into the Work. All manufacturer, material, and fixture warranties shall commence at Project Completion. Contractor shall ensure that all warranties are maintained for the benefit of the District, regardless of who the manufacturer is, who the installing Subcontractor was, if any, etc. While the District will fully expect the Contractor to manage all warranty work through all applicable warranty periods, the District must have that same ability if the Contractor fails to perform its warranty obligations as required in this **Exhibit D**.

**13.1.2.** In addition to guarantees required elsewhere, Contractor shall, and hereby does guarantee and warrant all Work furnished on the Project against all defects for a period of **ONE (1)** year after the later of the following dates:

13.1.2.1. Project Completion,

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13.1.2.2. The final commissioning date for all systems, equipment and components that are within the Project, if any.

At the District's sole option, Contractor shall repair or replace any and all of that Work, together with any other Work that may be displaced in so doing, that may prove defective in workmanship and/or materials within a **ONE (1)** year period from date of Project Completion as defined above without expense whatsoever to District. Product or system component warranties shall run from the date of Project Completion and may contain extended warranties per the Specifications In the event of failure of Contractor and/or Surety to commence and pursue with diligence said replacements or repairs within ten (10) days after being notified in writing, Contractor and Surety hereby acknowledge and agree that District is authorized to proceed to have defects repaired and made good at expense of Contractor and/or Surety who hereby agree to pay costs and charges therefore immediately on demand.

**13.1.3.** If, in the opinion of District, defective work creates a dangerous condition or requires immediate correction or attention to prevent further loss to District or to prevent interruption of operations of District, District will attempt to give the notice required above. If Contractor or Surety cannot be contacted or neither complies with District's request for correction within a reasonable time as determined by District, District may, notwithstanding the above provision, proceed to make any and all corrections and/or provide attentions the District believes are necessary. The costs of correction or attention shall be charged against Contractor and Surety of the guarantees provided in this Article or elsewhere in this Contract.

**13.1.4.** The above provisions do not in any way limit the guarantees 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. Contractor shall furnish to District all appropriate guarantee or warranty certificates as indicated in the Specifications or upon request by District.

**13.1.5.** Nothing herein shall limit any other rights or remedies available to District.

### 13.2. Indemnity

Contractor shall indemnify the District as indicated in the Facilities Lease.

## 14. TIME

### 14.1. Notice to Proceed

The District may issue a Notice to Proceed to commence construction Work, or will otherwise instruct the Contractor to begin performing the Work of the Project.

### 14.2. Computation of Time / Adverse Weather

**14.2.1.** The Contractor will only be allowed a time extension for Adverse Weather conditions if requested by Contractor and only if all of the following conditions are met:

14.2.1.1. The weather conditions constitute Adverse Weather, as defined herein;

14.2.1.2. Contractor can verify that the Adverse Weather caused delays in excess of five hours of the indicated labor required to complete the scheduled tasks of Work on the day affected by the Adverse Weather;

14.2.1.3. The Contractor's crew is dismissed as a result of the Adverse Weather; and

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14.2.1.4. The number of days of delay for the month exceeds the following parameters, or twenty nine (29) days annually, which will reset at the beginning of each calendar year of the Project duration. The District and Contractor may negotiate a different minimum number of days or a cumulative number of days for the duration of the Project, which shall be as indicated in **Exhibit K** to the Facilities Lease:

| | | | |
|---|---|---|---|
| January | **7** | July | **0** |
| February | **7** | August | **0** |
| March | **4** | September | **0** |
| April | **3** | October | **2** |
| May | **1** | November | **2** |
| June | **1** | December | **2** |

**14.2.2.** A day-for-day extension will only be allowed for those days in excess of those indicated herein.

**14.2.3.** The Contract Time has been determined with consideration given to the average climate weather conditions prevailing in the County in which the Project is located.

**14.3. Hours of Work**

Work shall be performed during regular working hours as permitted by the appropriate governmental agency except that in the event of an emergency, or when required to complete the Work in accordance with job progress, Work may be performed outside of regular working hours with the advance written consent of the District and approval of any required governmental agencies (e.g., the city within which the Project is located). Contractor shall confirm with the governmental agencies what the permitted work hours are for the jurisdiction in which the Project is located. Contractor and Subcontractors shall continuously furnish sufficient forces to ensure the performance of the Work in accordance with the Construction Schedule. In no event will the District be responsible for the costs of Work performed outside of regular working hours, including, without limitation, overtime or weekend Work, unless expressly agreed to by the District in writing and approved in a Change Order.

**14.4. Progress and Project Completion**

**14.4.1.** Time of the Essence

Time limits stated in the Contract Documents are of the essence to the Contract. By executing the Facilities Lease, the Contractor confirms that the Contract Time is a reasonable period for Project Completion.

**14.4.2.** No Commencement Without Insurance

The Contractor shall not commence operations on the Project or elsewhere prior to the effective date of insurance and bonds. The date of commencement of the Work shall not be changed by the effective date of such insurance. If Contractor commences Work without insurance and bonds, all Work is performed at Contractor's peril and shall not be compensable until and unless Contractor secures bonds and insurance pursuant to the terms of the Contract Documents and subject to District claim for damages.

**14.4.3.** Sufficient Forces

Contractor and Subcontractors shall continuously furnish sufficient forces to ensure the prosecution of the Work in accordance with the Construction Schedule to obtain Project

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Completion within the Contract Time.

**14.5. Schedule**

Contractor shall provide to District, Construction Manager, and Architect a schedule in conformance with the Contract Documents and as required in these General Construction Provisions.

**14.6. Expeditious Completion**

The Contractor shall proceed expeditiously with adequate forces and shall achieve Completion within the Contract Time.

## 15. EXTENSIONS OF TIME – LIQUIDATED DAMAGES

**15.1. Contractor's Notice of Delay**

**15.1.1.** In addition to the requirements indicated in this subsection, Contractor shall submit any request for an adjustment of the Contract Price or the Contract Time through the Change Order provisions in this **Exhibit D**.

**15.1.2.** Contractor shall, within **FIVE (5)** Days of any delay impacting the critical path in completing the Work, notify District in writing of the causes of the delay including documentation and facts explaining the delay.

**15.1.3.** Any request by Contractor for an adjustment of the Contract Price or the Contract Time for a delay shall be submitted in accordance with the provisions in the Contract Documents governing changes in Work. When requesting time, requests must be submitted with full justification and documentation. Such justification must be based on the official Construction Schedule as updated at the time of occurrence of the delay or execution of Work related to any changes to the Scope of Work.

**15.2. Types of Delay**.

There are three (3) types of delay as indicated and defined below:

**15.2.1. Excusable Delay(s)**. A delay that entitles Contractor to an adjustment of the Contract Time but **NOT** an adjustment of the Contract Price.

**15.2.2. Excusable and Compensable Delay(s)**. A delay that entitles Contractor to an adjustment of the Contract Price and an adjustment to the Contract Time, and excuses Contractor from an assessment of Liquidated Damages for the specific delay period approved by the District for the Excusable and Compensable Delay.

**15.2.3. Unexcused Delay(s).** A delay that does not entitle Contractor to an adjustment of the Contract Price and/or to an adjustment of the Contract Time, and for which the District may impose Liquidated Damages. An Unexcused Delay will be any delay caused by any delay other than a Excusable Delay and Excusable and Compensable Delay.

**15.3. Documentation in Support of Delay**.

Any claim for delay must include the following information as support, without limitation:

**15.3.1. Duration.** The duration of the activity relating to the changes in the Work and the resources (manpower, equipment, material, etc.) required to perform the activities within the stated duration.

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**15.3.2. Schedule Analysis**. A detailed schedule analysis articulating the cause of any delay and explaining the delay's impact to critical path and each activity of the Project. This analysis may be in the form of a time impact analysis. The time impact analysis shall provide all documentation and justification necessary to substantiate the requested extension. All supporting documentation shall be based on the then current Monthly Progress Schedule.

**15.3.3. Logical Ties / Fragnets.** Specific logical ties to the Contract Schedule for the proposed changes and/or delay showing the activity/activities in the Construction Schedule that are affected by the change and/or delay. (A portion of any delay of seven (7) days or more must be provided.) Include a "fragnet" analysis for the portion of the schedule and the activities the Contractor contends are impacted by the delay and a detailed time impact analysis in compliance with the provisions of the **"Construction Schedule – Network Analysis"** provisions indicated in **Exhibit I**.

**15.3.4. Updated Construction Schedule.** A recovery or updated Construction Schedule must be submitted.

**15.4. <u>District's Review and Determination of Delay</u>**

**15.4.1.** District shall review the facts and extent of any noticed delay and may grant Contract Time extension(s) of time for completing Work when, in the District's judgment, the findings of fact justify an extension.

**15.4.2.** Following submission of a notice of delay, the District may determine whether Contractor is entitled to an extension of the Contract Time, and, if applicable, an increase in the Contract Price arising from any properly noticed and substantiated delay. In making that determination, District will consider the following, based on the evidence submitted by Contractor and any investigations performed by District:

15.4.2.1. Whether the delay is an Excusable, Excusable and Compensable Delay, or Unexcused Delay;

15.4.2.2. How long the delay continues;

15.4.2.3. To what extent the prosecution and Completion of the Work might be delayed thereby; and

15.4.2.4. Compensation, if any, due to Contractor.

**15.4.3.** Contract Time extensions shall apply only to that portion of Work affected by delay, and shall not apply to other portions of Work not so affected, in the sole discretion of the District.

**15.4.4.** An extension of time may only be granted if Contractor has timely submitted the updated Construction Schedule as required herein.

**15.4.5.** Contractor's failure to request adjustment(s) of the Contract Time in strict conformity with applicable provisions of the Contract Documents shall be deemed Contractor's waiver of its right to assert a claim for a delay.

**15.5. <u>Excusable Delay(s)</u>**

**15.5.1.** A delay is an Excusable Delay only if **<u>all</u>** the following conditions are met:

15.5.1.1. Could have not been avoided by the Contractor exercising care, prudence, foresight, and diligence; and

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15.5.1.2. Actually extended the most current Project Completion date.

**15.5.2.** The Contractor may be entitled to an extension of the Project Completion date if there is an Excusable Delay, but the Contractor shall not be entitled to additional compensation for an Excusable Delay.

**15.5.3.** Excusable Delays are limited to interruptions that satisfy the above requirements and that are Force Majeure Events and/or Adverse Weather.

**15.5.4.** If an Infectious Disease impacts the progress of the Work and Contractor demonstrates that the event satisfies the conditions of the Contract Documents for an adjustment to the Contract Time, it will be considered a Force Majeure Event.

**15.5.5. <u>Computation of Time / Adverse Weather</u>**

15.5.5.1. The Contractor will only be allowed a time extension as an Excusable Delay for Adverse Weather conditions if requested by Contractor within **FIVE (5)** Days of the Adverse Weather event, and only if **<u>all</u>** of the following conditions are met in addition to those for an Excusable Delay above:

15.5.5.1.1. The weather conditions constitute Adverse Weather, as defined herein and further specified in **Exhibit K**;

15.5.5.1.2. Contractor can verify that the Adverse Weather caused delays in excess of five (5) hours of the indicated labor required to complete the scheduled tasks of Work on the day affected by the Adverse Weather;

15.5.5.1.3. The Contractor's crew is dismissed as a result of the Adverse Weather; and

15.5.5.1.4. The number of days of delay for the month exceed those indicated in the **Exhibit K**.

15.5.5.2. A day-for-day extension will only be allowed for those days in excess of those indicated in the **Exhibit K** and only if the tasks of Work on the day affected by the Adverse Weather were tasks required to be performed on that day to maintain the critical path of the Construction Schedule.

15.5.5.3. The Contractor shall work seven (7) days per week, if necessary, irrespective of inclement weather, to maintain access and the Construction Schedule, and to protect the Work under construction from the effects of Adverse Weather, all at no further cost to the District.

**15.5.6.** Contractor is aware that governmental agencies and utilities, including, without limitation, the Division of the State Architect, the Department of General Services, gas companies, electrical utility companies, water districts, cities, counties and other agencies may have to approve Contractor-prepared drawings or approve a proposed installation. Contractor shall include in its proposal, time for possible review of its drawings and for reasonable delays and damages that may be caused by such agencies. Contractor is not entitled to make a claim for damages or delays or an Excusable Delay arising from the review of Contractor's drawings or other approvals from the Division of the State Architect, the Department of General Services, gas companies, electrical utility companies, water districts, and other agencies.

**15.5.7.** Neither the financial resources of the Contractor or any person or entity directly or indirectly engaged by the Contractor in performance of any portion of the Work shall be deemed conditions beyond the control of the Contractor. If an event of Excusable Delay occurs, the Contract Time shall be subject to adjustment hereunder only if the Contractor establishes: (i) full compliance with all applicable provisions

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of the Contract Documents relative to the method, manner and time for Contractor's notice and request for adjustment of the Contract Time; (ii) that the event(s) forming the basis for Contractor's request to adjust the Contract Time are outside the reasonable control and without any fault or neglect of the Contractor or any person or entity directly or indirectly engaged by Contractor in performance of any portion of the Work; and (iii) that the event(s) forming the basis for Contractor's request to adjust the Contract Time directly and adversely impacted the critical path of the Work as indicated in the approved Construction Schedule or the most recent updated approved Construction Schedule relative to the date(s) of the claimed event(s) of Excusable Delay.

**15.6. Excusable and Compensable Delay(s)**

**15.6.1.** A delay is an Excusable and Compensable Delay only if **all** of the following conditions are met:

15.6.1.1. The District is responsible for the delay;

15.6.1.2. The delay is unreasonable under the circumstances involved and impacts the critical path of the Work and extends the most current Contract Completion date;

15.6.1.3. The delay was not within the contemplation of District and Contractor;

15.6.1.4. Contractor complies with the Change Order procedures, and if necessary, the Claims procedures of the Contract Documents;

15.6.1.5. The delay could not have been avoided or mitigated by the Contractor's care, prudence, foresight, and diligence;

15.6.1.6. The delay extends the most current Contract Completion date; and

15.6.1.7. The delay is not concurrent with a Contractor-caused delay or other type of Excusable Delay.

**15.6.2.** In accordance with California Public Contract Code section 7102, if the Contractor's progress is delayed by the events described in the preceding subsection, Contractor shall not be precluded from the recovery of damages directly and proximately resulting therefrom. In that event, Contractor's damages, if any, shall be limited to direct, actual and unavoidable additional costs of labor, materials or construction equipment directly resulting from that delay, and shall exclude special, indirect or consequential damages. In no event shall Contractor seek costs or damages for delays, interruptions, hindrances or disruptions to the Work for on-Site or off-Site costs or damages based upon formulas, e.g. Eichleay or other formula. Except as expressly provided for herein, Contractor shall not have any other claim, demand or right to adjustment of the Contract Price arising out of delay, interruption, hindrance or disruption to the progress of the Work. Adjustments to the Contract Price and the Contract Time, if any, on account of Changes to the Work or Suspension of the Work shall be governed by the applicable provisions of the Contract Documents, including without limitation, the "Changes in the Work" section and the percentages in the "Format for Proposed Change" section of these General Construction Provisions.

**15.6.3.** Delays from Force Majeure Events may **NOT** constitute an Excusable and Compensable Delay, but may only constitute an Excusable Delay.

**15.7. Unexcused Delay(s) – Liquidated Damages**

**15.7.1.** Unexcused Delays refer to any delay to the progress of the Work caused by events or factors other than those specifically identified in the "Excusable Delay(s)" or the "Excusable and Compensable Delay(s)" sections above. Neither the Contract Price nor the Contract Time shall be adjusted on account

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of Unexcused Delays.

**15.7.2.** Contractor and District hereby agree that the exact amount of damages for failure to complete the Work within the time specified is extremely difficult or impossible to determine. If the Work is not completed within the time specified in the Contract Documents, it is understood that the District will suffer damage. It being impractical and unfeasible to determine the amount of actual damage, it is agreed the Contractor shall forfeit and pay to District as fixed and liquidated damages, and not as a penalty, the amount set forth in the Contract Documents for each day of delay in Completion. Contractor and its Surety shall be liable for the amount thereof pursuant to Government Code section 53069.85.

**15.7.3.** Contractor shall not forfeit or pay liquidated damages for an Excusable Delay or an Excusable and Compensable Delay.

### 15.8. Float or Slack in the Schedule

Float or slack is the amount of time between the early start date and the late start date, or the early finish date and the late finish date, of any of the activities in the schedule. Float or slack is not for the exclusive use of or benefit of either the District or the Contractor, however it shall be used as necessary to accommodate delays in the progress of the Work which may occur during the course of construction, as determined by the District. Contractor shall not be entitled to an extension of time for any claimed delays to the extent that such delays may be covered by the float.

## 16. CHANGES IN THE WORK

### 16.1. No Changes Without Authorization

**16.1.1.** There shall be no change whatsoever in the Drawings, Specifications, or in the Work without an executed Change Order authorized by the District as herein provided. District shall not be liable for the cost of any extra work or any substitutions, changes, additions, omissions, or deviations from the Drawings and Specifications unless the District's governing board has authorized the same and the cost thereof has been approved in writing by Change Order. No extension of time for performance of the Work shall be allowed hereunder unless claim for such extension is made at the time changes in the Work are ordered, and such time duly adjusted in writing in the Change Order. The provisions of the Contract Documents shall apply to all such changes, additions, and omissions with the same effect as if originally embodied in the Drawings and Specifications.

**16.1.2. Verbal Order of Change in the Work.** Any verbal order, direction, instruction, interpretation, or determination from the District, the Project Inspector or the Architect which in the opinion of the Contractor causes any change to the scope of the Work, or otherwise requires an adjustment to the Contract Price or the Contract Time, shall be treated as a Change only if:

16.1.2.1. The Contractor gives the District written notice within three (3) Business Days of the order, directions, instructions, interpretation or determination and prior to acting in accordance therewith, **and**

16.1.2.2. The District confirms in writing the verbal order within 24 hours.

Time is of the essence in Contractor's written notice pursuant to the preceding sentence so that the District can promptly investigate and consider alternative measures to address the order, direction, instruction, interpretation or determination giving rise to Contractor's notice. Accordingly, Contractor acknowledges that its failure, for any reason, to give written notice within three (3) Business Days of any right to assert or claim any entitlement to an adjustment of the Contract Time or the Contract Price on account of that verbal order, direction, instruction, interpretation or

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determination shall constitute a waiver of its right to make that claim. The written notice shall state the date, circumstances, extent of adjustment to the Contract Price or the Contract Time, if any, requested, and the source of the verbal order, directions, instructions, interpretation or determination that the Contractor regards as a Change. Unless the Contractor acts in strict accordance with this procedure, any verbal order, direction, instruction, interpretation or determination shall not be treated as a Change and the Contractor hereby waives any claim for any adjustment to the Contract Price or the Contract Time on account thereof.

**16.1.3.** Contractor shall perform immediately all work that has been authorized by a fully executed Change Order, Unilateral Change Order, or Force Account Directive. Contractor shall be fully responsible for any and all delays and/or expenses caused by Contractor's failure to expeditiously perform this Work and Contractor's failure or refusal to proceed with that Work may be deemed to be Contractor's default of a material obligation of the Contractor under the Contract Documents.

**16.1.4.** Should any Change Order result in an increase in the Guaranteed Project Cost, the cost of that Change Order shall be agreed to, in writing, in advance by Contractor and District. In the event that Contractor proceeds with any change in Work without a Change Order executed by the District, Contractor waives any claim of additional compensation or time for that additional work.

**16.1.5.** Contractor understands, acknowledges, and agrees that the reason for District authorization is so that District may have an opportunity to analyze the Work and decide whether the District shall proceed with the Change Order or alter the Project so that a change in Work becomes unnecessary.

**16.1.6.** In an emergency affecting safety of life or of work or of adjoining property, Contractor, without special instruction or authorization, shall act, at its discretion, to prevent all threatened loss or injury. Any compensation or time claimed by Contractor on account of emergency work shall be determined as indicated herein as a PCO.

**16.2. Architect Authority**

The Architect will have authority to order minor changes in the Work not involving any adjustment in the Guaranteed Project Cost, or an extension of the Contract Time, or a change that is inconsistent with the intent of the Contract Documents. These changes shall be effected by written Change Order, Unilateral Change Order, or by Architect's response(s) to RFI(s).

**16.3. Change Orders**

**16.3.1. Definition of Change Order**. A Change Order is a written instrument prepared and issued by the District and signed by the District (as authorized by the District's governing board), the Contractor, the Architect, and approved by the Project Inspector (if necessary) and DSA (if necessary), stating their agreement regarding all of the following. If a Change Order is required to be approved by DSA, the District may call it a "*Construction Change Document*":

16.3.1.1. A description of a change in the Work;

16.3.1.2. The amount of the adjustment in the Guaranteed Project Cost, if any; and

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

**16.3.2. All Adjustments in Change Order**. If the District approves a Change, the District or the Architect shall provide a written Change Order to the Contractor describing the Change and setting forth the adjustment to the Contract Time and the Contract Price, if any, on account of that Change. All Change Orders shall be full payment and final settlement of all rights for direct, indirect and consequential costs,

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including without limitation, costs of delays or impacts related to, or arising out of, items covered and affected by the Change Order, as well as any adjustments to the Contract Time. Any demand or request for an adjustment to the Contract Time or the Contract Price relating to any Change incorporated into a Change Order not presented by the Contractor for inclusion in the Change Order shall be deemed waived. The Contractor shall execute the Change Order prepared pursuant to the foregoing. After the Change Order has been prepared and forwarded to the Contractor for execution, the Contractor shall not modify or amend the form or content of such Change Order, or any portion thereof.

**16.4. Unilateral Change Orders**

**16.4.1.** A Unilateral Change Order is a written order prepared and issued by the District, the Construction Manager, and/or the Architect and signed by the District, directing a change in the Work. The District may as provided by law, by Unilateral Change Order and without invalidating the Contract, order changes in the Work consisting of additions, deletions, or other revisions. If all or a portion of the Project is being funded by funds requiring approval by the State Allocation Board (SAB), these revisions may be subject to compensation once approval of same is received and funded by the SAB, and funds are released by the Office of Public School Construction (OPSC). Any dispute as to the sum of the Unilateral Change Order or timing of payment shall be resolved pursuant to the Payment and Claims provisions herein. **A Unilateral Change Order is NOT a "*Construction Change Document*" (which is defined above as a Change Order that DSA must approve)**.

**16.4.2.** The District may issue a Unilateral Change Order in the absence of agreement on the terms of a Change Order.

**16.5. Force Account Directives**

**16.5.1.** When work, for which a definite price has not been agreed upon in advance, is to be paid for on a time-and-material basis, all direct costs necessarily incurred and paid by the Contractor for labor, material, and equipment used in the performance of that Work, shall be subject to the approval of the District and compensation will be determined as set forth herein.

**16.5.2.** District will issue a Force Account Directive (which may also be called a "Construction Directive") to proceed with the Work on a force account (time-and-material) basis, and a not-to-exceed budget will be established by District.

**16.5.3.** All requirements regarding direct cost for labor, labor burden, material, equipment, and markups on direct costs for overhead and profit described in this section shall apply to Force Account Directives. However, District will only pay for actual costs verified in the field by the District or its authorized representative(s) on a daily basis.

**16.5.4.** Contractor shall be responsible for all cost related to the administration of Force Account Directive. The markup for overheard and profit for Contractor modifications shall be full compensation to the Contractor to administer Force Account Directive.

**16.5.5.** Contractor shall notify District or its authorized representative(s) at least twenty-four (24) hours prior to proceeding with any of the Force Account Directive work. Furthermore, the Contractor shall notify the District when it has consumed eighty percent (80%) of the budget, and shall not exceed the budget unless specifically authorized in writing by the District. Contractor will not be compensated for force account work in the event that Contractor fails to timely notify the District regarding the commencement of Force Account Directive work, or to the extent exceeding the Force Account Directive budget.

**16.5.6.** Contractor shall diligently proceed with the work, and on a daily basis, submit a daily time-and-

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material report on a form supplied by the District no later than 5:00 p.m. each day. The report shall contain a detailed itemization of the daily labor, material, and equipment used on the time-and-material work only. The names of the individuals performing the force account work shall be included on the daily time-and-material reports. The type and model of equipment shall be identified and listed. District will review the information contained in the reports, and sign the reports no later than the next work day, and return a copy of the report to Contractor for its records. District will not sign, nor will Contractor receive compensation for work District cannot verify. Contractor will provide a weekly Force Account Directive summary indicating the status of each Force Account Directive in terms of percent complete of the not-to-exceed budget and the estimated percent complete of the work.

**16.5.7.** In the event Contractor and District reach a written agreement on a set cost for the work while the work is proceeding based on a Force Account Directive, the Contractor's signed daily time-and-material reports shall be discontinued and all previously signed reports shall be invalid.

## 16.6. Price Request/Request for Proposal

**16.6.1.** Definition of Price Request. A Price **Request** (or a "**Request for Proposal**"; a"**PR**") is a written request prepared by the District requesting the Contractor to submit to the District an estimate of the effect of a proposed change in the Work on the Guaranteed Project Cost and the Contract Time.

**16.6.2.** Scope of Price Request. A Price Request shall contain adequate information, including any necessary Drawings and Specifications, to enable Contractor to provide the cost breakdowns required herein. The Contractor shall not be entitled to any additional compensation for preparing a response to a Price Request, whether ultimately accepted or not.

**16.6.3.** Do not consider Price Requests to be instructions either to stop work in progress or to execute the proposed change.

**16.6.4.** Within the time specified in Price Request after receipt of Price Request, submit a quotation estimating cost adjustments to the Contract Price and the Contract Time necessary to execute the change.

16.6.4.1. Include a list of quantities of products required or eliminated and unit costs, with total amount of purchases and credits to be made. If requested, furnish survey data to substantiate quantities.

16.6.4.2. Indicate applicable taxes, delivery charges, equipment rental, and amounts of trade discounts.

16.6.4.3. Include costs of labor and supervision directly attributable to the change.

16.6.4.4. Include an updated Contractor's Construction Schedule that indicates the effect of the change, including, but not limited to, changes in activity duration, start and finish times, and activity relationship. Use available total float before requesting an extension of the Contract Time.

## 16.7. Proposed Change Order/Change Order Request

**16.7.1.** Definition of Proposed Change Order. A **Proposed Change Order** (or a "**Change Order Request**"; a "**PCO**") is a written request prepared by the Contractor requesting that the District and the Architect issue a Change Order based upon a proposed change to the Work.

**16.7.2.** Changes in Guaranteed Project Cost. A PCO shall include breakdowns pursuant to the revisions herein to validate any change in Guaranteed Project Cost.

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**16.7.3.** Changes in Time. A PCO shall also include any changes in time required to complete the Project. Include an updated Contractor's Construction Schedule that indicates the effect of the change, including, but not limited to, changes in activity duration, start and finish times, and activity relationships. Use available total float before requesting an extension of the Contract Time. Any additional time requested shall not be the number of days to make the proposed change, but must be based upon the impact to the Construction Schedule as defined in the Contract Documents. If Contractor fails to request a time extension in a PCO, then the Contractor is thereafter precluded from requesting time and/or claiming a delay. If the Contractor is requesting additional time and believes that time is both Excusable and Compensable, then the Contractor must provide detailed documentation that supports its position and that addresses all the components of the "Excusable and Compensable Delay(s)" section above.

**16.7.4.** Unknown and/or Unforeseen Conditions. If Contractor submits a PCO requesting an increase in Guaranteed Project Cost and/or Contract Time that is based at least partially on Contractor's assertion that Contractor has encountered Unforeseen Site Conditions on the Project, then Contractor shall base the PCO on provable information that demonstrates that the Unforeseen Site Conditions were actually or reasonably constitute Unforeseen Site Conditions and were unknown and/or unforeseen to Contractor. If not, the District shall deny the PCO and the Contractor shall complete the Project without any increase in Guaranteed Project Cost and/or Contract Time based on that PCO.

**16.7.5.** Time to Submit PCO. Contractor shall submit its PCO within five (5) days of the date Contractor discovers, or reasonably should discover, the circumstances giving rise to the proposed change order, unless additional time to submit a proposed change order is granted in writing by the District. Time is of the essence in Contractor's written notice pursuant to the preceding sentence so that the District can promptly investigate and consider alternative measures to address the basis for the PCO. Accordingly, Contractor acknowledges that its failure, for any reason, to give written notice (with Supporting Documentation to permit the District's review and evaluation) within this time frame shall be deemed Contractor's waiver, release, discharge and relinquishment of any right to assert or claim any entitlement to an adjustment of the Contract Time or the Contract Price on account of the circumstances giving rise to the PCO.

**16.7.6.** COVID-19 and other Infectious Disease(s).

16.7.6.1. Contractor agrees that the Contract Price and the Contract Time are based on the Contractor's full compliance with all applicable and existing federal, state, and/or local statutes, orders, rules, regulations, ordinances, and/or directives relating to construction site safety in connection with Infectious Disease(s) (as defined herein) including COVID-19, and/or any similar virus or derivative strain at the time of Contract award. Therefore, any cost or delay associated with Infectious Disease(s), or any derivative or similar strain thereof, or any federal, state, or local order relating thereto, shall not be considered compensable unless:

16.7.6.1.1. It occurred after the date of the award of the Contract to Contractor;

16.7.6.1.2. It materially increases the Contract Price or the Contract Time; and

16.7.6.1.3. Contractor notifies the District within 10 days of notice of any a new derivative, strain, or new public health order(s), including the anticipated increase to the Contract Price or Contract Time due to the new derivative, strain, or new public health order(s), and Contractor substantiates those costs with detailed supporting documentation as required for a PCO.

16.7.6.2. If, during the construction of the Project, the applicable and existing federal, state, and/or local statutes, orders, rules, regulations, ordinances, and/or directives relating to construction site safety in connection with Infectious Disease(s), and/or any similar virus or derivative strain, are changed or rescinded (e.g., by the reduction of potential exposure or risk due to vaccinations), the

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Parties agree to reduce the Contract Price and the Contract Time due to the removal of the required efforts. If the Parties cannot mutually agree on the appropriate reduction, the District may issue a Unilateral Change Order for an amount of time and money it determines to be both reasonable and appropriate. The Parties agree that any dispute related to this provision will be resolved pursuant to the Claims Resolution Process herein.

**16.8. Format for Proposed Change Order**

The following format(s) on the following two (2) pages shall be used as applicable by the District and the Contractor (e.g., Change Orders, PCO's) to communicate proposed additions and deductions to the Contract, supported by attached documentation

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**FORMAT FOR PROPOSED CHANGE FOR <u>SUBCONTRACTOR</u> PERFORMED WORK**

| | **<u>SUBCONTRACTOR PERFORMED WORK</u>** | *ADD* | *DEDUCT* |
|---|---|---|---|
| **(A)** | **<u>Labor Charge</u>**<br>1. **Hours.** Attach total itemized hours, by each Subcontractor at each tier.<br>2. **Rate.** This shall be no more than the Straight-Time Total Hourly Rate as determined by the Department of Industrial Relations ("DIR") for the applicable local labor category. | | |
| **(B)** | **<u>Labor Burden & Worker's Compensation Charge</u>**<br>1. This shall be no more than twenty percent (20%) of **item (A)**, the Labor Charge.<br>2. This shall be the total cumulative charge permitted for all Subcontractors or all labor performed by the Subcontractor or Subcontractor's Subcontractor(s) (i.e., all "lower-tier" Subcontractor(s)). | | |
| **(C)** | **<u>Subtotal (A+B)</u>** | | |
| **(D)** | **<u>Material Charge</u>**<br>Attach itemized quantity and unit cost plus sales tax and invoice(s) from vendor(s) | | |
| **(E)** | **<u>Equipment Charge</u>**<br>Attach invoice(s) from supplier(s). | | |
| **(F)** | **<u>Subtotal (C+D+E)</u>** | | |
| **(G)** | **<u>Subcontractor's Overhead and Profit Charge</u>**<br>1. This shall be no more than eight percent (8%) of **item (F)**.<br>2. This shall be the total cumulative mark-up permitted for the Subcontractor and Subcontractor's Subcontractor(s) (i.e., all "lower-tier" Subcontractor(s)). | | |
| **(H)** | **<u>Subtotal (F+G)</u>** | | |
| **(I)** | **<u>General Contractor's "Mark-Up" and "Fee/Overhead & Profit"</u>**<br>**At or below those amounts indicated in the Contractor's response to the RFQ and/or RFP for this Project.** | | |
| **(J)** | **<u>General Contractor's Bond Cost</u>**<br>**At or below the amount indicated in the Contractor's response to the RFQ and/or RFP for this Project.** | | |
| **(K)** | **<u>General Contractor's Insurance Cost</u>**<br>**At or below the amount indicated in the Contractor's response to the RFQ and/or RFP for this Project.** | | |
| **(L)** | **<u>TOTAL (H+I+J+K)</u>** | | |
| **(M)** | **<u>Time</u>** | **_____ Days** | |

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**FORMAT FOR PROPOSED CHANGE FOR CONTRACTOR PERFORMED WORK**

| | GENERAL CONTRACTOR PERFORMED WORK | *ADD* | *DEDUCT* |
|---|---|---|---|
| **(A)** | **Labor Charge**<br>1. **Hours.** Attach total itemized hours.<br>2. **Rate.** This shall be no more than the Straight-Time Total Hourly Rate as determined by the Department of Industrial Relations ("DIR") for the applicable local labor category. | | |
| **(B)** | **Labor Burden & Worker's Compensation Charge**<br>1. This shall be no more than twenty percent (20%) of **item (A)**, the Labor Charge.<br>2. This shall be the total cumulative charge permitted for all labor performed by Contractor. | | |
| **(C)** | **Subtotal (A+B)** | | |
| **(D)** | **Material Charge**<br>Attach itemized quantity and unit cost plus sales tax and invoice(s) from vendor(s). | | |
| **(E)** | **Equipment Charge**<br>Attach invoice(s) from supplier(s). | | |
| **(F)** | **Subtotal (C+D+E)** | | |
| **(G)** | **General Contractor's "Mark-Up" and "Fee/Overhead & Profit"**<br>**At or below those amounts indicated in the Contractor's response to the RFQ and/or RFP for this Project.** | | |
| **(H)** | **General Contractor's Bond Cost**<br>**At or below the amount indicated in the Contractor's response to the RFQ and/or RFP for this Project.** | | |
| **(I)** | **General Contractor's Insurance Cost**<br>**At or below the amount indicated in the Contractor's response to the RFQ and/or RFP for this Project.** | | |
| **(J)** | **TOTAL (F+G+H+I)** | | |
| **(K)** | **Time** | **_____ Days** | |

**16.8.1.** All Proposed Change Order requests by Contractor for a change shall include a complete itemized breakdown with the following detail:

16.8.1.1. **Labor**. Labor breakdown by trade classification, wage rates, and estimated hours. Labor costs shall only include fringe benefits indicated by governing trade organizations. Wages shall not exceed current prevailing wages in the locality for performance of the changes.

16.8.1.1.1. The Contractor's or Subcontractors' labor burden and Workers' Compensation premium shall only be charged as indicated herein. In no event shall Contractor include any other charges than as indicated herein without the prior written approval of the District.

16.8.1.2. **Material**. Material quantities, and types of products, and transportation costs, if applicable.

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16.8.1.3. **Equipment**. Equipment breakdown by make, type, size, rental rates, equipment hours and transportation costs, if applicable.

16.8.1.3.1. The equipment costs shall not exceed one hundred percent (100%) of the Association of Equipment Distributors (AED) rental rates or Caltrans rates, whichever is less. Hourly, daily, weekly, or monthly rates shall be used, whichever is lower. Hourly rates including operator shall not be used.

16.8.1.3.2. The time to be paid for equipment shall be the actual time that the equipment is in (1) productive operation on the Work or (2) idled because of the event or circumstance giving rise to the Proposed Change Order.

16.8.1.3.2.1. To calculate the costs of idle equipment, the Contractor must use the applicable idle equipment rate. For example, and clarification purposes only, if the rate for "X" piece of equipment is $100 and the applicable delay factor is .20 for that piece of equipment, then the hourly rate for idle equipment shall be $20 ($100 x .20), which shall be applied against the number of hours idle. In no event shall Contractor charge an amount greater than 50% of the applicable equipment rate for idle equipment.

16.8.1.3.2.2. In computing the hourly rental of equipment, any time less than thirty (30) minutes shall be considered one-half (1/2) hour.

16.8.1.3.2.3. No payment will be made for time while equipment is inoperative due to breakdown, or for non-workdays.

16.8.1.3.2.4. The rental time shall not include the time required to move the equipment to and from the Site. No mobilization or demobilization will be allowed for equipment already on site. If equipment is not moved by its own power, then loading and transportation costs will be paid in lieu of rental time thereof. However, neither moving time nor loading and transportation costs will be paid if the equipment is used on the Project Site in any other way than upon the work directly related to the event or circumstance giving rise to the Proposed Change Order.

16.8.1.3.3. Individual pieces of equipment having a replacement value of one thousand dollars ($1,000) or less shall be considered to be small tools or small equipment, and no payment will be made since the costs of these tools and equipment is included as part of the markup for overhead and profit defined herein.

16.8.1.3.4. Payment to the Contractor for the use of equipment as set forth above shall constitute full compensation to the Contractor for the cost of fuel, power, oil, lubricants, supplies, small equipment, necessary attachments, repairs and maintenance of any kind, depreciation, storage, insurance, labor (except for equipment operators), and any and all costs to the Contractor incidental to the use of the equipment.

16.8.1.3.5. Should Contractor, or any of its owners, officers, directors or agents, hold any ownership interest in any company, organization, association or corporation from whom rental equipment is secured. Contractor shall immediately notify District of such and the price set for any such rental shall be agreed upon in advance by the Contractor and the District.

16.8.1.4. **Mark-Up, Fee / Overhead and Profit.** Markup for overhead and profit, which shall be used to compensate Contractor for all costs for all administration, general conditions, and supervision, including, without limitation:

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16.8.1.4.1. All home office overhead, field office overhead, field office personnel including, but not limited to, principals, project managers, superintendents, supervisory foremen, estimators, project engineers, detailers, draftsmen, schedulers, consultants, watchmen, payroll clerks, administrative assistants, labor compliance costs and secretaries.

16.8.1.4.2. All field and field office expenses including, but not limited to, field trailers, parking, storage sheds, office equipment and supplies, telephone service and long distance telephone calls, computers, fax machines, temporary utilities, sanitary facilities and services, janitorial services, small tools and equipment with a cost under $1000 each, portable scaffolding, blocking, shores, appliances, job vehicles, security and fencing, conformance to regulatory requirements including compliance to safety regulations, safety programs and meetings, cartage, warranties, As-Built Drawings, as well as any related maintenance costs.

16.8.1.4.3. Administrative functions such as, but not limited to, reviewing, coordinating, distributing, processing, posting, recording, estimating, negotiating, expediting, engineering, drawing, detailing, revising shop drawings, carting, cleaning, protecting the work, and other incidental Work related to the change.

16.8.1.4.4. All other costs and taxes required to be paid, but not included under direct costs as defined above including, without limitation, payroll taxes, social security, etc.

16.8.1.4.5. All costs for Contractor's bonds and insurance.

16.8.1.4.6. Taxes: Federal excise tax shall not be included. District will issue an exemption on request.

16.8.1.5. **Contract Time.** Justification for any adjustment in Contract Time including a schedule analysis identifying critical schedule activities delayed by the request. Contract Time shall be extended or reduced by Change Orders, Unilateral Change Orders, or Force Account Directives for a period of time commensurate with the time reasonably necessary to perform a Change. This time must be requested in writing by the Contractor with the Price Request, PCO, or expressly in writing as part of its documentation for Unilateral Change Orders, or Force Account Directives. The Contractor shall justify any Contract Time extension by submittal of a schedule analysis as required in this Changes section of these General Construction Provisions accurately portraying the impact of the change on the critical path of the Construction Schedule. Changes performed within available float shall not justify an extension to the Contract Time. The District shall make the final determination of the amount of Contract Time to allocate to any Change.

16.8.1.6. **Supporting Documentation.** Contractor shall include with each PCO, along with the itemized breakdown as required herein, reasonable documentation substantiating the requested change in the Contract Price and Contract Time. If the District deems Contractor's supporting documentation incomplete or inadequate to substantiate the requested change to the Contract Price and Contract Time, the District may request that Contractor supplement the PCO with additional, reasonable supporting documentation.

## 16.9. Change Order Certification

**16.9.1.** All Change Orders and PCOs shall include the following certification by the Contractor. The Parties acknowledged that if a Change Order is approved that does not include this language, that Change Order shall be deemed to include this certification language:

***The undersigned Contractor approves the foregoing as to the changes, if any, and the Guaranteed Project Cost specified for each item and as to the extension of time allowed, if***

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***any, for Project Completion, and agrees to furnish all labor, materials, and service, and perform all work necessary to complete any additional work specified for the consideration stated herein. Submission of sums that have no basis in fact or which Contractor knows are false are at the sole risk of Contractor and may be a violation of the False Claims Act set forth under Government Code section 12650 et seq. It is understood that the changes herein to the Contract shall only be effective when approved by the governing board of the District. It is expressly understood that the value of the extra Work or changes expressly includes any and all of the Contractor's costs and expenses, both direct and indirect, resulting from additional time required on the Project or resulting from delay to the Project. Any costs, expenses, damages, or time extensions not included are deemed waived*.**

**16.10. Determination of Change Order Cost**

**16.10.1.** The amount of the increase or decrease in the Guaranteed Project Cost from a Change Order, if any, shall be determined in one or more of the following ways as applicable to a specific situation and at the District's discretion:

16.10.1.1. District acceptance of a PCO;

16.10.1.2. By agreement between District and Contractor.

16.10.1.3. By amounts contained in Contractor's schedule of values, if applicable;

16.10.1.4. By the District, based upon actual and necessary costs incurred by the Contractor as determined by the District on the basis of the Contractor's records. Promptly upon determining the extent of adjustment to the Contract Price, the District shall notify the Contractor in writing of the same; the Contractor shall be deemed to have accepted the District's determination of the amount of adjustment to the Contract Price on account of a Change to the Work unless Contractor shall notify the District, in writing, not more than fifteen (15) days from the date of the District's written notice, of any objection to the District's determination. Failure of the Contractor to timely notify the District of Contractor's objections to the District's determination of the extent of adjustment to the Contract Price shall be deemed Contractor's acceptance of the District's determination and a waiver of any right or basis of the Contractor to thereafter protest or otherwise object to the District's determination. Notwithstanding any objection of the Contractor to the District's determination of the extent of any adjustment to the Contract Price pursuant to this provision, Contractor shall diligently proceed to perform and complete any such Change.

**16.10.2.** If the District has put in contingency(s) and/or allowance(s) in **Exhibit C** to the Facilities Lease, then approved Change Order(s) may be paid out of those contingency(s) and/or allowance(s), pursuant to **Exhibit C** and if agreed to by the District.

**16.11. Deductive Change Orders**

All deductive Change Order(s) must be prepared pursuant to the provisions herein. If Contractor offers a proposed amount for a deductive Change Order(s), Contractor shall include a minimum of five percent (5%) total overhead, profit & general conditions to be deducted with the amount of the work of the Change Order(s). If Subcontractor work is involved, Subcontractors shall also include a minimum of five percent (5%) total overhead, profit & general conditions to be deducted with the amount of its deducted work. Any deviation from this provision shall only be permitted with the District's prior written approval.

**16.12. Discounts, Rebates, and Refunds**

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For purposes of determining the cost, if any, of any change, addition, or omission to the Work hereunder, all trade discounts, rebates, refunds, and all returns from the sale of surplus materials and equipment shall accrue and be credited to the Contractor, and the Contractor shall make provisions so that such discounts, rebates, refunds, and returns may be secured, and the amount thereof shall be allowed as a reduction of the Contractor's cost in determining the actual cost of construction for purposes of any change, addition, or omission in the Work as provided herein. Such discounts and rebates generated as a result of early payments shall only be credited to the District, provided that the District provides Contractor with early payment in order to secure such discounts and rebates.

**16.13. Accounting Records**

With respect to portions of the Work performed by Change Orders, Unilateral Change Orders, or Force Account Directives, Contractor shall keep and maintain cost-accounting records satisfactory to the District, which shall be available to the District on the same terms as any other books and records the Contractor is required to maintain under the Contract Documents.

**16.14. Notice Required**

If the Contractor desires to make a claim for an increase in the Guaranteed Project Cost, or any extension in the Contract Time for Project Completion, it shall notify the District pursuant to the provisions herein. No claim shall be considered unless made in accordance with the provisions herein. Contractor shall proceed to execute the Work even though the adjustment may not have been agreed upon. Any change in the Guaranteed Project Cost or extension of the Contract Time resulting from such claim shall be authorized by a Change Order.

**16.15. Applicability to Subcontractors**

Any requirements under this Article shall be equally applicable to Change Orders, Unilateral Change Orders, or Force Account Directives issued to Subcontractors by the Contractor to the extent as required by the Contract Documents.

**16.16. Alteration to Change Order Language**

Contractor shall not alter Change Orders or reserve time in Change Orders. Contractor shall execute finalized Change Orders and proceed under the provisions herein with proper notice.

**16.17. Failure of Contractor to Execute Change Order**

Contractor shall be in default of the Contract if Contractor fails to execute a Change Order when the Contractor agrees with the addition and/or deletion of the Work in that Change Order.

## 17. REQUESTS FOR INFORMATION

**17.1.** Any Request for Information ("RFI") shall reference all applicable Contract Document(s), including Specification section(s), detail(s), page number(s), drawing number(s), and sheet number(s), etc. The Contractor shall make suggestions and interpretations of the issue raised by each Request for Information. A Request for Information cannot modify the Guaranteed Project Cost, Contract Time, or the Contract Documents.

**17.2.** The Contractor shall be responsible for any costs incurred for professional services that District may deduct from any amounts owing to the Contractor, if Contractor makes multiple Requests for Information that request interpretation(s) or decision(s) of a matter where the information sought is equally available to the Contractor. District, at its sole discretion, shall deduct from and/or invoice Contractor for all the professional

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services arising herein.

**17.3.** Requests for Information shall comply with all requirements of the Contract Documents.

**17.4.** Prior to submitting the RFI, Contractor shall diligently review the Contract Documents for information responsive to the RFI, including information incorporated by reference. Contractor should not issue an RFI regarding information contained in or inferable from the Contract Documents, including information incorporated by reference. An RFI is invalid if the RFI response is contained in or inferable from the Contract Documents.

**17.5.** Contractor shall be responsible for preparing and submitting each RFI so as to not cause delay to the progress of the Work nor to cause any impact to the Contractor's labor productivity. An RFI may be considered untimely if not submitted within **Forty-Eight (48) hours** of receipt from a Contractor's subcontractor. Untimely submission of any RFI will preclude Contractor from asserting any claims for delay or for labor impact against the District.

**17.6.** If the Contractor fails to timely notify the District and the Architect in writing of any Conditions encountered and the Contractor proceeds to perform any portion of the Work containing or affected by such Conditions the Contractor shall bear all costs associated with or required to correct, remove, or otherwise remedy any portion of the Work affected thereby without adjustment of the Contract Time or the Contract Price. In requesting information of the District to address and resolve any conditions, the Contractor shall act with promptness in submitting any written request so as to allow the District a reasonable period of time to review, evaluate and respond to any request, taking into account the then current status of the progress and completion of the Work and the actual or potential impact of any conditions upon the completion of the Work within the Contract Time. The Contract Time shall not be subject to adjustment in the event that the Contractor shall fail to timely request information from the District.

## 18. PAYMENTS

### 18.1. Guaranteed Project Cost

As compensation for Contractor's construction of the Project, the District shall pay Contractor pursuant to the terms of **Exhibit C** to the Facilities Lease.

### 18.2. Applications for Tenant Improvement Payments

#### 18.2.1. Procedure for Applications for Tenant Improvement Payments

18.2.1.1. Not before the fifth ($5^{th}$) Day of each calendar month during the progress of the Work, Contractor shall submit to the District and the Architect an itemized Application for Payment for operations completed in accordance with the Schedule of Values. The Contractor shall include in the Application for Tenant Improvement Payments an itemized list of equipment and materials that are stored off-site and are in the Contractor's possession. Each Application for Tenant Improvement Payment shall be notarized, if required, and supported by the following or each portion thereof unless waived by the District in writing:

18.2.1.1.1. The amount paid to the date of the Application for Tenant Improvement Payment to the Contractor, to all its Subcontractors, and all others furnishing labor, material, or equipment for its Contract;

18.2.1.1.2. The amount being requested under the Application for Tenant Improvement Payment by the Contractor on its own behalf and separately stating the amount requested on behalf of each of the Subcontractors and all others furnishing labor, material, and equipment

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under the Contract;

18.2.1.1.3. The balance that will be due to each of such entities after said payment is made;

18.2.1.1.4. A certification that the As-Built Drawings and annotated Specifications are current;

18.2.1.1.5. Itemized breakdown of work done for the purpose of requesting partial payment;

18.2.1.1.6. An updated and acceptable construction schedule in conformance with the provisions herein;

18.2.1.1.7. The additions to and subtractions from the Guaranteed Project Cost and Contract Time;

18.2.1.1.8. A total of the cumulative Retention withheld prior to the current Application for Payment, and that to be withheld under the current Application for Payment (5% of the current Application for Payment);

18.2.1.1.9. Verified material invoices, evidence of equipment purchases, rentals, and other support and details of cost as the District may require from time to time;

18.2.1.1.10. The percentage of completion of the Contractor's Work by line item;

18.2.1.1.11. Schedule of Values updated from the preceding Application for Tenant Improvement Payment;

18.2.1.1.12. If Contractor includes in the Application for Tenant Improvement Payments an itemized list of equipment and materials that are stored off-site and are in the Contractor's possession, the Contractor's Application for Tenant Improvement Payment shall be supported by the following:

18.2.1.1.12.1. Itemized breakdown of equipment and materials that are stored off-site and are in the Contractor's possession for the purpose of requesting partial payment, identifying the serial numbers and exact storage location of each piece of equipment and material;

18.2.1.1.12.2. Verified invoices for equipment and materials that are stored off-site and are in the Contractor's possession;

18.2.1.1.12.3. Original copy of Property of Others Insurance, Employee Theft Protection Insurance Policy or an Employee Theft Protection Bond. These documents shall include for the itemized equipment and materials that are stored off-site and are in the Contractor's possession, certificates and endorsements stating the coverage and stating that the District is a loss payee or obligee, as appropriate;

18.2.1.1.13. A duly completed and executed "Conditional Waiver and Release on Progress Payment" compliant with Civil Code section 8132 from each subcontractor of any tier and supplier to be paid from the current Tenant Improvement Payment;

18.2.1.1.14. A duly completed and executed "Unconditional Waiver and Release on Progress Payment" compliant with Civil Code section 8134 from each subcontractor of any tier and supplier that was paid from the Tenant Improvement Payment from sixty (60) days prior; and

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18.2.1.1.15. A certification by the Contractor of the following:

18.2.1.1.15.1.1. The Contractor warrants title to all Work performed as of the date of this payment application. The Contractor further warrants that all Work performed as of the date of this payment application is free and clear of liens, claims, security interests, or encumbrances in favor of the Contractor, Subcontractors, material and equipment suppliers, workers, or other persons or entities making a claim by reason of having provided labor, materials, and equipment relating to the Work, except those of which the District has been informed.

18.2.1.1.16. If requested by the District, a third party, or as required by the California Department of Industrial Relations, all requested or required certified payroll record ("CPR(s)") for each journeyman, apprentice, worker, or other employee employed by the Contractor and/or each Subcontractor in connection with the Work for the period of the Application for Payment.

18.2.1.2. Except as expressly provided for herein, no payments shall be made by the District on account of any item of the Work, including without limitation, materials or equipment that, at the time of the Contractor's submittal of an Application for Tenant Improvement Payments, has/have not been incorporated into and made a part of the Work.

**18.2.2.** Prerequisites for Tenant Improvement Payments

18.2.2.1. First Payment Request: The following items, if applicable, must be completed before the District will accept and/or process the Contractor's first payment request:

18.2.2.1.1. Schedule of unit prices, if applicable;

18.2.2.1.2. Receipt by Architect of all submittals due as of the date of the payment application;

18.2.2.1.3. Copies of authorizations and licenses from governing authorities;

18.2.2.1.4. Initial progress report;

18.2.2.1.5. Surveyor qualifications;

18.2.2.1.6. Written acceptance of District's survey of rough grading, if applicable;

18.2.2.1.7. List of all Subcontractors, with names, license numbers, telephone numbers, and Scope of Work;

18.2.2.1.8. All bonds and insurance endorsements; and

18.2.2.2. No Waiver of Criteria. Any payments made to Contractor where criteria set forth herein have not been met shall not constitute a waiver of said criteria by District. The approval of any Application for Progress Payment or the disbursement of any Tenant Improvement Payment to the Contractor shall not be deemed nor constitute acceptance of defective Work or Work not in conformity with the Contract Documents. Instead, such payment shall be construed as a good faith effort by District to resolve differences so Contractor may pay its Subcontractors and suppliers. Contractor agrees that failure to submit such items may constitute a breach of contract by Contractor and may subject Contractor to termination.

**18.3. District's Approval of Application for Tenant Improvement Payment**

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**18.3.1.** Upon receipt of an Application for Tenant Improvement Payment, The District shall act in accordance with both of the following:

18.3.1.1. Each Application for Tenant Improvement Payment shall be reviewed by the District as soon as practicable after receipt for the purpose of determining that the Application for Tenant Improvement Payment is a proper Application for Tenant Improvement Payment.

18.3.1.2. Any Application for Tenant Improvement Payment determined not to be a proper Application for Tenant Improvement Payment suitable for payment shall be returned to the Contractor as soon as practicable, but not later than seven (7) days, after receipt. An Application for Tenant Improvement Payment returned pursuant to this paragraph shall be accompanied by a document setting forth in writing the reasons why the Application for Tenant Improvement Payment is not proper. The number of days available to the District to make a payment without incurring interest pursuant to this section shall be reduced by the number of days by which the District exceeds this seven-day return requirement.

18.3.1.3. An Application for Tenant Improvement Payment shall be considered properly executed if funds are available for each payment request from a Schedule of Value line item in the Application for Tenant Improvement Payment, and payment is not delayed due to an audit inquiry by a financial officer or auditor of the District, the County, or the State.

18.3.1.3.1. An Application for Tenant Improvement Payment shall be considered improperly executed and returned, if payment is requested from a Schedule of Value line item that exceeds the percentage of work performed in that pay period for that scope of work, or that does not have funds available or that have been exhausted for that Schedule of Value line item, or if an Application for Tenant Improvement Payment includes line items not shown in the Schedules of Values of **Exhibit G**.

**18.3.2.** The District's review of the Contractor's Application for Tenant Improvement Payment will be based on the District's and the Architect's observations at the Site and the data comprising the Application for Tenant Improvement Payment that the Work has progressed to the point indicated and that, to the best of the District's and the Architect's knowledge, information, and belief, the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to:

18.3.2.1. Observation of the Work for general conformance with the Contract Documents,

18.3.2.2. Results of subsequent tests and inspections,

18.3.2.3. Minor deviations from the Contract Documents correctable prior to Project Completion, and

18.3.2.4. Specific qualifications expressed by the Architect.

**18.3.3.** District's approval of the certified Application for Tenant Improvement Payment shall be based on Contractor complying with all requirements for a fully complete and valid certified Application for Tenant Improvement Payment.

**18.3.4.** If Contractor includes in its Application for Tenant Improvement Payments an itemized list of equipment and materials that are stored off-site and are in the Contractor's possession, Contractor shall provide all required supporting documentation.

**18.3.5.** Payments to Contractor

18.3.5.1. Within thirty (30) days after District approval of the Application for Tenant Improvement

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Payment, Contractor shall be paid a sum equal to ninety-five percent (95%) of the value of the Work performed (as verified by Architect and Inspector and certified by Contractor) up to the last day of the previous month, less the aggregate of previous payments and other amounts statutorily or contractually necessary to be withheld, including, without limitation, any item listed as "Reasons to Withhold Payment" herein below. Contractor shall continue to perform and shall complete the Project.

18.3.5.2. As the amount of the GPC that remains with the District approaches the total amount of the Lease Payments, the District shall ensure it maintains sufficient funds for the total Lease Payments and all other amounts statutorily or contractually necessary, including, without limitation, any item listed as "Reasons to Withhold Payment" herein below. Contractor shall continue to perform and shall complete the Project.

18.3.5.3. The value of the Work completed shall be Contractor's best estimate. No inaccuracy or error in said estimate shall operate to release the Contractor, or any Surety upon any bond, from damages arising from such Work, or from the District's right to enforce each and every provision of this Contract, and the District shall have the right subsequently to correct any error made in any estimate for payment.

**18.3.6.** No Waiver

No payment by District hereunder shall be interpreted so as to imply that District has inspected, approved, or accepted any part of the Work. Notwithstanding any payment, the District may enforce each and every provision of this Contract. The District may correct or require correction of any error subsequent to any payment.

**18.3.7.** Warranty of Title

18.3.7.1. If a lien or a claim based on a stop payment notice of any nature should at any time be filed against the Work or any District property, by any entity that has supplied material or services at the request of the Contractor, Contractor and Contractor's Surety shall promptly, on demand by District and at Contractor's and Surety's own expense, take any and all action necessary to cause any such lien or a claim based on a stop payment notice to be released or discharged immediately therefrom.

18.3.7.2. If the Contractor fails to furnish to the District within ten (10) Days after demand by the District, satisfactory evidence that a lien or a claim based on a stop payment notice has been so released, discharged, or secured, the District may discharge such indebtedness and deduct the amount required therefor, together with any and all losses, costs, damages, and attorney's fees and expense incurred or suffered by District from any sum payable to Contractor under the Contract.

**18.3.8.** Decisions to Withhold Payment

18.3.8.1. Reasons to Withhold Payment

The District may withhold payment to the extent reasonably necessary to protect the District if, in the District's opinion, the representations to the District required herein cannot be made. The District may withhold payment to such extent as may be necessary to protect the District from loss because of, but not limited to:

18.3.8.1.1. Defective Work not remedied within **FORTY-EIGHT (48)** hours of written notice to Contractor;

18.3.8.1.2. Stop payment notices or other liens served upon the District as a result of the

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Contract;

18.3.8.1.3. Liquidated damages assessed against the Contractor;

18.3.8.1.4. The cost of Project Completion if there exists reasonable doubt that the Work can be completed for the unpaid balance of the Guaranteed Project Cost or by the Contract Time;

18.3.8.1.5. Damage to the District or other contractor(s);

18.3.8.1.6. Unsatisfactory prosecution of the Work by the Contractor:

18.3.8.1.7. Failure to store and properly secure materials;

18.3.8.1.8. Failure of the Contractor to submit, on a timely basis, proper, sufficient, and acceptable documentation required by the Contract Documents, including, without limitation, a Construction Schedule, Submittal Schedule, Schedule of Values, Monthly Progress Schedules, Shop Drawings, Product Data and samples, Proposed product lists, executed Change Orders, and/or verified reports;

18.3.8.1.9. Failure of the Contractor to submit As-Built Drawings;

18.3.8.1.10. Erroneous estimates by the Contractor of the value of the Work performed, or other false statements in an Application for Payment;

18.3.8.1.11. Unauthorized deviations from the Contract Documents;

18.3.8.1.12. Failure of the Contractor to prosecute the Work in a timely manner in compliance with the milestones within the Construction Schedule, established progress schedules, and/or completion dates;

18.3.8.1.13. The failure to provide certified payroll records acceptable to the District for each journeyman, apprentice, worker, or other employee employed by the Contractor and/or each Subcontractor in connection with the Work for the period of the Application for Payment;

18.3.8.1.14. Failure to properly pay prevailing wages as defined in Labor Code section 1720 et seq., and/or failure to comply with any other Labor Code requirements;

18.3.8.1.15. Failure to properly maintain or clean up the Site;

18.3.8.1.16. Payments to indemnify, defend, or hold harmless the District;

18.3.8.1.17. Any payments due to the District, including but not limited to payments for failed tests, utilities changes, or permits;

18.3.8.1.18. Failure to pay Subcontractor(s) or supplier(s) as required by law and by the Contract Documents;

18.3.8.1.19. Contractor is otherwise in breach, default, or in substantial violation of any provision of this Contract;

18.3.8.1.20. Extra services for Architect;

18.3.8.1.21. Extra services for the Inspector including but not limited to overtime tests and

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inspection or reinspection required due to Contractor's failed tests or installation of unapproved or defective materials and Contractor's requests for inspection and Contractor's failure to attend the inspection; and

18.3.8.1.22. Any other obligation(s) of the District which the District is authorized and/or compelled by law to perform.

18.3.8.2. Reallocation of Withheld Amounts. District may, in its reasonable discretion, apply any withheld amount to pay outstanding claims or obligations as defined herein. In so doing, District shall make such payments on behalf of Contractor only after providing fourteen (14) days prior written notice to Contractor, requesting the Contractor provide information in response to same. District shall consider all information provided by Contractor in exercising its discretion to pay any such claim or obligation. These payments may be made without prior judicial determination of claim or obligation. District will render Contractor an accounting of funds disbursed on behalf of Contractor.

18.3.8.3. If Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents or fails to perform any provision thereof, District may, after **FORTY-EIGHT (48)** hours written notice to the Contractor and, without prejudice to any other remedy, make good such deficiencies. The District shall adjust the total Guaranteed Project Cost by reducing the amount thereof by the cost of making good such deficiencies. If District deems it inexpedient to correct Work that is damaged, defective, or not done in accordance with Contract provisions, an equitable reduction in the Guaranteed Project Cost (of at least one hundred twenty-five percent (125%) of the estimated reasonable value of the nonconforming Work) shall be made therefor.

**18.3.9.** Payment After Cure

When Contractor removes the grounds for declining approval, payment shall be made for amounts withheld because of them. No interest shall be paid on any amounts withheld due to the failure of the Contractor to perform in accordance with the terms and conditions of the Contract Documents.

**18.4. Subcontractor Payments**

**18.4.1.** Payments to Subcontractors

No later than seven (7) days after receipt of each Tenant Improvement Payment, or pursuant to Business and Professions Code section 7108.5 and Public Contract Code section 7107, the Contractor shall pay to each Subcontractor, out of the amount paid to the Contractor on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to its Sub-subcontractors in a similar manner.

**18.4.2.** No Obligation of District for Subcontractor Payment

The District shall have no obligation to pay, or to see to the payment of, money to a Subcontractor except as may otherwise be required by law.

**18.4.3.** Joint Checks

Provided Contractor is in breach of its payment obligations to its subcontractors and after 14 days written notice, District shall have the right in its sole discretion, if necessary for the protection of the District, to issue joint checks made payable to the Contractor and Subcontractors and material or equipment suppliers. The joint check payees shall be responsible for the allocation and disbursement of funds included as part of any such joint payment. In no event shall any joint check payment be

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construed to create any contract between the District and a Subcontractor of any tier, any obligation from the District to such Subcontractor, or rights in such Subcontractor against the District.

## 19. COMPLETION OF THE WORK

### 19.1. Completion

**19.1.1.** The Project may only be accepted by action of the governing board of the District.

**19.1.2.** Completion of the Project will be when the Work to construct the Project is 100% complete, including all punch list items. Final DSA approval of the Project is not required for Project Completion.

**19.1.3. Acceptance.** There is no "*substantial completion*" for this Project. Even so, the District, at its sole option, may accept the Project and record a Notice of Completion when Project Completion has been completed to the satisfaction of the District, except for minor corrective items, as distinguished from incomplete items. If Contractor fails to complete all minor corrective items within thirty (30) Days after the date of the District's acceptance of the Project, the District shall withhold from the final Tenant Improvement Payment one hundred fifty percent (150%) of an estimate of the amount sufficient to complete the corrective items, as determined by District, until the item(s) are completed.

19.1.3.1. At the end of the thirty (30) Day period, if there are any items remaining to be corrected, District may elect to proceed as provided herein related to adjustments to Guaranteed Project Cost, and/or District's right to perform the Work of the Contractor.

### 19.2. Closeout Procedures

**19.2.1.** In addition to the closeout procedures indicated herein, Contractor shall comply with all the closeout requirements, procedures, and actions as indicated in all Contract Documents.

**19.2.2.** Punch List

The Contractor shall notify the Architect when Contractor considers the Work complete. Upon notification, Architect will prepare a list of minor items to be completed or corrected ("Punch List"). The Contractor and/or its Subcontractors shall proceed promptly to complete and correct items on the Punch List. Failure to include an item on Punch List does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

**19.2.3.** Closeout Requirements

19.2.3.1. Utility Connections

Buildings shall be connected to water, gas, sewer, and electric services, complete and ready for use. Service connections shall be made and existing services reconnected.

19.2.3.2. As-Built Drawings

19.2.3.2.1. Contractor shall provide exact "as-built" of the Work upon Project Completion as indicated in the Contract Documents ("As-Built Drawings").

19.2.3.2.2. Contractor is liable and responsible for any and all inaccuracies in As-Built Drawings, even if inaccuracies become evident at a future date.

19.2.3.2.3. Upon Project Completion and as a condition precedent to approval of final

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payment, Contractor shall obtain the Inspector and the Architect's approval of the corrected prints and provide to the District the As-Built Drawings and information electronically. When completed, Contractor shall deliver corrected PDF files to the District.

19.2.3.3. Maintenance Manuals: Contractor shall prepare all operation and maintenance manuals and date as indicated in the Contract Documents.

19.2.3.4. Closeout Documentation: Contractor shall provide all Closeout Documentation, which shall include the following, without limitation:

19.2.3.4.1. A full set of final As-Built Drawings, as further defined herein.
19.2.3.4.2. All Operations & Maintenance Manuals and information, as further defined herein.
19.2.3.4.3. All Warranties, as further defined herein.
19.2.3.4.4. Verified report(s) for all scope(s) of work (most recent revision of DSA 6-C, ).

**19.3. Final Inspection**

**19.3.1.** Contractor shall comply with Punch List procedures as provided herein and in all the Contract Documents and maintain the presence of its District-approved Contractor's superintendent and project manager until the Punch List is complete to ensure proper and timely completion of the Punch List. Under no circumstances shall Contractor demobilize its forces prior to completion of the Punch List. Upon receipt of Contractor's written notice that all of the Punch List items have been fully completed and the Work is ready for final inspection and acceptance, Architect and Project Inspector will inspect the Work and shall submit to Contractor and District a final inspection report noting the Work, if any, required in order to complete in accordance with the Contract Documents. Absent unusual circumstances, this report shall consist of the Punch List items not yet satisfactorily completed.

**19.3.2.** Upon Contractor's completion of all items on the Punch List and any other uncompleted portions of the Work, the Contractor shall notify the District, the Architect and the Project Inspector, who shall again inspect such Work. If the Architect and the Project Inspector find the Work complete and acceptable under the Contract Documents, the Architect will notify Contractor, who shall then jointly submit to the Architect and the District its final Application for Payment.

**19.3.3.** Final Inspection Requirements

19.3.3.1. Before calling for final inspection, Contractor shall determine that the following have been performed:

19.3.3.1.1. The Work has been completed.

19.3.3.1.2. All life safety items are completed and in working order.

19.3.3.1.3. Mechanical and electrical Work are complete and tested, fixtures are in place, connected, and ready for tryout.

19.3.3.1.4. Electrical circuits scheduled in panels and disconnect switches labeled.

19.3.3.1.5. Painting and special finishes complete.

19.3.3.1.6. Doors complete with hardware, cleaned of protective film, relieved of sticking or binding, and in working order.

19.3.3.1.7. Tops and bottoms of doors sealed.

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19.3.3.1.8. Floors waxed and polished as specified.

19.3.3.1.9. Broken glass replaced and glass cleaned.

19.3.3.1.10. Grounds cleared of Contractor's equipment, raked clean of debris, and trash removed from Site.

19.3.3.1.11. Work cleaned, free of stains, scratches, and other foreign matter, of damaged and broken material replaced.

19.3.3.1.12. Finished and decorative work shall have marks, dirt, and superfluous labels removed.

19.3.3.1.13. Final cleanup, as provided herein.

**19.4. Costs of Multiple Inspections**

More than two (2) requests of the District to make a final inspection shall be considered an additional service of District, Architect, Construction Manager, and/or Project Inspector, and all subsequent costs will be invoiced to Contractor and if funds are available, withheld from remaining payments.

**19.5. Beneficial Occupancy or Use Prior to Project Completion**

**19.5.1.** District's Rights to Beneficial Occupancy or Use

The District may, at its sole discretion, have Beneficial Occupancy or use of any completed or partially completed portion of the Project at any stage. Neither the District's Final Acceptance, the making of Final Payment, nor the Beneficial Occupancy or use of the Project, in whole or in part, by District shall constitute acceptance of the Project not in accordance with the Contract Documents nor relieve the Contractor or the Contractor's Performance Bond Surety from liability with respect to any warranties or responsibility for faulty or defective Work or materials, equipment and workmanship incorporated therein. The District and the Contractor shall agree in writing to the responsibilities assigned to each of them for payments, security, maintenance, heat, utilities, damage to the Project, insurance, the period for correction of the Work, and the commencement of warranties required by the Contract Documents. Any dispute as to responsibilities shall be resolved pursuant to the Claims provisions herein, with the added provision that during the dispute process, the District shall have the right to Beneficial Occupancy or use any portion of the Project that it needs or desires to use.

**19.5.2.** Inspection Prior to Beneficial Occupancy or Use

Immediately prior to partial Beneficial Occupancy or use of the Project, the District, the Contractor, and the Architect shall jointly inspect the area to be occupied or portion of the Project to be used in order to determine and record the condition of the Work.

**19.5.3.** No Waiver

Unless otherwise agreed upon, partial or entire occupancy or use of a portion or portions of the Project shall not in and of itself constitute an acceptance of the Project not complying with the requirements of the Contract Documents.

**20. FINAL PAYMENT AND RETENTION**

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**20.1. Final Payment**

Upon receipt and approval of a valid and final Application for Tenant Improvement Payment, the Architect may issue a final Certificate of Tenant Improvement Payment. The District shall thereupon jointly inspect the Work and either accept the Project as complete or notify the Architect and the Contractor in writing of reasons why the Project is not complete. Upon acceptance of the Project, the District may record a Notice of Completion with the County Recorder, and the Contractor shall, upon receipt of final Tenant Improvement Payment from the District, pay the amount due Subcontractors. The amount of the final Tenant Improvement Payment shall be equal to the remaining value of the work performed, less the total amount to be paid as Lease Payments pursuant to Exhibit C.

**20.2. Prerequisites for Final Tenant Improvement Payment**

The following conditions must be fulfilled prior to Final Tenant Improvement Payment:

**20.2.1.** A full and final waiver or release of all Stop payment notices in connection with the Work shall be submitted by Contractor, including a release of Stop payment notice in recordable form, together with (to the extent permitted by law) a copy of the full and final release of all Stop payment notice rights.

**20.2.2.** A duly completed and executed "**Conditional Waiver and Release on Final Payment**" compliant with Civil Code section 8136 from each subcontractor of any tier and supplier to be paid from the **current** Tenant Improvement Payment.

**20.2.3.** A duly completed and executed "**Unconditional Waiver and Release upon Final Payment**" compliant with Civil Code section 8138 from each subcontractor of any tier and supplier that was paid from the **previous** Tenant Improvement Payment.

**20.2.4.** The Contractor shall have made all corrections to the Work that are required to remedy any defects therein, to obtain compliance with the Contract Documents or any requirements of applicable codes and ordinances, or to fulfill any of the orders or directions of District required under the Contract Documents.

**20.2.5.** Each Subcontractor shall have delivered to the Contractor all written guarantees, warranties, applications, and bonds required by the Contract Documents for its portion of the Work.

**20.2.6.** Contractor must have completed all requirements set forth under "Closeout Procedures," Including, without limitation, an approved set of complete As-Built Drawings.

**20.2.7.** Architect shall have issued its written approval that final payment can be made.

**20.2.8.** The Contractor shall have delivered to the District all manuals and materials required by the Contract Documents.

**20.2.9.** The Contractor shall have completed final clean up as provided herein.

**20.3. Retention**

**20.3.1.** The retention (5% of the total Contract Price; "**Retention**"), **less** the total Lease Payments and less any amounts disputed by the District or that the District has the right to withhold pursuant to provisions herein, shall be paid as follows:

20.3.1.1. After approval by the District of the Architect's Certificate of Payment,

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20.3.1.2. After the satisfaction of the conditions set forth herein, and

20.3.1.3. Within sixty (60) Days following Project Completion pursuant to Public Contract Code section 7107.

20.3.1.4. No earlier than thirty-five (35) Days of the recording of the Notice of Completion by District, if a Notice of Completion is recorded by the District.

**20.3.2.** No interest shall be paid on any amounts withheld due to a failure of the Contractor to perform, in accordance with the terms and conditions of the Contract Documents.

**20.3.3.** District and Contractor acknowledge that the District's protections, restrictions and requirements outlined in the "retention" provisions of applicable California law (including, without limitation, Public Contract Code sections 7201 and 9203) are satisfied by the amount(s) the District will withhold as Retention under this Contract, including the amounts that the District will pay as Lease Payments under this Contract.

**20.4. Claims Asserted After Final Tenant Improvement Payment.**

Any lien, stop payment notice or other claim filed or asserted after the Contractor's acceptance of the Final Payment by any Subcontractor, of any tier, laborer, Material Supplier or others in connection with or for Work performed under the Contract Documents shall be the sole and exclusive responsibility of the Contractor pursuant to the indemnification obligations of the Contract Documents. In the event any lien, stop payment notice or other claim of any Subcontractor, Laborer, Material Supplier or others performing Work under the Contract Documents remain unsatisfied after Final Tenant Improvement Payment is made, Contractor shall refund to District all monies that the District may pay or be compelled to pay in discharging any lien, stop payment notice or other claim, including, without limitation all costs and reasonable attorneys' fees incurred by District in connection therewith.

## 21. UNCOVERING WORK, CORRECTION OF WORK AND RIGHT TO TAKEOVER WORK

### 21.1. Uncovering Work

If a portion of the Work is covered without Inspector or Architect approval or not in compliance with the Contract Documents, it must, if required in writing by the District, the Project Inspector, or the Architect, be uncovered for the Project Inspector's or the Architect's observation and be replaced at the Contractor's expense without change in the Guaranteed Project Cost or Contract Time.

### 21.2. Rejection of Work

Prior to the District's Acceptance of the Work, any Work or materials or equipment forming a part of the Work or incorporated into the Work that is defective or not in conformity with the Contract Documents may be rejected by the District, the Architect or the Project Inspector and the Contractor shall correct all rejected Work without any adjustment to the Contract Price or the Contract Time, even if the Work, materials or equipment have been previously inspected by the Architect or the Project Inspector or even if they failed to observe the defective or non-conforming Work, materials or equipment.

### 21.3. Nonconforming Work

**21.3.1.** Contractor shall promptly remove from the School Site all Work identified by District as failing to conform to the Contract Documents whether incorporated or not. Contractor shall promptly replace and re-execute its own Work to comply with the Contract Documents without additional expense to the District and shall bear the expense of making good all work of other contractors destroyed or damaged by

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any removal or replacement pursuant hereto and/or any delays to the District or other contractors caused thereby.

**21.3.2.** If Contractor does not remove or reasonably begin and diligently remove Work that District has identified as failing to conform to the Contract Documents within a reasonable time, not to exceed five (5) Days, District may remove it and may store any material at Contractor's expense. If Contractor does not pay expense(s) of that removal within ten (10) days' time thereafter, District may, upon ten (10) days' written notice, sell any material at auction or at private sale and shall deduct all costs and expenses incurred by the District and/or District may withhold those amounts from payment(s) to Contractor.

## 21.4. Correction of Work

### 21.4.1. Correction of Rejected Work

Pursuant to the notice provisions herein, the Contractor shall promptly correct the Work rejected by the District, the Architect, or the Project Inspector as failing to conform to the requirements of the Contract Documents, whether observed before or after Project Completion and whether or not fabricated, installed, or completed. The Contractor shall bear costs of correcting the rejected Work, including additional testing, inspections, and compensation for the Inspector's or the Architect's services and expenses made necessary thereby.

### 21.4.2. One-Year Warranty Corrections

If, within one (1) year after the date of Project Completion or a designated portion thereof, or after the date for commencement of warranties established hereunder, or by the terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the District to do so. This period of one (1) year shall be extended with respect to portions of the Work first performed after Project Completion by the period of time between Project Completion and the actual performance of the Work. This obligation hereunder shall survive acceptance of the Work under the Contract and termination of the Contract. The District shall give such notice promptly after discovery of the condition.

## 21.5. District's Right to Takeover Work

**21.5.1.** If the Contractor should neglect to prosecute or reasonably begin and diligently prosecute the Work properly or fail to perform any provisions of this contract, the District, after **five (5) Days** written notice to the Contractor, may, without prejudice to any other remedy it may have, make good such deficiencies and may deduct the cost thereof from the payment then or thereafter due the Contractor.

**21.5.2.** If it is found at any time, before or after Project Completion, that Contractor has varied from the Drawings and/or Specifications, including, but not limited to, variation in material, quality, form, or finish, or in the amount or value of the materials and labor used, District may require at its option:

21.5.2.1. That all such improper Work be removed, remade or replaced, and all work disturbed by these changes be made good by Contractor at no additional cost to the District;

21.5.2.2. That the District deduct from any amount due Contractor the sum of money equivalent to the difference in value between the work performed and that called for by the Drawings and Specifications; or

21.5.2.3. That the District exercise any other remedy it may have at law or under the Contract Documents, including but not limited to the District hiring its own forces or another contractor to

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replace the Contractor's nonconforming Work, in which case the District shall either issue a deductive Change Order, a Unilateral Change Order, or invoice the Contractor for the cost of that work. Contractor shall pay any invoices within thirty (30) Days of receipt of same or District may withhold those amounts from payment(s) to Contractor.

**21.5.3. Acceptance of Defective or Non-Conforming Work.** The District may, in its sole and exclusive discretion, elect to accept Work that is defective or that is not in accordance with the requirements of the Contract Documents, instead of requiring its removal and correction, in which case the Contract Price shall be reduced as appropriate and equitable.

## 22. TERMINATION AND SUSPENSION AND SCOPE REDUCTION

The Parties' rights to terminate the Project are as indicated in the Facilities Lease. In the event of a termination of the Facilities Lease and notwithstanding any other provision in the Contract Documents, the Surety shall remain liable to all obligees under the Payment Bond and to the District under the Performance Bond for any claim related to the Project.

### 22.1. Emergency Termination of Public Contracts Act of 1949

**22.1.1.** In addition to the Parties' right to termination under the Facilities Lease, this Contract is subject to termination as provided by sections 4410 and 4411 of the Government Code of the State of California, being a portion of the Emergency Termination of Public Contracts Act of 1949.

22.1.1.1. Section 4410 of the Government Code states:

In the event a national emergency occurs, and public work, being performed by contract, is stopped, directly or indirectly, because of the freezing or diversion of materials, equipment or labor, as the result of an order or a proclamation of the President of the United States, or of an order of any federal authority, and the circumstances or conditions are such that it is impracticable within a reasonable time to proceed with a substantial portion of the work, then the public agency and the contractor may, by written agreement, terminate said contract.

22.1.1.2. Section 4411 of the Government Code states:

Such an agreement shall include the terms and conditions of the termination of the contract and provision for the payment of compensation or money, if any, which either party shall pay to the other or any other person, under the facts and circumstances in the case.

22.1.1.3. Compensation to the Contractor shall be determined on the basis of the reasonable value of the Work done, including preparatory work. As an exception to the foregoing and at the District's discretion, in the case of any fully completed separate item or portion of the Work for which there is a separate previously submitted unit price or item on the accepted schedule of values, that price shall control. The District, at its sole discretion, may adopt the Guaranteed Project Cost as the reasonable value of the work done or any portion thereof.

### 22.2. Suspension of Work

**22.2.1.** District may, without cause, order Contractor in writing to suspend, delay or interrupt the Project in whole or in part for such period of time as District may determine. When the District resumes the Project, the Parties will attempt to negotiate an adjustment in the GPC for increases or decreases in the cost of performance of the Project caused by suspense, delay or interruption. If the parties cannot agree on an adjusted GPC, the District may terminate the leases as permitted herein.

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**22.2.2.** In the event the District shall order suspension of the Work, an adjustment shall be made to the Contract Price for increases in the direct cost of performance of the Work of the Contract Documents, actually caused by suspension, delay or interruption ordered by the District; provided however that no adjustment of the Contract Price shall be made to the extent: (i) that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible under the Contract Documents; or (ii) that an equitable adjustment is made or denied under another provision of the Contract Documents. The foregoing notwithstanding, any adjustment of the Contract Price shall not include any adjustment to increase the Contractor's overhead, general administrative costs or profit, all of which will remain as reflected in the Schedule of Values submitted by the Contractor pursuant to the Contract Documents. In the event of the District's suspension of the Work, the Contract Time shall be equitably adjusted.

### 22.3. Scope Reduction

In cases of suspension, partial or complete termination, or at the discretion of the District, the District reserves the right to unilaterally approve a deductive Change Order to reduce scope of work or perform work with other forces or its own forces.

## 23. CLAIMS RESOLUTION

### 23.1. Exclusive Remedy

**23.1.1.** Compliance with the claim resolution process and timelines described in this Claims Resolution section as well as the notice provisions of the Contract are express conditions precedent to Contractor's right to commence litigation or arbitration, file a claim under the California Government Code, or commence any other legal action related to the Project ("Claims Resolution Process").

**23.1.2.** Contractor acknowledges that its failure, for any reason, to provide written notice and all required supporting documentation to permit the District's review and evaluation within the time frame required by this Claims Resolution Process, shall be deemed Contractor's waiver, release, discharge and relinquishment of any right to assert, request, or demand any entitlement to an adjustment of the Contract Time or the contract Price on account of any instruction, request, drawings, specifications, action, condition, omission, default or other situation.

**23.1.3.** To the extent any provision(s) of this Claims Resolution Process conflict with or otherwise impair the timeframes and procedures of Public Contract Code section 9204, the provisions of Section 9204 shall control. If provisions of this Claims Resolution Process are supplementary and/or in addition to the requirements of Section 9204, but do not conflict with or otherwise impair the timeframes and procedures of Section 9204, the provisions of this Claims Resolution Process and the Contract shall control.

### 23.2. Performance during Claim Resolution Process.

The Contractor shall diligently proceed with Work on the Project at the same time that Claims are addressed under the Claims Resolution Process. It is the intent of District to resolve Claims with the Contractor as close to the events giving rise to the Claims as possible, and to avoid stale or late Claims and the late documenting of Claims. Contractor's failure to diligently proceed in accordance with the District's instructions or the Contract terms will be considered a material breach of the Contract and a waiver of Contractor's rights under this Contract.

### 23.3. Waiver

If Contractor fails to timely submit any written notices required under the terms of the Contract or in this

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Claims Resolution section, Contractor waives and releases its rights regarding further review of its Claim, unless Contractor and District mutually agree in writing to other time limits.

**23.4. Intention**

The Claims Resolution Process required herein is intended to provide a concise mechanism for resolving Claims as they arise during the Project, while requiring accurate documentation related to contested issues as to those Claims that are not contemporaneously resolved.

**23.5. Other Provisions**

If portions of the Contract, other than this Claims Resolution Process, establish a specific process regarding a specific subject, then that process shall govern and control the resolutions of any disagreements thereunder. Otherwise, the provisions in this Claims Resolution Process shall control the resolution of all Claims.

**23.6. Claim Presentation**

**23.6.1. Claim**. A claim is a written demand by Contractor (or by Contractor on behalf of a Subcontractor) that the Contractor must submit by **registered mail or certified mail return receipt requested** for:

23.6.1.1. An extension to the Contract Time, including relief from damages or penalties assessed by the District for delay;

23.6.1.2. Payment of money or damages arising from work done by, or on behalf of, the Contractor pursuant to the Contract and payment that is not otherwise expressly provided for in the Contract Documents or the Contractor is not otherwise entitled; or

23.6.1.3. Payment that is disputed by the District.

**23.6.2.** A PCO may be a Claim, but the Parties agree that a PCO shall only be a Claim if:

23.6.2.1. The District states in writing that it disagrees with the terms of a PCO and directs the Contractor to utilize the Claim Resolution Process, or

23.6.2.2. The District rejects in whole or in part a PCO and the Contractor states in writing that it is utilizing the Claim Resolution Process for the portion of the PCO that the District rejected.

**23.6.3. Subcontractor Claims**

23.6.3.1. Public Contract Code section 9204(d)(5) states that the Contractor may present to the District a Claim on behalf of a Subcontractor or lower tier Subcontractor. A Subcontractor may request in writing, either on his or her own behalf or on behalf of a lower tier Subcontractor, that the Contractor present a claim for Work which was performed by the Subcontractor or by a lower tier Subcontractor on behalf of the Subcontractor. The Subcontractor requesting that the Claim be presented to the District shall furnish reasonable documentation to support the Claim. Within 45 days of receipt of this written request, the Contractor shall notify the Subcontractor in writing as to whether the Contractor presented the claim to the District and, if the Contractor did not present the Claim, provide the Subcontractor with a statement of the reasons for not having done so.

23.6.3.2. Contractor is responsible for providing this Claims Resolution Process to its Subcontractors and for ensuring that all Subcontractors or others who may assert Claims by and through Subcontractors and/or the Contractor are informed of this Claims Resolution Process. No Claim

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submitted by any party that fails to follow the provisions of this Claims Resolution Process will be considered. Contractor shall indemnify, keep and hold harmless the District and its consultants, against all suits, claims, damages, losses, and expenses, including but not limited to attorney's fees, caused by, arising out of, resulting from, or incidental to, the failure to provide this Claims Resolution Process to its Subcontractors or others who may assert Claims by and through Subcontractors and/or the Contractor.

**23.6.4. Contractor Must Timely Identify, Present and Document Any Claim**

23.6.4.1. Every Claim shall be stated with specificity in writing and signed by Contractor under penalty of perjury and presented to the District within ten (10) Days from the date Contractor discovers or reasonably should discover, that an act, error or omission of District, its agents or employees, or action, condition or other situation has occurred that may entitle Contractor to make a Claim. This shall include the Contractor's actual or constructive knowledge of any instruction, request, drawings, specifications, action, condition, omission, default or other situation for which the contractor believes there should an adjustment of the Contract Price or Contract Time. Contractor shall provide this writing even if Contractor has not yet been damaged, delayed, or incurred extra cost when Contractor discovers, or reasonably should discover, the act, error, omission, action, condition or situation giving rise to the incidents giving rise to the Claim. The writing shall:

23.6.4.1.1. Identify all of the issues, events, conditions, circumstances and/or causes giving rise to the Claim;

23.6.4.1.2. Identify all pertinent dates and/or durations and all actual and/or anticipated effects on the Contract Price, milestones and/or Contract Time adjustments; and

23.6.4.1.3. Identify in detail line-item costs if the Claim seeks money.

23.6.4.1.4. If the Claim involves extra work, a detailed cost breakdown of the amounts the Contractor is seeking, including actual cost records (including without limitation, payroll records, material and rental invoices and the like) demonstrating that those costs have actually been incurred. To the extent costs have not yet been incurred at the time the Claim is submitted, actual cost records must be submitted on a current basis not less than once a week during any period costs are incurred. A cost record will be considered current if submitted within seven (7) Days of the date the cost reflected in the record is incurred. At the request of District, extra costs may be subject to further verification procedures (such as having an inspector verify the performance of alleged extra work on a daily basis).

23.6.4.1.5. If the Claim involves an error or omission in the Contract Documents:

23.6.4.1.5.1. An affirmative representation under penalty of perjury by Contractor and any affected Subcontractors and suppliers that the error or omission was not discovered prior to submitting a proposal for the Work, and

23.6.4.1.5.2. A detailed statement demonstrating that the error or omission reasonably should not have been discovered, by Contractor, its Subcontractors and suppliers, prior to submitting a proposal for the Work.

23.6.4.1.6. **Escalation Costs**. If a Claim involves a request for additional compensation for escalation of materials and/or equipment costs, then this provision exclusively governs those request(s) by Contractor and the following are **all** conditions precedent to Contractor's submission of a Claim for escalation of materials and/or equipment costs:

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23.6.4.1.6.1. Contractor shall not be entitled to submit a request for compensation for escalation of materials unless the actual increase in the cost of the materials exceeds ten percent (10%) of the total material costs on the Project at the time of Contractor's proposal.

23.6.4.1.6.2. The cost escalation is the result of unusual and unforeseeable market conditions not reasonably foreseeable at the time of award of the Contract and was not an escalated cost resulting from any action or inaction of the Contractor.

23.6.4.1.6.3. Contractor timely ordered and/or purchased the materials at issue, based on (1) Contractor's constructive knowledge of the supply chain for required materials and (2) Contractor's request to utilize the provisions in the Contract Documents, including all "**early purchase items**" provisions and all provisions related to the District's payment for materials and equipment purchased and stored on Site or offsite.

23.6.4.1.6.4. Contractor's material costs were reasonable at the time of Contractor's proposal for the Project.

23.6.4.1.6.5. Contractor demonstrates through verifiable documentation, an actual increase in the cost of materials in its Contract Price at the time of award of the Contract compared to Contractor's actual material payment cost paid either at time of purchase or delivery, whichever is earlier.

23.6.4.1.6.6. An actual year-to-date price increase has occurred and can be substantiated by the E.N.R. 20-City Average Material Cost Index for the material at issue that demonstrates the claim for an increase in price of the material at the time of delivery of the higher priced material to the Project.

23.6.4.2. The writing shall be accompanied by all documents substantiating Contractor's position regarding the Claim.

23.6.4.3. A Claim that asserts an effect on any schedule milestones and/or Contract Time shall include all pertinent scheduling data demonstrating the impact(s) on the critical path(s), milestone(s) and/or Contract Time.

23.6.4.4. Contractor agrees that it shall not base its damages, its calculations or its Claim on a "total cost" approach, a "modified total cost" approach or a "jury verdict method" approach.

**23.6.5. Certification.** Each copy of the Claim Documentation shall be certified by a responsible officer of the Contractor in accordance with the requirements of the Contract Documents. This certification shall be under penalty of perjury and must include the following language immediately above or before the Contractor's signature: "***I declare under penalty of perjury under the laws of the State of California that the information provided and statements made in this Claim are true and correct, substantiated and of merit***." The Contractor acknowledges that this requirement is not a mere formality but is intended to ensure that the Contractor only submits Claims that it believes are true and correct, substantiated and have merit. Should Contractor fail to submit the foregoing written statement signed under penalty of perjury, Contractor waives and releases its Claim, including all rights and remedies in connection therewith. This certification must include a certification of any portion of the Claim from Subcontractor(s) or others who are asserting Claims by and through Subcontractors and/or the Contractor.

**23.6.6. District's Written Statement/Decision on Claim.** The District shall issue a written statement/decision regarding the Claim to the Contractor within forty-five (45) Days of receipt of the written Claim from the Contractor, or three (3) Days after the District's first regular governing board

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meeting after that 45-day period if the District's governing board does not meet within that first 45-day period. If the District fails to timely provide a written statement/decision regarding the Claim, the Claim shall be deemed rejected in its entirety.

**23.6.7. Contractor Must Demand an Informal Meet and Confer Conference if Contractor Pursues Any Claim**

23.6.7.1. **FAILURE OF A CONTRACTOR TO TIMELY DEMAND A MEET AND CONFER CONFERENCE IS A WAIVER OF ITS RIGHT TO PURSUE ALL OR A PORTION OF ITS CLAIM.**

23.6.7.2. **Where There Is No Agreement:** If there is no agreement between Contractor and the District on a Claim, then within ten (10) Days of the date of the District's written statement/decision in response to a Claim or PCO, if Contractor pursues that Claim, then Contractor must demand, by **registered mail or certified mail return receipt requested,** a meet and confer conference with District staff. A meet and confer conference with District staff shall be a condition precedent to Contractor seeking any further relief, including a mediation as indicated below.

23.6.7.3. **Where There Is Partial Agreement**: If Contractor and the District partially agree on a Claim but do not reach complete agreement, then the Parties shall complete a Change Order, if applicable, for the issues and/or amounts agreed to. For those issues not agreed to, if Contractor pursues those issues from that Claim, then Contractor must demand, by **registered mail or certified mail return receipt requested,** a meet and confer conference with District staff regarding those issues. A meet and confer conference with District staff shall be a condition precedent to Contractor seeking any further relief, including a mediation as indicated below, in connection with the District's rejection.

23.6.7.4. **Meet and Confer Conference.** District and Contractor shall schedule the meet and confer conference as soon as reasonably possible after Contractor's written demand for a meet and confer conference, but in no case later than thirty (30) Days after Contractor's demand.

23.6.7.5. **District's Written Decision.** Within ten (10) Business Days of the meet and confer conference, the District shall issue a written decision. If the District fails to timely provide a written statement/decision after the meet and confer conference, all Claim issues that were part of the meet and confer conference shall be deemed rejected in their entirety.

23.6.7.5.1. If the District's decision completely resolves the Claim, then the Parties shall complete a Change Order, if applicable, for the issues and/or amounts agreed to.

23.6.7.5.2. If the District rejects the Contractor's Claim in whole or in part or does not issue a timely written response, then the parties shall mediate the remaining issues of the Claim.

23.6.7.5.3. Contractor's costs incurred in seeking relief for Claims are not recoverable from District.

**23.6.8. Mediation**.

23.6.8.1. At the District's sole discretion, this mediation may be a multiple-party mediation with the Architect, the Construction Manager, the Inspector, and/or other District consultants.

23.6.8.2. The District and Contractor 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.

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**23.6.9. Contractor's Obligation to File a Government Code Claim.** Nothing in this Contract, including this Claims Resolution Process, waives, modifies or tolls the Contractor's obligation to present a timely claim under Government Code section 910, et seq. Therefore, in addition to complying with this Claims Resolution Process, the Contractor is required to present claims to the District pursuant to Government Code section 910, et seq. If after the requirements of this Claims Resolution Process are satisfied, and all or a portion of the Claim remains unresolved, and if the Government Code claim is rejected by the District, the Contractor may proceed under the post-mediation provisions of this Claims Resolution Process.

**23.6.10. Post Mediation Provisions**

23.6.10.1. **Claims of $375,000 or Less:** The provisions of Public Contract Code § 20104.4 shall apply. Pursuant to Public Contract Code § 20104.4(a), within sixty (60) days, but no earlier than thirty (30) days, following the filing of responsive pleadings, the court shall submit the matter to nonbinding mediation unless waived by mutual stipulation of both parties. Pursuant to Public Contract Code § 9204(d)(2)(D), a mediation conducted pursuant to this Claims Resolution Process shall excuse the obligation under Public Contract Code § 20104.4(a) to mediate after litigation has been commenced unless otherwise agreed to by the parties in writing.

23.6.10.2. **Litigation of Claims in Excess of $375,000**. If, after a mediation as indicated above, the Parties have not resolved the Claim, either Party may commence an action in a court of competent jurisdiction to contest that decision within ninety (90) Days following the conclusion of that mediation or one (1) year following the accrual of the cause of action, whichever is later. By mutual agreement, the Parties can agree to instead resolve the Claim through arbitration.

**23.6.11.** The District shall be entitled to remedy any false claims, as defined in California Government Code section 12650 *et seq*., made to the District by the Contractor or any Subcontractor under the standards set forth in Government Code section 12650 *et seq*. Any Contractor or Subcontractor who submits a false claim shall be liable to the District for three times the amount of damages that the District sustains because of the false claim. A Contractor or Subcontractor who submits a false claim shall also be liable to the District for (a) the costs, including attorney fees, of a civil action brought to recover any of those penalties or damages, and (b) a civil penalty of up to $11,000 for each false claim. In addition, Contractor may be subject to criminal prosecution under California Penal Code §72 and/or civil liability under False Claims Act. If so, the District may be entitled to recover its costs incurred to investigate any False Claim, including but not limited to attorneys' fees and expert fees incurred in connection with that investigation.

**23.7. Documentation of Resolution.**

If a Claim is resolved, the District shall determine if that resolution shall be documented in a settlement agreement or release or other document, as appropriate.

**23.8. Claim Resolution Process – Non-Applicability**.

The procedures and provisions in this Claims Resolution section shall **not** apply to:

**23.8.1.** District's determination of what Work is or will be constructed, or whether the Work complies with the Contract Documents for purposes of accepting the Work;

**23.8.2.** District's rights and obligations as a public entity, such as, but without limitation, the revocation of prequalified or qualified status, barring a contractor from District contracts, the imposition of penalties or forfeitures prescribed by statute or regulation; provided, however, that penalties imposed against a

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public entity by statutes such as Section 7107 of the Public Contract Code, shall be subject to the mandatory dispute resolution provisions of this Claims Resolution section and the Contract;

**23.8.3.** Personal injury, wrongful death or property damage claims;

**23.8.4.** Latent defect or breach of warranty or guarantee to repair;

**23.8.5.** Stop notices or stop payment notices; or

**23.8.6.** Any other District rights as set forth herein.

**23.9.** The District's failure to respond to a Claim from the Contractor within the time periods described herein or to otherwise meet the time requirements of Public Contract Code section 9204 shall automatically result in the Claim being deemed rejected in its entirety, with no admission by the District as to the merits of the Claim.

**23.10.** If District fails to timely issue payment for any Claim or portion of a Claim as required pursuant to these Claim Resolution Procedures, the Contractor is permitted to assess interest indicated in Public Contract Code section 9204. Notwithstanding this provision, and in accordance with California Public Contract Code §7107, the District is entitled to withhold up to 150% of disputed amounts and the District shall not be liable for payment of interest on such disputed amounts pending final adjudication of such disputes.

## 24. LABOR, WAGE & HOUR, APPRENTICE AND RELATED PROVISIONS

### 24.1. Compliance Monitoring and Enforcement by the DIR

**24.1.1.** Contractor shall comply with the registration and compliance monitoring provisions of Labor Code section 1771.4, including furnishing its CPRs to the Labor Commissioner of California and complying with any applicable enforcement by the Department of Industrial Relations. Labor Code section 1771.1(a) states the following:

> "A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded."

**24.1.2.** Contractor acknowledges that, for purposes of Labor Code section 1725.5, this work is a public work to which Labor Code section 1771 applies. Contractor shall comply with Labor Code section 1725.5, including without limitation the registration requirements. Additionally, all "subcontractors" (as defined by Labor Code section 1722.1) shall comply with Labor Code section 1725.5 to be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of the Work. Contractor represents to the District that all "subcontractors" (as defined by Labor Code section 1722.1) are registered pursuant to Labor Code section 1725.5.

**24.1.3.** The Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. Contractor shall post job site notices, as prescribed by regulation. Contractor shall comply with all requirements of Labor Code section 1771.4, except the requirements that are exempted by the Labor Commissioner for the Project.

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**24.2. Wage Rates, Travel and Subsistence**

**24.2.1.** Pursuant to the provisions of article 2 (commencing at section 1770), chapter 1, part 7, division 2, of the Labor Code of California, the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality in which this public work is to be performed for each craft, classification, or type of worker needed to execute this Contract are on file at the District's principal office and copies will be made available to any interested party on request. Contractor shall obtain and post a copy of these wage rates at the job site.

**24.2.2.** Holiday and overtime work, when permitted by law, shall be paid for at a rate of at least one and one-half times the above specified rate of per diem wages, unless otherwise specified. The holidays upon which those rates shall be paid need not be specified by the District, but shall be all holidays recognized in the applicable collective bargaining agreement. If the prevailing rate is not based on a collectively bargained rate, the holidays upon which the prevailing rate shall be paid shall be as provided in Section 6700 of the Government Code.

**24.2.3.** Contractor shall pay and shall cause to be paid each worker engaged in Work on the Project not less than the general prevailing rate of per diem wages determined by the Director of the Department of Industrial Relations ("DIR") ("Director"), regardless of any contractual relationship which may be alleged to exist between Contractor or any Subcontractor and such workers.

**24.2.4.** If during the period this bid is required to remain open, the Director determines that there has been a change in any prevailing rate of per diem wages in the locality in which the Work under the Contract is to be performed, such change shall not alter the wage rates in the Notice to Bidders (or RFP) or the Contract subsequently awarded.

**24.2.5.** Pursuant to Labor Code section 1775, Contractor shall, as a penalty to District, forfeit the statutory amount, (currently not to exceed two hundred dollars ($200) for each Day, or portion thereof), for each worker paid less than the prevailing rates, as determined by the District and/or the Director, for the work or craft in which that worker is employed for any public work done under Contract by Contractor or by any Subcontractor under it.

24.2.5.1. The amount of the penalty shall not be less than forty dollars ($40) for each Day, or portion thereof, unless the failure of Contractor was a good faith mistake and, if so, the error was promptly and voluntarily corrected when brought to the attention of Contractor.

24.2.5.2. The amount of the penalty shall not be less than eighty dollars ($80) for each Day or portion thereof, if Contractor has been assessed penalties within the previous three (3) years for failing to meet Contractor's prevailing wage obligations on a separate contract, unless those penalties were subsequently withdrawn or overturned.

24.2.5.3. The amount of the penalty may not be less than one hundred twenty dollars ($120) for each Day, or portion thereof, if the Labor Commissioner determines the Contractor willfully violated Labor Code section 1775.

24.2.5.4. The difference between such prevailing wage rates and the amount paid to each worker for each Day or portion thereof for which each worker was paid less than the prevailing wage rate, shall be paid to each worker by Contractor.

**24.2.6.** Any worker employed to perform Work on the Project, which Work is not covered by any classification listed in the general prevailing wage rate of per diem wages determined by the Director, shall be paid not less than the minimum rate of wages specified therein for the classification which most nearly corresponds to Work to be performed by him, and such minimum wage rate shall be retroactive to

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time of initial employment of such person in such classification. Prevailing wage rates are on file with the District and are available to any interested party on request or at **www.dir.ca.gov/oprl/statistics_and_databases.html**.

**24.2.7.** Pursuant to Labor Code section 1773.1, per diem wages are deemed to include employer payments for health and welfare, pension, vacation, travel time, subsistence pay, and apprenticeship or other training programs authorized by section 3093, and similar purposes.

**24.2.8.** Contractor shall post at appropriate conspicuous points on the Site of Project, a schedule showing all determined minimum wage rates and all authorized deductions, if any, from unpaid wages actually earned. In addition, Contractor shall post a sign-in log for all workers and visitors to the Site, a list of all subcontractors of any tier on the Site, and the required Equal Employment Opportunity poster(s).

**24.3. Hours of Work**

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

**24.3.2.** Contractor shall keep and shall cause each Subcontractor to keep an accurate record showing the name of and actual hours worked each Day and each calendar week by each worker employed by Contractor in connection with the Work or any part of the Work contemplated by this Contract. The record shall be kept open at all reasonable hours to the inspection of District and to the Division of Labor Standards Enforcement of the DIR.

**24.3.3.** Pursuant to Labor Code section 1813, Contractor shall as a penalty to the District forfeit the statutory amount (believed by the District to be currently one hundred dollars ($100)) for each worker employed in the execution of this Contract by Contractor or by any Subcontractor for each Day during which such worker is required or permitted to work more than eight (8) hours in any one Day and forty (40) hours in any one calendar week in violation of the provisions of article 3 (commencing at section 1810), chapter 1, part 7, division 2, of the Labor Code.

**24.3.4.** Any Work necessary to be performed after regular working hours, or on Sundays or other holidays shall be performed without additional expense to the District.

**24.4. Payroll Records**

**24.4.1.** Contractor and all Subcontractors must comply with the compliance monitoring provisions of Labor Code section 1771.4, including furnishing its certified payroll records ("CPR(s)") to the Labor Commissioner of California and complying with any applicable enforcement by DIR. Labor Code section 1771.4 requires Contractor and Subcontractors to provide electronic copies of CPRs to the Labor Commissioner of California at least once every thirty (30) days, and within thirty (30) Days of Project Completion. The failure to timely provide the CPRs could result in penalties as determined by Labor Code section 1771.4, applicable laws, and regulations.

**24.4.2.** If requested by the District, Contractor shall provide to the District and shall cause each Subcontractor performing any portion of the Work to provide the District and an accurate CPR(s), showing

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the name, address, social security number, work classification, straight time, and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by the Contractor and/or each Subcontractor in connection with the Work.

**24.4.3.** In addition to any other requirements pursuant to Labor Code sections 1770, et seq., the CPRs enumerated hereunder shall be certified and shall be provided to the District on a weekly basis. The CPRs from the Contractor and its Subcontractor(s) for each week shall be provided on or before Wednesday of the week following the week covered by the CPRs. The District shall not make any payment to Contractor until:

24.4.3.1. Contractor and/or its Subcontractor(s) provide CPRs acceptable to the District, and

24.4.3.2. The District is given sufficient time to review and/or audit the CPRs to determine their acceptability. Any delay in Contractor and/or its Subcontractor(s) providing CPRs to the District in a timely manner will directly delay the District's review and/or audit of the CPRs and Contractor's payment.

**24.4.4.** All CPRs shall be available for inspection at all reasonable hours at the principal office of Contractor on the following basis:

24.4.4.1. A certified copy of an employee's CPR shall be made available for inspection or furnished to the employee's authorized representative on request.

24.4.4.2. CPRs shall be made available for inspection or furnished upon request to a representative of District, Division of Labor Standards Enforcement, Division of Apprenticeship Standards, and/or the Department of Industrial Relations.

24.4.4.3. CPRs shall be made available upon request by the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through either the District, Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. If the requested CPRs have not been provided pursuant to the provisions herein, the requesting party shall, prior to being provided the records reimburse the costs of preparation by Contractor, Subcontractors, and the entity through which the request was made. The public shall not be given access to the records at the principal office of Contractor.

**24.4.5.** The form of certification for the CPRs shall be as follows:

I, _____ (Name-Print), the undersigned, am the _____ (Position in business) with the authority to act for and on behalf of _____ (Name of business and/or Contractor), certify under penalty of perjury that the records or copies thereof submitted and consisting of _____ (Description, number of pages) are the originals or true, full, and correct copies of the originals which depict the payroll record(s) of actual disbursements by way of cash, check, or whatever form to the individual or individual named, and (b) we have complied with the requirements of sections 1771, 1811, and 1815 of the Labor Code for any work performed by our employees on the Project.

Date: _____ Signature: _____.

(Section 16401 of Title 8 of the California Code of Regulations)

**24.4.6.** Each Contractor shall file a certified copy of the CPRs with the entity that requested the records within ten (10) Days after receipt of a written request.

**24.4.7.** Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by District, Division of Apprenticeship Standards, or Division of Labor

Form Agreement

Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address, and social security number. The name and address of Contractor awarded Contract or performing Contract shall not be marked or obliterated.

**24.4.8.** Contractor shall inform District of the location of the records enumerated hereunder, including the street address, city, and county, and shall, within five (5) Business days, provide a notice of change of location and address.

**24.4.9.** In the event of noncompliance with the requirements of this section, Contractor shall have ten (10) Days in which to comply subsequent to receipt of written notice specifying in what respects Contractor must comply with this section. Should noncompliance still be evident after the ten (10) day period, Contractor shall, as a penalty to District, forfeit one hundred dollars ($100) for each Day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of Division of Apprenticeship Standards or Division of Labor Standards Enforcement, these penalties shall be withheld from Tenant Improvement Payment and/or Lease Payments then due.

**24.4.10.** It shall be the responsibility of Contractor to ensure compliance with the provisions of Labor Code section 1776.

**24.5. Apprentices**

**24.5.1.** Contractor acknowledges and agrees that, if this Contract involves a dollar amount greater than or a number of working days greater than that specified in Labor Code section 1777.5, then this Contract is governed by the provisions of Labor Code Section 1777.5. It shall be the responsibility of Contractor to ensure compliance with this Article and with Labor Code section 1777.5 for all apprenticeship occupations.

**24.5.2.** Apprentices of any crafts or trades may be employed and, when required by Labor Code section 1777.5, shall be employed provided they are properly registered in full compliance with the provisions of the Labor Code.

**24.5.3.** Every apprentice shall be paid the standard wage paid to apprentices under the regulations of the craft or trade at which the apprentice is employed, and shall be employed only at the work of the craft or trade to which the apprentice is registered.

**24.5.4.** Only apprentices, as defined in section 3077 of the Labor Code, who are in training under apprenticeship standards and written apprentice agreements under chapter 4 (commencing at section 3070), division 3, of the Labor Code, are eligible to be employed. The employment and training of each apprentice shall be in accordance with the provisions of the apprenticeship standards and apprentice agreements under which the apprentice is training.

**24.5.5.** Pursuant to Labor Code section 1777.5, if that section applies to this Contract as indicated above, Contractor and any Subcontractors employing workers in any apprenticeable craft or trade in performing any Work under this Contract shall apply to the applicable joint apprenticeship committee for a certificate approving the Contractor or Subcontractor under the applicable apprenticeship standards and fixing the ratio of apprentices to journeymen employed in performing the Work.

**24.5.6.** Pursuant to Labor Code section 1777.5, if that section applies to this Contract as indicated above, Contractor and any Subcontractor may be required to make contributions to the apprenticeship program.

**24.5.7.** If Contractor or Subcontractor willfully fails to comply with Labor Code section 1777.5, then, upon a determination of noncompliance by the Administrator of Apprenticeship, it shall:

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24.5.7.1. Be denied the right to bid or propose on any subsequent project for one (1) year from the date of such determination;

24.5.7.2. Forfeit as a penalty to District the full amount as stated in Labor Code section 1777.7. Interpretation and enforcement of these provisions shall be in accordance with the rules and procedures of the California Apprenticeship Council and under the authority of the Chief of the Division of Apprenticeship Standards.

**24.5.8.** Contractor and all Subcontractors shall comply with Labor Code section 1777.6, which section forbids certain discriminatory practices in the employment of apprentices.

**24.5.9.** Contractor shall become fully acquainted with the law regarding apprentices prior to commencement of the Work. Special attention is directed to sections 1777.5, 1777.6, and 1777.7 of the Labor Code, and title 8, California Code of Regulations, section 200 et seq. Questions may be directed to the State Division of Apprenticeship Standards, 455 Golden Gate Avenue, San Francisco, California 94102.

**24.5.10.** Contractor shall ensure compliance with all certification requirements for all workers on the Project including, without limitation, the requirements for electrician certification in Labor Code section 108, et seq.

**24.6. Non-Discrimination**

**24.6.1.** Contractor herein agrees not to discriminate in its recruiting, hiring, promotion, demotion, or termination practices on the basis of race, religious creed, national origin, ancestry, sex, age, or physical handicap in the performance of this Contract and to comply with the provisions of the California Fair Employment and Housing Act as set forth in part 2.8 of division 3 of the California Government Code, commencing at section 12900; the Federal Civil Rights Act of 1964, as set forth in Public Law 88-352, and all amendments thereto; Executive Order 11246, and all administrative rules and regulations found to be applicable to Contractor and Subcontractor.

**24.6.2.** Special requirements for Federally Assisted Construction Contracts: During the performance of this Contract, Contractor agrees to incorporate in all subcontracts the provisions set forth in Chapter 60-1.4(b) of Title 41 published in Volume 33 No. 104 of the Federal Register dated May 28, 1968.

**24.7. Labor First Aid**

Contractor shall maintain emergency first aid treatment for Contractor's workers on the Project which complies with the Federal Occupational Safety and Health Act of 1970 (29 U.S.C. § 651 et seq.), the California Occupational Safety and Health Act of 1973, and all related regulations, including without limitation sections 330 *et seq.* of Title 8 of the California Code of Regulations.

**24.8. Skilled and Trained Workforce Requirement**

**24.8.1.** Contractor is familiar with the hiring requirements set forth in Education Code section 17407.5, and as a condition of entering into this Facilities Lease, Contractor understands and agrees that Contractor 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.

**24.8.2. Monthly Workforce Report**. The Contractor will provide to the District on a monthly basis while the Project is being performed, a report demonstrating compliance by Contractor and its Subcontractors at every tier with the skilled workforce requirements described in Public Contract Code section 2602 ("Workforce Report(s)").

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24.8.2.1. **Content of Workforce Report(s).** The Workforce Reports will state the following:

24.8.2.1.1. Each Subcontractor's name and license number, or list the Contractor if the Contractor is self-performing the applicable scope of Work;

24.8.2.1.2. That each worker is either a registered apprentice in an apprenticeship program approved by the State or a skilled journeyperson;

24.8.2.1.3. Of the skilled journeypersons for each Subcontractor and the Contractor, identify which specific workers are graduates of an approved apprenticeship program. The Workforce Reports must include "*the full name of, and identify the apprenticeship program name, location, and graduation date of, each worker relied upon to satisfy the apprenticeship graduation percentage requirements*" (Public Contract Code § 2602(a)(2).);

24.8.2.1.4. The monthly and cumulative percentages that entity has achieved of those graduates. If a Subcontractor (or the Contractor) is meeting the percentage cumulatively, the District may utilize that information when it determines whether the report is sufficient.

24.8.2.2. **Time Frame.** Each monthly Workforce Report must include all work performed during the preceding month and must be submitted to the District no later than thirty (30) Days after the end of the preceding month. (i.e., the monthly Workforce Report for activity during March must be submitted no later than April 30.)

24.8.2.3. **No Report or Incomplete Report of Contractor.** If the Contractor fails to provide a Workforce Report or provides a Workforce Report that is incomplete, the District shall withhold further payments from the Contractor until the Contractor provides a complete Workforce Report for that month.

24.8.2.3.1. If a monthly report by the Contractor is incomplete due to the failure of a Subcontractor(s) to timely or completely submit the information to the Contractor or District, the District shall only withhold an amount equal to one hundred and fifty percent (150%) of the value of the monthly billing for the non-compliant Subcontractor(s), which the Contractor shall be entitled to withhold from the Subcontractor(s)..

24.8.2.3.2. If the Contractor substitutes Subcontractor(s) for failure to provide a complete or timely report, and the Contractor replaces the Subcontractor(s) with one that provides an enforceable commitment that a skilled and trained workforce as defined in Public Contract Code 2601, et seq. will be used to complete the Project, the District shall resume making payments to the Contractor.

24.8.2.3.3. The District shall forward to the Labor Commissioner a copy of a Contractor's monthly report submitted to the District that fails to comply with Public Contract Code section 2602, et seq.

24.8.2.4. **Report with Plan(s)**. If the Contractor submits to the District a plan to achieve substantial compliance with Public Contract Code section 2601, et seq, the District shall resume making payments to the Contractor, including all previously withheld payments, unless, within a reasonable time, the District rejects the plan as insufficient.

24.8.2.4.1. In the event that the District rejects the Contractor's plan as insufficient, the District shall provide an explanation in writing of the basis of for the District's rejection of the Contractor's plan.

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24.8.2.5. In the event that the Contractor submits a plan to the District to achieve substantial compliance with Public Contract Code 2601 et. seq., the District shall forward a copy of that plan to the Labor Commissioner.

**24.8.3. End-of-Project Reconciliation**

24.8.3.1. At the end of the Project, if the Contractor cannot demonstrate that it has met the applicable participation level for all work that falls within an apprenticeable occupation as defined in Public Contract Code section 2600, et seq., then the District shall have the right to retain ten percent (10%) of the price for the out of compliance apprenticeable occupation's Work, per month, as reflected in the Project's schedule of values, not to exceed the monthly amounts for first-time violations indicated in Public Contract Code 2603(a). The District shall have the right to withhold those funds until the Labor Commissioner makes its determination of violations pursuant to Public Contract Code section 2603. At that time, the District will distribute those funds as directed by the Labor Commissioner or, if the Labor Commissioner determines that no violation was made or the penalty(ies) are less than the amount the District is withholding, the District shall pay the applicable withheld amounts to the Contractor, with no interest or penalty.

24.8.3.2. The Parties agree that these end-of-Project remedies are reasonable and sufficient, subject to a determination made by Department of Industrial Relations or a court of competent jurisdiction that a different remedy is applicable.

**24.8.4.** Any payments the District withholds from the Contractor for noncompliance will be reflective only of the trade(s) or Subcontractor(s) out of compliance and will be paid once the subcontractor(s) and/or trade(s) are cumulatively compliant, subject to the End-of-Project Reconciliation process indicated herein above.

## 25. MISCELLANEOUS

### 25.1. Assignment of Antitrust Actions

Although this project may not have been formally bid, the following provisions may apply:

**25.1.1.** Section 7103.5(b) of the Public Contract Code states:

In entering into a public works contract or subcontract to supply goods, services, or materials pursuant to a public works contract, the Contractor or subcontractor offers and agrees to assign to the awarding body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. § 15) or under the Cartwright Act (Chapter 2 (commending with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, made and become effective at the time the awarding body tenders final payment to the Contractor, without further acknowledgment by the Parties.

**25.1.2.** Section 4552 of the Government Code states:

In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. § 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder.

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**25.1.3.** Section 4553 of the Government Code states:

> If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery.

**25.1.4.** Section 4554 of the Government Code states:

> Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action.

**25.1.5.** Under this Article, "public purchasing body" is District and "bidder" is Contractor.

**25.2. Excise Taxes**

If, under Federal Excise Tax Law, any transaction hereunder constitutes a sale on which a Federal Excise Tax is imposed and the sale is exempt from such Federal Excise Tax because it is a sale to a State or Local Government for its exclusive use, District, upon request, will execute documents necessary to show (1) that District is a political subdivision of the State for the purposes of such exemption, and (2) that the sale is for the exclusive use of District. No Federal Excise Tax for such materials shall be included in any Guaranteed Project Cost.

**25.3. Taxes**

Guaranteed Project Cost is to include any and all applicable sales taxes or other taxes that may be due in accordance with section 7051 of the Revenue and Taxation Code; Regulation 1521 of the State Board of Equalization or any other tax code that may be applicable.

**25.4. Shipments**

All shipments must be F.O.B. destination to Site or sites, as indicated in the Contract Documents. There must be no charge for containers, packing, unpacking, drayage, or insurance. The total Guaranteed Project Cost shall be all inclusive (including sales tax) and no additional costs of any type will be considered.

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**EXHIBIT E**
**TO FACILITIES LEASE**

**MEMORANDUM OF COMMENCEMENT DATE**

**[TO BE PREPARED BY THE DISTRICT AND ENTERED INTO AFTER CONSTRUCTION IS COMPLETE TO COMMENCE DISTRICT OCCUPANCY OF THE FACILITIES AND TO START THE LEASE TERM.]**

This Memorandum Of Commencement Date is dated _____, 20___, and is made by and between **@Contractor** ("Contractor"), as Lessor, and the **@District** ("District"), as Lessee.

1. Contractor and District have previously entered into a Facilities Lease dated as of **_____, 20__**, (the "Lease") for the leasing by Contractor to District of the Project Site(s) and Project in _____, CA, referenced in the Lease.

2. District hereby confirms the following:

A. That the Contractor has, in all respects, completed all construction of the Project required to be performed pursuant to the Facilities Lease;

B. That District has accepted and entered into possession of the Project and now occupies same; and

C. That the term of the leaseback period in the Facilities Lease commenced on _____, 20___, and will expire at 11:59 P.M. on _____, 20___.

The Parties have accepted and agreed to this Memorandum of Commencement Date, as of the date indicated above, and have directed and authorized their respective officers to execute this Memorandum of Commencement Date:

| **@District** | **@Contractor** |
|---|---|
| By: _____ | By: _____ |
| Print Name: _____ | Print Name: _____ |
| Print Title: _____ | Print Title: _____ |

Form Agreement

**EXHIBIT F**
**TO FACILITIES LEASE**

**CONSTRUCTION SCHEDULE**

**Attached is a detailed Construction Schedule that complies with the requirements of the Construction Provisions (Exhibit D) and that has been approved by the District.**

**[A complete Construction Schedule must be attached to this Exhibit.**

NOTE: If the Parties first enter into the Agreement for Preliminary Services (Exhibit L) and have not finalized a Construction Schedule for the construction of the Project at that time, the Parties should still complete the dates below based on the then-current anticipated Completion dates. When and if the Parties do agree to a Guaranteed Project Cost and amend the Contract, the Parties shall also amend this Exhibit at that time to include the detailed Construction Schedule prepared by the Contractor and agreed to by the District pursuant to the Contract.]

**Preliminary Services.** The schedule for the Preliminary Services is as follows:

- Contractor shall commence the Preliminary Services on or before **[Date]**, and
- Contractor shall complete the Preliminary Services on or before **[Date]**.

**Construction Schedule.** The Construction Schedule is as follows:

- It is hereby understood and agreed that assuming the District issues a Notice to Proceed for the Project on or before **[Date]**, then:
    - District shall have Beneficial Occupancy of the Project on or before **[Date]**, and
    - Project Completion shall be on or before **[Date].**
- In addition to the general parameters above for the Construction Schedule, attached is a detailed Project Construction Schedule with a duration no longer than the Contract Time, and with specific milestones that Contractor shall meet.

Form Agreement

**EXHIBIT G**
**TO FACILITIES LEASE**

**SCHEDULE OF VALUES**

**Attached is a detailed Schedule of Values that complies with the requirements of the Construction Provisions (Exhibit D) and that has been approved by the District.**

**[ A complete Schedule of Values must be attached to this Exhibit.**

NOTE: A complete Schedule of Values must be attached to this Exhibit. If the Parties first enter into the Agreement for Preliminary Services (Exhibit L) and have not finalized a Schedule of Values for the construction of the Project at that time, the Parties can include initial cost breakdowns in this Exhibit. When and if the Parties do agree to a Guaranteed Project Cost and amend the Contract, the Parties shall also amend this Exhibit at that time to include the detailed Schedule of Values prepared by the Contractor and agreed to by the District pursuant to the Contract. ]

Form Agreement

**EXHIBIT H**
**TO FACILITIES LEASE**

**SUBCONTRACTOR PROCUREMENT PROCESS**

If the District issues an RFP or RFQ/P and requires the Contractors to submit a **final** price for this Project at the time it is competing against other Contractors, the Contractor shall comply with the subcontractor prequalification requirements of Education Code section 17406 (a)(1)(C) and may otherwise select subcontractors based on their own reasonable and non-discriminatory process.

If the District issues an RFQ or RFQ/P and selects one Contractor who will **later** provide a final price for this Project, that Contractor shall, in addition to all legal requirements, including without limitation Education Code section 17406, Take the following steps when the District directs the Contractor to procure Subcontractors so that Contractor can provide a final lump sum Guaranteed Project Cost ("**GPC**") for construction of the Project.

1. **Subcontractor Bid Packages.** Contractor shall prepare separate and specific Subcontractor bid packages that include all scope(s) of construction Work included in the Plans and Specifications.

2. **Public Notice**. Contractor shall provide notice of bidding for Subcontractors "in accordance with the publication requirements applicable to the District's competitive selection process" to solicit Subcontractors in compliance with statutory requirements and the District's process. (Education Code §17406.). This requires the Contractor to advertise for Subcontractor bids "*once a week for two weeks in some newspaper of general circulation.*" (Pub. Con. Code § 20112) as required by Ed. Code § 17406 (a)(4)(B)(i).

3. **District Review of Bid Packages and Notice.** At least fourteen (14) Days prior to the bidding of Subcontractor bid packages, Contractor shall provide the District with a copy of the written notice it will publish (including newspaper advertising) to solicit Subcontractors. The District reserves the right to request that Contractor reasonably revise its published notice.

4. **Three Bona Fide Bids.** Contractor is required to receive **at least** three (3) bona fide bids from Subcontractors for all scopes of Work on the Project that constitute more than three percent (3%) of the total Project scope of Work. Prior to the Contractor seeking bids, the District may, in its sole discretion, and upon Contractor's written request, authorize Contractor to utilize a different minimum number of bona fide bids from Subcontractors.

5. **Prequalification.** Contractor's Subcontractors performing work valued in excess of ½ of 1% of the GPC must comply with the following:

   a. **MEP Prequalification.** If the Project has electrical, mechanical, and plumbing components that will be performed by subcontractors performing under the following license classification(s) (C-4, C-7, C-10, C-16, C-20, C-34, C-36, C-38, C-42, C-43, and/or C-46; "**MEP Subcontractor(s)**"), and those MEP Subcontractors will be first-tier Subcontractors to the Contractor, those MEP Subcontractors must be prequalified with the District to be eligible to be included in a Contractor's proposal. MEP Subcontractors shall prequalify with the District utilizing the District's Prequalification Questionnaire. **The District highly recommends that the Contractor informs all of its potential MEP Subcontractors that must be prequalified to immediately complete the prequalification process to ensure their eligibility to be included as MEP Subcontractors for the Project.**

   b. **Non-MEP Subcontractor Prequalification Criteria and Standards.** For this Project, Contractor may **NOT** prequalify non-MEP subcontractors solicited for work on this Project, unless the Contractor provides any prequalification or qualification criteria, process or questionnaire to the District for approval at least fourteen (14) Days prior to the bidding of Subcontractor bid packages.

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c. **LIMIT ON "BEST VALUE" SELECTION.** CONTRACTOR ACKNOWLEDGES THAT THIS PROCESS – THE PREQUALIFICATION OR ANY ASSOCIATED QUALIFICATION PROCESS – IS THE ONLY "BEST VALUE" SELECTION PROCESS AS IDENTIFIED IN EDUCATION CODE SECTION 17406 THAT THE DISTRICT HAS APPROVED FOR THIS PROJECT. THE CONTRACTOR MAY REQUEST, AT LEAST FOURTEEN (14) DAYS PRIOR TO THE BIDDING OF SUBCONTRACTOR BID PACKAGES, THAT THE DISTRICT APPROVE OTHER SELECTION PROCESS(ES) OR CRITERIA THAT THE CONTRACTOR DESIRES TO IMPLEMENT ON THIS PROJECT. CONTRACTOR CAN ONLY IMPLEMENT THOSE IF THE DISTRICT PRE-APPROVES THEM.

6. **Open-Book / Bid Opening**. Contractor shall invite the District to attend all bid opening(s) for the Project and shall within 48 hours of the bid opening(s) provide copies or access to all bid documents provided by all Subcontractors.

7. **Missing Scopes of Work in Subcontractor Bids ("Bid Levelling").** When Contractor has received all Subcontractor bids, Contractor shall identify all scope(s) of construction Work for which Contractor did not receive a bid and provide a written justification as to why the scope(s) of construction Work was either not included in a Subcontractor bid or was not bid on ("**Unbid Work**"). The District expects very little if any Unbid Work, far less than 1% of the GPC. After the District reviews the Contractor's justification, the Parties shall meet and confer and the District shall reasonably determine, in its sole discretion, whether to:

   a. Direct the Contractor to rebid the Unbid Work; or

   b. If Contractor requests, allow the Contractor to self-perform the Unbid Work. If Contractor self-performs the Unbid Work, Contractor shall provide substantiation for the pricing for the Unbid Work that Contractor intends to self-perform. The Parties shall negotiate in good faith to determine a reasonable price for the Unbid Work that Contractor intends to self-perform. The District reserves the right to seek its own pricing of that Work to verify the value of Contractor's proposed pricing.

8. **Low Bid.** Because the "best value" process was implemented as part of the Subcontractor procurement process, once the Contractor receives Subcontractor bids, the Contractor shall award subcontracts to subcontractors with the **lowest responsive, responsible bid** that have satisfied the above prequalification and/or qualification steps, as applicable.

9. **Self-Performing Construction Work.** If Contractor intends to propose to self-perform portion(s) of the construction Work, it must:

   a. Receive the District's prior written approval.

   b. Provide its pricing (its bid) to the District 48 hours prior to Contractor's receipt of Subcontractor bids for those portion(s) of the Work.

   c. Receive a minimum number of two (2) bona fide bids from Subcontractors for scope(s) of Work that the Contractor is bidding to self-perform, not including the Contractor's pricing/bid.

10. **Finalizing GPC.** After Contractor completes this Subcontractor Procurement Process and the District approves the Subcontractor bids and self-performed construction Work, if any, Contractor shall prepare a final proposed GPC as set forth in **Exhibit C** to the Facilities Lease**.** The GPC shall be calculated consistent with the matrix in the "Guaranteed Project Cost (or Guaranteed Maximum Price)" section of **Exhibit C**.

Form Agreement

**EXHIBIT I**
**TO FACILITIES LEASE**

**CERTIFICATES AND BONDS TO LEASE-LEASEBACK DOCUMENTS**
**AND**
**DIVISION 1 DOCUMENTS TO LEASE-LEASEBACK DOCUMENTS**

**@ProjectName**

**@District**
**and**
**@Contractor**

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**NONCOLLUSION DECLARATION**
**Public Contract Code § 7106**

TO BE EXECUTED BY CONTRACTOR

The undersigned declares:

I am the _____ [**PRINT YOUR TITLE**]

of _____ [**PRINT FIRM NAME**],

the party making the foregoing Contract.

The Contract is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The Contract is genuine and not collusive or sham. The Contractor has not directly or indirectly induced or solicited any other contractor to put in a false or sham bid. The Contractor has not directly or indirectly colluded, conspired, connived, or agreed with any contractor or anyone else to put in a sham proposal, or to refrain from proposing. The Contractor has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the Contract price of the Contractor or any other contractor, or to fix any overhead, profit, or cost element of the Contract price, or of that of any other contractor. All statements contained in the Contract and Contractor's proposal are true. The Contractor has not, directly or indirectly, submitted his or her Contract 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 proposal or contract, and has not paid, and will not pay, any person or entity for such purpose.

Any person executing this declaration on behalf of a Contractor 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 execute, and does execute, this declaration on behalf of the Contractor.

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 the following date:

Date: _____

Proper Name of Bidder: _____

Signature: _____

By: _____ (Print Name)

Title: _____

Form

**CERTIFICATIONS TO BE COMPLETED BY CONTRACTOR**

**THE UNDERSIGNED MUST CHECK EACH BOX AND EXECUTE THIS FORM AND HEREBY CERTIFIES TO THE GOVERNING BOARD OF THE DISTRICT THAT UNDERSIGNED IS:**

- A representative of the Contractor,
- Familiar with the facts herein certified and acknowledged,
- Authorized and qualified to execute the Contract Documents and these certifications on behalf of Contractor and that by executing the Contract Documents undersigned is certifying the following items.

☐ **Labor Code Sections 1860-1861 (Workers' Compensation).** In accordance with Labor Code section 3700, every contractor will be required to secure the payment of compensation to his or her employees. I acknowledge and certify under penalty of perjury that 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.

☐ **Labor Code Section 6401.9 (Workplace Violence Prevention).** I acknowledge and certify under penalty of perjury that I am aware of the provisions of Section 6401.9 of the Labor Code which require every employer, as specified in more detail in that section, to comply with the following:

- Establish, implement, and maintain, at all times in all work areas, an effective workplace violence prevention plan containing specified information;
- Record specified information in a violent incident log for every workplace violence incident;
- Provide initial and ongoing effective training of employees on workplace violence with training material appropriate in content and vocabulary to the education level, literacy, and language of employees;
- Create and maintain records of workplace violence hazard identification, evaluation, and correction for a minimum of five years; and
- Allow access to those records by employees and their representatives without cost.

I will comply with these provisions before commencing the performance of the Work of this Contract.

☐ **Government Code Sections 8355-8357 (Drug-Free Workplace).** I acknowledge and certify under penalty of perjury that I will provide a drug-free workplace by doing all of the following:

(1) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the person's or organization's workplace and specifying the actions that will be taken against employees for violations of the prohibition.
(2) Establishing a drug-free awareness program to inform employees about all of the following:
(A) The dangers of drug abuse in the workplace.
(B) The person's or organization's policy of maintaining a drug-free workplace.
(C) Any available drug counseling, rehabilitation, and employee assistance programs.
(D) The penalties that may be imposed upon employees for drug abuse violations.
(3) Requiring that each employee engaged in the performance of the contract or grant be given a copy of the statement required by subdivision (a) and that, as a condition of employment on the contract or grant, the employee agrees to abide by the terms of the statement.

I also acknowledge that this Contract may be subject to suspension of payments under the contract or grant or termination of the contract or grant, or both, and the contractor or grantee thereunder may be subject to

debarment, in accordance with the requirements of the above-referenced statute, if the contracting or granting agency determines that any of the following has occurred:

(1) The contractor or grantee has made a false certification under Section 8355.
(2) The contractor or grantee violates the certification by failing to carry out the requirements of subdivisions (a) to (c), inclusive, of Section 8355.

I also acknowledge that the Department of General Services shall establish and maintain a list of individuals and organizations whose contracts or grants have been canceled due to failure to comply with the above-referenced statute. This list shall be updated monthly and published each month. No state agency shall award a contract or grant to a person or organization on the published list until that person or organization has complied with the above-referenced statute.

☐ **Tobacco-Free Environment**. Pursuant to, without limitation, 20 U.S.C. section 6083, Labor Code section 6400 et seq., Health & Safety Code section 104350 et seq. and District Board Policies, all District sites, including the Project site, are tobacco-free environments. Smoking and the use of tobacco products by all persons is prohibited on or in District property. District property includes school buildings, school grounds, school owned vehicles and vehicles owned by others while on District property.

I acknowledge and certify under penalty of perjury that I am aware of the District's policy regarding tobacco-free environments at District sites, including the Project site and acknowledge and certify that I will adhere to the requirements of that policy and not permit any of my firm's employees, agents, subcontractors, or my firm's subcontractors' employees or agents to use tobacco and/or smoke on the Project site. The District also prohibits electronic cigarettes, "vaping" or similar product uses on District sites.

☐ **No Hazardous Materials.** I acknowledge and certify under penalty of perjury that no Asbestos, or Asbestos-Containing Materials, polychlorinated biphenyl (PCB), or any material listed by the federal or state Environmental Protection Agency or federal or state health agencies as a hazardous material, or any other material defined as being hazardous under federal or state laws, rules, or regulations ("New Hazardous Material"), shall be furnished, installed, or incorporated in any way into the Project or in any tools, devices, clothing, or equipment used to affect any portion of Contractor's work on the Project for District. I have instructed our employees with respect to the above-mentioned standards, hazards, risks, and liabilities.

(i) Asbestos and/or asbestos-containing material shall be defined as all items containing but not limited to chrysotile, crocidolite, amosite, anthophyllite, tremolite, and actinolite. Any or all material containing greater than one-tenth of one percent (.1%) asbestos shall be defined as asbestos-containing material. Any disputes involving the question of whether or not material is New Hazardous Material shall be settled by electron microscopy or other appropriate and recognized testing procedure, at the District's determination. The costs of any such tests shall be paid by Contractor if the material is found to be New Hazardous Material.

(ii) All Work or materials found to be New Hazardous Material or Work or material installed with equipment containing "New Hazardous Material," will be immediately rejected and this Work will be removed at Contractor's expense at no additional cost to the District.

**The Contractor must immediately notify the District within two (2) Business Days, if the Contractor finds and before it disturbs, any material that the Contractor believes may be hazardous waste, as defined in section 25117 of the Health and Safety Code, and requires removal to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law**

I acknowledge and certify under penalty of perjury that this certification provides notice to the Contractor that:



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(1) The Contractor's work may disturb lead-containing building materials.
(2) The Contractor must notify the District if any work may result in the disturbance of lead-containing building materials.

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☐ **Lead as a Health Hazard**. Lead poisoning is recognized as a serious environmental health hazard facing children today. Even at low levels of exposure, much lower than previously believed, lead can impair the development of a child's central nervous system, causing learning disabilities, and leading to serious behavioral problems. Lead enters the environment as tiny lead particles and lead dust disburses when paint chips, chalks, peels, wears away over time, or is otherwise disturbed. Ingestion of lead dust is the most common pathway of childhood poisoning; lead dust gets on a child's hands and toys and then into a child's mouth through common hand-to-mouth activity. Exposures may result from construction or remodeling activities that disturb lead paint, from ordinary wear and tear of windows and doors, or from friction on other surfaces.

Ordinary construction and renovation or repainting activities carried out without lead-safe work practices can disturb lead-based paint and create significant hazards. Improper removal practices, such as dry scraping, sanding, or water blasting painted surfaces, are likely to generate high volumes of lead dust.

Because the Contractor and its employees will be providing services for the District, and because the Contractor's work may disturb lead-containing building materials, **Contractor is hereby notified** of the potential presence of lead-containing materials located within certain buildings utilized by the District. All school buildings built prior to 1993 are presumed to contain some lead-based paint until sampling proves otherwise.

(i) **Overview of California Law**

Education Code section 32240 et seq. is known as the Lead Safe Schools Protection Act. Under this act, the Department of Health Services ("DHS") is to conduct a sample survey of schools in the State of California for the purpose of developing risk factors to predict lead contamination in public schools. (Ed. Code, § 32241.)

Any school that undertakes any action to abate existing risk factors for lead is required to utilize trained and state-certified contractors, inspectors, and workers. (Ed. Code, § 32243, subd. (b).) Moreover, lead-based paint, lead plumbing, and solders, or other potential sources of lead contamination, shall not be utilized in the construction of any new school facility or the modernization or renovation of any existing school facility. (Ed. Code, § 32244.)

Both the Federal Occupational Safety and Health Administration ("Fed/OSHA") and the California Division of Occupational Safety and Health ("Cal/OSHA") have implemented safety orders applicable to all construction work where a contractor's employee may be occupationally exposed to lead.

The OSHA Regulations apply to all construction work where a contractor's employee may be occupationally exposed to lead. The OSHA Regulations contain specific and detailed requirements imposed on contractors subject to that regulation. The OSHA Regulations define construction work as work for construction, alteration, and/or repair, including painting and decorating. It includes, but is not limited to, the following:

a. Demolition or salvage of structures where lead or materials containing lead are present;

b. Removal or encapsulation of materials containing lead;

c. New construction, alteration, repair, or renovation of structures, substrates, or portions thereof, that contain lead, or materials containing lead;

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d. Installation of products containing lead;

e. Lead contamination/emergency cleanup;

f. Transportation, disposal, storage, or containment of lead or materials containing lead on the site or location at which construction activities are performed; and

g. Maintenance operations associated with the construction activities described in the subsection.

Because it is assumed by the District that all painted surfaces (interior as well as exterior) within the District contain some level of lead, it is imperative that the Contractor, its workers and subcontractors fully and adequately comply with all applicable laws, rules and regulations governing lead-based materials (including title 8, California Code of Regulations, section 1532. 1).

**The Contractor must notify the District if any Work may result in the disturbance of lead-containing building materials. Any and all Work that may result in the disturbance of lead-containing building materials must be coordinated through the District. A signed copy of this Certification must be on file prior to beginning Work on the Project, along with all current insurance certificates.**

(ii) **Renovation, Repair and Painting Rule, Section 402(c)(3) of the Toxic Substances Control Act**

In 2008, the U.S. Environmental Protection Agency, issued a rule pursuant to the authority of Section 402(c)(3) of the Toxic Substances Control Act, requiring lead safe work practices to reduce exposure to lead hazards created by renovation, repair and painting activities that disturb lead-based paint (Renovation, Repair and Painting Rule). Renovations in homes, childcare facilities, and schools built prior to 1978 must be conducted by certified renovations firms, using renovators with accredited training, and following the work practice requirements to reduce human exposures to lead.

Contractor, its workers and subcontractors must fully and adequately comply with all applicable laws, rules and regulations governing lead-based materials, including those rules and regulations appearing within title 40 of the Code of Federal Regulations as part 745 (40 CFR 745).

The requirements apply to all contractors who disturb lead-based paint in a six-square-foot area or greater indoors or a 20-square-foot area outdoors. If a DPH-certified inspector or risk assessor determines that a home constructed before 1978 is lead-free, the federal certification is not required for anyone working on that particular building.

(iii) **Contractor's Liability**

If the Contractor fails to comply with any applicable laws, rules, or regulations, and that failure results in a site or worker contamination, the Contractor will be held solely responsible for all costs involved in any required corrective actions, and shall defend, indemnify, and hold harmless the District, pursuant to the indemnification provisions of the Contract, for all damages and other claims arising therefrom.

If lead disturbance is anticipated in the Work, only persons with appropriate accreditation, registrations, licenses, and training shall conduct this Work.

It shall be the responsibility of the Contractor to properly dispose of any and all waste products, including, but not limited to, paint chips, any collected residue, or any other visual material that may occur from the prepping of any painted surface. It will be the responsibility of the Contractor to provide the proper disposal of any hazardous waste by a certified hazardous waste hauler. This company shall be registered with the Department of Transportation (DOT) and shall be able to issue a current manifest number upon transporting

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any hazardous material from any school site within the District.

The Contractor shall provide the District with any sample results prior to beginning Work, during the Work, and after the completion of the Work. The District may request to examine, prior to the commencement of the Work, the lead training records of each employee of the Contractor.

I acknowledge and certify under penalty of perjury, that:

1. I have received notification of potential lead-based materials on the District's property;
2. I am knowledgeable regarding and will comply with all applicable laws, rules, and regulations governing work with, and disposal of, lead.

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☐ **Imported Materials.** All soils, aggregate, or related materials ("Fill") that Contractor, a Subcontractor, agent or supplier, in any way, provides or delivers and/or supplies to the Project Site shall be free of any and all hazardous material as defined in section 25260 of the Health and Safety Code, shall satisfy the requirements of any environmental review of the Project performed pursuant to the statutes and guidelines of the California Environmental Quality Act, sections 21000 et seq. of the Public Resources Code ("CEQA"), and shall comply with the requirements of sections 17210 et seq. of the Education Code, including requirements for a Phase I environmental assessment acceptable to the State of California Department of Education and Department of Toxic Substances Control. I acknowledge that, to the furthest extent permitted by California law, the indemnification provisions in the Contract Documents apply to, without limitation, any claim(s) connected with providing, delivering, and/or supplying Fill.

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☐ **Roofing Contract Financial Interest Certification (Public Contract Code § 3006)**

I, _____ [**Your Name**], _____[**Firm Name**] certify that I have not offered, given, or agreed to give, received, accepted, or agreed to accept, any gift, contribution, or any financial incentive whatsoever to or from any person in connection with a roof project contract or subcontract on the Project. As used in this certification, "person" means any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals.

I, _____ [**Your Name**], _____[**Firm Name**] certify that I do not have, and throughout the duration of the Contract, I will not have, any financial relationship in connection with the performance of the Contract with any architect, engineer, roofing consultant, materials manufacturer, distributor, or vendor that is not disclosed below.

I, _____ [**Your Name**], _____[**Firm Name**] have the following financial relationships with an architect, engineer, roofing consultant, materials manufacturer, distributor, or vendor, or other person in connection with the following roof project contract:

Name of firm ("Firm"): _____
Mailing address: _____
Address of branch office used for this Project: _____
If subsidiary, name and address of parent company: _____

**For Projects without substantive roofing components, check the following box and execute this certification:**

☐ The Work on the Contract (1) does not include the replacement or repair of a roof or (2) is a repair of twenty five percent (25%) or less of the roof, (3) or is a repair project that has a total cost of twenty one thousand dollars ($21,000) or less.

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☐ **Russian Sanctions Certification**

On February 21, 2022, President Biden issued Executive Order 14065 (https://www.whitehouse.gov/briefing-room/presidential-actions/2022/02/21/executive-order-on-blocking-property-of-certain-persons-and-prohibiting-certain-transactions-with-respect-to-continued-russian-efforts-to-undermine-the-sovereignty-and-territorial-integrity-of-ukraine/; "**Federal Order**") imposing economic sanctions and prohibiting many activities including, but not limited to, investing in, importing to, exporting from, and contracting with, areas of Ukraine and in Russia. On March 4, 2022, California Governor Newsom issued Executive Order N-6-22 requiring state agencies to take steps to ensure any agency and entity under contract with state agencies comply with the Federal Order (https://www.gov.ca.gov/wp-content/uploads/2022/03/3.4.22-Russia-Ukraine-Executive-Order.pdf; "**State Order**").

The District requires the Contractor, as a vendor with the District, to comply with the economic sanctions imposed in response to Russia's actions in Ukraine, including the orders and sanctions identified on the U.S. Department of the Treasury website (https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/ukraine-russia-related-sanctions).

If your Firm's contract with the District has a cumulative value of $5 million or more, your certification here constitutes your written response to the District, indicating:

(1) that your Firm is in compliance with the required economic sanctions of the Federal and State Orders;

(2) the steps your Firm has taken in response to Russia's actions in Ukraine, including, but not limited to, desisting from making new investments in, or engaging in financial transactions with, Russian entities, not transferring technology to Russia or Russian entities, and directly providing support to the government and people of Ukraine.

☐ **Lobbyist Certification**

The Architect and its Consultants shall at all times comply with the lobbyist certification requirements as set forth below. Specifically, by checking the one applicable option below, Architect hereby represents and warrants to District the following:

☐ Architect and its Consultants are not a "Lobbying Coalition," "Lobbying Firm," "Lobbyist" or "Lobbyist Employer" as those terms are defined in the Political Reform Act of 1974 (Gov. Code §§ 81000) (collectively "Lobbyist") and are not performing Services hereunder that would require registering as a Lobbyist.

☐ Architect and its Consultants Services hereunder shall or may include lobbying. Architect and its Consultants shall comply with all applicable District, local, state and/or federal policies, rules, regulations, statutes and requirements governing Lobbyists. In addition, the Architect shall maintain on file registering and reporting records for Lobbyists. These records shall be regularly maintained and updated by Architect and shall be available to District upon request or audit.

☐ **Conflict of Interest Certification**

The Architect and its Consultants shall at all times comply with the conflict of interest certification requirements as set forth below. Architect hereby represents and warrants to District that Architect and its Consultants have read and understand the District's Conflict of Interest Code and, Architect knows or has reason to believe that Architect

Form Agreement

has a conflict of interest that requires disclosure and Architect and its Consultants shall comply with the applicable disclosure requirements of the District's Conflict of Interest Code. In addition, the Architect shall maintain on file statements of economic interests in accordance with applicable disclosure requirements. These records shall be regularly maintained and updated by Architect and shall be available to District upon request or audit.

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**I ACKNOWLEDGE AND CERTIFY UNDER PENALTY OF PERJURY THAT I AM DULY AUTHORIZED TO LEGALLY BIND THE CONTRACTOR TO ALL PROVISIONS AND ITEMS INCLUDED IN THESE CERTIFICATIONS, THAT THE CONTENTS OF THESE CERTIFICATIONS ARE TRUE, AND THAT THESE CERTIFICATIONS ARE MADE UNDER THE LAWS OF THE STATE OF CALIFORNIA.**

Date: _____

Proper Name of Contractor: _____

Signature: _____

By: _____ (Print Name)

Title: _____

Form Agreement

**DISABLED VETERAN BUSINESS ENTERPRISE**
**PARTICIPATION CERTIFICATION**

Section 17076.11 of the Education Code requires school districts using funds allocated pursuant to the State of California School Facility Program ("Program") for the construction and/or modernization of school buildings to have a participation goal for disabled veteran business enterprises ("DVBE") of at least three percent (3%), per year, of the overall dollar amount expended each year by the school district on projects that receive state funding.

1. **Disabled Veteran Business Enterprise.** A DVBE is a business enterprise certified by the California Office of Small Business as a DVBE.

2. **DVBE Participation Policy.** The District is committed to achieving this DVBE participation goal. The District encourages Contractor to ensure maximum opportunities for the participation of DVBEs in the Work of the Contract.

3. **DVBE Participation Goal.** The three percent (3%) participation goal is not a quota, set-aside or rigid proportion.

4. **Certification of Participation.** At the time of execution of the Contract, the Contractor will provide a statement to the District of anticipated participation of DVBEs in the contract.

5. **Submission of Report.** During performance of the Contract, Contractor shall monitor the Work of the Contract, award of subcontracts and contracts for materials, equipment and supplies for the purpose of determining DVBE participation in the Work of the Contract.

    a) Contractor shall report on a monthly basis all DVBEs utilized in the performance of the Work, the type or classification of the Work performed by each DVBE, and the dollar value of the Work performed by each DVBE.

    b) Upon completion of the Work of the Contract, Contractor shall submit a report to the District in the form attached hereto identifying all DVBEs utilized in the performance of the Work, the type or classification of the Work performed by each DVBE, and the dollar value of the Work performed by each DVBE.

        i) The submission to the District of this report is a condition precedent to the District's obligation to make payment of the Final Payment under the Contract Documents. The submission of this report shall be in addition to, and not in lieu of, any other conditions precedent set forth in the Contract Documents for the District's obligation to make payment of the Final Payment.

        ii) The District reserves the right to request additional information or documentation from the Contractor evidencing efforts to comply with the three percent (3%) DVBE participation goal.

Form Agreement

DVBE PARTICIPATION REPORT

Contractor Name: _____ Date: _____

Project Name: _____ Project Number: _____

| DVBE Firm Name | Trade / Portion of Work | Subcontract/ Contract Value |
|---|---|---|
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| **Add more sheets as needed to include all information for each DVBE** | | |

Does the cumulative dollar value of these DVBE contracts meet or exceed the participation goal of three percent (3%) of the final Contract Price, as adjusted by all change orders?

YES _____ NO: _____

If your response is "NO," please attach to this report a detailed description of the reasons your firm did not achieve the participation goal of three percent (3%) of the final Contract Price.

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

Date: _____

Proper Name of Contractor: _____

Signature: _____

By: _____ (Print Name)

Title: _____

Form Agreement

**CRIMINAL BACKGROUND INVESTIGATION / FINGERPRINTING CERTIFICATION**

The undersigned does hereby certify to the governing board of the District that undersigned is a representative of the Contractor, is familiar with the facts herein certified, is authorized and qualified to execute this certificate on behalf of Contractor; and that the information in this Criminal Background Investigation / Fingerprinting Certification is true and correct.

1. **Education Code.** Contractor has taken at least one of the following actions (check all that apply):

☐ **All Workers Fingerprinted.** The Contractor has complied with the fingerprinting requirements of Education Code section 45125.1 with respect to all Contractor's employees and all of its Subcontractors' employees who interact with pupils, outside of the immediate supervision and control of the pupil's parent or guardian or a school employee, has a valid criminal record summary as described in Education Code Section 44237 (Contractor shall "require each applicant for employment in a position requiring contact with minor pupils to submit two sets of fingerprints prepared for submittal by the employer to the Department of Justice for the purpose of obtaining criminal record summary information from the Department of Justice and the Federal Bureau of Investigation."). A complete and accurate list of Contractor's employees and of all of its subcontractors' employees who may interact with District pupils during the course and scope of the Contract is attached hereto; and/or

☐ **Physical Barrier.** Pursuant to Education Code section 45125.2, Contractor has installed or will install, prior to commencement of work, a physical barrier at the Project Site, that will limit contact between Contractor's employees and District pupils at all times; and/or

☐ **Continual Supervision by Fingerprinted Employee.** Pursuant to Education Code section 45125.2, Contractor certifies that all employees will be under the continual supervision of, and monitored by, an employee of the Contractor who the California Department of Justice has ascertained has not been convicted of a violent or serious felony. The name and title of the employee who will be supervising Contractor's employees and its Subcontractors' employees is:

Name: _____ Title: _____

☐ **Unoccupied Site.** The Work on the Contract is at an unoccupied school site and no employee and/or subcontractor or supplier of any tier of Contract shall come in contact with the District pupils.

2. **Megan's Law (Sex Offenders).** I have verified and will continue to verify that the employees of Contractor that will be on the Project site and the employees of the Subcontractor(s) that will be on the Project site are **not** listed on California's "Megan's Law" Website (http://www.meganslaw.ca.gov/).

Contractor's responsibility for background clearance extends to all of its employees, subcontractors, and employees of subcontractors coming into contact with District pupils regardless of whether they are designated as employees or acting as independent contractors of the Contractor.

Date: _____

Proper Name of Contractor: _____

Signature: _____

By: _____ (Print Name)

Title: _____

Form Agreement

**PERFORMANCE BOND (100% of Contract Price)**
**(Note: Contractor must use this form, NOT a surety company form.)**

**KNOW ALL PERSONS BY THESE PRESENTS:**

**WHEREAS**, the governing board ("Board") of the **@District**, ("District") and

_____, ("Principal)"

have entered into a contract for the furnishing of all materials and labor, services and transportation, necessary, convenient, and proper to perform the following project:

**@ProjectName** ("Project" or "Contract")

which Contract dated _____, 20__, and all of the Contract Documents attached to or forming a part of the Contract, are hereby referred to and made a part hereof, and

**WHEREAS**, the Principal is required under the terms of the Contract to furnish a bond for the faithful performance of the Contract;

**NOW, THEREFORE**, the Principal and _____ ("Surety") are held and firmly bound unto the District in the penal sum of:

**$ _____ DOLLARS,**

lawful money of the United States, for payment to the District and will and truly be made pursuant to the provisions herein. Principal and Surety, each of us, bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally to:

- Perform all the work required to complete the Project; and
- Pay to the District all damages the District incurs as a result of the Principal's failure to perform all the Work required to complete the Project.

In the event the Principal is declared by the District to be in breach or default in the performance of the Contract, then, after written notice from the District to the Surety, as provided for herein, the Surety shall either remedy the default or breach of the Principal or shall take charge of the Work of the Contract and complete the Contract with a Contractor other than the Principal at its own expense; provided, however, that the procedure by which the Surety undertakes to discharge its obligations under this Bond shall be subject to the advance written approval of the District.

The condition of the obligation is such that, if the above bounden Principal, his or its heirs, executors, administrators, successors, or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions, and agreements in the Contract and any alteration thereof made as therein provided, on his or its part to be kept and performed at the time and in the intent and meaning, including all contractual guarantees and warrantees of materials and workmanship, and shall indemnify and save harmless the District, its trustees, officers and agents, as therein stipulated, then this obligation shall become null and void, otherwise it shall be and remain in full force and effect.

As a condition precedent to the satisfactory completion of the Contract, the above obligation shall hold good for a period equal to the warranty and/or guarantee period of the Contract, during which time Surety's obligation shall continue if Contractor shall fail to make full, complete, and satisfactory repair, replace, and totally protect the District from loss or damage resulting from or caused by defective materials or faulty workmanship. The

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obligations of Surety hereunder shall continue so long as any obligation of Contractor remains. Nothing herein shall limit the District's rights or the Contractor's or Surety's obligations under the Contract, law or equity, including, but not limited to, California Code of Civil Procedure section 337.15.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Contract or to the Work to be performed thereunder shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration, or addition to the Contract Documents or to the Work.

**Any claims under this bond may be addressed to the Surety at the following address. This cannot be the Contractor's broker for this bond, but must be an employee of the Surety or the Surety's legal counsel:**

_____

_____

**Attention:** _____

**Telephone No.:** _____

**E-mail Address:** _____

IN WITNESS WHEREOF, two (2) identical counterparts of this instrument, each of which shall for all purposes be deemed an original thereof, have been duly executed by the Principal and Surety above named, on

Date: _____ , 20_____.

| **Principal** | **Surety** |
|---|---|
| _____ | _____ |
| (Name of Principal) | (Name of Surety) |
| _____ | _____ |
| (Signature of Person with Authority) | (Signature of Person with Authority) |
| _____ | _____ |
| (Print Name) | (Print Name) |
| | _____ |
| | (Name of California Agent of Surety) |
| | _____ |
| | (Address of California Agent of Surety) |
| | _____ |
| | (Telephone Number of California Agent of Surety) |

**Contractor must attach a Notarial Acknowledgment for all Surety's signatures and a Power of Attorney and Certificate of Authority for Surety. The California Department of Insurance must authorize the Surety to be an admitted surety insurer.**

Form Agreement

**PAYMENT BOND -- Contractor's Labor & Material Bond (100% of Contract Price)**
**(Note: Contractor must use this form, NOT a surety company form.)**

**KNOW ALL PERSONS BY THESE PRESENTS:**

**WHEREAS**, the governing board ("Board") of the **@District**, ("District") and

_____, ("Principal)"

have entered into a contract for the furnishing of all materials and labor, services and transportation, necessary, convenient, and proper to perform the following project:

**@ProjectName** ("Project" or "Contract")

which Contract dated _____, 20__, and all of the Contract Documents attached to or forming a part of the Contract, are hereby referred to and made a part hereof, and

**WHEREAS**, pursuant to law and the Contract, the Principal is required, before entering upon the performance of the work, to file a good and sufficient bond with the body by which the Contract is awarded in an amount equal to 100 percent (100%) of the Contract price, to secure the claims to which reference is made in the Civil Code of California, including section 9100, and the Labor Code of California, including section 1741.

**NOW, THEREFORE**, the Principal and _____ ("Surety") are held and firmly bound unto all laborers, material men, and other persons referred to in said statutes in the penal sum of:

**$ _____ DOLLARS,**

lawful money of the United States, being a sum not less than the total amount payable by the terms of Contract, for the payment of which sum well and truly to be made pursuant to all applicable statutes and laws applicable to the provisions herein. Principal and Surety, each of us, bind ourselves, our heirs, executors, administrators, successors, or assigns, jointly and severally, to those applicable statutes and laws, and to the provisions herein.

The condition of this obligation is that if the Principal or any of his or its subcontractors, of the heirs, executors, administrators, successors, or assigns of any, all, or either of them shall fail to pay for any labor, materials, provisions, equipment, or other supplies, used in, upon, for or about the performance of the work contracted to be done, or for any work or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to that work or labor, that the Surety will pay the same in an amount not exceeding the amount herein above set forth, and also in case suit is brought upon this bond, will pay a reasonable attorney's fee to be awarded and fixed by the Court, and to be taxed as costs and to be included in the judgment therein rendered.

It is hereby expressly stipulated and agreed that this bond shall inure to the benefit of any and all persons, companies, and corporations entitled to file claims under sections 9000 through 9566 of the Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

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

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Contract or to the Work to be performed thereunder shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration, or addition to the Contract Documents or to the Work.

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IN WITNESS WHEREOF, two (2) identical counterparts of this instrument, each of which shall for all purposes be deemed an original thereof, have been duly executed by the Principal and Surety above named, on

Date: _____ , 20_____.

| **Principal** | **Surety** |
|---|---|
| _____ | _____ |
| (Name of Principal) | (Name of Surety) |
| _____ | _____ |
| (Signature of Person with Authority) | (Signature of Person with Authority) |
| _____ | _____ |
| (Print Name) | (Print Name) |
| | _____ |
| | (Name of California Agent of Surety) |
| | _____ |
| | (Address of California Agent of Surety) |
| | _____ |
| | (Telephone Number of California Agent of Surety) |

**Contractor must attach a Notarial Acknowledgment for all Surety's signatures and a Power of Attorney and Certificate of Authority for Surety. The California Department of Insurance must authorize the Surety to be an admitted surety insurer.**

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**Division 1 Documents**
**to**
**Lease-Leaseback Documents**


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## COORDINATION AND PROJECT MEETINGS

**1. GENERAL**

**1.1. SECTION INCLUDES**

1.1.1. Coordination Responsibilities of the Contractor
1.1.2. Field Engineering Responsibilities of the Contractor
1.1.3. Preconstruction Conference.
1.1.4. Progress Meetings.
1.1.5. Pre-Installation Conferences.
1.1.6. Post Construction Dedication.

**1.2. COORDINATION RESPONSIBILITIES OF THE CONTRACTOR**

1.2.1. Coordinate scheduling, submittals, and Work of the Specifications to assure efficient and orderly sequence of installation of interdependent construction elements, with provisions for accommodating items installed later.
1.2.2. Prior to commencement of a particular type or kind of work examine relevant information, contract documents, and subsequent data issued to the Project.
1.2.3. Verify that utility requirement characteristics of operating equipment are compatible with building utilities. Coordinate work of various sections having interdependent responsibilities for installing, connecting to, and placing in service, such equipment.
1.2.4. Closing up of holes, backfilling, and other covering up operations shall not proceed until all enclosed or covered work and inspections have been completed. Verify before proceeding.
1.2.5. Coordinate space requirements and installation of mechanical and electrical work which are indicated diagrammatically on Drawings. Follow routing shown for pipes, ducts, and conduit as closely as practicable; place runs parallel with line of building. Utilize spaces efficiently to maximize accessibility for other installations, for maintenance, and for repairs.
1.2.6. In finished areas except as otherwise indicated, conceal pipes, ducts, and wiring within the construction. Coordinate locations of fixtures and outlets with finish elements.
1.2.7. In locations where several elements of mechanical and electrical work must be sequenced and positioned with precision in order to fit into available space, prepare coordination drawings showing the actual conditions required for the installation. Prepare coordination drawings prior to purchasing, fabricating, or installing any of the elements required to be coordinated.
1.2.8. Closing up of walls, partitions or furred spaces, backfilling, and other covering up operations shall not proceed until all enclosed or covered work and inspections have been completed. Verify before proceeding.
1.2.9. Coordinate completion and clean up of Work of separate sections in preparation for completion and for portions of work designated for District's occupancy.
1.2.10. After District occupancy of Project, coordinate access to Site for correction of defective Work and Work not in accordance with Contract Documents, to minimize disruption of District's activities.
1.2.11. Coordinate all utility company work in accordance with the Contract Documents.

**1.3. FIELD ENGINEERING RESPONSIBILITIES OF THE CONTRACTOR**

1.3.1. Contractor shall employ a Land Surveyor registered in the State of California and acceptable to the Construction Manager.
1.3.2. Control datum for survey is that established by District provided survey. Contractor to locate and protect survey control and reference points.
1.3.3. Replace dislocated survey control points based on original survey control.
1.3.4. Provide field engineering services. Establish elevations, lines, and levels utilizing recognized engineering survey practices.
1.3.5. Upon completion of Work, submit certificate signed by the Land Surveyor, that elevations and locations of Work are in conformance with Contract Documents. Record

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deviations on Record Drawings.

**1.4. PRECONSTRUCTION CONFERENCE**

1.4.1. Construction Manager or Project Engineer will schedule a conference immediately after receipt of fully executed Contract Documents prior to Project mobilization.

1.4.2. Mandatory Attendance: Construction Manager, Project Engineer, Inspector of Record, Architect of Record, Contractor, Contractor's Project Manager, and Contractor's Job/Project Superintendent.

1.4.3. Optional Attendance: Architect's consultants, subcontractors, and utility company representatives.

1.4.4. Construction Manager shall preside at conference and shall prepare and record minutes and distribute copies.

1.4.5. Agenda:

1.4.5.1. Execution of the Contract Documents.
1.4.5.2. Issue Notice to Proceed.
1.4.5.3. Submission of executed bonds and insurance certificates.
1.4.5.4. Distribution of Contract Documents.
1.4.5.5. Submission of list of Subcontractors, list of Products, Schedule of Values, and Progress Schedule.
1.4.5.6. Designation of responsible personnel representing the parties.
1.4.5.7. Procedures for processing Force Account Directives and Change Orders.
1.4.5.8. Procedures for Request for Information.
1.4.5.9. Procedures for testing and inspecting.
1.4.5.10. Procedures for processing applications for payment.
1.4.5.11. Procedures for Project closeout.
1.4.5.12. Use of School Site.
1.4.5.13. Work restrictions.
1.4.5.14. District's occupancy requirements or options.
1.4.5.15. Responsibility for temporary facilities and controls.
1.4.5.16. Construction waste management and recycling.
1.4.5.17. Parking availability.
1.4.5.18. Office, work and storage areas.
1.4.5.19. Equipment deliveries and priority.
1.4.5.20. Security.
1.4.5.21. Progress cleaning.

**1.5. PROGRESS MEETINGS**

1.5.1. Construction Manager shall schedule and administer meetings throughout progress of the Work at a minimum of every week.

1.5.2. Construction Manager or Project Engineer will make arrangements for meetings, prepare agenda, and preside at meetings. Construction Manager shall record minutes (Field Reports), and distribute copies.

1.5.3. Attendance Required: Project Manager, Job Superintendent, Construction Manager, Project Engineer, Project Inspector (Inspector of Record), Architect of Record, Subcontractors, and suppliers as appropriate to agenda topics for each meeting.

1.5.4. Agenda:

1.5.4.1. Review minutes of previous meetings. (Field Reports)
1.5.4.2. Safety, and jobsite visits
1.5.4.3. Review of Work progress.
1.5.4.4. Field observations, problems, and decisions.
1.5.4.5. Identification of problems which impede planned progress.
1.5.4.6. Review of submittals schedule and status of submittals.
1.5.4.7. Review of off-site fabrication and delivery schedules.
1.5.4.8. Maintenance of construction schedule.
1.5.4.9. Corrective measures to regain projected schedules.

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1.5.4.10. Planned progress during succeeding work period.
1.5.4.11. Coordination of projected progress.
1.5.4.12. Maintenance of quality and work standards.
1.5.4.13. Effect of proposed changes on progress schedule and coordination.
1.5.4.14. Other business relating to Work.

1.5.5. District has authority to schedule meetings other than those listed, as necessary.

**1.6. PRE-INSTALLATION CONFERENCES**

When required in individual specification section, or requested by the District Contractor shall convene a pre-installation conference prior to commencing work of the section. Refer to individual specification section for timing requirements of conference.

1.6.1. Contractor shall require his/her subcontractors and suppliers directly affecting, or affected by, work of the specific section to attend.

1.6.2. Notify the Construction Manager, Project Engineer, Inspector of Record, and Architect of Record four (4) Days in advance of meeting date.

1.6.3. The pre-installation conference may coincide with a regularly scheduled progress meeting.

1.6.4. Contractor shall prepare agenda, preside at conference, record minutes, and distribute copies within two (2) Days after conference to participants.

1.6.5. The purpose of the meeting will be to review Contract Documents, conditions of installation, preparation and installation procedures, and coordination with related work and manufacturer's recommendations.

1.6.6. Pre-installation Schedule: As a minimum, Work being installed under the Contract Documents technical sections will require pre-installation conferences. Contractor shall review the technical specifications and add all additional requirements for pre-installation meetings contained in those sections.

**1.7. POST CONSTRUCTION DEDICATION**

1.7.1. Attendance Required: Project Superintendent, Contractor, Project Manager, major subcontractors, Construction Manager, Project Engineer, Inspector of Record, and Architect of Record.

1.7.2. Preparation prior to Dedication: Contractor and appropriate subcontractors and suppliers shall:

1.7.3. Assist District in operation of mechanical devices and systems.
1.7.3.1. Verify operation and adjust controls for communication systems.
1.7.3.2. Assist District in operation of lighting systems.

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## PRODUCT OPTIONS AND SUBSTITUTIONS

**1. Substitution for Specified Items.**

The Project shall be based on products and systems specified in Contract Documents or listed by name in Addenda. Contractor shall only request substitutions as indicated herein.

1.1. **Request for Substitution Prior to Proposal.**

1.1.1. District must receive any request for substitution a minimum of FOURTEEN (14) Days prior to the date proposals are due.

1.1.2. The District's denial of a substitution request prior to the date proposals are due shall be conclusive, requiring Contractors to base proposals only on approved items. The District is not responsible and/or liable in any way for a Contractor's damages and/or claims related, in any way, to that Contractor's basing its proposal on any requested substitution that the District has not approved. Contractor's proposal may be deemed non-responsive if it identifies a product or manufacturer of a non-approved substitution.

1.1.3. Approved substitutions shall be listed in Addenda.

1.1.4. District reserves the right not to act upon submittals of substitutions until after the date proposals are due. If the District does not act on a substitution request prior to the date proposals are due, Contractors must propose only on products and systems specified in Contract Documents or listed by name in Addenda.

1.2. **Request for Substitution After Contract Awarded**. Requests for substitutions after award of the Contract shall be within **THIRTY-FIVE (35) Days of the date of the Notice of Award or similar notice to Contractor**. This time period can be extended by the District only, in its sole discretion.

1.2.1. Whenever in the Specifications any materials, process, or article is indicated or specified by grade, patent, or proprietary name, or by name of manufacturer, that Specification shall be deemed to be followed by the words "or equal." Contractor may, unless otherwise stated, offer any material, process, or article that shall be substantially equal or better in every respect to that so indicated or specified.

1.2.2. If the material, process, or article offered by Contractor is not, in the opinion of the District, substantially equal or better in every respect to that specified, then Contractor shall furnish the material, process, or article specified in the Specifications without any additional compensation or change.

1.2.3. This provision shall not be applicable with respect to any material, product, thing or service for which District made findings and gave notice in accordance with Public Contract Code section 3400(b); therefore, Contractor shall not be entitled to request a substitution with respect to those materials, products or services.

1.2.4. The burden of proof as to equality of any material, process, or article shall rest with Contractor.

1.3. **A request for a substitution shall be in writing and shall include the following information and /or assurances.**

1.3.1. All variations of the proposed substitute from the material specified including, but not limited to, principles of operation, materials, or construction finish, thickness or gauge of materials, dimensions, weight, and tolerances;

1.3.2. Available maintenance, repair or replacement services;

1.3.3. Increases or decreases in operating, maintenance, repair, replacement, and spare parts costs;

1.3.4. Whether or not acceptance of the substitute will require other changes in the Work (or in work performed by the District or others under contract with the District); and

1.3.5. The time impact on any part of the Work resulting directly or indirectly from acceptance of the proposed substitute.

1.3.6. The proposed substitute is equal or superior in all respects to that specified, and that such proposed substitute is suitable and fit for the intended purpose and will perform adequately the function and achieve the results called for by the general design and the Contract Documents;

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1.3.7. The Contractor provides the same warranties and guarantees for the substitute that would be provided for that specified;

1.3.8. The Contractor shall be fully responsible for the installation of the substitute and any changes in the Work required, either directly or indirectly, because of the acceptance of such substitute, with no increase in Contract Price or Contract Time. Incidental changes or extra component parts required to accommodate the substitute will be made by the Contractor without a change in the Contract Price or Contract Time;

1.3.9. The Contractor shall be responsible for any re-design costs occasioned by District's acceptance and/or approval of any substitute; and

1.3.10. The Contractor shall, in the event that a substitute is less costly than that specified, credit the District with one hundred percent (100%) of the net difference between the substitute and the originally specified material. In this event, the Contractor agrees to execute a deductive Change Order to reflect that credit.

1.4. In the event Contractor furnishes a material, process, or article more expensive than that specified, the difference in the cost of that material, process, or article so furnished shall be borne by Contractor.

1.5. In no event shall the District be liable for any increase in Contract Price or Contract Time due to any claimed delay in the evaluation of any proposed substitute or in the acceptance or rejection of any proposed substitute.

1.6. If the District approves a substitution after the award of the Contract, the District shall memorialize that approval in a Change Order or other applicable Contract modification process.

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## CONSTRUCTION SCHEDULE - NETWORK ANALYSIS

**1. GENERAL**

**1.1. REFERENCES**

1.1.1. Construction Planning and Scheduling Manual - A Manual for General Contractors and the Construction Industry, The Associated General Contractors of America (AGC).

1.1.2. CSI - Construction Specifications Institute MP-2-1 Master Format.

1.1.3. U.S. National Weather Service - Local Climatological Data.

**1.2. PERFORMANCE REQUIREMENTS**

1.2.1. All Contractor's schedules shall comply with the baseline and milestones as indicated in the draft "Program Schedule" the District provided as a draft **Exhibit F** to the Facilities Lease.

1.2.2. Ensure adequate scheduling during construction activities so Work may be prosecuted in an orderly and expeditious manner within stipulated Contract Time.

1.2.3. Ensure coordination of Contractor and subcontractors at all levels.

1.2.4. Ensure coordination of submittals, fabrication, delivery, erection, installation, and testing of Products, materials and equipment.

1.2.5. Ensure on-time delivery of District furnished Products, materials and equipment.

1.2.6. Ensure coordination of jurisdictional reviews.

1.2.7. Prepare applications for payment.

1.2.8. Monitor progress of Work.

1.2.9. Prepare proper requests for changes to Contract Time.

1.2.10. Prepare proper requests for changes to Construction Schedule.

1.2.11. Assist in detection of schedule delays and identification of corrective actions.

**1.3. QUALITY ASSURANCE**

1.3.1. Perform scheduling work in accordance with Construction Planning and Scheduling Manual published by the AGC.

1.3.2. Maintain one copy of Construction Planning and Scheduling Manual on Site.

1.3.3. In the event of discrepancy between the AGC publication and the Contract Documents, provisions of the Contract Documents shall govern.

**1.4. QUALIFICATIONS**

1.4.1. **Scheduler**:

1.4.1.1. Contractor shall retain a construction scheduler to work in enough capacity to perform all of the Contractor's requirements to prepare the Construction Schedule. The Scheduler shall plan, coordinate, execute, and monitor a cost/resource loaded critical path method (CPM) schedule as required for Project and have a minimum of five (5) years direct experience using CPM.

1.4.1.2. Scheduler will cooperate with District and shall be available on site for monitoring, maintaining and updating schedules in a timely manner.

1.4.1.3. District has the right to reject the Scheduler based upon a lack of experience as required by this Document or based on lack of performance and timeliness of schedule submittals/fragnets on past projects. Contractor shall within seven (7) Days of District's rejection, propose another scheduler who meets the experience requirements stated above.

1.4.2. **Administrative Personnel**: Five (5) years minimum experience in using and monitoring schedules on comparable projects.

**1.5. SUBMITTALS**

1.5.1. Submission of submittals pursuant to "Contractor's Submittals And Schedules" in Exhibit D. Adobe "PDF" files are not acceptable.

1.5.2. Submit Short Interval Schedule at each Construction Progress Meeting.

1.5.3. Submit Time Adjustment Schedule within five (5) Days of commencement of a claimed delay.

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1.5.4. Submit Recovery Schedules as required for timely completion of Work or when demanded by the District.
1.5.5. Submit job cost reports when demanded by the District.
1.5.6. Submit one (1) reproducible and two (2) copies of each schedule and cost report.
1.5.7. Submit large format plotted schedules monthly or at the request of the District or Construction Manager.

**1.6. REVIEW AND EVALUATION**

1.6.1. Contractor shall participate in joint review of Construction Schedule and Reports with District and Construction Manager.
1.6.2. Within seven (7) Days of receipt of District and Construction Manager's comments provide satisfactory revision to Construction Schedule or adequate justification for activities in question.
1.6.3. In the event that an activity or element of Work is not detected by District or Construction Manager review, such omission or error shall be corrected by next scheduled update and shall not affect Contract Time.
1.6.4. Acceptance by District of corrected Construction Schedule shall be a condition precedent to making any Tenant Improvement Payment.
1.6.5. Cost-loaded values of Construction Schedule shall be basis for determining Tenant Improvement Payment unless waived by the District in writing.
1.6.6. Review and acceptance by District and Construction Manager of Preliminary Work Schedule or Construction Schedule does not constitute responsibility whatsoever for accuracy or feasibility of schedules nor does such acceptance expressly or impliedly warrant, acknowledge or admit reasonableness of activities, logic, duration, manpower, cost or equipment loading stated or implied on schedules.

**1.7. FORMAT**

1.7.1. Prepare diagrams and supporting mathematical analyses using Precedence Diagramming Method, under concepts and methods outlined in AGC Construction Planning and Scheduling Manual.
1.7.2. **Listings**: Reading from left to right, in ascending order for each activity.
1.7.3. **Diagram Size**: 42 inches maximum height x width required.
1.7.4. **Scale and Spacing**: To allow for legible notations and revisions.
1.7.5. Illustrate order and interdependence of activities and sequence of Work.
1.7.6. Illustrate complete sequence of construction by activity.
1.7.7. Provide legend of symbols and abbreviations used.

**1.8. COST AND SCHEDULE REPORTS**

1.8.1. **Activity Analysis**: Tabulate each activity of network diagram and identify for each activity:
1.8.1.1. Description.
1.8.1.2. Interface with outside contractors or agencies.
1.8.1.3. Number.
1.8.1.4. Preceding and following number.
1.8.1.5. Duration.
1.8.1.6. Earliest start date, earliest finish date.
1.8.1.7. Actual start date, actual finish date.
1.8.1.8. Latest start date, latest finish date.
1.8.1.9. Total and free float.
1.8.1.10. Identification of critical path activity.
1.8.1.11. Monetary value keyed to Schedule of Values.
1.8.1.12. Manpower requirements.
1.8.1.13. Responsibility.
1.8.1.14. Percentage complete.
1.8.1.15. Variance positive or negative.
1.8.2. **Cost Report**: Tabulate each activity of network diagram and identify for each activity,

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unless waived by the District in writing:

1.8.2.1. Description.
1.8.2.2. Number.
1.8.2.3. Total cost.
1.8.2.4. Percentage complete.
1.8.2.5. Value prior to current period.
1.8.2.6. Value this period.
1.8.2.7. Value to date.

1.8.3. **Required Sorts**: List activities in sorts or groups:

1.8.3.1. By activity number.
1.8.3.2. By amount of float time in order of early start.
1.8.3.3. By responsibility in order of earliest start date.
1.8.3.4. In order of latest start dates.
1.8.3.5. In order of latest finish dates.
1.8.3.6. Application for payment sorted by Schedule of Values.
1.8.3.7. Listing of activities on critical path.

1.8.4. Listing of basic input data which generates schedule.

**1.9. CONSTRUCTION SCHEDULE**

1.9.1. Contractor shall develop and submit a preliminary schedule of construction (or Preliminary Construction Schedule) during the procurement process or, if not then, and only with the District's written approval, within thirty (30) Days after award of the Contract. That document shall comply with this Document and the Contract Documents. It shall be submitted in computer generated network format and shall be organized by Activity Codes representing the Contractor's intended sequencing of the Work, and with time scaled network diagrams of activities. The Preliminary Construction Schedule shall include activities such as mobilization, preparation of submittals, specified review periods, procurement items, fabrication items, milestones, and all detailed construction activities.

1.9.2. Upon District's acceptance of the Preliminary Construction Schedule, Contractor shall update the accepted Preliminary Construction Schedule until Contractor's Construction Schedule is fully developed and accepted within the first thirty (30) Days. Once approved by District, this shall become the Construction Schedule (or "Baseline Schedule"). This schedule shall include and identify all tasks that are on the Project's critical path with a specific determination of the start and completion of each critical path task, all contract milestones and each milestone's completion date(s) as may be required by the District, and the date of Project Completion. Since updates to the Construction Schedule are the basis for payment to Contractor, submittal and acceptance of the Construction Schedule and updates shall be a condition precedent to making of monthly payments, as indicated in the General Construction Provisions (Exhibit D to the Facilities Lease).

1.9.3. Failure to submit an adequate or accurate Preliminary Construction Schedule, Construction Schedule, updates thereto or failure to submit on established dates, will be considered a breach of Contract.

1.9.4. Failure to include any activity shall not be an excuse for completing all Work by required Completion Date.

1.9.5. Activities of long intervals shall be broken into increments no longer than fourteen (14) Days or a value over $20,000.00 unless approved by the District or it is non-construction activity for procurement and delivery.

1.9.6. The Construction Schedule shall comply with the following and include the following:

1.9.6.1. Provide a written narrative describing Contractor's approach to mobilization, procurement, and construction during the first thirty (30) Days including crew sizes, equipment and material delivery, Site access, submittals, and permits.

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1.9.6.2. Shall designate critical path or paths.
1.9.6.3. Procurement activities to include mobilization, shop drawings and sample submittals.
1.9.6.4. Identification of key and long-lead elements and realistic delivery dates.
1.9.6.5. Construction activities in units of whole days limited to fourteen (14) Days for each activity except non-construction, procurement and delivery.
1.9.6.6. Approximate cost and duration of each activity.
1.9.6.7. Shall contain seasonal weather considerations.
1.9.6.8. Indicate a date for Project Completion that is no later than Completion Date subject to any time extensions processed as part of a Change Order.
1.9.6.9. Conform to mandatory dates specified in the Contract Documents.
1.9.6.10. Contractor shall allow for inclement weather in the Proposed Baseline Schedule by incorporating an activity titled "Rain Day Impact Allowance" as the last activity prior to the Completion Milestone. No other activities may be concurrent with it. The duration of the Rain Day Impact Allowance activity will in accordance with the Contract Documents, including "Computation of Time / Adverse Weather" in Exhibit D , and will be calculated from the Notice to Proceed until the Completion.
1.9.6.11. Level of detail shall correspond to complexity of work involved.
1.9.6.12. Indicate procurement activities, delivery, and installation of District furnished material and equipment.
1.9.6.13. Designate critical path or paths.
1.9.6.14. Subcontractor work at all levels shall be included in schedule.
1.9.6.15. As developed shall show sequence and interdependence of activities required for complete performance of Work.
1.9.6.16. Shall be logical and show a coordinated plan of Work.
1.9.6.17. Show order of activities and major points of interface, including specific dates of completion.
1.9.6.18. Duration of activities shall be coordinated with subcontractors and suppliers and shall be best estimate of time required.
1.9.6.19. Shall show description, duration and float for each activity.

1.9.7. **Activity.** An activity shall meet the following criteria:
1.9.7.1. Any portion or element of Work or action that is precisely described, readily identifiable, and is a function of a logical sequential process.
1.9.7.2. Descriptions shall be clear and concise. Beginning and end shall be readily verifiable. Starts and finishes shall be scheduled by logical restraints.
1.9.7.3. Responsibility shall be identified with a single performing entity.
1.9.7.4. Additional codes shall identify building, floor, and CSI classification.
1.9.7.5. Assigned dollar value (cost-loading) of each activity shall cumulatively equal total contract amount. Mobilization, bond and insurance costs shall be separate. General requirement costs, overhead, profit, shall be prorated throughout all activities. Activity costs shall correlate with Schedule of Values.
1.9.7.6. Assigned manpower requirement (resource loading) of each activity.
1.9.7.7. Major construction equipment shall be assigned to each activity.
1.9.7.8. Activities labeled start, continue or completion are not allowed.

1.9.8. **Equipment and Materials.** For major equipment and materials show a sequence of activities including:
1.9.8.1. Preparation of shop drawings and sample submissions.
1.9.8.2. Review of shop drawings and samples.
1.9.8.3. Finish and color selection.
1.9.8.4. Fabrication and delivery.

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1.9.8.5. Erection or installation.
1.9.8.6. Testing.

1.9.9. Include a minimum of fifteen (15) Days prior to Completion Date for punch lists and clean up. No other activities shall be scheduled during this period.

**1.10. SHORT INTERVAL SCHEDULE**

1.10.1. The Four-Week Rolling Schedule shall be based on the most recent District Accepted Construction Schedule or Update. It shall include weekly updates to all construction, submittal, fabrication/procurement, and separate Work Contract activities. Contractor shall ensure that it accurately reflects the current progress of the Work.

1.10.2. Shall be fully developed horizontal bar-chart-type schedule directly derived from Construction Schedule.

1.10.3. Prepare schedule on sheet of sufficient width to clearly show data.

1.10.4. Provide continuous heavy vertical line identifying first day of week.

1.10.5. Provide continuous subordinate vertical line identifying each day of week.

1.10.6. Identify activities by same activity number and description as Construction Schedule.

1.10.7. Show each activity in proper sequence.

1.10.8. Indicate graphically sequences necessary for related activities.

1.10.9. Indicate activities completed or in progress for previous two (2) week period.

1.10.10. Indicate activities scheduled for succeeding two (2) week period.

1.10.11. Further detail may be added if necessary to monitor schedule.

**1.11. REQUESTED TIME ADJUSTMENT SCHEDULE**

1.11.1. Updated Construction Schedule shall not show a Completion Date later than the Contract Time, subject to any time extensions processed as part of a Change Order.

1.11.2. If an extension of time is requested, a separate schedule entitled "Requested Time Adjustment Schedule" shall be submitted to District and Architect.

1.11.3. Indicate requested adjustments in Contract Time which are due to changes or delays in completion of Work.

1.11.4. Extension request shall include forecast of Project Completion date and actual achievement of any dates listed in Contract Documents.

1.11.5. To the extent that any requests are pending at time of any Construction Schedule update, Time Adjustment Schedule shall also be updated.

1.11.6. Schedule shall be a time-scaled network analysis.

1.11.7. Accompany schedule with formal written time extension request and detailed impact analysis justifying extension.

1.11.8. Time impact analysis shall demonstrate time impact based upon date of delay, and status of construction at that time and event time computation of all affected activities. Event times shall be those as shown in latest Construction Schedule.

1.11.9. Activity delays shall not automatically constitute an extension of Contract Time.

1.11.10. Failure of subcontractors shall not be justification for an extension of time.

1.11.11. Float is not for the exclusive use or benefit of any single party. Float time shall be apportioned according to needs of project, as determined by the District.

1.11.12. Float suppression techniques such as preferential sequencing, special lead/lag logic restraints, extended activity durations, or imposed dates shall **not** be allowed without the prior written permission of the District.

1.11.13. Extensions will be granted only to extent that time adjustments to activities exceed total positive float of the critical path and extends Completion date.

1.11.14. District shall not have an obligation to consider any time extension request unless requirements of Contract Documents, and specifically, but not limited to these requirements are complied with.

1.11.15. District shall not be responsible or liable for any construction acceleration due to failure of District to grant time extensions under Contract Documents should requested adjustments in Contract Time not substantially comply with submission and justification requirements of Contract for time extension requests.

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1.11.16. In the event a Requested Time Adjustment Schedule and Time Impact Analysis are not submitted within ten (10) Days after commencement of a delay it is mutually agreed that delay does not require a Contract Time extension.

**1.12. RECOVERY SCHEDULE**

1.12.1. When activities are behind Construction Schedule a supplementary Recovery Schedule shall be submitted.

1.12.2. Contractor shall prepare and submit to the District a Recovery Schedule at any time requested by the District, at no cost to the District.

1.12.3. Form and detail shall be sufficient to explain and display how activities will be rescheduled to regain compliance with Construction Schedule and to complete the Work by the Completion Date.

1.12.4. Maximum duration shall be one (1) month and shall coincide with payment period.

1.12.5. Ten (10) Days prior to expiration of Recovery Schedule, Contractor shall have to show verification to determine if activities have regained compliance with Construction Schedule. Based upon this verification the following will occur:

1.12.5.1. Supplemental Recovery Schedule will be submitted to address subsequent payment period

1.12.5.2. Construction Schedule will be resumed.

**1.13. UPDATING SCHEDULES**

1.13.1. Review and update schedule at least ten (10) Days prior to submitting an Application for Payment.

1.13.2. Maintain schedule to record actual prosecution and progress.

1.13.3. Identify approved Change Orders which affect schedule as separate new activities.

1.13.4. No other revisions shall be made to schedule unless authorized by District.

1.13.5. **Written Narrative Report**: Contractor shall include a written report to explain the Monthly Schedule Update. The narrative shall, at a minimum include the following headings with appropriate discussions of each topic:

1.13.5.1. Activities or portions of activities completed during previous reporting period.

1.13.5.2. Actual start dates for activities currently in progress.

1.13.5.3. Deviations from critical path in days ahead or behind.

1.13.5.4. List of major construction equipment used and any equipment idle.

1.13.5.5. Number of personnel by craft engaged on Work during reporting period.

1.13.5.6. Progress analysis describing problem areas.

1.13.5.7. Current and anticipated delay factors and their impact.

1.13.5.8. Proposed corrective actions and logic revisions for Recovery Schedule.

1.13.5.9. Proposed modifications, additions, deletions and changes in logic of Construction Schedule.

1.13.5.10. In updating the Schedule, Contractor shall not modify Activity ID numbers, schedule calculation rules/criteria, or the Activity Coding Structure required.

1.13.6. Schedule update will form basis upon which Tenant Improvement Payments will be made.

1.13.7. District will not be obligated to review or process Application for Payment until schedule and Progress Report have been submitted.

**1.14. DISTRIBUTION**

1.14.1. Following joint review and acceptance of updated schedules distribute copies to District, Architect, and all other concerned parties.

1.14.2. Instruct recipients to promptly report in writing any problem anticipated by projections shown in schedule.

**2. PRODUCTS**

**2.1. SCHEDULING SOFTWARE**

**Contractor shall utilize District approved software for scheduling software and shall employ the Critical**

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**Path Method (CPM) in the development and maintenance of the Construction Schedule.** The scheduling software shall be capable of being resource loaded with manpower, costs and materials. It shall also be capable of generating time-scaled logic diagrams, resource histograms and profiles, bar charts, layouts and reports with any and/or all activity detail.

**2.2. ELECTRONIC DATA**

Provide compact disk(s) that contain a back-up of the Proposed Baseline Schedule data on it. The electronic P6 files shall be saved in ".XER" type format.

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## SUBMITTALS

**1. GENERAL**

**1.1. SUBMITTAL PROCEDURES – USE OF SOFTWARE**

**1.1.1. CONTRACTOR SHALL UTILIZE DISTRICT APPROVED SOFTWARE FOR THE SUBMITTAL PROCESS**

1.1.2. Contractor shall transmit each submittal in conformance with requirements of this Document. For each submittal, Contractor shall:

1.1.2.1. Sequentially number the transmittal forms. Resubmitted submittals must have the original number with an alphabetic suffix;

1.1.2.2. Identify Project and Architect's project number, Contractor, Subcontractor or supplier; pertinent Drawing sheet and detail number(s), and specification Section number, as appropriate;

1.1.2.3. Apply Contractor's stamp, signed or initialed certifying that review, verification of Products required, field dimensions, adjacent construction work, and coordination of information is in accordance with the requirements of the Work and Contract Documents. Submittals without Contractor's stamp and signature will be returned without review.

1.1.3. Coordinate preparation and processing of submittals with performance of Work. Transmit each submittal sufficiently in advance of performance of Work to avoid delay.

1.1.3.1. Coordinate each submittal with fabrication, purchasing, testing, delivery, other submittals, and related activities that require sequential activity.

1.1.3.2. Coordinate transmittal of different types of submittals for related parts of Work so processing will not be delayed because of the need to review submittals concurrently for coordination.

1.1.3.3. Architect reserves the right to withhold action on a submittal requiring coordination with other submittals until related submittals are received.

1.1.4. Comply with Contract Documents for list of submittals and time requirements for scheduled performance of Work.

1.1.5. No extension of Contract Time will be authorized because of failure to transmit submittals to the Architect sufficiently in advance of the Work to permit processing.

1.1.6. Identify variations from Contract Documents and Product or system limitations which may be detrimental to successful performance of the completed Work.

1.1.7. Provide space for Contractor and Architect review stamps.

1.1.8. Revise and resubmit submittals as required, identify all changes made since previous submittal.

1.1.9. Distribute copies of reviewed submittals to concerned parties. Instruct parties to promptly report any inability to comply with provisions.

1.1.10. Submittals not requested will not be recognized or processed. Submittals not requested will be returned without review.

**1.2. SHOP DRAWINGS**

1.2.1. Do not reproduce Contract Documents or copy standard information as the basis of shop drawings. Standard information prepared without specific reference to the Project is not a shop drawing.

1.2.2. Do not use or allow others to use Shop Drawings which have been submitted and have been rejected.

**1.3. ELECTRONIC SUBMITTAL PROCESS**

**1.3.1. Submittal Procedure for Large Format shop drawings.**

1.3.1.1. Contractor shall provide six (6) paper copies and of the large format Shop Drawings directly to the District and the Construction Manager (CM) and Contractor will provide an electronic transmittal (with a detailed description of the submittal including the subject, specification number and number of drawings) using the District approved software/program.

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1.3.1.2. Contractor shall verify that the Submittal Schedule and all submittal log(s) are accurate and up to date.
1.3.1.3. The District and Architect will review and markup each Submittal and provide changes to Contractor for Contractor's incorporation into the Submittal.
1.3.1.4. This process will continue until the Contractor has provided a Submittal that is acceptable to the District and the Architect.
1.3.1.5. Once a Submittal is accepted, the District will provide a final accepted Submittal to the Contractor and the Contractor will closeout that one Submittal.
1.3.1.6. Contractor shall send one (1) copy of the completed record submittal of the large format documents to a vendor (Ford Graphics is suggested) and using the District approved software/program.

**1.3.2. Product Data, Calculations and Small Format Drawings**

1.3.2.1. Contractor shall upload/post one (1) electronic copy (from manufacturer's website or pre-scanned) of the product literature, data, calculations, and/or small format shop drawings using the District approved software/program with a Transmittal (with a detailed description of the submittal) directly to the CM.
1.3.2.2. The District and Architect will review and markup each Submittal and provide changes to Contractor for Contractor's incorporation into the Submittal.
1.3.2.3. This process will continue until the Contractor has provided a Submittal that is acceptable to the District and the Architect.
1.3.2.4. Once a Submittal is accepted, the District will provide a final accepted Submittal to the Contractor and the Contractor will closeout that one Submittal.
1.3.2.5. Contractor shall send one (1) copy of the completed record submittal of the large format documents to a vendor for scanning and posting using the District approved software/program.

**1.3.3. Sample Submittal Procedure – (Product / Assembly Samples)**

1.3.3.1. Contractor shall provide four (4) physical samples directly to the District and the CM and Contractor will provide an electronic transmittal (with a detailed description of the submittal including the subject, specification number and number of drawings) using the District approved software/program.
1.3.3.2. The District and Architect will review and markup each Submittal and provide changes to Contractor for Contractor's incorporation into the Submittal.
1.3.3.3. This process will continue until the Contractor has provided a Submittal that is acceptable to the District and the Architect.
1.3.3.4. Once a Submittal is accepted, the District will provide a final accepted Submittal to the Contractor and the Contractor will closeout that one Submittal.
1.3.3.5. Contractor shall send one (1) copy of the completed record submittal of the large format documents to a vendor (Ford Graphics is suggested) for using the District approved software/program.

**1.4. PRODUCT DATA**

In addition to the above requirements, mark each copy to identify applicable products, models, options, and other data. Supplement manufacturers' standard data to provide information unique to this Project.

**1.5. SAMPLES**

1.5.1. In addition to the above requirements, submit samples to illustrate functional and aesthetic characteristics of the Product in accordance with this Document, with integral parts and attachment devices. Coordinate sample submittals for interfacing work.
1.5.2. Where specific colors or patterns are not indicated, provide materials and products specified in the full range of color, texture and pattern for selection by District. Range shall include standard stocked color/texture/pattern, standard color/texture/pattern not stocked, but available from manufacturer, and special color/ texture/pattern

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available from manufacturer as advertised in product data and brochures. Unless otherwise indicated in individual specification sections, District may select from any range at no additional cost to District.

1.5.3. Include identification on each sample, with full Project information.

1.5.4. Submit the number of samples that Contractor requires, plus one that will be retained by Architect and one by District.

1.5.5. Reviewed samples which may be used in the Work are indicated in individual specification Sections.

**1.6. MANUFACTURER'S INSTRUCTION**

1.6.1. When specified in individual specification Sections, submit manufacturers' printed instructions for delivery, storage, assembly, installation, start-up, adjusting, and finishing, in quantities specified for Product Data.

1.6.2. Identify conflicts between manufacturers' instructions and Contract Documents.

**1.7. MANUFACTURER'S CERTIFICATES**

1.7.1. When specified in individual specification Sections, submit manufacturers' certificate to Architect for review, in quantities specified for Product Data.

1.7.2. Indicate material or Product conforms to or exceeds specified requirements. Submit supporting reference date, affidavits, and certifications as appropriate.

1.7.3. Certificates may be recent or previous test results on material or Product, but must be acceptable to District.

**1.8. MOCK-UP**

1.8.1. Where indicated, provide mock-ups as required. Mock-ups shall be prepared per the specifications and shall accurately and reasonably represent the quality of construction the Contractor will provide. If the mock-up or portions thereof do not adequately represent the quality of the work specified, the Contractor shall modify it as needed.

1.8.2. Once completed to the District's satisfaction, the mock-up shall serve as the standard of quality for the work.

1.8.3. All mock-ups, at District's option, shall remain the property of the District. If not required by the District, Contractor shall remove and dispose of the mock-up.

1.8.4. Where indicated, on-site mock-ups, if accepted, may be integrated into the Work.

**1.9. DEFERRED APPROVAL REQUIREMENTS**

1.9.1. Installation of deferred approval items shall not be started until detailed plans, specifications, and engineering calculations have been accepted and signed by the Architect or Engineer in general responsible charge of design and signed by a California registered Architect or professional engineer who has been delegated responsibility covering the work shown on a particular plan or specification and approved by the Division of the State Architect (DSA). Deferred approval items for this Project are as indicated in the Contract Documents.

1.9.2. Deferred approval drawings and specifications become part of the approved documents for the Project when they are submitted to and approved by DSA.

1.9.3. Submit material using electronic submittal process as defined above.

1.9.4. Identify and specify all supports, fasteners, spacing, penetrations, etc., for each of the deferred approval items, including calculations for each and all fasteners.

1.9.5. Submit documents to Architect for review prior to requesting that the Architect forward it to the DSA.

1.9.6. Documents shall bear the stamp and signature of the Structural, Mechanical, or Electrical Engineer licensed in California who is responsible for that work.

1.9.7. Architect and its subconsultants will review the documents only for conformance with design concept. The Architect will then forward the Submittal to DSA for approval.

1.9.8. Contractor shall respond to review comments made by DSA and revise and resubmit submittal to the Architect for re-submittal to DSA for final approval.

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## REGULATORY REQUIREMENTS

**1. GENERAL**

**1.1. DESCRIPTION**

This section covers the general requirements for regulatory requirements pertaining to the Work and is supplementary to all other regulatory requirements mentioned or referenced elsewhere in the Contract Documents.

**1.2. REQUIREMENTS OF REGULATORY AGENCIES**

**1.2.1.** All statutes, ordinances, laws, rules, codes, regulations, standards, and the lawful orders of all public authorities having jurisdiction of the Work, are hereby incorporated into the Contract Documents as if repeated in full herein and are intended to be included in any reference to Code or Building Code, unless otherwise specified, including, without limitation, the references in the list below. Contractor shall make available at the Site copies of all the listed documents applicable to the Work as the District and/or Architect may request, including, without limitation, applicable portions of the California Code of Regulations (C.C.R.).

**1.2.2.** This Project shall be governed by applicable regulations, including, without limitation, the State of California's Administrative Regulations for the Division of the State Architect-Structural Safety (DSA/SS), Chapter 4, Part 1, Title 24, C.C.R., and the most current version on the date the Contract is executed and as it pertains to school construction including, without limitation:

1.2.2.1. Test and testing laboratory pursuant to Section 4-335 (District shall pay for the testing laboratory).

1.2.2.2. All special inspections pursuant to Section 4-333(d).

1.2.2.3. Contractor shall submit verified reports pursuant to Section 4-336 & 4-343(c).

1.2.2.4. Administration

1.2.2.4.1. Duties of the Architect and Engineers shall be pursuant to Section and 4-341.

1.2.2.4.2. Duties of Contractor shall be pursuant Section 4-343.

1.2.2.4.3. Verified Reports shall be pursuant to Section 4-336.

1.2.2.5. Contractor shall keep and make available a copy of Part 1 and 2 of the most current version of C.C.R., Title 24 at the Site during construction.

1.2.2.6. Contractor shall notify the Division of State Architect (DSA) upon the start of construction pursuant to Section 4-331.

1.2.2.7. Addenda and Change Orders shall be pursuant to Section 4-338.

1.2.3. Items of deferred approval shall be clearly marked on the first sheet of the Architect's and/or Engineer's approved Drawings. All items later submitted for approval shall be pursuant to Title 24 requirements to the DSA.

1.2.3.1. Building Standards Administrative Code, C.C.R., Title 24, Part 1..

1.2.3.2. California Building Code (CBC), C.C.R., Title 24, Part 2.; (Uniform Building code volumes 1-3 and California Amendments).

1.2.3.3. California Electrical Code (CEC), C.C.R., Title 24, Part 3 ; (National Electrical Code and California Amendments).

1.2.3.4. California Mechanical Code (CMC), C.C.R., Title 24, Part 4 ; (Uniform Mechanical Code and California Amendments).

1.2.3.5. California Plumbing Code (CPC), C.C.R., Title 24, Part 5; (Uniform Plumbing Code and California Amendments).

1.2.3.6. California Fire Code (CFC), C.C.R., Title 24, Part 9; (Fire Plumbing Code and California Amendments).

1.2.3.7. California Referenced Standards Code, C.C.R., Title 24, Part 12.

1.2.3.8. State Fire Marshal Regulations, C.C.R., Title 19, Public Safety.

1.2.3.9. Partial List of Applicable NFPA Standards:

1.2.3.9.1. NFPA 13 - Automatic Sprinkler System.

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1.2.3.9.2. NFPA 14 - Standpipes Systems.
1.2.3.9.3. NFPA 17A - Wet Chemical System
1.2.3.9.4. NFPA 24 - Private Fire Mains.
1.2.3.9.5. (California Amended) NFPA 72 - National Fire Alarm Codes.
1.2.3.9.6. NFPA 253 - Critical Radiant Flux of Floor Covering System.
1.2.3.9.7. FPA 2001 - Clean Agent Fire Extinguishing Systems.
1.2.3.10. California Division of the State Architect Interpretation of Regulations Manual.

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## TESTING LABORATORY SERVICES

**1. GENERAL**

**1.1. REFERENCES**

1.1.1. ASTM D3740 - Practice for Evaluation of Agencies Engaged in Testing and/or Inspection of Soil and Rock as Used in Engineering Design and Construction.

1.1.2. ASTM E329 - Recommended Practice for Inspection and Testing Agencies for Concrete, Steel, and Bituminous Materials as Used in Construction.

1.1.3. CBC - California Building Code.

1.1.4. UBC - Uniform Building Code.

1.1.5. Title 24, Parts 1 and 2, of the California Code of Regulations. Contractor shall keep a copy of these available at the job Site for ready reference during construction.

1.1.6. DSA - Division of the State Architect, Office of Regulation Services, Structural Safety Section. DSA shall be notified at or before the start of construction.

**1.2. OBSERVATION AND SUPERVISION**

1.2.1. The District and Construction Manager or their appointed representatives will review the Work and the Contractor shall provide facilities and access to the Work at all times as required to facilitate this review. Administration by the Architect and any consulting Structural Engineer will be in accordance with applicable regulations, including, without limitation, 24 C.C.R. §4-341.

1.2.2. One or more Project Inspector(s) approved by DSA and employed by or in contract with the District( "Project Inspector"), will observe the Work in accordance with 24 C.C.R. §§4-333(b) and 4-342:

1.2.3. Project Inspector shall have access to the Work wherever it is in preparation or progress for ascertaining that the Work is in accordance with the Contract Documents and all applicable code sections. Contractor shall provide facilities and access as required and shall provide assistance for sampling or measuring materials.

1.2.3.1. Project Inspector will notify District and Architect and inform Contractor of any observed failure of Work or material to conform to Contract Documents.

1.2.3.2. The Project Inspector shall observe and monitor all testing and inspection activities required.

1.2.4. Contractor shall conform with all applicable laws as indicated in the Contract Documents, including, without limitation, to 24 C.C.R. §4-343. Contractor shall supervise and direct the Work and maintain a competent superintendent on the Project who is authorized to act in all matters pertaining to the Work. The Contractor shall inspect all materials, as they arrive, for compliance with the Contract Documents. Contractor shall reject defective Work or materials immediately upon delivery or failure of the Work or material to comply with the Contract Documents. The Contractor shall submit verified reports as indicated in the Contract Documents, including, without limitation, the Specifications and as required by 24 C.C.R. §4-336.

**1.3. TESTS AND INSPECTIONS**

1.3.1. Contractor shall be responsible for notifying District and Project Inspector of all required tests and inspections. Contractor shall notify District and Project Inspector forty-eight (48) hours in advance of performing any Work requiring testing or inspection.

1.3.2. Contractor shall provide access to Work to be tested and furnish incidental labor, equipment, and facilities to facilitate all inspections and tests.

1.3.3. District will pay for first inspections and tests required by the Title 24 and other inspections or tests that District and/or Architect may direct to have made, including, but not limited to, the following principal items:

1.3.3.1. Tests and observations for earthwork and pavings.

1.3.3.2. Tests for concrete mix designs, including tests of trial batches.

1.3.3.3. Tests and inspections for structural steel work.

1.3.3.4. Field tests for framing lumber moisture content.

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1.3.3.5. Additional tests directed by District that establish that materials and installation comply with the Contract Documents.
1.3.3.6. Test and observation of welding and expansion anchors.
1.3.3.7. Factory observation of components and assembly of modular prefabrication structures and buildings.

1.3.4. District may at its discretion, pay and then back charge Contractor for:
1.3.4.1. Retests or reinspections, if required, and tests or inspection required due to Contractor error or lack of required identifications of material.
1.3.4.2. Uncovering of work in accordance with Contract Documents.
1.3.4.3. Testing done on weekends, holidays, and overtime will be chargeable to Contractor for the overtime portion.
1.3.4.4. Testing done off site.

1.3.5. Testing and inspection reports and certifications:
1.3.5.1. If initially received by Contractor, Contractor shall provide to each of the following a copy of the agency or laboratory report of each test or inspection or certification: District; Construction Manager, if any; Architect; consulting engineer, if any; other engineers on the Project, as appropriate; and the Project Inspector.
1.3.5.2. When the test or inspection is one required by the Title 24, a copy of the report shall also be provided to the DSA.

**1.4. SELECTION AND PAYMENT**

1.4.1. District's hiring of Testing Laboratory shall in no way relieve Contractor of its obligation to perform work in accordance with requirements of Contract Documents.

**1.5. CONTRACTOR RESPONSIBILITIES**

1.5.1. Submit proposed items for testing as required herein and/or as further required in the Contract Documents to Architect for review in accordance with applicable specifications.

1.5.2. Cooperate with Laboratory personnel, and provide access to the Work and to manufacturer's facilities.

1.5.3. Notify Architect, District, and Testing Laboratory 48 hours prior to expected time for operations requiring inspection and testing services.

1.5.4. When tests or inspections cannot be performed after such notice, reimburse District for Laboratory personnel and travel expenses incurred due to the Contractor's negligence.

1.5.5. Contractor shall notify District a sufficient time in advance of the manufacture of material to be supplied by Contractor pursuant to the Contract Documents, which must by terms of the Contract be tested, in order that the District may arrange for the testing of same at the source of supply.
1.5.5.1. Any material shipped by the Contractor from the source of supply prior to having satisfactorily passed such testing and inspection or prior to the receipt of notice that such testing and inspection will not be required shall not be incorporated in the Work.

1.5.6. Contract and pay for services of District's Testing Laboratory to perform additional inspections, sampling and testing required when initial tests indicate Contractor's work and/or materials does not comply with Contract Documents.

1.6. **PROJECT INSPECTOR'S ACCESS TO SITE**

1.6.1. A Project Inspector employed by the District in accordance with the requirement of State of California Code of Regulations, Title 24, Part 1 will be assigned to the Work. Project Inspector's duties are specifically defined in 24. C.C.R. §4-342, and as indicated in the General Construction Provisions (Exhibit D to the Facilities Lease).

1.6.2. District and Construction Manager shall at all times have access for the purpose of inspection to all parts of the Work and to the shops wherein the Work is in preparation, and Contractor shall at all times maintain proper facilities and provide safe access for such inspection.

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1.6.3. The Work in all stages of progress shall be subject to the personal continuous observation of the Inspector. Inspector shall have free access to any or all parts of the Work at any time. Contractor shall furnish the Inspector reasonable facilities for obtaining such information as may be necessary to keep Inspector fully informed respecting the progress and manner of the Work and the character of the materials. Inspection of the Work shall not relieve the Contractor from any obligation set forth in the Contract Documents.

1.6.4. The Inspector is not authorized to change, revoke, alter, enlarge or decrease in any way any requirement of the Contract Documents, drawings, specifications or subsequent change orders.

1.6.5. Whenever there is insufficient evidence of compliance with any of the provisions of Title 24 or evidence that any material or construction does not conform to the requirements of Title 24, the Division of the State Architect may require tests as proof of compliance. Test methods shall be as specified herein or by other recognized and accepted test methods determined by the Division of the State Architect. All tests shall be performed by a testing laboratory accepted by the Division of the State Architect.

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## TEMPORARY FACILITIES AND CONTROLS

**1. GENERAL**

1.1. **LOGISTICS PLAN**

Contractor shall provide to the District for prior approval the Contractor's mobilization and logistics plan for the Site which shall include, at a minimum, the provisions herein.

1.2. **TEMPORARY UTILITIES**

**1.2.1. Electric Power and Lighting**

1.2.1.1. Contractor will furnish and pay for power during the course of the work to the extent power is not in the building(s) or on the Site. Contractor shall be responsible for providing temporary facilities required on the Site to point of intended use.

1.2.1.2. Contractor shall furnish, wire for, install, and maintain temporary electrical lights wherever it is necessary to provide illumination for the proper performance and/or observation of the Work: a minimum of 20 foot-candles for rough work and 50 foot-candles for finish work.

1.2.1.3. Contractor shall be responsible for maintaining existing lighting levels in the Project vicinity should temporary outages or service interruptions occur.

**1.2.2. Heat and Ventilation**

1.2.2.1. Contractor shall provide temporary heat to maintain environmental conditions to facilitate progress of the Work, to meet specified minimum conditions for the installation and curing of materials, and to protect materials and finishes from damage due to improper temperature and humidity conditions. Portable heaters shall be standard units complete with controls.

1.2.2.2. Contractor shall provide forced ventilation and dehumidification, as required, of enclosed areas for proper installation and curing of materials, to disperse humidity, and to prevent accumulations of dust, fumes, vapors, and gases.

1.2.2.3. Contractor shall pay the costs of installation, maintenance, operation, and removal of temporary heat and ventilation, including costs for fuel consumed, required for the performance of the Work.

**1.2.3. Water**

1.2.3.1. Contractor will furnish and pay for water during the course of the work. Contractor shall be responsible for providing temporary facilities required.

1.2.3.2. Contractor shall make potable water available for human consumption.

**1.2.4. Sanitary Facilities**

1.2.4.1. Contractor shall provide sanitary temporary facilities in no fewer numbers than required by law and such additional facilities as may be directed by the Inspector for the use of all workers. The facilities shall be maintained in a sanitary condition at all times and shall be left at the Site until removal is directed by the Project Inspector or Contractor completes all Work.

1.2.4.2. Use of toilet facilities in the Work shall not be permitted except by consent of the Project Inspector and District.

**1.2.5. Telephone and Internet Service**

1.2.5.1. Contractor shall arrange with local telephone and internet service company(ies) for service for the performance of the Work. Contractor shall, at a minimum, provide in all District field offices, one line for telephone and one line for internet access. The phone equipment must include speakerphone, intercom, conference call, flash, redial, call hold and voice mail. Internet speed spec should be 25/25 mbps or faster and WiFi speed specification shall utilize 802.11AC IEE standard or better.

1.2.5.2. Contractor shall pay the costs for internet and telephone lines installation, maintenance, service, and removal; for Construction Site Office, Construction Manager's Office and Inspector's Office.

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**1.2.6. Fire Protection:**

1.2.6.1. Contractor shall provide and maintain fire extinguishers and other equipment for fire protection. Such equipment shall be designated for use for fire protection only and shall comply with all requirements of the California Fire, State Fire Marshall and/or its designee.

1.2.6.2. Where on-site welding and burning of steel is unavoidable, Contractor shall provide protection for adjacent surfaces.

**1.2.7. Custodial Service and Trash Removal:**

Contractor shall provide custodial service and trash removal on a timely basis, not less than weekly for all Site Offices, restroom(s), and the Site.

**1.2.8. Temporary Facilities:**

1.2.8.1. Contractor shall coordinate floor plan and location of electrical, telephone, data outlets with District prior to ordering and delivering the trailer.

1.2.8.2. Contractor shall provide the following minimum facilities, trailers, offices, and services, fully furnished for the exclusive use by the District including desks, chairs, plan tables, etc.:

1.2.8.2.1. One (1) office trailer with two (2) separate offices with windows and lockable doors

1.2.8.2.2. One (1) bathroom

1.2.8.2.3. One (1) conference room with a table and adequate seating for twelve (12)

1.2.8.3. Contractor will provide furnishings in the following quantities, to be set in rooms and position as directed by the District upon delivery:

1.2.8.3.1. **1 per office** rolling mid-back task chairs, with arms

1.2.8.3.2. **1 per office space**: double pedestal metal desks, 29" x 72" x 36", HON or equal

1.2.8.3.3. **1 per office space and in meeting conference area:** metal bookcases, three shelf, 41"x34"x12"

1.2.8.3.4. 1 resin folding table 29"x30"x72"

1.2.8.3.5. 8 padded meeting chairs, Global or equal

1.2.8.3.6. **1 per office:** four drawer, legal size lateral files, HON 500 series or equal

1.2.8.3.7. Provide and install 2 "Plan-Hold" wall-mounted 42" wide plan racks with 36 individual plan holders each

1.2.8.3.8. Provide and install 1 large white board in one conference room, 48" 72"

1.2.8.3.9. Provide and install 1 large tack board in one conference room 48" x 72"

1.2.8.3.10. Provide Canon all-in-one copier, printer, fax and printer, model Image Class MF733CDW or equal, with maintenance plan

**1.3. CONSTRUCTION AIDS**

**1.3.1. Plant and Equipment:**

1.3.1.1. Contractor shall furnish, operate, and maintain a complete plant for fabricating, handling, conveying, installing, and erecting materials and equipment; and for conveyances for transporting workmen. Include elevators, hoists, debris chutes, and other equipment, tools, and appliances necessary for performance of the Work.

1.3.1.2. Contractor shall maintain plant and equipment in safe and efficient operating condition. Damages due to defective plant and equipment, and uses made thereof, shall be repaired by Contractor at no expense to the District.

1.3.2. No District tools or equipment shall be used by Contractor for the performance of the Work.

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**1.4. BARRIERS AND ENCLOSURES**

1.4.1. Contractor shall obtain District's written permission for locations and types of temporary barriers and enclosures, including fire-rated materials proposed for use, prior to their installation.

1.4.2. Contractor shall provide a six (6) foot high, chain link perimeter fence with post driven into the ground and fabric screen as a temporary barrier around construction area. Contractor shall provide and maintain temporary enclosures to prevent public entry and to protect persons using other buildings and portions of the Project Site and/or the School Site. Contractor shall remove temporary fence, barriers and enclosure upon Completion of the Work.

1.4.3. Contractor shall provide site access to existing facilities for persons using other buildings and portions of the Site, the public, and for deliveries and other services and activities.

**1.5. SECURITY**

**1.5.1.** Contractor shall secure all construction equipment, machinery and vehicles, park and store only within fenced area, and render inoperable during non-work hours. Contractor is responsible for insuring that no construction materials, tools, equipment, machinery or vehicles can be used for unauthorized entry or other damage or interference to activities and security of existing facilities adjacent to and in the vicinity of the Project Site(s).

**1.5.2.** Contractor shall provide a security guard located on the Project Site(s) during non-working hours.

**1.6. TEMPORARY CONTROLS**

**1.6.1. Noise Control**

1.6.1.1. Contractor acknowledges that adjacent facilities may remain in operation during all or a portion of the Work, and it shall take all reasonable precautions to minimize noise as required by applicable laws and the Contract Documents.

1.6.1.2. Notice of proposed noisy operations, including without limitation, operation of pneumatic demolition tools, concrete saws, and other equipment, shall be submitted to District a minimum of forty-eight (48) hours in advance of their performance.

**1.6.2. Noise and Vibration**

1.6.2.1. Equipment and impact tools shall have intake and exhaust mufflers.

1.6.2.2. Contractor shall cooperate with District to minimize and/or cease the use of noisy and vibratory equipment if that equipment becomes objectionable by its longevity.

**1.6.3. Dust and Dirt**

1.6.3.1. Contractor shall conduct demolition and construction operations to minimize the generation of dust and dirt, and prevent dust and dirt from interfering with the progress of the Work and from accumulating in the Work and adjacent areas including, without limitation, occupied facilities, and off-site adjacent properties.

1.6.3.2. Contractor shall periodically water exterior demolition and construction areas to minimize the generation of dust and dirt.

1.6.3.3. Contractor shall ensure that all hauling equipment and trucks carrying loads of soil and debris shall have their loads sprayed with water or covered with tarpaulins, and as otherwise required by local and state ordinance.

1.6.3.4. Contractor shall prevent dust and dirt from accumulating on walks, roadways, parking areas, and planting, and from washing into sewer and storm drain lines.

**1.6.4. Water**

Contractor shall not permit surface and subsurface water, and other liquids, to accumulate in or about the vicinity of the School Site. Should accumulation develop, Contractor shall control the water or other liquid, and suitably dispose of it by means of temporary pumps, piping, drainage lines, troughs, ditches, dams, or other methods.

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**1.6.5. Pollution**

1.6.5.1. No burning of refuse, debris, or other materials shall be permitted on or in the vicinity of the School Site.

1.6.5.2. Contractor shall comply with applicable regulatory requirements and anti-pollution ordinances during the conduct of the Work including, without limitation, demolition, construction, and disposal operations.

**1.6.6. Lighting**

If portable lights are used after dark, all light must be located so as not to direct light into neighboring property.

**1.7. JOB SIGN(S)**

**1.7.1. General:**

1.7.1.1. Contractor shall provide and maintain and locate a Project identification sign with the design, text, and colors designated by District and/or the Architect. Sign shall be protected in place and maintained by the Contractor.

1.7.1.2. Signs other than the specified Project sign and or signs required by law, for safety, or for egress, shall not be permitted, unless otherwise approved in advance by the District.

**1.7.2. Materials:**

1.7.2.1. Structure and Framing: Structurally sound, new or used wood or metal; wood shall be nominal 3/4-inch exterior grade plywood.

1.7.2.2. Sign Surface: Minimum 3/4-inch exterior grade plywood.

1.7.2.3. Sign shall be mounted on 4”x4” wooden posts embedded at least thirty six (36) inches into the soil or placed in concrete.

1.7.2.4. Paint: Exterior quality, of type and colors selected by the District and/or the Architect.

**1.7.3. Fabrication:**

1.7.3.1. Contractor shall fabricate to provide smooth, even surface for painting.

1.7.3.2. Size: 4'-0" x 8'-0", unless otherwise indicated.

1.7.3.3. Contractor shall paint exposed surfaces of supports, framing, and surface material with exterior grade paint: one coat of primer and one coat of finish paint.

1.7.3.4. Text and Graphics: As indicated.

**1.8. PUBLICITY RELEASES**

Contractor shall not release any information, story, photograph, plan, or drawing relating information about the Project to anyone, including press and other public communications medium, including, without limitation, on website(s). Contractor shall not bring anyone onto the Project Site(s) during or after construction for the purpose of publicity or marketing without prior written permission of the District.

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**SITE STANDARDS**

**1. GENERAL**

**1.1. REQUIREMENTS OF THE DISTRICT**

**1.1.1. Drug-Free Schools and Safety Requirements:**

1.1.1.1. No drugs, alcohol, smoking or the use of tobacco products are allowed at any time in any buildings, Contractor-owned vehicles or vehicles owned by others while on District property. No students, staff, visitors, or contractors are to use drugs on these sites.

1.1.1.2. Contractor shall post: "Non-Smoking Area" in a highly visible location on Site. Contractor may designate a smoking area outside of District property within the public right-of-way, provided that this area remains quiet and unobtrusive to adjacent neighbors. This smoking area must be kept clean at all times.

1.1.1.3. Contractor shall ensure that no alcohol, firearms, weapons, or controlled substances enter or are used at the Site. Contractor shall immediately remove from the Site and terminate the employment of any employee(s) found in violation of this provision.

1.1.2. **Language**: Unacceptable and/or loud language will not be tolerated, "Cat calls" or other derogatory language toward students or public will not be allowed.

**1.1.3. Disturbing the Peace (Noise and Lighting):**

1.1.3.1. Contractor shall observe the noise ordinance of the Site at all times including, without limitation, all applicable local, city, and/or state laws, ordinances, and/or regulations regarding noise and allowable noise levels.

1.1.3.2. District reserves the right to prohibit the use of radios at the Site, except for handheld communication radios.

1.1.3.3. If portable lights are used after dark, the lights must be located so as not to direct light into neighboring properties.

1.1.4. **Traffic**:

1.1.4.1. Driving on the School Site shall be limited to periods when students and public are not present. If driving or deliveries must be made during the school hours, two (2) or more ground guides shall lead the vehicle across the area of travel. In no case shall driving take place across playgrounds or other pedestrian paths during recess, lunch, and/or class period changes. The speed limit on-the School Site shall be five (5) miles per hour (maximum) or less if conditions require. Contractor shall not have any deliveries to the Project during the hour before school begins at the Site and during the half hour after school ends at the Site without prior written permission from the Construction Manager or the District.

1.1.4.2. All paths of travel for deliveries, including without limitation, material, equipment, and supply deliveries, shall be reviewed and approved by District in advance.

1.1.4.3. District shall designate a construction entry to the Site. If Contractor requests, District determines it is required, and to the extent possible, District shall designate a staging area so as not to interfere with the normal functioning of school facilities. Location of gates and fencing shall be approved in advance with District and at Contractor's expense.

1.1.4.4. Parking areas shall be reviewed and approved by District in advance. No parking is to occur under the drip line of trees or in areas that could otherwise be damaged.

1.1.4.5. All of the above shall be observed and complied with by the Contractor and all workers on the Site. Failure to follow these directives could result in individual(s) being suspended or removed from the work force at the discretion of the District. The same rules and regulations shall apply equally to delivery

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personnel, inspectors, consultants, and other visitors to the Site.

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## TEMPORARY TREE AND PLANT PROTECTION

**WHERE SUBSTANTIAL TREE PROTECTION WILL BE REQUIRED ON THE SITE, OBTAIN AN ARBORIST TO REVIEW THIS DOCUMENT PRIOR TO CONSTRUCTION.**

**1. GENERAL**

**1.1. SUMMARY**

This Document includes the protection and trimming of existing trees that interfere with, or are affected by, execution of the Work, whether temporary or permanent construction.

**1.2. DEFINITIONS**

Tree Protection Zone: Area surrounding individual trees or groups of trees to remain during construction, and defined by the drip line of individual trees or the perimeter drip line of groups of trees, unless otherwise indicated.

**1.3. SUBMITTALS**

1.3.1. Product Data: For each type of product indicated.

1.3.2. Tree Pruning Schedule: Written schedule from arborist detailing scope and extent of pruning of trees to remain that interfere with or are affected by construction.

1.3.3. Qualification Data: For tree service firm and arborist.

1.3.4. Certification: From arborist, certifying that trees indicated to remain have been protected during construction according to recognized standards and that trees were promptly and properly treated and repaired when damaged.

1.3.5. Maintenance Recommendations: From arborist, for care and protection of trees affected by construction during and after completing the Work.

**1.4. QUALITY ASSURANCE**

1.4.1. Tree Service Firm Qualifications: An experienced tree service firm that has successfully completed tree protection and trimming work similar to that required for this Project and that will assign an experienced, qualified arborist to Project Site(s) during execution of tree protection and trimming.

1.4.2. Arborist Qualifications: An arborist certified by ISA (International Society of Arboriculture) or licensed in the jurisdiction where Project is located.

1.4.3. Tree Pruning Standard: Comply with ANSI A300 (Part 1), "Tree, Shrub, and Other Woody Plant Maintenance--Standard Practices (Pruning)."

1.4.3.1. Before tree protection and trimming operations begin, meet with District to review tree protection and trimming procedures and responsibilities.

**2. PRODUCTS**

**2.1. MATERIALS**

2.1.1. Drainage Fill: Selected crushed stone, or crushed or uncrushed gravel, washed, ASTM D 448, Size 24, with 90 to 100 percent passing a 2-1/2-inch (63-mm) sieve and not more than 10 percent passing a 3/4-inch (19-mm) sieve.

2.1.2. Topsoil: Natural or cultivated surface-soil layer containing organic matter and sand, silt, and clay particles; friable, pervious, and black or a darker shade of brown, gray, or red than underlying subsoil; reasonably free of subsoil, clay lumps, gravel, and other objects more than 1 inch (25 mm) in diameter; and free of weeds, roots, and toxic and other nonsoil materials.

2.1.2.1. Obtain topsoil only from well-drained sites where topsoil is 4 inches (100 mm) deep or more; do not obtain from bogs or marshes.

2.1.3. Filter Fabric: Manufacturer's standard, nonwoven, pervious, geotextile fabric of polypropylene, nylon, or polyester fibers.

2.1.4. Chain-Link Fence: Metallic-coated steel chain-link fence fabric of 0.120-inch- (3-mm-) diameter wire; a minimum of 48 inches (1200 mm) high; with 1.9-inch- (48-mm-) diameter line posts; 2-3/8-inch- (60-mm-) diameter terminal and corner posts; 1-5/8-inch- (41-mm-) diameter top rail; and 0.177-inch- (4.5-mm-) diameter bottom tension wire; with tie wires, hog ring ties, and other accessories for a complete fence system.

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2.1.5. Select mulch as recommended by arborist or landscape architect.
2.1.6. Organic Mulch: Use shredded hardwood, ground or shredded bark, or wood and bark chips, all free of deleterious materials.

**3. EXECUTION**

**3.1. PREPARATION**

3.1.1. Temporary Fencing: Install temporary fencing around tree protection zones to protect remaining trees and vegetation from construction damage. Maintain temporary fence and remove when construction is complete.
3.1.2. Install chain-link fence according to ASTM F 567 and manufacturer's written instructions.
3.1.3. Protect tree root systems from damage caused by runoff or spillage of noxious materials while mixing, placing, or storing construction materials. Protect root systems from ponding, eroding, or excessive wetting caused by dewatering operations.
3.1.4. Mulch areas inside tree protection zones and other areas indicated.
3.1.4.1. Select mulch as recommended by arborist or landscape architect.
3.1.4.2. Apply 2-inch (50-mm) to 3-inch (75-mm) average thickness of organic mulch. Do not place mulch within 6 inches (150 mm)] of tree trunks.
3.1.5. Do not store construction materials, debris, or excavated material inside tree protection zones. Do not permit vehicles or foot traffic within tree protection zones; prevent soil compaction over root systems.
3.1.6. Maintain tree protection zones free of weeds and trash.
3.1.7. Do not allow fires within tree protection zones.

**3.2. EXCAVATION**

3.2.1. Install shoring or other protective support systems to minimize sloping or benching of excavations where construction or utility excavation is near trees to be protected.
3.2.2. Do not excavate within tree protection zones, unless otherwise indicated.
3.2.3. Where excavation for new construction is required within tree protection zones, hand clear and excavate to minimize damage to root systems. Use narrow-tine spading forks and comb soil to expose roots.
3.2.3.1. Do not allow exposed roots to dry out before placing permanent backfill. Provide temporary earth cover or pack with peat moss and wrap with burlap. Water and maintain in a moist condition. Temporarily support and protect roots from damage until they are permanently relocated and covered with soil.
3.2.4. Where utility trenches are required within tree protection zones, tunnel under or around roots by drilling, auger boring, pipe jacking, or digging by hand.
3.2.4.1. Root Pruning: Do not cut main lateral roots or taproots; cut only smaller roots that interfere with installation of utilities. Cut roots with sharp pruning instruments; do not break or chop.

**3.3. REGRADING**

3.3.1. Grade Lowering: Where new finish grade is indicated below existing grade around trees, slope grade beyond tree protection zones. Maintain existing grades within tree protection zones.
3.3.2. Grade Lowering: Where new finish grade is indicated below existing grade around trees, slope grade away from trees as recommended by arborist, unless otherwise indicated.
3.3.2.1. Root Pruning: Prune tree roots exposed during grade lowering. Do not cut main lateral roots or taproots; cut only smaller roots. Cut roots with sharp pruning instruments; do not break or chop.
3.3.3. Minor Fill: Where existing grade is 6 inches (150 mm) or less below elevation of finish grade, fill with topsoil. Place topsoil in a single uncompacted layer and hand grade to required finish elevations.
3.3.4. Moderate Fill: Where existing grade is more than 6 inches (150 mm) but less than 12 inches (300 mm) below elevation of finish grade, place drainage fill, filter fabric, and

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topsoil on existing grade as follows:

3.3.4.1. Carefully place drainage fill against tree trunk approximately 2 inches (50 mm) above elevation of finish grade and extend not less than 18 inches (450 mm) from tree trunk on all sides. For balance of area within drip-line perimeter, place drainage fill up to 6 inches (150 mm) below elevation of grade.

3.3.4.2. Place filter fabric with edges overlapping 6 inches (150 mm) minimum.

3.3.4.3. Place fill layer of topsoil to finish grade. Do not compact drainage fill or topsoil. Hand grade to required finish elevations.

**3.4. TREE PRUNING**

3.4.1. Prune trees to remain that are affected by temporary and permanent construction.

3.4.2. Prune trees to remain to compensate for root loss caused by damaging or cutting root system. Provide subsequent maintenance during Contract period as recommended by arborist.

3.4.3. Pruning Standards: Prune trees according to ANSI A300 (Part 1), as recommended by arborist report.

3.4.4. Adjust pruning requirements per arborist's recommendations.

3.4.5. Cut branches with sharp pruning instruments; do not break or chop.

3.4.6. Modify below to specific project requirements.

3.4.7. Chip removed tree branches and dispose of or spread over areas identified by District.

**3.5. TREE REPAIR AND REPLACEMENT**

3.5.1. Promptly repair trees damaged by construction operations within 24 hours. Treat damaged trunks, limbs, and roots according to arborist's written instructions.

3.5.2. Remove and replace trees indicated to remain that die or are damaged during construction operations or that are incapable of restoring to normal growth pattern.

3.5.2.1. Provide new trees of 6-inch (150-mm) caliper size and of a when damaged trees more than 6 inches (150 mm) in caliper size, measured 12 inches (300 mm) above grade, are required to be replaced. Plant and maintain new trees as specified in Contract Documents.

3.5.3. Where recommended by arborist report, aerate surface soil, compacted during construction, 10 feet (3 m) beyond drip line and no closer than 36 inches (900 mm) to tree trunk. Drill 2-inch (50-mm) diameter holes a minimum of 12 inches (300 mm) deep at 24 inches (600 mm) o.c. Backfill holes with an equal mix of augered soil and sand.

**3.6. DISPOSAL OF WASTE MATERIALS**

3.6.1. Burning is not permitted.

3.6.2. Disposal: Remove excess excavated material and displaced trees from Site.

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**STORM WATER POLLUTION PREVENTION PLAN – CONSTRUCTION**

**PURSUANT TO THE PROVISIONS OF EXHIBIT D AND THE CONTRACT DOCUMENTS, CONTRACTOR SHALL PERFORM THE WORK OF THE PROJECT RELATED TO BEING THE DISTRICT'S QUALIFIED SWPPP (STORM WATER POLLUTION PREVENTION PLAN) PRACTITIONER ("QSP"). THE CONTRACTOR SHALL COMPLY WITH THE FOLLOWING PROVISIONS AND THE SWPPP. IF THE SWPPP CONTAINS OTHER MORE DETAILED OR CONFLICTING PROVISIONS AND/OR REQUIRES THE CONTRACTOR TO TAKE OTHER ACTIONS OR ACTIVITIES, THE CONTRACTOR MUST COMPLY WITH THE SWPPP.**

1. **INTRODUCTION**

1.1. In order to enroll in the construction storm water permit and before construction activities begin, the District will file certain submittals referred to as Permit Registration Documents (PRDS) with the Regional Water Quality Control Board.

2. **GENERAL**

The Clean Water Act and Porter Cologne Water Quality Act prohibit the discharge of any water containing pollutants from certain construction sites unless a National Pollutant Discharge Elimination System permit is first obtained and followed. The National Pollutant Discharge Elimination System General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities ( Construction Storm Water Permit) Order No. 2009-0009-DWQ as amended by Order No. 2010-0014-DWQ (NPDES No. CAS000002) issued by the California State Water Resources Control Board (State Water Board) authorizes the discharge of storm water and certain non-storm water from construction sites if certain conditions and measures are taken. The District has determined that the construction of this Project requires enrollment in the Construction Storm Water Permit.

3. **SUBMITTALS**

**3.1. GENERAL**

All submittals shall be made in a form conducive for the District to electronically upload the approved submittals to the Storm water Multi-Application Reporting and Tracking System (SMARTS).

**3.2. RAIN EVENT ACTION PLAN (REAP)**

3.2.1. A Rain Event Action Plan (REAP) is a written document, specific for each rain event. A REAP should be designed that when implemented it protects all exposed portions of the site within 48 hours of any likely. The General Permit requires Risk Level 2 and 3 dischargers to develop and implement a REAP designed to protect all exposed portions of their sites within 48 hours prior to any likely precipitation event. The REAP requirement is designed to ensure that the discharger has adequate materials, staff, and time to implement erosion and sediment control measures that are intended to reduce the amount of sediment and other pollutants generated from the active site. A REAP must be developed when there is likely a forecast of 50% or greater probability of precipitation in the project area. (The National Oceanic and Atmospheric Administration (NOAA) defines a chance of precipitation as a probability of precipitation of 30% to 50% chance of producing precipitation in the project area.14 NOAA defines the probability of precipitation (PoP) as the likelihood of occurrence (expressed as a percent) of a measurable amount (0.01 inch or more) of liquid precipitation (or the water equivalent of frozen precipitation) during a specified period of time at any given point in the forecast area.) Forecasts are normally issued for 12- hour time periods.

3.2.2. If the District's QSD determines that the site is a Risk Level 2 or 3 the Contractor's QSP shall prepare the REAP for the Work in compliance with the General Permit and the SWPPP.

**3.3. RECORDS**

All electronic and hardcopy records required by the Construction Storm Water Permit shall be submitted to the District within seven (7) Days of Completion of the Project.

4. **PERMIT REGISTRATION DOCUMENTS**

Prior to any activities on Site that disturb the Site's surface, the Permit Registration Documents (PRDs) required by the Construction Storm Water Permit must be filed with the Regional Water Quality Control Board. The District shall file the PRDs with the Regional Water Quality Control Board to activate coverage under the Construction

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Storm Water Permit.

5. **IMPLEMENTATION REQUIREMENTS**

5.1. Contractor shall not conduct any activities that may affect the Site's construction runoff water quality until the District provides Contractor with the Waste Discharger Identification Number (WDID) assigned to this Project by the State Water Board.

5.2. Contractor shall keep a copy of the approved SWPPP at the job site. The SWPPP shall be made available when requested by a representative of the Regional Water Quality Control Board, State Water Resources Control Board, United States Environmental Protection Agency, or the local storm water management agency. Requests from the public shall be directed to the District for response.

5.3. Contractor shall designate in writing to the District a Qualified SWPPP Practitioner (QSP) who shall be responsible for implementing the SWPPP, REAP (if applicable), ATS (if applicable), conducting non-storm water and storm water visual observations, and for ensuring that all best management practices (BMPs) required by the SWPPP and General Permit are properly implemented and maintained.

5.4. All measures required by the SWPPP shall be implemented concurrent with the commencement of construction. Pollution practices and devices shall be followed or installed as early in the construction schedule as possible with frequent upgrading of devices as construction progresses.

5.5. Contractor shall ensure that all measures are properly maintained and repaired to protect the water quality of discharges.

6. **INSPECTION, SAMPLING, ANALYSIS, AND RECORD KEEPING REQUIREMENTS**

The Contractor's QSP shall conduct all required visual observations, sampling, analysis, reporting, and record keeping required by the SWPPP and the Construction Storm Water Permit.

7. **REPORTING REQUIREMENTS**

Contractor shall prepare and provide all the reports, which include, but are not limited to the Annual Report and any NEL Violation Reports or NAL Exceedance Reports, all of which are required by the SWPPP and the Construction Storm Water Permit.

8. **ANNUAL REPORT**

By August 1 of each year (defined as July 1 to June 30) that had at least one continuous three (3) month period coverage under the General Permit, Contractor shall complete and submit to the District an Annual Report, as required by the General Permit. If the Project is complete prior to August 1, Contractor shall submit the report prior to acceptance of the Project.

9. **COMPLETION OF WORK**

9.1. Clean-up shall be performed as each portion of the work progresses. All refuse, excess material, and possible pollutants shall be disposed of in a legal manner off-site and all temporary and permanent SWPPP devices shall be in place and maintained in good condition.

9.2. At Completion of Work, Contractor shall inspect installed SWPPP devices, and present the currently implemented SWPPP with all backup records to the District.

10. **NOTICE OF TERMINATION (NOT)**

A Notice of Termination (NOT) must be submitted by the Contractor to the District for electronic submittal by the Legally Responsible Person via SMARTS to terminate coverage under the General Permit. The NOT must include a final Site Map and representative photographs of the Project Site(s) that demonstrate final stabilization has been achieved. The NOT shall be submitted to the District on or before the Contractor submits its final application for payment. If the Regional Water Board rejects the NOT for any reason, the Contractor shall revise the NOT as many times as necessary to get the Regional Water Board's approval. The Regional Water Board will consider a construction site complete when the conditions of the General Permit, Section II.D have been met.

11. **QUALITY ASSURANCE**

11.1. Before performing any of the obligations indicated herein, the Contractor's QSP shall meet the training and certification requirements in the Construction Storm Water Permit.

11.2. Contractor shall perform the Work in strict compliance with the approved SWPPP, REAP, ATS, and the Construction Storm Water Permit.

11.3. Contractor shall conduct at least a one-hour training session on the requirements of the SWPPP for each employee before an employee conducts any construction on the Site. Contractor shall

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maintain documentation of this employee training at the site for review by the District or any regulatory agency.

12. **PERFORMANCE REQUIREMENTS**

12.1. The Storm Water Pollution Prevention Plan is a minimum requirement. Revisions and modifications to the SWPPP are acceptable only if they maintain levels of protection equal to or greater than originally specified.

12.2. Read and be thoroughly familiar with all of the requirements of the SWPPP.

12.3. Inspect and monitor all work and storage areas for compliance with the SWPPP prior to any anticipated rain.

12.4. Complete any and all corrective measures as may be directed by the regulatory agency.

12.5. **Penalties**: Contractor shall pay any fees and any penalties that may be imposed by the regulatory agency for non-compliance with SWPPP during the course of Work.

12.6. **Costs**: Contractor to pay all costs associated with the implementation of the requirements of the SWPPP in order to maintain compliance with the Permit. This includes installation of all Housekeeping BMPs, General Site and Material Management BMPs, Inspection requirements, maintenance requirements, and all other requirements specified in the SWPPP.

13. **MATERIALS**

All temporary and permanent storm water pollution prevention facilities, equipment, and materials as required by or as necessary to comply with the SWPPP as described in the BMP Handbook.

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## MATERIALS AND EQUIPMENT

**1. GENERAL**

**1.1. MATERIAL AND EQUIPMENT**

1.1.1. Only items approved by the District and/or Architect shall be used.

1.1.2. Contractor shall submit lists of Products and other Product information in accordance with the Contract Documents, including, without limitation, the provisions regarding the submittals.

**1.2. MATERIAL AND EQUIPMENT COLORS**

1.2.1. The Contractor shall comply with all schedule(s) of colors provided by the District and/or Architect.

1.2.2. No individual color selections will be made until after approval of all pertinent materials and equipment and after receipt of appropriate samples in accordance with the Contract Documents, including, without limitation, the provisions regarding the submittals.

1.2.3. Contractor shall request priority in writing for any item requiring advance ordering to maintain the approved Construction Schedule.

**1.3. DELIVERY, STORAGE, AND HANDLING**

1.3.1. Contractor shall deliver manufactured materials in original packages, containers, or bundles (with seals unbroken), bearing name or identification mark of manufacturer.

1.3.2. Contractor shall deliver fabrications in as large assemblies as practicable; where specified as shop-primed or shop-finished, package or crate as required to preserve such priming or finish intact and free from abrasion.

1.3.3. Contractor shall store materials in such a manner as necessary to properly protect them from damage. Materials or equipment damaged by handling, weather, dirt, or from any other cause will not be accepted.

1.3.4. Except for items that the District has approved, in writing, for Contractor to store off-site, all materials are not be acceptable that have been warehoused for long periods of time, stored or transported in improper environment, improperly packaged, inadequately labeled, poorly protected, excessively shipped, deviated from normal distribution pattern, or reassembled.

1.3.5. Contractor shall store material so as to cause no obstructions of sidewalks, roadways, and underground services. Contractor shall protect material and equipment furnished pursuant to the Contract Documents.

1.3.6. Contractor may store materials on Site with prior written approval by the District, all material shall remain under Contractor's control and Contractor shall remain liable for any damage to the materials. Should the Project Site(s) not have storage area available, the Contractor shall provide for off-site storage at no cost to District.

1.3.7. When any room in Project is used as a shop or storeroom, the Contractor shall be responsible for any repairs, patching, or cleaning necessary due to that use. Location of storage space shall be subject to prior written approval by District.

**2. PRODUCTS**

**2.1. MANUFACTURERS**

2.1.1. Manufacturers listed in various sections of Contract Documents are names of those manufacturers that are believed to be capable of supplying one or more of items specified therein.

2.1.2. The listing of a manufacturer does not imply that every product of that manufacturer is acceptable as meeting the requirements of the Contract Documents.

**2.2. FACILITIES AND EQUIPMENT**

Contractor shall provide, install, maintain, and operate a complete and adequate facility for handling, the execution, disposal, and distribution of material and equipment as required for proper and timely performance of Work.

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**2.3. MATERIAL REFERENCE STANDARDS**

Where material is specified solely by reference to "standard specifications" and if requested by District, Contractor shall submit for review data on actual material proposed to be incorporated into Work, listing name and address of vendor, manufacturer, or producer, and trade or brand names of those materials, and data substantiating compliance with standard specifications.

**3. EXECUTION**

**3.1. WORKMANSHIP**

3.1.1. Where not more specifically described in any other Contract Documents, workmanship shall conform to methods and operations of best standards and accepted practices of trade or trades involved and shall include items of fabrication, construction, or installation regularly furnished or required for completion (including finish and for successful operation, as intended).

3.1.2. Work shall be executed by tradespersons skilled in their respective field of work. When completed, parts shall have been durably and substantially built and present a neat appearance.

**3.2. COORDINATION**

3.2.1. Contractor shall coordinate installation of materials and equipment so as to not interfere with installation of other work. Adjustment or rework because of Contractor's failure to coordinate will be at no additional cost to District.

3.2.2. Contractor shall examine in-place materials and equipment for readiness, completeness, fitness to be concealed or to receive Work , and compliance with Contract Documents. Concealing or covering work constitutes acceptance of additional cost which will result should in-place materials and equipment be found unsuitable for receiving other work or otherwise deviating from the requirements of the Contract Documents.

**3.3. COMPLETENESS**

Contractor shall provide all portions of the Work, unless clearly stated otherwise, installed complete and operational with all elements, accessories, anchorages, utility connections, etc., in manner to assure well-balanced performance, in accordance with manufacturer's recommendations and in accordance with Contract Documents. For example, electric water coolers require water, electricity, and drain services; roof drains require drain system; sinks fit within countertop, etc. Terms such as "installed complete," "operable condition," "for use intended," "connected to all utilities," "terminate with proper cap," "adequately anchored," "patch and refinish," "to match similar," should be assumed to apply in all cases, except where completeness of functional or operable condition is specifically stated as not required.

**3.4. APPROVED INSTALLER OR APPLICATOR**

Contractor shall ensure that all installations are only performed by a manufacturer's approved installer or applicator.

**3.5. MANUFACTURER'S RECOMMENDATIONS**

All installations shall be in accordance with manufacturer's published recommendations and specific written directions of manufacturer's representative. Should Contract Documents differ from recommendations of manufacturer or directions of manufacturer's representative, Contractor shall analyze differences, make recommendations to the District and the Architect in writing, and shall not proceed until interpretation or clarification has been issued by the District and/or the Architect.

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## DELIVERY, STORAGE AND HANDLING

**1. GENERAL**

**1.1. PRODUCTS**

1.1.1. Products are as defined in the General Construction Provisions (Exhibit D to the Facilities Lease).

1.1.2. Contractor shall not use and/or reuse materials and/or equipment removed from existing School Site, except as specifically permitted by the Contract Documents.

1.1.3. Contractor shall provide interchangeable components of the same manufacturer, for similar components.

**1.2. TRANSPORTATION AND HANDLING**

1.2.1. Contractor shall transport and handle Products in accordance with manufacturer's instructions.

1.2.2. Contractor shall promptly inspect shipments to confirm that Products comply with Contract requirements, are of correct quantity, and are undamaged.

1.2.3. Contractor shall provide equipment and personnel to properly handle Products to prevent soiling, disfigurement, or damage.

**1.3. STORAGE AND PROTECTION**

1.3.1. Contractor shall store and protect Products in accordance with manufacturer's instructions, with seals and labels intact and legible. Contractor shall store sensitive Products in weather-tight, climate controlled enclosures.

1.3.2. Contractor shall place fabricated Products that are stored outside, on above-ground sloped supports.

1.3.3. Contractor shall provide off-site storage and protection for Products when Site does not permit on-site storage or protection.

1.3.4. Contractor shall cover Products subject to deterioration with impervious sheet covering and provide ventilation to avoid condensation.

1.3.5. Contractor shall store loose granular materials on solid flat surfaces in a well-drained area and prevent mixing with foreign matter.

1.3.6. Contractor shall provide equipment and personnel to store Products by methods to prevent soiling, disfigurement, or damage.

1.3.7. Contractor shall arrange storage of Products to permit access for inspection and periodically inspect to assure Products are undamaged and are maintained under specified conditions.

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## CONTRACT CLOSEOUT AND FINAL CLEANING

**1. GENERAL**

**1.1. CLOSEOUT PROCEDURES**

Contractor shall comply with all closeout provisions as indicated in the General Construction Provisions (Exhibit D to the Facilities Lease).

**1.2. FINAL CLEANING**

1.2.1. Contractor shall execute final cleaning prior to final inspection.

1.2.2. Contractor shall clean interior and exterior glass and surfaces exposed to view; remove temporary labels, tape, stains, and foreign substances, polish transparent and glossy surfaces, wax and polish new vinyl floor surfaces, vacuum carpeted and soft surfaces.

1.2.3. Contractor shall clean equipment and fixtures to a sanitary condition.

1.2.4. Contractor shall replace filters of operating equipment.

1.2.5. Contractor shall clean debris from roofs, gutters, down spouts, and drainage systems.

1.2.6. Contractor shall clean Site, sweep paved areas, and rake clean landscaped surfaces.

1.2.7. Contractor shall remove waste and surplus materials, rubbish, and construction facilities from the Site.

**1.3. ADJUSTING**

Contractor shall adjust operating products and equipment to ensure smooth and unhindered operation.

**1.4. RECORD DOCUMENTS AND SHOP DRAWINGS**

Contractor shall legibly mark each item to record actual construction, including:

1.4.1. Measured depths of foundation in relation to finish floor datum.

1.4.2. Measured horizontal and vertical locations of underground utilities and appurtenances, referenced to permit surface improvements.

1.4.3. Measured locations of internal utilities and appurtenances concealed in construction, referenced to visible and accessible features of the Work.

1.4.4. Field changes of dimension and detail.

1.4.5. Details not on original Contract Drawings

1.4.6. Changes made by modification(s).

1.4.7. References to related Shop Drawings and modifications.

1.4.8. Contractor will provide one set of Record Drawings to District in an electronic format and one set on paper.

1.4.9. Contractor shall submit all required documents to District and/or Architect prior to or with its final Application for Payment.

**1.5. INSTRUCTION OF DISTRICT PERSONNEL**

1.5.1. Before final inspection, at agreed upon times, Contractor shall instruct District's designated personnel in operation, adjustment, and maintenance of products, equipment, and systems.

1.5.2. For equipment requiring seasonal operation, Contractor shall perform instructions for other seasons within six (6) months.

1.5.3. Contractor shall use operation and maintenance manuals as basis for instruction. Contractor shall review contents of manual with personnel in detail to explain all aspects of operation and maintenance.

1.5.4. Contractor shall prepare and insert additional data in Operation and Maintenance Manual when need for such data becomes apparent during instruction.

1.5.5. Contractor shall use operation and maintenance manuals as basis for instruction. Contractor shall review contents of manual with personnel in detail to explain all aspects of operation and maintenance.

1.5.6. Contractor shall be available for up to two (2) four-hour sessions of additional training of District personnel at any time within the first year of operation of the Site.

**1.6. SPARE PARTS AND MAINTENANCE MATERIALS**

1.6.1. Contractor shall provide products, spare parts, maintenance, and extra materials in

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quantities specified in the Specifications and in Manufacturer's recommendations.

1.6.2. Contractor shall provide District all required Operation and Maintenance Data.

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## FIELD ENGINEERING

**1. GENERAL**

**1.1. REQUIREMENTS INCLUDED**

1.1.1. Contractor shall provide and pay for field engineering services by a California-registered engineer, required for the Project, including, without limitations:

1.1.1.1. Survey work required in execution of the Project.

1.1.1.2. Civil or other professional engineering services specified, or required to execute Contractor's construction methods.

**1.2. QUALIFICATIONS OF SURVEYOR OR ENGINEERS**

Contractor shall only use a qualified licensed engineer or registered land surveyor, to whom District makes no objection.

**1.3. SURVEY REFERENCE POINTS**

1.3.1. Existing basic horizontal and vertical control points for the Project are those designated on the Drawings.

1.3.2. Contractor shall locate and protect control points prior to starting Site Work and preserve all permanent reference points during construction. In addition Contractor shall:

1.3.2.1. Make no changes or relocation without prior written notice to District and Architect.

1.3.2.2. Report to District and Construction Manager when any reference point is lost or destroyed, or requires relocation because of necessary changes in grades or locations.

1.3.2.3. Require surveyor to replace Project control points based on original survey control that may be lost or destroyed.

**1.4. RECORDS**

Contractor shall maintain a complete, accurate log of all control and survey work as it progresses.

**1.5. SUBMITTALS**

1.5.1. Contractor shall submit name and address of Surveyor and Professional Engineer to District and Construct Manager prior to its/their work on the Project.

1.5.2. On request of District and Construction Manager, Contractor shall submit documentation to verify accuracy of field engineering work, at no additional cost to the District.

1.5.3. Contractor shall submit a certificate signed by registered engineer or surveyor certifying that elevations and locations of improvements are in conformance or nonconformance with Contract Documents.

**2. EXECUTION**

**2.1. COMPLIANCE WITH LAWS**

Contractor is responsible for meeting all applicable codes, OSHA, safety and shoring requirements.

**2.2. NONCONFORMING WORK**

Contractor is responsible for any re-surveying required by correction of nonconforming work.

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## CUTTING AND PATCHING

**1. GENERAL**

**1.1. CUTTING AND PATCHING**

1.1.1. Contractor shall be responsible for all cutting, fitting, and patching, including associated excavation and backfill, required to complete the Work or to:

1.1.1.1. Make several parts fit together properly.

1.1.1.2. Uncover portions of Work to provide for installation of ill-timed Work.

1.1.1.3. Remove and replace defective Work.

1.1.1.4. Remove and replace Work not conforming to requirements of Contract Documents.

1.1.1.5. Remove Samples of installed Work as specified for testing.

1.1.1.6. Provide routine penetrations of non-structural surfaces for installation of piping and electrical conduit.

1.1.1.7. Attaching new materials to existing remodeling areas – including painting (or other finishes) to match existing conditions.

1.1.2. In addition to Contract requirements, upon written instructions from District, Contractor shall uncover Work to provide for observations of covered Work in accordance with the Contract Documents; remove samples of installed materials for testing as directed by District; and remove Work to provide for alteration of existing Work.

1.1.3. Contractor shall not cut or alter Work, or any part of it, in such a way that endangers or compromises the integrity of the Work, the Project, or work of others.

1.1.4. Contractor shall not cut and patch operating elements and safety related components in a manner that results in reducing their capacity to perform as intended or that results in increased maintenance or decreased operational life or safety. Operating elements include the following:

1.1.4.1. Primary operational systems and equipment.

1.1.4.2. Air or smoke barriers.

1.1.4.3. Fire-suppression systems.

1.1.4.4. Mechanical systems piping and ducts.

1.1.4.5. Control systems.

1.1.4.6. Communication systems.

1.1.4.7. Conveying systems.

1.1.4.8. Electrical wiring systems.

1.1.5. Contractor shall not cut and patch miscellaneous elements or related components in a manner that could change their load-carrying capacity, that results in reducing capacity to perform as intended, or that results in increased maintenance or decreased operational life of safety. Miscellaneous elements include the following:

1.1.5.1. Water, moisture or vapor barriers.

1.1.5.2. Membranes and flashings.

1.1.5.3. Exterior curtain-wall construction.

1.1.5.4. Equipment supports.

1.1.5.5. Piping, ductwork, vessels and equipment.

1.1.5.6. Noise and vibration control elements and systems.

1.1.5.7. Shoring, bracing and sheeting.

**1.2. SUBMITTALS**

1.2.1. Contractor shall submit written notice to District pursuant to the applicable notice provisions of the Contract Documents, requesting consent to proceed with the cutting or alteration (Request) at least ten (10) Days prior to any cutting or alterations that may affect the structural safety of Project, or work of others, including the following:

1.2.1.1. The work of the District or other trades.

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1.2.1.2. Structural value or integrity of any element of Project.
1.2.1.3. Integrity or effectiveness of weather-exposed or weather-resistant elements or systems.
1.2.1.4. Efficiency, operational life, maintenance or safety of operational elements.
1.2.1.5. Visual qualities of sight-exposed elements.

1.2.2. Contractor's Request shall also include:
1.2.2.1. Identification of Project.
1.2.2.2. Description of affected Work.
1.2.2.3. Necessity for cutting, alteration, or excavations.
1.2.2.4. Affects of Work on District, other trades, or structural or weatherproof integrity of Project.
1.2.2.5. Description of proposed Work:
1.2.2.5.1. Scope of cutting, patching, alteration, or excavation.
1.2.2.5.2. Trades that will execute Work.
1.2.2.5.3. Products proposed to be used.
1.2.2.5.4. Extent of refinishing to be done.
1.2.2.6. Alternates to cutting and patching.
1.2.2.7. Cost proposal, when applicable.
1.2.2.8. The scheduled date the Contractor intends to perform the Work and the duration of time to complete the Work.
1.2.2.9. Written permission of other trades whose Work will be affected.

**1.3. QUALITY ASSURANCE**

1.3.1. Contractor shall ensure that cutting, fitting, and patching shall achieve security, strength, weather protection, appearance for aesthetic match, efficiency, operational life, maintenance, safety of operational elements, and the continuity of existing fire ratings.

1.3.2. Contractor shall ensure that cutting, fitting, and patching shall successfully duplicate undisturbed adjacent profiles, materials, textures, finishes, colors, and that materials shall match existing construction. Where there is dispute as to whether duplication is successful or has been achieved to a reasonable degree, the District's decision shall be final.

**1.4. PAYMENT FOR COSTS**

1.4.1. Cost caused by ill-timed or defective Work or Work not conforming to Contract Documents, including costs for additional services of the District, its consultants, including but not limited to the Construction Manager, the Architect, the Project Inspector(s), Engineers, and Agents, will be paid by Contractor and/or deducted from the Contract by the District.

1.4.2. District shall only pay for cost of Work if it is part of the original Contract Price or if a change has been made to the contract in compliance with the provisions of the General Construction Provisions (Exhibit D to the Facilities Lease). Cost of Work performed upon instructions from the District, other than defective or nonconforming Work, will be paid by District on approval of written Change Order. Contractor shall provide written cost proposals prior to proceeding with cutting and patching.

**2. PRODUCTS**

**2.1. MATERIALS**

2.1.1. Contractor shall provide for replacement and restoration of Work removed. Contractor shall comply with the Contract Documents and with the Industry Standard(s), for the type of Work, and the Specification requirements for each specific product involved. If not specified, Contractor shall first recommend a product of a manufacturer or appropriate trade association for approval by the District.

2.1.2. Materials to be cut and patched include those damaged by the performance of the Work.

**3. EXECUTION**

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**3.1. INSPECTION**

3.1.1. Contractor shall inspect existing conditions of the Site and the Work, including elements subject to movement or damage during cutting and patching, excavating and backfilling. After uncovering Work, Contractor shall inspect conditions affecting installation of new products.

3.1.2. Contractor shall report unsatisfactory or questionable conditions in writing to District as indicated in the General Construction Provisions (Exhibit D to the Facilities Lease) and shall proceed with Work as indicated in the General Construction Provisions (Exhibit D to the Facilities Lease) by District.

**3.2. PREPARATION**

3.2.1. Contractor shall provide shoring, bracing and supports as required to maintain structural integrity for all portions of the Project, including all requirements of the Project.

3.2.2. Contractor shall provide devices and methods to protect other portions of Project from damage.

3.2.3. Contractor shall, provide all necessary protection from weather and extremes of temperature and humidity for the Project, including without limitation, any work that may be exposed by cutting and patching Work. Contractor shall keep excavations free from water.

**3.3. ERECTION, INSTALLATION AND APPLICATION**

3.3.1. With respect to performance, Contractor shall:

3.3.1.1. Execute fitting and adjustment of products to provide finished installation to comply with and match specified tolerances and finishes.

3.3.1.2. Execute cutting and demolition by methods that will prevent damage to other Work, and provide proper surfaces to receive installation of repairs and new Work.

3.3.1.3. Execute cutting, demolition excavating, and backfilling by methods that will prevent damage to other Work and damage from settlement.

3.3.1.4. Contractor shall employ original installer or fabricator to perform cutting and patching for:

3.3.1.5. Weather-exposed surfaces and moisture-resistant elements such as roofing, sheet metal, sealants, waterproofing, and other trades.

3.3.1.6. Sight-exposed finished surfaces.

3.3.2. Contractor shall execute fitting and adjustment of products to provide a finished installation to comply with specified products, functions, tolerances, and finishes as shown or specified in the Contract Documents including, without limitation, the Drawings and Specifications.

3.3.3. Contractor shall fit Work airtight to pipes, sleeves, ducts, conduit, and other penetrations through surfaces. Contractor shall conform to all Code requirements for penetrations or the Drawings and Specifications, whichever calls for a higher quality or more thorough requirement. Contractor shall maintain integrity of both rated and non-rated fire walls, ceilings, floors, etc.

3.3.4. Contractor shall restore Work which has been cut or removed. Contractor shall install new products to provide completed Work in accordance with requirements of the Contract Documents and as required to match surrounding areas and surfaces.

3.3.5. Contractor shall refinish all continuous surfaces to nearest intersection as necessary to match the existing finish to any new finish.

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## OPERATION AND MAINTENANCE DATA

**1. GENERAL**

**1.1. QUALITY ASSURANCE**

Contractor shall prepare instructions and data by personnel experienced in maintenance and operation of described products.

**1.2. FORMAT**

1.2.1. Contractor shall prepare data in the form of an instructional manual entitled "OPERATIONS AND MAINTENANCE MANUAL & INSTRUCTIONS" ("Manual").

1.2.2. Binders: Contractor shall use commercial quality, 8-1/2 by 11 inch, three-side rings, with durable plastic covers; two inch maximum ring size. When multiple binders are used, Contractor shall correlate data into related consistent groupings.

1.2.3. Cover: Contractor shall identify each binder with typed or printed title "OPERATION AND MAINTENANCE MANUAL & INSTRUCTIONS"; and shall list title of Project and identify subject matter of contents.

1.2.4. Contractor shall arrange content by systems process flow under section numbers and sequence of Table of Contents of the Contract Documents.

1.2.5. Contractor shall provide tabbed fly leaf for each separate Product and system, with typed description of Product and major component parts of equipment.

1.2.6. Text: The content shall include Manufacturer's printed data, or typewritten data on 24 pound paper.

1.2.7. Drawings: Contractor shall provide with reinforced punched binder tab and shall bind in with text; folding larger drawings to size of text pages.

**1.3. CONTENTS, EACH VOLUME**

1.3.1. Table of Contents: Contractor shall provide title of Project; names, addresses, and telephone numbers of the Architect, any engineers, subconsultants, Subcontractor(s), and Contractor with name of responsible parties; and schedule of Products and systems, indexed to content of the volume.

1.3.2. For Each Product or System: Contractor shall list names, addresses, and telephone numbers of Subcontractor(s) and suppliers, including local source of supplies and replacement parts.

1.3.3. Product Data: Contractor shall mark each sheet to clearly identify specific Products and component parts, and data applicable to installation. Delete inapplicable information.

1.3.4. Drawings: Contractor shall supplement Product data to illustrate relations of component parts of equipment and systems, to show control and flow diagrams. Contractor shall not use Project Record Documents as maintenance drawings.

1.3.5. Text: The Contractor shall include any and all information as required to supplement Product data. Contractor shall provide logical sequence of instructions for each procedure, incorporating manufacturer's instructions.

**1.4. MANUAL FOR MATERIALS AND FINISHES**

1.4.1. Building Products, Applied Materials, and Finishes: Contractor shall include Product data, with catalog number, size, composition, and color and texture designations. Contractor shall provide information for re-ordering custom manufactured Products.

1.4.2. Instructions for Care and Maintenance: Contractor shall include Manufacturer's recommendations for cleaning agents and methods, precautions against detrimental agents and methods, and recommended schedule for cleaning and maintenance.

1.4.3. Moisture Protection and Weather Exposed Products: Contractor shall include Product data listing applicable reference standards, chemical composition, and details of installation. Contractor shall provide recommendations for inspections, maintenance, and repair.

1.4.4. Additional Requirements: Contractor shall include all additional requirements as specified in the Specifications.

1.4.5. Contractor shall provide a listing in Table of Contents for design data, with tabbed fly

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sheet and space for insertion of data.

**1.5. MANUAL FOR EQUIPMENT AND SYSTEMS**

1.5.1. Each Item of Equipment and Each System: Contractor shall include description of unit or system, and component parts and identify function, normal operating characteristics, and limiting conditions. Contractor shall include performance curves, with engineering data and tests, and complete nomenclature, and commercial number of replaceable parts.

1.5.2. Panelboard Circuit Directories: Contractor shall provide electrical service characteristics, controls, and communications.

1.5.3. Contractor shall include color coded wiring diagrams as installed.

1.5.4. Operating Procedures: Contractor shall include start-up, break-in, and routine normal operating instructions and sequences. Contractor shall include regulation, control, stopping, shut-down, and emergency instructions. Contractor shall include summer, winter, and any special operating instructions.

1.5.5. Maintenance Requirements: Contractor shall include routine procedures and guide for trouble-shooting; disassembly, repair, and reassembly instructions; and alignment, adjusting, balancing, and checking instructions.

1.5.6. Contractor shall provide servicing and lubrication schedule, and list of lubricants required.

1.5.7. Contractor shall include manufacturer's printed operation and maintenance instructions.

1.5.8. Contractor shall include sequence of operation by controls manufacturer.

1.5.9. Contractor shall provide original manufacturer's parts list, illustrations, assembly drawings, and diagrams required for maintenance.

1.5.10. Contractor shall provide control diagrams by controls manufacturer as installed.

1.5.11. Contractor shall provide Contractor's coordination drawings, with color coded piping diagrams as installed.

1.5.12. Contractor shall provide charts of valve tag numbers, with location and function of each valve, keyed to flow and control diagrams.

1.5.13. Contractor shall provide list of original manufacturer's spare parts, current prices, and recommended quantities to be maintained in storage.

1.5.14. Additional Requirements: Contractor shall include all additional requirements as specified in Specification(s).

1.5.15. Contractor shall provide a listing in Table of Contents for design data, with tabbed fly sheet and space for insertion of data.

**1.6. SUBMITTAL**

1.6.1. Concurrent with the Submittal Schedule as indicated in the General Construction Provisions (Exhibit D to the Facilities Lease), Contractor shall submit to the District for review two (2) copies of a preliminary draft of proposed formats and outlines of the contents of the Manual.

1.6.2. For equipment, or component parts of equipment put into service during construction and to be operated by District, Contractor shall submit draft content for that portion of the Manual within ten (10) Days after acceptance of that equipment or component.

1.6.3. On or before the Contractor submits its final application for payment, Contractor shall submit two (2) copies of a complete Manual in final form. The District will provide comments to Contractor and Contractor must revise the content of the Manual as required by District prior to District's approval of Contractor's final Application for Payment.

1.6.4. Contractor must submit two (2) copies of revised Manual in final form within ten (10) Days after receiving District's comments. Failure to do so will be a basis for the District withholding funds sufficient to protect itself for Contractor's failure to provide a final Manual to the District. All final documents to be concurrently provided to the District in an electronic format.

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## WARRANTIES

**1. GENERAL**

**1.1. FORMAT**

1.1.1. Binders: Contractor shall use commercial quality, 8-1/2 by 11 inch, three-side rings, with durable plastic covers; two inch maximum ring size.

1.1.2. Cover: Contractor shall identify each binder with typed or printed title "WARRANTIES" and shall list title of Project.

1.1.3. Table of Contents: Contractor shall provide title of Project; name, address, and telephone number of Contractor and equipment supplier, and name of responsible principal. Contractor shall identify each item with the number and title of the specific Specification, document, provision, or section in which the name of the Product or work item is specified.

1.1.4. Contractor shall separate each warranty with index tab sheets keyed to the Table of Contents listing, providing full information and using separate typed sheets as necessary. Contractor shall list each applicable and/or responsible Subcontractor(s), supplier(s), and/or manufacturer(s), with name, address, and telephone number of each responsible principal(s).

**1.2. PREPARATION**

1.2.1. Contractor shall obtain warranties, executed in duplicate by each applicable and/or responsible subcontractor(s), supplier(s), and manufacturer(s), within ten (10) Days after completion of the applicable item or work. Except for items put into use with District's permission, Contractor shall leave date of beginning of time of warranty until the date of completion is determined.

1.2.2. Contractor shall verify that warranties are in proper form, contain full information, and are notarized, when required.

1.2.3. Contractor shall co-execute submittals when required.

1.2.4. Contractor shall retain warranties until time specified for submittal.

**1.3. TIME OF SUBMITTALS**

1.3.1. For equipment or component parts of equipment put into service during construction with District's permission, Contractor shall submit a draft warranty for that equipment or component within ten (10) Days after acceptance of that equipment or component.

1.3.2. On or before the Contractor submits its final application for payment, Contractor shall submit all warranties and related documents in final form. The District will provide comments to Contractor and Contractor must revise the content of the warranties as required by District prior to District's approval of Contractor's final Application for Payment.

1.3.3. For items of Work that are not completed until after the date of Completion, Contractor shall provide an updated warranty for those item(s) of Work within ten (10) Days after acceptance, listing the date of acceptance as start of warranty period.

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## RECORD DOCUMENTS

**1. RECORD DRAWINGS**

**1.1. GENERAL**

1.1.1. "Record Drawings" may also be referred to in the Contract as "As-Built Drawings."

1.1.2. As indicated in the Contract Documents, District will provide Contractor with one set of reproducible plans of the original Contract Drawings.

1.1.3. Contractor shall maintain at each Project Site(s) one (1) set of marked-up plans and shall transfer all changes and information to those marked-up plans, as often as required in the Contract Documents, but in no case less than once each month. Contractor shall submit to the Project Inspector one set of the Project Record Drawings ("As-Builts") showing all changes incorporated into the Work since the preceding monthly submittal. The As-Builts shall be available at the Project Site(s). The Contractor shall submit reproducible documents at the conclusion of the Project following review of the red-lined prints.

1.1.4. Label and date each Record Drawing "RECORD DOCUMENT" in legibly printed letters.

1.1.5. All deviations in construction, including but not limited to pipe and conduit locations and deviations caused by without limitation Change Orders, Construction Directives, RFI's, and Addenda, shall be accurately and legibly recorded by Contractor

1.1.6. Locations and changes shall be done by Contractor in a neat and legible manner and, where applicable, indicated by drawing a "cloud" around the changed or additional information.

**1.2. RECORD DRAWING INFORMATION**

1.2.1. Contractor shall record the following information:

1.2.1.1. Locations of Work buried under or outside each building, including, without limitation, all utilities, plumbing and electrical lines, and conduits.

1.2.1.2. Actual numbering of each electrical circuit.

1.2.1.3. Locations of significant Work concealed inside each building whose general locations are changed from those shown on the Contract Drawings.

1.2.1.4. Locations of all items, not necessarily concealed, which vary from the Contract Documents.

1.2.1.5. Installed location of all cathodic protection anodes.

1.2.1.6. Deviations from the sizes, locations, and other features of installations shown in the Contract Documents.

1.2.1.7. Locations of underground work, points of connection with existing utilities, changes in direction, valves, manholes, catch basins, capped stubouts, invert elevations, etc.

1.2.1.8. Sufficient information to locate Work concealed in each building with reasonable ease and accuracy.

1.2.2. In some instances, this information may be recorded by dimension. In other instances, it may be recorded in relation to the spaces in the building near which it was installed.

1.2.3. Contractor shall provide additional drawings as necessary for clarification.

1.2.4. Contractor shall provide reproducible record drawings, made from final Shop Drawings marked "No Exceptions Taken" or "Approved as Noted."

**2. RECORD SPECIFICATIONS**

Contractor shall mark each section legibly to record manufacturer, trade name, catalog number, and supplier of each Product and item of equipment actually installed.

**3. MAINTENANCE OF RECORD DOCUMENTS**

**3.1.** Contractor shall store Record Documents apart from documents used for construction as follows:

3.1.1. Provide files and racks for storage of Record Documents.

3.1.2. Maintain Record Documents in a clean, dry, legible condition and in good order.

**3.2.** Contractor shall not use Record Documents for construction purposes.

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## COMMISSIONING

**1. RELATED DOCUMENTS AND PROVISIONS**

Contractor shall review all Contract Documents for applicable provisions related to the provisions in this document, including without limitation:

**1.1.** LEED Certification Sustainable Design Requirements.

**2. SUMMARY**

**2.1.** Commissioning is a process for validating and documenting that the facility and its systems are constructed and perform in conformity with the Contract Documents.

**2.2.** The objective of the commissioning process is to verify that the performance of the facility and its systems meet or exceed the design intent.

**2.3.** Commissioning includes special facility start-up processes used to bring the facility to a fully operational state, free of deficiencies in an efficient and timely manner.

**2.4.** Training on related systems and equipment operation and maintenance shall be scheduled to commence only after start-up is complete and systems are verified to be 100% complete and functional.

**3. DESCRIPTION**

The following applies to all Contract Documents:

**3.1.** **Contractor Startup**: Sub-phase of Contractor's work ending with Acceptance of Work, during which Contractor performs a pre-planned program of activities including starting, testing, inspecting, adjusting balancing, correcting deficiencies and other similar activities.

3.1.1. The District, Construction Manager and Architect and the Inspector shall be present to observe, inspect and identify deficiencies in building systems operations.

**3.2.** The completion of startup means the entire Construction Project including startup and fine tuning has been performed to the requirements of the Contract Documents and is verified in writing by the District, Construction Manager and Architect.

**3.3.** **Fine Tuning**: Fine tuning is the responsibility of Contractors after District occupancy and ending one (1) year after District occupancy. During this time, the Contractor is responsible for optimizing systems and correcting deficiencies arising under normal operating conditions.

3.3.1. Includes a period after occupancy where systems are optimized under "live" operating conditions and any outstanding construction deficiencies are corrected.

3.3.2. Fine Tuning shall extend from date of District occupancy to one year after occupancy.

**4. DEFINITION OF TERMS**

**4.1.** **Contractor's Pre-Commissioning Checklists**: Includes installation and start-up items as specified to be completed by the appropriate contractors prior to operational verification through the functional testing process.

**4.2.** **Installation Verification Process**: Includes the on-site inspection and review of related system components for conformance to Contract Documents. The Contractor shall verify systems readiness for functional testing procedures prior to the start of functional testing. Deficiencies will be documented by the Inspector for future resolution.

**4.3.** **Functional Performance Testing Process**: Includes the documented testing of system parameters, under actual or simulated operating conditions. Final performance commissioning of systems will begin only after the appropriate Contractor certifies that systems are 100% complete and ready for functional testing. The Contractor will be required to schedule, coordinate and perform device tests, calibration and functional performance test procedures.

**4.4.** **Deficiencies and Resolutions List:** Includes a list of noted deficiencies discovered as a result of the commissioning process. This list also includes the current disposition of issues, and the date of final resolution as confirmed by the Construction Manager and Inspector. Deficiencies are defined as those issues where products execution or performance does not satisfy the Project Contract Documents and/or the design intent.

**5. COMMISSIONING SCHEDULE**

**5.1.** Provide schedules for Contractor Start-Up work.

**5.2.** Incorporate in overall construction schedule.

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**5.3.** Contractor's activities, which will be performed as specified under Fine Tuning, shall be completed within one (1) year from date of occupancy by the District.

**6. CONTRACTOR RESPONSIBILITIES**

**6.1.** Provide utility services required for the commissioning process.

**6.2.** Contractor is responsible for construction means, methods, job safety, and/or management function related to commissioning on the Project Site.

**6.3.** Contractor shall assign representatives with expertise and authority to act on behalf of Contractor and schedule the representatives to participate in and perform commissioning team activities including, but not limited to, the following:

6.3.1. Participate in design and construction-phase coordination meetings.
6.3.2. Participate in maintenance orientation and inspection.
6.3.3. Participate in operation and maintenance training sessions.
6.3.4. Participate in final review.
6.3.5. Certify that Work is complete and systems are operational according to the Contract Documents, including calibration of instrumentation and controls.
6.3.6. Evaluate performance deficiencies identified in test reports and, in collaboration with entity responsible for system and equipment installation, recommend corrective action.
6.3.7. Review and comment on final commissioning documentation.

**6.4.** Contractor shall integrate all commissioning activities into Contractor's Construction Schedule.

**6.5.** Contractor's Subcontractors shall assign representatives with expertise and authority to act on behalf of subcontractors and schedule the representatives to participate in and perform commissioning team activities including, but not limited to, the following:

6.5.1. Participate in design and construction-phase coordination meetings.
6.5.2. Participate in maintenance orientation and inspection.
6.5.3. Participate in procedures meeting for testing.
6.5.4. Participate in final review.
6.5.5. Provide schedule for operation and maintenance data submittals, equipment startup, and testing to Commissioning Authority for incorporation into the commissioning plan. Update schedule on a weekly basis throughout the construction period.
6.5.6. Provide information to the Commissioning Authority for developing construction phase commissioning plan.
6.5.7. Participate in training sessions for District's operation and maintenance personnel.
6.5.8. Provide updated Project Record Documents to Commissioning Authority on a daily basis.
6.5.9. Gather and submit operation and maintenance data for systems, subsystems, and equipment to the Commissioning Authority, as specified in Division 01 Document "Operation and Maintenance Data."
6.5.10. Provide technicians who are familiar with the construction and operation of installed systems, who shall execute the test procedures developed by the Commissioning Authority, and who shall participate in testing of installed systems, subsystems, and equipment.

**7. SUBMITTALS**

**7.1.** Submit Draft and Final Contractor Start-up Forms as described in this Document. Submit Draft Report for Construction Manager and Architect's review and comment prior to Final Submission. Submit Final Report not later than twenty weeks before scheduled date of Acceptance of Work.

**7.2.** Prepare and submit one copy of report form to be used in preparation of system reports for:

7.2.1. Food Service Equipment.
7.2.2. Gymnasium Equipment and Scoreboards
7.2.3. Laboratory Fume Hoods
7.2.4. Elevators
7.2.5. Each mechanical system specified in Division 15.
7.2.6. Each Electrical system specified in Division 16.

**7.3.** Each System Report shall be submitted including the following:

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7.3.1. Project Name
7.3.2. Name of System
7.3.3. Index of report's content
7.3.4. Adjacent to list of equipment, columns to indicate status of equipment operation, to date and to sign off equipment start-up.
7.3.5. Space to record equipment and operational problems which cannot be corrected with scheduled Contractor Start-Up program and which may delay Acceptance of Work.
7.3.6. Manufacturer's equipment start-up reports.
7.3.7. Systems' testing, balancing, and adjusting reports.
7.3.8. Equipment Report Forms shall include the following: Project name, name of equipment, starting and testing procedures to be performed and observations and test results to be recorded.

**8. QUALITY ASSURANCE**

**8.1.** Training Instructor Qualifications: Contractor shall provide factory-authorized service representatives, experienced in training, operation, and maintenance procedures for installed systems, subsystems, and equipment.

**8.2.** Test Equipment Calibration: Comply with test equipment manufacturer's calibration procedures and intervals. Recalibrate test instruments (per NIST requirements if applicable) immediately whenever instruments have been repaired following damage or dropping. Affix calibration tags to test instruments. Instruments shall have been calibrated within six months prior to use.

**9. EQUIPMENT & SYSTEM SCHEDULE**

The following equipment shall be commissioned in this Project:

| System | Equipment | Note | Req'd by LEED |
|---|---|---|---|
| HVAC System | Chillers | | X |
| | Boilers | | X |
| | Pumps | | X |
| | Cooling towers | | X |
| | Variable frequency drives | | X |
| | Air handlers | | X |
| | Packaged AC units | | X |
| | Terminal units for Office areas | 2 | X |
| | Unit heaters | | X |
| | Heat exchangers | | X |
| | Exhaust fans | | X |
| | Supply fans | | X |
| | Return fans | | X |
| Building Management System | Sequences of Operation, Monitored Points, and Alarms | | X |
| | Metering/Monitoring Devices and Equipment | | X |
| | Software Commissioning, GUI presentation commissioning, system access performance criteria, software tools/source code commissioning, instrument data sheets, middleware commissioning, Internet Protocol commissioning | | |
| Electrical System | Sweep or scheduled lighting controls | 2 | X |
| | Daylight dimming controls | | X |
| | Lighting occupancy sensors | | X |
| | Electrical grounding | | |

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| | | | |
|---|---|---|---|
| Plumbing System | Domestic water heaters | | X |
| Security Alarm Systems | Security cameras and monitoring system personal duress alarm system; Intercom system; Paging System. | | |
| **System** | **Equipment** | **Note** | **Req'd by LEED** |
| Security Electronics | Security plumbing fixture water management system. | | |
| | Door Controls. | | |
| | Fire alarm system. | | |
| | Distributed radio antenna system. | | |
| | Access control system. | | |
| Courtroom Systems | Room acoustics. | | |
| | Sound masking system. | | |
| | Assisted listening. | | |
| | Video projection. | | |
| | Audio system. | | |
| | Lighting and lighting controls. | | X |
| Fire/Life Safety Systems | All devices | | |
| | Alarm drivers | | |
| | HVAC/Fire System Integration | | |
| | Event Notifying and Reporting Systems | | |
| Communication System | | | |

**9.1. SYSTEM FAILURES**

**9.2.** After a second failure of a system to successfully meet the criteria as set for in the functional performance testing process, the Contractor shall reimburse the District for cost associated with any additional retesting required due to uncorrected deficiencies. Costs shall include salary, benefits, overhead, travel costs and per diem lodging costs if applicable.

| | | | |
|---|---|---|---|
| | | | |
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**EXHIBIT J**
**TO FACILITIES LEASE**

**PLANS, TECHNICAL SPECIFICATIONS, AND DRAWINGS**

**[IF PLANS ARE FINAL – PROVIDE A COMPLETE LIST OF ALL PLANS, TECHNICAL SPECS, AND OTHER DRAWINGS]**

**OR**

**[INCLUDE IF CONTRACTOR PERFORMS PRELIMINARY SERVICES AND PARTIES AMEND FOR GPC]: IF THE PARTIES AGREE TO A GUARANTEED PROJECT COST AND AMEND THE CONTRACT, THE PARTIES SHALL ALSO AMEND THIS EXHIBIT AND INCLUDE THE PLANS, TECHNICAL SPECIFICATIONS, AND DRAWINGS FOR THE PROJECT PURSUANT TO THE CONTRACT.**

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**EXHIBIT K**
**TO FACILITIES LEASE**

**REVISIONS TO CONTRACT DOCUMENTS**

# [MUST BE REVISED / SPECIFIED FOR EACH PROJECT]

# FACILITIES LEASE

**[OPTIONAL]: The following provisions are added to Section 4.4 of the Facilities Lease:**

**(Operating School):** The phasing plan shall be as follows:

- _____
- _____
- _____

**(No Work During Student Testing):** The following dates and times apply to this section:

- Each January: Two (2) days (Finals)
- Each March: Two (2) days (CAHSEE)
- Each June: Two (2) days (Finals)
- Each April - May: Ten (10) days (STAR and AP)

# EXHIBIT D TO FACILITIES LEASE

**[OPTIONAL]: Add the following to Section 5.2.1 of Exhibit D to the Facilities Lease**

The minimum staffing for the Project shall be a competent:

- Project Manager,
- Full-time Construction Superintendent on each active component/project,
- Project Engineer, and
- Project Administrator

Contractor shall provide with its proposal the name and resume for each specific individual that it is proposing for each position. Those persons shall be made available for interviews with the District, if requested.

**[OPTIONAL]: Add the following as Section 5.6.3 to Exhibit D to the Facilities Lease**

5.6.3. **Terms for Early Purchase Items**

5.6.3.1. **Early Purchase Item(s).** The term "**Early Purchase Item(s)**" means the material(s) and equipment identified below that are to be purchased early by Contractor on the terms set forth In this section and in the quantities and at the price here:

| EQUIPMENT AND MATERIAL | QUANTITY | PRICE |
|---|---|---|
| [Insert Name of Item] | X | $X,XXX |
| | X | $X,XXX |
| | X | $X,XXX |

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| | | |
|---|---|---|
| | X | $X,XXX |
| | X | $X,XXX |
| | **TOTAL COST** | **$XX,XXX** |

5.6.3.1. **Early Purchase Price (Total Purchase Price).** The term "**Early Purchase Price**" means the individual cost for any one (1) Early Purchase Item, and the term "**Total Early Purchase Price**" means the "Total Cost" of the Early Purchase Items identified above.

5.6.3.2. **Notice & Evidence of Order.** The District may, in its sole and absolute discretion, direct Contractor to purchase an Early Purchase Item(s) by issuing a written notice to purchase the Early Purchase Item(s) ("**Early Purchase Notice**"). Within **THREE (3)** calendar days of the issuance of the Early Purchase Notice, Contractor shall provide the District with a purchase order, bill of sale, bill of lading, invoice, or any other document identifying Contractor and/or its subcontractor as the title owner to Early Purchase Item(s) ("**Purchase Documentation**").

5.6.3.3. **Proof of Receipt of Early Purchase Item.** Upon delivery of the Early Purchase Item(s) to Contractor, whether at the Project site or off-site, Contractor shall provide the District with verifiable documentation of the receipt of any Early Purchase Item(s) in the form of photographs specifically identifying:

5.6.3.3.1. The Early Purchase Item(s);
5.6.3.3.2. The serial number(s) of each Early Purchase Item(s); and/or
5.6.3.3.3. Other indicia authenticating the Early Purchase Item(s).

5.6.3.4. **Total Compensation.** The District shall pay Contractor for the Early Purchase Item(s) an amount **not to exceed** the Total Early Purchase Price. District shall pay Contractor for the Early Purchase Item(s) on the terms set forth below (each, a "**Early Purchase Payment**"):

5.6.3.4.1. **Upon Proof of Purchase (50%).** District shall pay Contractor **Fifty-Percent** (**50%**) of the Early Purchase Price for each Early Purchase Item identified in the Purchase Documentation, upon the District's receipt of the Purchase Documentation.

5.6.3.4.2. **Upon Delivery (25%).** District shall pay Contractor **Twenty-Five Percent** (**25%**) of the Early Purchase Price for each Early Purchase Item identified in the Purchase Documentation, upon delivery of the Early Purchase Item(s) to the Project site, or, if stored off-site, upon delivery of the Early Purchase Item(s) to the location for off-site storage.

5.6.3.4.3. **Upon Installation (20%).** After the issuance of a Notice to Proceed for Construction Work the District shall pay Contractor **Twenty Percent** (**20%**) of the Early Purchase Price for each Early Purchase Item identified in the Purchase Documentation when:

5.6.3.4.3.1. Contractor completes installation of the Early Purchase item;
5.6.3.4.3.2. The installation is approved by the IOR and/ or Architect; and
5.6.3.4.3.3. The District approves the Application for Payment of documenting the complete installation of the Early Purchase Item(s).

5.6.3.4.4. **Retention.** District shall retain **Five Percent** (**5%**) of the amount owed to Contractor from each Early Purchase Payment. Retention shall be released

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when the Contractor achieves Completion of the Project consistent with the terms of **Exhibit D** to the Facilities Lease.

5.6.3.5. **Schedule of Values.** When Contractor prepares its Schedule of Values for construction of the Project, Contractor shall include a line item(s) for each Early Purchase Item consistent with the requirements **Exhibit D** to the Facilities Lease.

5.6.3.6. **Storage and Related Requirements.**

5.6.3.6.1. Contractor's obligations to store the Early Purchase Item(s) shall comply with all requirements for storage of equipment and materials in **Exhibit D** to the Facilities Lease.

5.6.3.6.2. If Contractor intends to store off-site any Early Purchase Item(s), Contractor shall comply with all requirements related to off-site storage in **Exhibit D** to the Facilities Lease.

5.6.3.6.3. In addition to the insurance requirements of the Contract, Contractor shall ensure that its policies of insurance comply with all requirements for protecting District property set forth in **Exhibit D** to the Facilities Lease.

5.6.3.7. **No Adjustment to the Contract Price or Contract Time.** Contractor expressly agrees and acknowledges that this process for the early purchase of equipment and materials herein is a contractual mitigation measure to avoid increased costs and to avoid delay(s) to the construction of the Project. The District's consent to this process hereunder shall in no way entitle the Contractor to an increase in the Guaranteed Project Cost or an extension of the Contract Time after the issuance of the Notice to Proceed for construction of the Project, unless otherwise permitted, and consistent with the requirements of, **Exhibit D** to the Facilities Lease.

**[OPTIONAL]: Section 5.12.21.6 of Exhibit D to the Facilities Lease**

**Health & Safety.** This provision includes additional requirements related to the Contractor's responsibility related to the health of its workers and to the procedures it must follow related to COVID-19, and is in addition to the requirements already indicated in the Contract Documents including, without limitation, in the Agreement and the General Conditions.

**[INCLUDE ALL DISTRICT-SPECIFIC, BOARD-APPROVED PROVISIONS, RESTRICTIONS, REQUIREMENTS, ETC., THAT CONTRACTORS ON SITE MUST COMPLY WITH.]**

**Article 10 – Add the following to "CONTRACTOR'S SUBMITTALS AND SCHEDULES"**

| Item | Description | Due Date |
|---|---|---|
| Construction Schedule | Must be in Microsoft Project or Primavera or Equivalent | Within 30 Days of District's Notice to Proceed. |
| Schedule of Values | With all the detail as required in Exhibit D. | Prior to the District's approval of the Contractor's first Application for Tenant Improvement Payment |
| Shop Drawings | | Within 30 Days of District's Notice to Proceed. |
| Safety Plan | | Within 30 Days of District's Notice to Proceed. |
| Complete Subcontractor List | | Within 30 Days of District's Notice to Proceed. |

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| | | |
|---|---|---|
| Logistics Plan | | Within 30 Days of District's Notice to Proceed. |

**Section 14.2**: The number of days that must be exceeded to claim extra time for "Adverse Weather":
[**ALTERNATIVELY: THE DISTRICT AND CONTRACTOR MAY NEGOTIATE A CUMULATIVE NUMBER OF DAYS FOR THE DURATION OF THE PROJECT.**]

| | | | |
|---|---|---|---|
| January | **7** | July | **0** |
| February | **7** | August | **0** |
| March | **4** | September | **0** |
| April | **3** | October | **2** |
| May | **1** | November | **2** |
| June | **1** | December | **2** |

END OF DOCUMENT

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**EXHIBIT L**
**TO FACILITIES LEASE**

**AGREEMENT FOR PRELIMINARY SERVICES**

This Agreement for Preliminary Services ("**Agreement**") dated _____, 20_____ ("**Effective Date**"), is made and entered into by and between the **@District** ("**District**") and **@Contractor** ("**Contractor**") (together, the "**Parties**").

**WHEREAS**, the District's Governing Board, in order to enable the District to utilize the lease-leaseback delivery method for future construction projects, adopted procedures for a fair and impartial solicitation process to evaluate qualifications and proposals to determine which proposer provides the "best value" pursuant to Education Code section 17406(a)(2) ("**Lease-Leaseback Procedures**"); and

**WHEREAS**, Education Code section 17406(a)(1) permits the District to utilize the lease-leaseback delivery method to enter into a lease whereby the District leases the project site to the contractor to construct the project, and the contractor then leases the project site back to the District; and

**WHEREAS,** prior to entering into the lease to construct the project, Education Code section 17406(b)(1) permits the District to enter into a contract for the performance of preliminary services before the Division of the State Architect ("**DSA**") approves the plans and specifications for a project so long as the contractor does not perform any services for which a contractor's license is required; and

**WHEREAS,** consistent with the Lease-Leaseback Procedures, the District issued a request for qualifications and proposals ("**RFQ/P**") to solicit proposals from qualified firms to perform both preliminary services and construction services for the District's **@ProjectName** ("**Project**"), and through the RFQ/P the District intended to award both the performance of preliminary phase services and construction phases services to the successful contractor; and

**WHEREAS**, after receiving and scoring the proposals, the District determined that the Contractor presented the District the "best value" to the District and the District's Governing Board awarded the Project to the Contractor; and

**WHEREAS,** the District seeks to have the Contractor perform preliminary services as more fully described in **Attachment A** attached hereto ("**Preliminary Services**") pursuant to Education Code section 17406(b)(1), and the Contractor represents that it is able and qualified to perform Preliminary Services for the Lease-Leaseback Project prior to the Contractor providing construction phase services; and

**WHEREAS,** after the Contractor performs Preliminary Services, the Parties acknowledge that Contractor shall procure subcontractors, propose a Guaranteed Maximum Price / Guaranteed Project Cost ("**GMP**" or "**GPC**"), and the Parties shall enter into a Site Lease and Facilities Lease for the construction of the Lease-Leaseback Project based on the Contractor's response to the RFQ/P.

**AGREEMENT**

**NOW, THEREFORE**, for good and sufficient consideration, receipt of which is acknowledged, the Parties agree as follows:

1. **One Project.** The Parties agree and acknowledge that consistent with the RFQ/P and relevant law, the District's intention is to award this Agreement and then the Lease-Leaseback Contract for the Project to the Contractor, all as one continuous project. Even so, if the Parties cannot agree on a GPC for the Lease-Leaseback Contract at the conclusion of the Preliminary Services, the District reserves the right to contract with another contractor to construct the Project.

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2. **Part of the Facilities Lease.** The Parties acknowledge that this Agreement is **Exhibit L** to the Facilities Lease for the Project. The Facilities Lease was part of the RFQ/P for the Project and Contractor agreed to the Facilities Lease as to Form. The Facilities Lease and this Agreement shall be read collectively as one and document. Any reference herein to a term, provision, or exhibit in the Facilities Lease shall be read as incorporating that provision herein by reference, including, without limitation, the Subcontractor Procurement Process in **Exhibit H,** even if the Parties have yet to execute the Facilities Lease. If the Parties agree to a GPC, this Agreement shall become **Exhibit L** to the Facilities Lease.

3. **Services**.

   3.1. The Contractor shall provide the services as described in **Attachment A,** attached hereto and incorporated herein by this reference ("**Services**" or "**Work**"). The scope of services will generally consist of the following:

   **Contractor shall perform Preliminary Services for the Project upon the District's issuance of a Notice to Proceed consistent with the Schedule.**

   3.2. Notwithstanding any provision contained in the Facilities Lease or this Agreement, Contractor shall not perform any Preliminary Services for which a Contractor is required to be licensed pursuant to Article 5 (commencing with Section 7065) of Chapter 9, Division 3 of the Business and Professions Code and/or for which DSA approval is required unless and until the District receives DSA approval for the Project.

4. **Project.** The "Project" as used in this Agreement is Contractor's performance of Services at or in connection with _____ School, _____, as further described in the Scope of Work for Preliminary Services attached hereto as **Attachment A**.

5. **Term**. Unless terminated or otherwise cancelled as permitted herein, the term of this Agreement shall be for the duration of the Services provided under this Agreement consistent with the Schedule.

   5.1. **Notice to Proceed**. Within a reasonable time after the Parties execute this Agreement, the District shall issue a Notice to Proceed to Contractor at which time Contractor shall commence the performance of the Services.

   5.2. **Schedule**. The schedule for the Preliminary Services is as follows ("**Schedule**"):

   5.2.1. Contractor shall commence the Preliminary Services on or before the date indicated in the Notice to Proceed, but in no event later than **[Date]** and

   5.2.2. Contractor shall complete the Preliminary Services on or before **[Date].**

6. **Submittal of Documents**. The Contractor shall not commence the Work under this Agreement until the Contractor has submitted and the District has approved the certificate(s) and affidavit(s), and the endorsement(s) of insurance required as indicated below:

   ___X___ Signed Agreement
   ___X___ Certifications to be Completed by Contractor as Part of Agreement for Preliminary Services
   ___X___ Insurance Certificates and Endorsements
   ___X___ W-9 Form
   _____ Bonds (as required or requested by District)

7. **Compensation**. The District shall pay Contractor for Contractor's performance of Preliminary Services a total fee **not to exceed $**_____ based on the amount of Work satisfactorily performed and approved by

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the District pursuant to the scope and provisions in **Attachment A** attached hereto and as indicated herein ("**Fee**"):

**[BY SCOPE]**

| Item | Amount |
|---|---|
| General Services | $_____ |
| Review of Design Documents | $_____ |
| Value Engineering | $_____ |
| Constructability Review | $_____ |
| Confirm Modifications to Design Drawings | $_____ |
| Budget of Project Costs | $_____ |
| Construction Schedule and Phasing Plan | $_____ |
| Construction Planning and Bidding | $_____ |
| **Total** | **$_____** |

**[MONTHLY FEE OPTION]**

| Month | Fee |
|---|---|
| January | $_____ |
| February | $_____ |
| March | $_____ |
| April | $_____ |
| May | $_____ |
| June | $_____ |
| July | $_____ |
| August | $_____ |
| September | $_____ |
| October | $_____ |
| November | $_____ |
| December | $_____ |
| Etc. | $_____ |

**[HOURLY FEE OPTION]**

| Job Title | Hourly Rate |
|---|---|
| Principal in Charge | $_____ |
| Director | $_____ |
| Consultant(s) | $_____ |
| Administrative Personnel | $_____ |
| Other | $_____ |
| Other | $_____ |

7.1. The Fee includes all costs and expenses for all time and materials required and expended to provide the specific Preliminary Services including but not limited to the costs of hiring sub-consultants, contractors and other professionals, review of the Lease-Leaseback Project, Plans and Specifications, review and preparation of necessary documentation relating to the development of the Lease-Leaseback Project, all travel-related expenses, as well as for meetings with District and its representatives, long distance telephone charges, copying expenses, salaries of Contractor staff and employees working on the Project, overhead, and any other reasonable expenses incurred by Contractor in performance of the Preliminary Services.

7.2. The Contractor shall submit a monthly itemized statement of Service charges and expenses to the District on the fifth ($5^{th}$) day of each month. The itemized statement shall reflect the hours spent, or

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scopes of work performed, by the Contractor in performing its Services, and, if applicable, the statements shall reflect expenses and materials. The itemized statement shall show the days and hours worked each workday Contractor performs Services for the previous month. District will permit a one (1) month grace period beyond this time for the Contractor to submit its invoice for a particular month's work. No amounts shall be due or owing to the Contractor if it fails to submit an invoice to the District at or before the end of that grace period.

7.3. Payment for the Work shall be made for all undisputed amounts in monthly installment payments within forty five (45) Days after the Contractor submits an itemized statement to the District for Work actually completed and after the District's written approval of the Work, or the portion of the Work for which payment is to be made.

8. **Expenses**. District shall not be liable to Contactor for any costs or expenses paid or incurred by Contractor in performing the Services, except as expressly provided for in this Agreement.

9. **Independent Contractor**. Contractor, in the performance of this Agreement, shall be and act as an independent contractor. Contractor understands and agrees that it and all of its employees shall not be considered officers, employees, agents, partner, or joint venture of the District, and are not entitled to benefits of any kind or nature normally provided employees of the District and/or to which District's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker's Compensation. Contractor shall assume full responsibility for payment of all federal, state and local taxes or contributions, including unemployment insurance, social security and income taxes with respect to Contractor's employees. In the performance of the work herein contemplated, Contractor is an independent contractor or business entity, with the sole authority for controlling and directing the performance of the details of Contractor's Work, District being interested only in the results obtained.

10. **Contractor and Subcontractor Registration and Compliance.**

10.1. Contractor acknowledges that, for purposes of Labor Code section 1725.5, all or some of the Work is a public work to which Labor Code section 1771 applies and that the Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. Contractor shall comply with Labor Code section 1725.5, including without limitation the registration requirements for itself and its subcontractors. Contractor represents that all of its subcontractors are registered pursuant to Labor Code section 1725.5.

10.2. Labor Code section 1771.1(a) states the following:

> "A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work Contractor to Section 1725.5 at the time the contract is awarded."

10.3. Contractor shall comply with the registration and compliance monitoring provisions of Labor Code section 1771.4, including furnishing its CPRs to the Labor Commissioner of California and complying with any applicable enforcement by the Department of Industrial Relations.

10.4. Contractor shall post job site notices, as required by law, including without limitation Labor Code

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section 1771.4.

10.5. Contractor shall comply with all requirements of Labor Code section 1771.4, except the requirements that are exempted by the Labor Commissioner for the Project.

11. **Designated Representatives.** Contractor shall coordinate with District personnel and/or its designated representatives as may be requested and desirable, including with other professionals employed by the District for the design, coordination or management of other work related to the Project.

12. **Materials**. Contractor shall furnish, at its own expense, all labor, materials, equipment, supplies and other items necessary to complete the services to be provided pursuant to this Agreement, except as expressly provided for in this Agreement.

13. **Performance of Services.**

13.1. **Standard of Care**.

13.1.1. Contractor represents that Contractor has the qualifications and ability to perform the Services in a professional manner, without the advice, control or supervision of District. Contractor's Services will be performed, findings obtained, reports and recommendations prepared in accordance with generally and currently accepted principles and practices of its profession for services to California school districts. Contractor's Services will be performed with due care and in accordance with applicable law, code, rule, regulation, and/or ordinance.

13.1.2. Contractor hereby represents, to the extent applicable, that it possesses the necessary professional capabilities, qualifications, licenses, skilled personnel, experience, expertise, and financial resources, and it has available and will provide the necessary equipment, materials, tools, and facilities to perform the Services in an efficient, professional, and timely manner in accordance with the terms and conditions of the Agreement.

13.1.3. Contractor shall be responsible for the professional quality, technical accuracy, completeness, and coordination of the Services, and Contractor understands that the District relies upon such professional quality, accuracy, completeness, and coordination by Contractor in performing the Services.

13.1.4. Contractor shall ensure that any individual performing work under the Agreement requiring a California license shall possess the appropriate license required by the State of California. All personnel shall have sufficient skill and experience to perform the work assigned to them.

13.2. **Meetings.** In addition to all public hearings and meetings, Contractor agrees to participate in coordination meetings to discuss District strategies, timetables, implementations of Services, and any other issues deemed relevant to the Project.

13.3. **District Approval.**

13.3.1. The District has the right to inspect and supervise to secure satisfactory completion of the Services.

13.3.2. Prior to any documents being made public, Contractor shall provide in draft form to District staff and District legal counsel, all documents that it or its subcontractors prepare.

14. **Information.**

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14.1. **Furnished by District.** Upon request by Contractor, District shall furnish Contractor any information and documents readily available to District that the Contractor determines may be of use to the Contractor in the performance of the Services. District shall rely upon Contractor to determine which information and documents may be of use to the Contractor in performance of the Services. District makes no representations with respect to the reliability, accuracy, or completeness of any information or documents furnished by the District. Contractor shall determine if it is appropriate to rely on the District furnished information or documents. Contractor shall determine if clarification, additional information, or additional data is needed, and if so, to seek it out.

14.2. **Furnished by Others.** Contractor is to obtain, utilizing its own personnel, any required information that has been developed by other public or private entities that are not under contract to District. Contractor shall determine if it is appropriate to rely on the information or data developed by these other public or private entities. Contractor shall determine if clarification, additional information, or additional data is needed.

15. **Originality of Services**. Except as to standard generic details, Contractor agrees that all technologies, formulae, procedures, processes, methods, writings, ideas, dialogue, compositions, recordings, teleplays and video productions prepared for, written for, or submitted to the District and/or used in connection with this Agreement, shall be wholly original to Contractor and shall not be copied in whole or in part from any other source, except that submitted to Contractor by District as a basis for such services.

16. **Copyright/Trademark/Patent**. Contractor understands and agrees that all matters produced under this Agreement shall become the property of District and cannot be used without District's express written permission. District shall have all right, title and interest in said matters, including the right to secure and maintain the copyright, trademark and/or patent of said matter in the name of the District. Contractor consents to use of Contractor's name in conjunction with the sale, use, performance and distribution of the matters, for any purpose and in any medium.

17. **Audit**. Contractor shall establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business operations of Contractor transacted under this Agreement. Contractor shall retain these books, records, and systems of account during the Term of this Agreement and for five (5) years thereafter. Contractor shall permit the District, its agent, other representatives, or an independent auditor to audit, examine, and make excerpts, copies, and transcripts from all books and records, and to make audit(s) of all billing statements, invoices, records, and other data related to the Services covered by this Agreement. Audit(s) may be performed at any time, provided that the District shall give reasonable prior notice to Contractor and shall conduct audit(s) during Contractor's normal business hours, unless Contractor otherwise consents. For a period of three (3) years after final payment under this Agreement, all expenditures of public funds in excess of ten thousand dollars ($10,000) shall be subject to examination and audit by the State Auditor. The audit shall be confined to those matters connected with the performance of this Agreement, including, but not limited to, the costs of administering the Agreement.

18. **Termination**.

18.1. **Without Cause by District**. District may, at any time, with or without reason, terminate this Agreement and compensate Contractor only for the Services satisfactorily rendered to the date of termination. Written notice by District shall be sufficient to stop further performance of Services by Contractor. Notice shall be deemed given when received by the Contractor or no later than three (3) Days after the day the notice was mailed, whichever is sooner.

18.2. **Without Cause by Contractor**. Contractor cannot terminate this Agreement without cause.

18.3. **With Cause by District**. District may terminate this Agreement upon giving of written notice of intention to terminate for cause. Cause shall include:

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18.3.1. material violation of this Agreement by the Contractor; or

18.3.2. any act by Contractor exposing the District to liability to others for personal injury or property damage; or

18.3.3. Contractor is adjudged a bankrupt, Contractor makes a general assignment for the benefit of creditors or a receiver is appointed on account of Contractor's insolvency.

Written notice by District shall contain the reasons for such intention to terminate and unless within three (3) Days after that notice the condition or violation shall cease, or satisfactory arrangements for the correction thereof be made, this Agreement shall upon the expiration of the three (3) Days cease and terminate. In the event of this termination, the District may secure the Services from another Contractor. If the expense, fees, and/or costs to the District exceeds the cost of providing the Services pursuant to this Agreement, the Contractor shall immediately pay the excess expense, fees, and/or costs to the District upon the receipt of the District's notice of these expenses, fees, and/or costs. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to District.

18.4. **With Cause by Contractor**. Contractor may only terminate this Agreement after giving written notice of intention to terminate for cause and the expiration of the time to cure. Cause shall only include:

18.4.1. Material violation of this Agreement by the District, or

18.4.2. Failure of the District to timely pay undisputed Contractor invoices.

Written notice by Contractor shall contain the reasons for such intention to terminate and unless within thirty (30) Days after that notice the condition or violation shall cease, or satisfactory arrangements for the correction thereof be made, this Agreement shall upon the expiration of the thirty (30) Days cease and terminate. During the thirty (30) Days the Inspector shall continue providing Services to the District until the Agreement ceases and terminates. In the event of this termination, the District may secure the Services from another Contractor.

18.5. **Ownership of Records.** It is mutually agreed that all materials prepared by Contractor under this Agreement shall become the property of the District and Contractor shall have no property right therein whatsoever. Contractor hereby assigns to District any copyrights associated with the materials prepared pursuant to the Agreement. Immediately upon termination and upon written request, the District shall be entitled to, and Contractor shall deliver to the Contractor, all data, drawings, specifications, reports, estimates, summaries and such other materials and commissions as may have been prepared or accumulated to date by the District in performing the Agreement which is not Contractor privileged information, as defined by law, or Contractor's personnel information.

19. **Indemnification**. The Contractor shall indemnify, defend with legal counsel reasonably acceptable to the District, keep and hold harmless the District, and their respective board members, officers, representatives, and employees, in both individual and official capacities ("Indemnitees"), against all suits, claims, damages, losses, and expenses, caused by, arising out of, resulting from, or incidental to, the performance of the Work under this Contract by the Contractor or its subcontractors to the full extent allowed by the laws of the State of California, and not to any extent that would render these provisions void or unenforceable, including, without limitation, any such suit, claim, damage, loss, or expense attributable to, without limitation, bodily injury, sickness, disease, death, alleged patent violation or copyright infringement, or to injury to or destruction of tangible property, except to the extent caused by the negligence or willful misconduct of the Indemnitees. This agreement and obligation of the Contractor shall not be construed to negate, abridge, or otherwise reduce any right or obligation of indemnity that would otherwise exist as to any party or person

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described herein.

20. **Insurance**.

20.1. The Contractor shall procure and maintain at all times it performs any portion of the Services the following insurance with minimum limits equal to the amount indicated below. In addition to the information below, see the Facilities Lease for explanations for the scopes and types of coverages.

20.1.1. **Commercial General Liability and Automobile Liability Insurance**. Commercial General Liability Insurance and Any Auto Automobile Liability Insurance that shall protect the Contractor, the District, and the State from all claims of bodily injury, property damage, personal injury, death, advertising injury, and medical payments arising performing any portion of the Services. (Form CG 0001 and CA 0001, or forms substantially similar, if approved by the District.)

20.1.2. **Workers' Compensation and Employers' Liability Insurance**. Workers' Compensation Insurance and Employers' Liability Insurance for all of its employees performing any portion of the Services. In accordance with provisions of section 3700 of the California Labor Code, the Contractor shall be required to secure workers' compensation coverage for its employees. If any class of employee or employees engaged in performing any portion of the Services under this Agreement are not protected under the Workers' Compensation Statute, adequate insurance coverage for the protection of any employee(s) not otherwise protected must be obtained before any of those employee(s) commence performing any portion of the Services.

20.1.3. **Sexual Molestation and Abuse Liability Insurance.** Contractor shall procure and maintain, during the life of this Contract, sexual molestation and abuse insurance. Contractor shall require its Subcontractor(s), if any, to procure and maintain sexual molestation and abuse insurance for any and all employee(s) of Subcontractor(s). Any class of employee or employees not covered by a Subcontractor's insurance shall be covered by Contractor's insurance. If any class of employee or employees engaged in Work under the Contract, on or at the Site of the Project, are not covered under the sexual molestation and abuse insurance, Contractor shall provide, or shall cause a Subcontractor to provide, adequate insurance coverage to cover any employee(s) not otherwise covered before any of those employee(s) commence work.

20.1.4. **Professional Liability (Errors and Omissions)**. This insurance shall cover the Contractor and his/her subcontractors(s) for two million dollars ($2,000,000) aggregate limit subject to no more than twenty-five thousand dollars ($25,000) per claim deductible, coverage to continue through completion of construction plus two years thereafter. The policy must contain terms or endorsements extending coverage that requires the insurer to defend and indemnify for acts which happen before the effective date of the policy provided the claim is first made during the policy period.

| | | |
|---|---|---|
| **Commercial General Liability** (Includes: Bodily Injury, Property Damage, Personal & Advertising Injury, Product Liability and Completed Operations) | Combined Single Limit | $2,000,000 |
| | General Aggregate | $4,000,000 |
| | Product Liability and Completed Operations | $2,000,000 |

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| | | |
|---|---|---|
| **Automobile Liability – Any Auto** | Combined Single Limit<br>**NO** General Aggregate | $2,000,000 |
| **Excess Liability (Umbrella)** | | $6,000,000 per occurrence;<br>$6,000,000 aggregate |
| **Workers Compensation** | | Statutory limits pursuant to State law |
| **Employers' Liability** | | $2,000,000 each incident |
| **Sexual Abuse / Molestation** | | $1,000,000 each incident;<br>$2,000,000 policy limit |
| **Property of Others** | Combined Single Limit<br>General Aggregate | Issued for the value and scope of Work stored off-site. |
| **Professional Liability** | | $2,000,000 per occurrence and annual aggregate |

20.2. **Proof of Carriage of Insurance**. The Contractor shall not commence performing any portion of the Services until all required insurance has been obtained and certificates indicating the required coverage have been delivered in duplicate to the District and approved by the District. Certificates and insurance policies shall include the following:

20.2.1. A clause stating: "This policy shall not be canceled or reduced in required limits of liability or amounts of insurance until notice has been mailed to the District, stating date of cancellation or reduction. Date of cancellation or reduction shall not be less than thirty (30) Days after date of mailing notice."

20.2.2. Language stating in particular those insured, extent of insurance, location and operation to which insurance applies, expiration date, to whom cancellation and reduction notice will be sent, and length of notice period.

20.2.3. An endorsement stating that the District and the State and their agents, representatives, employees, trustees, officers, consultants, and volunteers ("Additional Insureds") are named Additional Insureds under all policies except Workers' Compensation Insurance, Professional Liability, and Employers' Liability Insurance. The coverage shall contain no special limitations on the scope of protection afforded to the Additional Insureds. An endorsement shall also state that Contractor's insurance policies shall be primary to any insurance or self-insurance maintained by District.

20.2.4. All policies except the Professional Liability Policy shall be written on an occurrence form.

20.3. **Acceptability of Insurers**. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to the District.

21. **Assignment**. The obligations and liabilities of the Contractor pursuant to this Agreement shall not be assigned voluntarily by the Contractor nor assigned by operation of law, without express written consent of the District.

22. **Binding Contract.** This Agreement shall be binding upon the Parties hereto and upon their successors and assigns and shall inure to the benefit of the Parties and their successors and assigns.

23. **Compliance with Laws**. Contractor shall observe and comply with all rules and regulations of the governing board of the District and all federal, state, and local laws, ordinances and regulations. Contractor shall give all notices required by any law, ordinance, rule and regulation bearing on conduct of the Work as indicated or specified. If Contractor observes that any of the Work required by this Agreement is at variance with any such

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laws, ordinance, rules or regulations, Contractor shall notify the District, in writing, and, at the sole option of the District, any necessary changes to the scope of the Work shall be made and this Agreement shall be appropriately amended in writing, or this Agreement shall be terminated effective upon Contractor's receipt of a written termination notice from the District. If Contractor performs any work that is in violation of any laws, ordinances, rules or regulations, without first notifying the District of the violation, Contractor shall bear all costs arising therefrom.

24. **Certificates/Permits/Licenses**. Contractor and all Contractor's employees or agents shall secure and maintain in force such certificates, permits and licenses as are required by law in connection with the furnishing of the Services. Except for any license or permits furnished by District, Contractor shall be fully responsible for identifying and obtaining all necessary licenses and permits for the timely prosecution of the Services.

25. **Anti-Discrimination**. It is the policy of the District that in connection with all work performed under contracts there be no discrimination against any employee engaged in the work because of race, color, ancestry, national origin, religious creed, physical disability, medical condition, marital status, sexual orientation, gender, or age and therefore the Contractor agrees to comply with applicable Federal and California laws including, but not limited to the California Fair Employment and Housing Act beginning with Government Code Section 12900 and District policy. Contractor and each subcontractor shall comply with Chapter 1 of Division 2, Part 7 of the Labor Code, beginning with § 1720, and including §§ 1735, 1777.5 and 1777.6, forbidding discrimination, and §§ 1776, 1777.5 and 1777.6 concerning the employment of apprentices by Contractor or subcontractors. Willful failure to comply may result in penalties, including loss of the right to bid on or receive public works contracts. In addition, the Contractor agrees to require like compliance by all its subcontractor(s).

26. **Fingerprinting of Employees**. The Fingerprinting/Criminal Background Investigation Certification must be completed and attached to this Agreement prior to Contractor's performing of any portion of the Services.

27. **Disabled Veteran Business Enterprises.** Section 17076.11 of the Education Code requires school districts using funds allocated pursuant to the State of California School Facility Program for the construction or modernization of a school building to have a participation goal of at least three percent (3%), per year, of the overall dollar amount expended each year by the school district, for disabled veteran business enterprises (DVBE). In accordance therewith, the Contractor must submit, upon request by District, appropriate documentation to the District identifying the steps the Contractor has taken to solicit DVBE participation in conjunction with this Agreement, if applicable.

28. **Interaction with the Media and Public.** Contractor shall promptly refer all inquiries from the news media or public to District and shall not make any statements to the media or the public relating to the Services. If Contractor receives a complaint from a citizen or the community, Contractor shall promptly inform the District about the complaint.

29. **Taxes.** Contractor shall be liable and solely responsible for paying all required taxes and other obligations, including but not limited to federal and state income taxes and social security taxes payable in connection with the Services and this Agreement. Contractor agrees to release, indemnify, defend, and hold District harmless from and against any worker's compensation or any tax liability which District may incur to any Federal or State governments with jurisdiction as a consequence of this Agreement. All payments made to Contractor may be reported to the Internal Revenue Service.

30. **No Rights in Third Parties.** This Agreement does not create any rights in, or inure to the benefit of, any third party except as expressly provided herein.

31. **District's Evaluation of Contractor and Contractor's Employees and/or Subcontractors**. The District may evaluate the Contractor in any way the District is entitled pursuant to applicable law. The District's evaluation may include, without limitation:

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31.1. Requesting that District employee(s) evaluate the Contractor and the Contractor's employees and subcontractors and each of their performance.

31.2. Announced and unannounced observance of Contractor, Contractor's employee(s), and/or subcontractor(s).

32. **Limitation of District Liability**. Other than as provided in this Agreement, District's financial obligations under this Agreement shall be limited to the payment of the compensation provided in this Agreement. Notwithstanding any other provision of this Agreement, in no event, shall District be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement for the services performed in connection with this Agreement.

33. **Disputes**. In the event of a dispute between the Parties as to performance of Work, Agreement interpretation, or payment, the Parties shall attempt to resolve the dispute by negotiation and/or mediation, if agreed to by the Parties. Pending resolution of the dispute, Contractor shall neither rescind the Agreement nor stop performing the Services.

34. **Confidentiality**. The Contractor and all Contractor's agents, personnel, employee(s), and/or subcontractors(s) shall maintain the confidentiality of all information received in the course of performing the Services. Contractor understands that student records are confidential and agrees to comply with all state and federal laws concerning the maintenance and disclosure of student records. This requirement to maintain confidentiality shall extend beyond the termination of this Agreement.

35. **Employment with Public Agency**. Contractor, if an employee of another public agency, agrees that Contractor will not receive salary or remuneration, other than vacation pay, as an employee of another public agency for the actual time in which Services are actually being performed pursuant to this Agreement.

36. **Notice.** Any notice required or permitted to be given under this Agreement shall be deemed to have been given, served, and received if given in writing and either personally delivered or sent by overnight delivery service, addressed as follows:

| **@District** | **@Contractor** |
|---|---|
| _____<br>_____, CA 9_____<br>ATTN: _____ | _____<br>_____, CA 9_____<br>ATTN: _____ |

Any notice personally given shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the Business Day next following delivery thereof to the overnight delivery service.

37. **Integration/Entire Agreement of Parties**. This Agreement constitutes the entire agreement between the Parties and supersedes all prior discussions, negotiations, and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by both Parties.

38. **California Law**. This Agreement is entered into in California and shall be governed by and the rights, duties and obligations of the Parties, and shall be determined and enforced in accordance with the laws of the State of California. The Parties further agree that any action or proceeding brought to enforce the terms and conditions of this Agreement shall be maintained in the county in which the District's administrative offices are located. Contractor waives any claim or right to remove an action on this Agreement to federal court.

39. **Waiver**. The waiver by either Party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, condition, or any subsequent breach of the same or any

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other term, covenant, or condition herein contained.

40. **Severability**. If any term, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force and effect, and shall not be affected, impaired or invalidated in any way.

41. **Authority to Bind Parties.** Neither Party in the performance of any and all duties under this Agreement, except as otherwise provided in this Agreement, has any authority to bind the other to any agreements or undertakings.

42. **Attorney Fees/Costs.** Should litigation be necessary to enforce any terms or provisions of this Agreement, then each Party shall bear its own litigation and collection expenses, witness fees, court costs and attorney's fees.

43. **Captions and Interpretations.** Paragraph headings in this Agreement are used solely for convenience and shall be wholly disregarded in the construction of this Agreement. No provision of this Agreement shall be interpreted for or against a Party because that Party or its legal representative drafted such provision, and this Agreement shall be construed as if jointly prepared by the Parties.

44. **Calculation of Time.** For the purposes of this Agreement, "days" refers to Days unless otherwise specified.

45. **Signature Authority.** Each Party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each Party has been properly authority and empowered to enter into this Agreement.

46. **Counterparts.** This Agreement and all amendments and supplements to it may be executed in counterparts, and all counterparts together shall be construed as one document.

47. **Incorporation of Recitals and Attachments**. The Recitals and each attachment attached hereto are hereby incorporated herein by reference.

48. **Provisions Required by Law Deemed Inserted.** Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein and this Agreement shall be read and enforced as though it were included herein.

49. **Incorporation of RFQ/RFP & Proposal and Interpretation of Documents.** If the Parties enter into this Agreement as a result of a Request for Qualifications and/or a Request for Proposal ("**RFQ/RFP**"), the RFQ/RFP is incorporated into this Agreement, except that if there is any conflict between the RFQ/RFP and any provision of this Agreement, the Agreement shall prevail.

**IN WITNESS WHEREOF**, the Parties have accepted and agreed to this Agreement, as of the Effective Date, and have directed and authorized their respective officers to execute this Agreement:

| **@District** | **@Contractor** |
|---|---|
| By: _____ | By: _____ |
| Print Name: _____ | Print Name: _____ |
| Print Title: _____ | Print Title: _____ |

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**Attachment A to Agreement for Preliminary Services**

**Scope of Services**

1. **Scope of Contractor's Preliminary Services**. Contractor is authorized to perform the following services by applicable law and agrees to perform the services described herein. Contractor shall perform management and coordination services, plan and specification constructability reviews, provide value-engineering reviews and recommendations and other reviews as necessary to verify that the drawings and specifications are clear and reasonably accurate to minimize the need for changes during the construction phase of the project, including but not limited to the following ("**Preliminary Services**"):

**1.1. General Services.**

**1.1.1.** Contractor shall attend regular meetings during Project development between the Architect, the District, District site personnel, and any other applicable consultants of the District as required to discuss the Project, including budget, scope and schedule.

**1.1.2.** Contractor shall assist Architect with the making of a written record of all meetings, conferences, discussions and decisions made between or among the District, Architect and Contractor.

**1.1.3.** Contractor shall assist the Architect with making formal presentations to the governing board of District.

**1.1.4.** Contractor shall prepare and update the preliminary Project schedule.

**1.1.5.** Contractor shall prepare and update the components of the Guaranteed Project Cost and shall be primarily in control of ensuring that the Project can and is constructed for no more than that amount.

**1.1.6.** Contractor shall assist District with City land use issues;

**1.1.7.** Contractor shall assist District with DSA review, input, and timeframe for same;

**1.1.8.** Contractor shall provide review and comment upon geotechnical / soils investigation and report;

**1.1.9.** Contractor shall provide review and comment upon survey of the Project site;

**1.1.10.** Contractor shall provide review and comment upon any environmental impact report ("**EIR**") or other required California Environmental Quality Act ("**CEQA**") documents with District's CEQA consultant.

**1.2. Review of Design Documents.**

**1.2.1.** Contractor shall review Project design and budget with the District and the Architect **four (4)** times: during the Schematic Design Phase, the Design Development Phase, at 50% Construction Documents Phase, and at 100% Construction Documents Phase to:

**1.2.1.1.** Contractor shall provide recommendations on site use and improvements, selection of materials, building systems and equipment and methods of Project delivery;

**1.2.1.2.** Contractor shall provide recommendations on relative feasibility of construction methods, availability of materials and labor, time requirements for procurement, installation and construction of the Project and subparts thereof if requested, and factors relating to cost including, but not limited to, construction costs of alternate designs of materials, preliminary budgets and possible economics that could be achieved through alternate methods or substitutions;

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**1.2.1.3.** Contractor shall provide interim design phase estimates to establish and maintain the Project budget and scheduled costs; and

**1.2.1.4.** Contractor shall provide plan review.

**1.2.1.5. Value-engineering**.

**1.2.1.5.1.** "**Value Engineering**" or "**VE**" as used herein shall mean an organized effort to analyze the functions of systems, equipment, facilities, services, and supplies depicted in the Plans and Specifications prepared by Architect ("**Design Documents**") for the Project to identify equipment, materials or systems which provide for comparable function at reduced initial or life-time cost consistent with required performance, reliability, quality, and safety for similar types of school construction projects. Value Engineering shall include, without limitation, proposed changes to the Design Documents, or other contract requirements, consistent with industry practice in the construction of public schools.

**1.2.1.5.2.** Value Engineering is intended to enable a contractor to construct the Project more efficiently and economically consistent with the Project's goals and objectives, without sacrificing quality.

**1.2.1.5.3.** The Contractor shall perform Value Engineering for the Project as set forth herein at the 100% Design Development Phase and the 50% Construction Document Phase, to the extent applicable. Contractor shall perform Value Engineering concurrently with, and without delay to, the schedule attached to the applicable**.**

**1.2.1.5.4. General Value Engineering Requirements**

**1.2.1.5.4.1.** In performing Value Engineering, the Contractor shall, without limitation:

**1.2.1.5.4.1.1.** Identify all documents necessary for Contractor to fully understand the background and decisions that have influenced the design up to Design Development.
**1.2.1.5.4.1.2.** Coordinate with the District and Architect to obtain any further documentation necessary to develop this understanding.
**1.2.1.5.4.1.3.** Review relevant meeting minutes, master plans, District design guidelines, Design Documents and all other necessary documents related to the Project.
**1.2.1.5.4.1.4.** Analyze and understand key functional issues governing the Project, Project design, and Project systems so that Contractor understands how to best approach Value Engineering.
**1.2.1.5.4.1.5.** Develop an understanding of the District's key criteria, objectives, and budgetary constraints with respect to the development of the Project.
**1.2.1.5.4.1.6.** The Contractor shall coordinate with the District and the Design Team as necessary in the performance of Value Engineering to ensure that the Contractor's recommendations are consistent with the District's criteria, objectives, and budgetary constraints.
**1.2.1.5.4.1.7.** The Contractor shall consider all ways to provide function within the Project at a lesser initial or life-cycle-cost representing improved value to the District without sacrificing quality.
**1.2.1.5.4.1.8.** The Contractor shall coordinate with the Design Team to ensure that any recommendation is compliant with any authority having jurisdiction over the Project, including, without limitation, DSA.

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**1.2.1.5.5. Value Engineering Workshop**

**1.2.1.5.5.1.** As part of the Value Engineering for each phase, the Contractor shall organize and conduct a value engineering workshop ("**Workshop**").

**1.2.1.5.5.2.** The Contractor shall invite the Architect to participate in the Workshop.

**1.2.1.5.5.3.** Prior to the Workshop, the Contractor and the Architect will provide all participants with a preliminary list of Value Engineering items for discussion and order of magnitude estimates of cost both for design and construction.

**1.2.1.5.5.4.** The Workshop will consist of an initial Project design review related to that phase of development, research of alternative solutions, and evaluations of alternatives. The Workshop will conclude with a review of design and construction costs, benefits of various items selected, and selection of items to be incorporated into the Project design.

**1.2.1.5.5.5.** The Contractor will incorporate the Workshop findings into the VE Report (as defined below) for that phase. Although the Workshop findings may include Value Engineering recommendations, Contractor shall perform its own, independent Value Engineering and provide any recommendations that are different or in addition to the Workshop findings.

**1.2.1.5.6. VE Report**

**1.2.1.5.6.1.** At the conclusion of Value Engineering for each phase of design, Contractor shall prepare a report ("**VE Report**") and submit the VE Report to the District. Each VE Report shall include recommendations for alternatives, deletions, or amendments to the Design Documents for the Project that pertain to the anticipated construction costs, useful life, maintenance and operational costs and efficiencies.

**1.2.1.5.6.2.** The VE Report shall contain as an attachment the Workshop findings.

**1.2.1.5.6.3.** At a minimum, Contractor shall include the following in the VE Report:

**1.2.1.5.6.3.1.** Recommendation Narrative. A narrative describing the difference between the existing Design Documents and any change to the Design Documents, the comparative advantages and disadvantages of each, to the extent applicable, a justification if an item's function is being altered, and the effect of the change on system and facility performance.

**1.2.1.5.6.3.2.** Changes to Design Documents. A list and analysis of design criteria or specifications that must be changed if the District accepts the recommendation.

**1.2.1.5.6.3.3.** Hard Costs. A detailed estimate of the impact on Project cost of the recommendation, if accepted and implemented by the District.

**1.2.1.5.6.3.4.** Soft Costs / Maintenance Costs. A description and estimate of costs the District may incur in implementing the recommendation, including, without limitation, design costs, additional testing and inspections, and ongoing maintenance costs.

**1.2.1.5.6.3.5.** Life Cycle Costs. A prediction of any effects the proposed recommendation may have on life cycle cost.

**1.2.1.5.6.3.6.** Schedule Impacts. The effect the recommendation may have on design or construction schedules. The Contractor shall include the number of Days the Project would expected to extended or reduced based upon the change, which shall be

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broken down by each individual task related to that scope of work (e.g., shop drawing submittals, lead times for the procurement of materials and supplies, construction, etc.).

**1.2.1.5.6.4. Deliverables.** Contractor shall submit one (1) hard copy and one (1) electronic .pdf of the VE Report to the District. Contractor shall also submit one (1) electronic .pdf version of the VE Report to the Architect.

**1.2.1.5.7. VE Report Presentation / Meeting.** After the submittal of the VE Report, and upon the District's request, the Contractor shall meet with the District to present the VE Report to the District and respond to any questions concerning the recommended changes in the VE Report.

**1.2.1.5.8. District Review / Acceptance**

**1.2.1.5.8.1.** Prior to authorizing the Architect's performance of next phase design services, the District shall review the VE Report and decide whether to accept in writing any changes to the Design Documents.

**1.2.1.5.8.2.** Upon the District's acceptance of change(s) to the Design Documents, the Contractor shall send written direction to the Architect to incorporate those changes into the Design Documents.

**1.2.1.5.8.3.** Upon the Architect's notice that it has incorporated the changes into the Design Documents, Contractor shall review the modified Design Documents to ensure that the District accepted changes are incorporated into the Design Documents. If the Contractor determines that the Architect has not incorporated into the Design Documents the changes accepted by the District, the Contractor shall advise the District in writing of the changes that were not included in the modified Design Documents, and shall assist the District in ensuring that the Architect incorporates those modifications.

**1.2.1.5.8.4.** If the Architect disputes or otherwise recommends the denial of any recommendation from a VE Report, the District shall meet and coordinate with the Architect to determine the proper resolution of the dispute and shall issue a written recommendation to the District as to whether to include the recommendation into the Design Documents. The District shall thereafter issue a written decision, which will be binding on the Architect.

**1.2.1.6. Constructability Review**.

**1.2.1.6.1.** "**Constructability Review(s)**" or "**CR(s)**" as used herein shall mean a systematic review of the Design Documents to ensure that the Design Documents delineate clear and feasible construction techniques, including, without limitation, making certain that the requirements of the construction work are clear, the Design Documents are coordinated, and that they assist the contractor in subcontractor bidding, construction and project administration to result in reduced impacts to the Project.

**1.2.1.6.2.** The purpose of the Construability Review is to eliminate flaws in the Design Documents, eliminate issues that may cause other impacts, and to ultimately enable Contractor to bid, coordinate, schedule, sequence and construct the Project efficiently, and without time and scheduling impacts.

**1.2.1.6.3.** The Contractor shall perform a Constructability Review for the Project as set forth herein at the 100% Design Development Phase and the 90% Construction Document Phase, to the extent applicable.

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**1.2.1.6.4. General Constructability Review Requirements**

**1.2.1.6.4.1.** In performing a Constructability Review, the Contractor shall review the Design Documents and all other necessary documents related to the Project, including, without limitation, geotechnical reports, soils reports, and hazardous materials reports, to fully understand the Project, Project scope, and the Project site and to enable the Contractor to identify issues regarding constructability and associated risks arising from the current Design Documents. The Constructability Review shall include the review of every element encountered by the general contractor during construction of the Project, including, without limitation whatsoever: material delivery, storage, site clearing, utilities work (location, interconnection, existing utilities, etc.), excavation, SWPPP requirements, field office locations, demolition, depiction of existing conditions, required equipment, required permits, coordination of the trades, verifying design elements, visual depictions, site access, traffic control, foundation of piers, etc.

**1.2.1.6.4.2.** In reviewing the scope of work in the Design Documents, Contractor shall identify existing conditions which may present construction problems and make recommendations regarding the project footprint, including, without limitation, Project limits within the Project site.

**1.2.1.6.4.3.** The Contractor shall perform a field inspection to familiarize itself with the Project site and to enable it to provide detailed comments to the Design Documents during the Constructability Review.

**1.2.1.6.4.4.** The Contractor shall review the project budget for the current phase of design to determine whether the Project can be constructed within budget constraints and in light of risks identified during Constructability Review.

**1.2.1.6.4.5.** The Contractor shall review the Design Documents and propose an appropriate Project duration, sequencing, phasing, and the separation of subcontracts into categories of the work and trade bid packages.

**1.2.1.6.4.6.** The Contractor shall coordinate with the District and the Design Team as necessary in the performance of the Constructability Review.

**1.2.1.6.4.7.** The Contractor is not responsible for providing, nor does the Contractor control, the Project design or the contents of the Design Documents. The Contractor's actions in reviewing the Project design and Design Documents, and in making any findings, recommendations, or assessments as provided herein, are advisory only to the District. The Design Team members are not third party beneficiaries of the Constructability Review and the Design Team members remains solely responsible for the contents of the Design Documents. Unless the Contractor holds a professional architect or engineering license, or unless the Constructability Review is performed by a consultant or subconsultant of Contractor who holds that type of license, the Contractor shall be held to the standard of care for general contractors performing constructability reviews on public school construction projects within the same geographic area as the District.

**1.2.1.7. 100% Design Development Constructability Review.**

**1.2.1.7.1.** The 100% Design Development Constructability Review ("**DD CR**") shall evaluate the Design Documents and must address all items that are or will be critical to the completion of the construction of the Project.

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**1.2.1.7.2.** The DD CR should address all structural, architect, mechanical, electrical, plumbing, civil, landscaping, and off-site work related to the Project as set forth in the Design Documents. The DD CR should be performed such that it provides the Architect guidance and direction in proceeding with the final design of Construction Documents, and identify any alterations or revisions to the Design Documents, or other special considerations.

**1.2.1.8. 90% Construction Documents Constructability Review.**

**1.2.1.8.1.** The 90% Construction Documents Constructability Review ("**CD CR**") shall evaluate all Design Documents, with special attention given to Plans and Specifications, to serve as a final check on those documents prior to soliciting bids and to ensure the overall constructability of the Project, subject to revisions made during back-check.

**1.2.1.8.2.** The CD CR should identify details, omissions, or design problems not previously addressed or those that materialized or that were identified during this phase of design. Although the District expects that any omissions or deficiencies at this stage should be minor, the District expects that the Contractor shall fully review the Project for constructability as set forth herein.

**1.2.1.8.3.** The DD CR should address all structural, architect, mechanical, electrical, plumbing, civil, landscaping, and off-site work related to the Project as set forth in the Design Documents. The CD CR should include a final, detailed review of the Design Documents to ensure that the drawings and specifications are not only constructable, but are coordinated and can be read as a cohesive whole.

**1.2.1.9. Constructability Review Report.**

**1.2.1.9.1.** At the conclusion of the Constructability Review for each phase of design, Contractor shall prepare a report ("**CR Report**") and submit the CR Report to the District. Each CR shall include all findings and recommendations made as a result of the CR, and shall identify any and all risks or impacts arising from any issues identified therein.

**1.2.1.9.2.** At a minimum, Contractor shall include the following in the CR Report:

**1.2.1.9.2.1.** Issue / Risk Narrative. A narrative identifying each issue and the impact or risk associated with that issue. The narrative shall also include recommendations to avoid the risk or impact by making changes to the Design Documents.

**1.2.1.9.2.2.** Coordination. Identify any areas in which the drawings or specifications are not coordinated.

**1.2.1.9.2.3.** Changes to Design Documents. A list and analysis of design criteria or specifications that could be changed based on any identified issue.

**1.2.1.9.2.4.** Budget Review. A narrative describing the Contractor's review of the budget, and discussing whether the current budget for the Project is sufficient or achievable in light of the issues identified.

**1.2.1.9.2.5.** Planning Review. A narrative describing Contractor's proposed Project duration, sequencing, phasing, and the separation of subcontracts into categories of the work and trade bid packages.

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**1.2.1.10. CR Report Presentation / Meeting.** After the submittal of the CR Report, and upon the District's request, the Contractor shall meet with the District to present the CR Report to the District and respond to any questions concerning any issues raised in the CR Report.

**1.2.1.11. <u>District / Architect Review</u>**

**1.2.1.11.1.** Prior to authorizing the Architect's performance of next phase design services, the District shall issue the CR Report to the Architect and, in its discretion, may instruct the Architect to address the issues raised in the CR report.

**1.2.1.11.2.** The Architect shall then address any issues identified in the CR Report. Upon the Architect's notice that it has addressed all issues, Contractor shall review the modified Design Documents to ensure that the issues in the CR have been addressed. If the Contractor determines that the Architect has not addressed any issue identified in the CR Report, the Contractor shall advise the District in writing of the unaddressed issues and shall assist the District in ensuring that the Architect addresses those issues.

**1.2.1.11.3.** If the Architect objects to addressing any issue raised in the CR Report, Contractor shall meet and coordinate with the Architect to determine the proper resolution of the objection and shall issue a written recommendation to the District as to whether Architect should address the issue. The District shall thereafter issue a written decision, which will be binding on the Architect.

**1.2.2. Confirm Modifications to Design Drawings.** If the District accepts Contractor's comments, including the value-engineering and/or constructability review comments, Contractor shall review the design documents to confirm that those comments are properly incorporated into the final design documents.

**1.3. Budget of Project Costs.**

**1.3.1.** At each stage of plan review indicated above, Contractor shall update and refine the budget of the Guaranteed Project Cost based on the most recent set of design documents. Contractor shall also advise the District and the Architect if it appears that the total construction costs may exceed the Guaranteed Project Cost established by the District and shall make recommendations for corrective action. Contractor will further provide input to the District and Architect relative to value of construction, means and methods for construction, duration of construction of various building methods and constructability.

**1.3.2.** In each budget of the Guaranteed Project Cost, Contractor shall include values of scopes of work subdivided into component parts in sufficient detail to serve as the basis for progress payments during construction. This budget of the Guaranteed Project Cost shall include, at a minimum, the following information divided into at least the following categories:

**1.3.2.1.** Overhead and profit;
**1.3.2.2.** Supervision;
**1.3.2.3.** General conditions;
**1.3.2.4.** Layout & Mobilization (not more than 1%)
**1.3.2.5.** Submittals, samples, shop drawings (not more than 3%);
**1.3.2.6.** Bonds and insurance (not more than 2%);
**1.3.2.7.** Close-out documentation (not less than 3%);
**1.3.2.8.** Demolition;
**1.3.2.9.** Installation;
**1.3.2.10.** Rough-in;

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**1.3.2.11.** Finishes;
**1.3.2.12.** Testing;
**1.3.2.13.** Punchlist and acceptance.

Contractor shall indicate its willingness and ability to enter into the Contract Document to construct the Project for at or below that Guaranteed Project Cost, excluding Unforeseen Site Conditions or District-requested changes. This commitment will be a component of the Contract Documents.

**1.4. Construction Schedule and Phasing Plan.**

Contractor shall prepare a preconstruction schedule to guide the design team through to bid dates. That schedule shall show the multiphases and interrelations of design, constructability review, and estimating. Contractor shall also prepare a full construction schedule for the Project detailing the phasing and construction activities. Contractor shall further investigate, recommend and prepare a schedule for the District's purchase of materials and equipment requiring long lead time procurement, and coordinate the schedule with the early preparation of portions of the Contract Documents by the Architect.

**1.5. Construction Planning and Bidding.**

**1.5.1.** Contractor shall prepare and distribute specifications and drawings provided by District to facilitate bidding to Contractor's subcontractors.

**1.5.2.** Contractor shall review the drawings and specifications to eliminate areas of conflict and overlapping in the work to be performed by various subcontractors, and with a view to eliminating change order requests by the Architect or subcontractors.

**1.5.3.** Contractor shall conduct pre-bid conferences. Contractor shall coordinate with District and the Architect in responding to subcontractor questions or providing clarification to all subcontractors.

**1.5.4.** Contractor shall prepare appropriate subcontractor bid packages.

**1.6. Bidding for Subcontractor Work.**

**1.6.1. CONTRACTOR SHALL SOLICIT AND PROCURE SUBCONTRACTORS PURSUANT TO THE SUBCONTRACTOR PROCUREMENT PROCESS ATTACHED TO THE FACILITIES LEASE AS EXHIBIT H.**

**1.6.2. Finalizing the GPC.** After Contractor completes the Subcontractor Procurement Process as set forth in **Exhibit H** to the Facilities Lease and the District approves the Subcontractor bids and self-performed construction Work, if any, Contractor shall prepare a final proposed GPC as set forth in **Exhibit C** to the Facilities Lease. The GPC shall be calculated consistent with the matrix in the "Guaranteed Project Cost (or Guaranteed Maximum Price)" section of **Exhibit C** to the Facilities Lease.

**1.7. Schedules.** Prior to the Parties executing the Site Lease and Facilities that will include the GPC, or amending an existing Site Lease and Facilities Lease to include a GPC, Contractor shall provide to the District a Construction Schedule and Schedule Values compliant with the requirements of the Contract Documents, including, without limitation, **Exhibit D**, so that those schedules may be included as **Exhibit F** and **Exhibit G** respectively; provided, however, the District may excuse this requirement and instead direct Contractor to submit the schedules after the issuance of a Notice to Proceed for construction work.

**1.8.** If Contractor or any of its subcontractors intend to use on the Project any In-Use-Off-Road Deisel-Fueled Fleets, as that term is defined in Title 13, California Code of Regulations, section 2449(b)(1), then Contractor must submit a Certificate of Reported Compliance for the each of those fleets and subcontractors with Contractor's list of subcontractors.

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2. **Limited Authority.** The duties, responsibilities and limitations of authority of Contractor shall not be restricted, modified or extended without written agreement between the District and Contractor.

**District's Responsibilities.** The District has and shall continue to provide to Contractor information regarding requirements for the Project, including information regarding the District's objectives, schedule, constraints and criteria.

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**CERTIFICATIONS TO BE COMPLETED BY CONTRACTOR**
**AS PART OF**
**AGREEMENT FOR PRELIMINARY SERVICES (EXHIBIT L TO FACILITIES LEASE)**

**THE UNDERSIGNED MUST CHECK EACH BOX AND EXECUTE THIS FORM AND HEREBY CERTIFIES TO THE GOVERNING BOARD OF THE DISTRICT THAT UNDERSIGNED IS:**

- A representative of the Contractor,
- Familiar with the facts herein certified and acknowledged,
- Authorized and qualified to execute the Contract Documents and these certifications on behalf of Contractor and that by executing the Contract Documents undersigned is certifying the following items.

☐ **Labor Code Sections 1860-1861 (Workers' Compensation).** In accordance with Labor Code section 3700, every contractor will be required to secure the payment of compensation to his or her employees. I acknowledge and certify under penalty of perjury that 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.

☐ **Government Code Sections 8355-8357 (Drug-Free Workplace).** I acknowledge and certify under penalty of perjury that I will provide a drug-free workplace by doing all of the following:

(1) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the person's or organization's workplace and specifying the actions that will be taken against employees for violations of the prohibition.
(2) Establishing a drug-free awareness program to inform employees about all of the following:
(A) The dangers of drug abuse in the workplace.
(B) The person's or organization's policy of maintaining a drug-free workplace.
(C) Any available drug counseling, rehabilitation, and employee assistance programs.
(D) The penalties that may be imposed upon employees for drug abuse violations.
(3) Requiring that each employee engaged in the performance of the contract or grant be given a copy of the statement required by subdivision (a) and that, as a condition of employment on the contract or grant, the employee agrees to abide by the terms of the statement.

I also acknowledge that this Contract may be subject to suspension of payments under the contract or grant or termination of the contract or grant, or both, and the contractor or grantee thereunder may be subject to debarment, in accordance with the requirements of the above-referenced statute, if the contracting or granting agency determines that any of the following has occurred:

(1) The contractor or grantee has made a false certification under Section 8355.
(2) The contractor or grantee violates the certification by failing to carry out the requirements of subdivisions (a) to (c), inclusive, of Section 8355.

I also acknowledge that the Department of General Services shall establish and maintain a list of individuals and organizations whose contracts or grants have been canceled due to failure to comply with the above-referenced statute. This list shall be updated monthly and published each month. No state agency shall award a contract or grant to a person or organization on the published list until that person or organization has complied with the above-referenced statute.

☐ **Tobacco-Free Environment**. Pursuant to, without limitation, 20 U.S.C. section 6083, Labor Code section 6400 et seq., Health & Safety Code section 104350 et seq. and District Board Policies, all District sites, including the Project site, are tobacco-free environments. Smoking and the use of tobacco products by all persons is prohibited on or in District property. District property includes school buildings, school grounds, school owned vehicles and vehicles owned by others while on District property.

I acknowledge and certify under penalty of perjury that I am aware of the District's policy regarding tobacco-free environments at District sites, including the Project site and acknowledge and certify that I will adhere to the requirements of that policy and not permit any of my firm's employees, agents, subcontractors, or my firm's subcontractors' employees or agents to use tobacco and/or smoke on the Project site. The District also prohibits electronic cigarettes, "vaping" or similar product uses on District sites.

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☐ **Russian Sanctions Certification**

On February 21, 2022, President Biden issued Executive Order 14065 (https://www.whitehouse.gov/briefing-room/presidential-actions/2022/02/21/executive-order-on-blocking-property-of-certain-persons-and-prohibiting-certain-transactions-with-respect-to-continued-russian-efforts-to-undermine-the-sovereignty-and-territorial-integrity-of-ukraine/; "**Federal Order**") imposing economic sanctions and prohibiting many activities including, but not limited to, investing in, importing to, exporting from, and contracting with, areas of Ukraine and in Russia. On March 4, 2022, California Governor Newsom issued Executive Order N-6-22 requiring state agencies to take steps to ensure any agency and entity under contract with state agencies comply with the Federal Order (https://www.gov.ca.gov/wp-content/uploads/2022/03/3.4.22-Russia-Ukraine-Executive-Order.pdf; "**State Order**").

The District requires the Contractor, as a vendor with the District, to comply with the economic sanctions imposed in response to Russia's actions in Ukraine, including the orders and sanctions identified on the U.S. Department of the Treasury website (https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/ukraine-russia-related-sanctions).

If your Firm's contract with the District has a cumulative value of $5 million or more, your certification here constitutes your written response to the District, indicating:

(1) that your Firm is in compliance with the required economic sanctions of the Federal and State Orders;

(2) the steps your Firm has taken in response to Russia's actions in Ukraine, including, but not limited to, desisting from making new investments in, or engaging in financial transactions with, Russian entities, not transferring technology to Russia or Russian entities, and directly providing support to the government and people of Ukraine.

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☐ **Lobbyist Certification**

The Architect and its Consultants shall at all times comply with the lobbyist certification requirements as set forth below. Specifically, by checking the one applicable option below, Architect hereby represents and warrants to District the following:

☐ Architect and its Consultants are not a "Lobbying Coalition," "Lobbying Firm," "Lobbyist" or "Lobbyist Employer" as those terms are defined in the Political Reform Act of 1974 (Gov. Code §§ 81000) (collectively "Lobbyist") and are not performing Services hereunder that would require registering as a Lobbyist.

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☐ Architect and its Consultants Services hereunder shall or may include lobbying. Architect and its Consultants shall comply with all applicable District, local, state and/or federal policies, rules, regulations, statutes and requirements governing Lobbyists. In addition, the Architect shall maintain on file registering and reporting records for Lobbyists. These records shall be regularly maintained and updated by Architect and shall be available to District upon request or audit.

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☐ **Conflict of Interest Certification**

The Architect and its Consultants shall at all times comply with the conflict of interest certification requirements as set forth below. Architect hereby represents and warrants to District that Architect and its Consultants have read and understand the District's Conflict of Interest Code and, Architect knows or has reason to believe that Architect has a conflict of interest that requires disclosure and Architect and its Consultants shall comply with the applicable disclosure requirements of the District's Conflict of Interest Code. In addition, the Architect shall maintain on file statements of economic interests in accordance with applicable disclosure requirements. These records shall be regularly maintained and updated by Architect and shall be available to District upon request or audit.

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☐ **Criminal Background Investigation / Fingerprinting Certification**

The undersigned does hereby certify to the governing board of the District that undersigned is a representative of the Contractor, is familiar with the facts herein certified, is authorized and qualified to execute this certificate on behalf of Contractor; and that the information in this Criminal Background Investigation / Fingerprinting Certification is true and correct.

1. **Education Code.** Contractor has taken at least one of the following actions (check all that apply):

   ☐ **All Workers Fingerprinted.** The Contractor has complied with the fingerprinting requirements of Education Code section 45125.1 with respect to all Contractor's employees and all of its Subcontractors' employees who interact with pupils, outside of the immediate supervision and control of the pupil's parent or guardian or a school employee, has a valid criminal record summary as described in Education Code Section 44237 (Contractor shall "require each applicant for employment in a position requiring contact with minor pupils to submit two sets of fingerprints prepared for submittal by the employer to the Department of Justice for the purpose of obtaining criminal record summary information from the Department of Justice and the Federal Bureau of Investigation."). A complete and accurate list of Contractor's employees and of all of its subcontractors' employees who may interact with District pupils during the course and scope of the Contract is attached hereto; and/or

   ☐ **Physical Barrier.** Pursuant to Education Code section 45125.2, Contractor has installed or will install, prior to commencement of work, a physical barrier at the Project Site, that will limit contact between Contractor's employees and District pupils at all times; and/or

   ☐ **Continual Supervision by Fingerprinted Employee.** Pursuant to Education Code section 45125.2, Contractor certifies that all employees will be under the continual supervision of, and monitored by, an employee of the Contractor who the California Department of Justice has ascertained has not been convicted of a violent or serious felony. The name and title of the employee who will be supervising Contractor's employees and its Subcontractors' employees is:

   Name: _____ Title: _____

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☐ **Unoccupied Site.** The Work on the Contract is at an unoccupied school site and no employee and/or subcontractor or supplier of any tier of Contract shall come in contact with the District pupils.

2. **Megan's Law (Sex Offenders).** I have verified and will continue to verify that the employees of Contractor that will be on the Project site and the employees of the Subcontractor(s) that will be on the Project site are **not** listed on California's "Megan's Law" Website (http://www.meganslaw.ca.gov/).

Contractor's responsibility for background clearance extends to all of its employees, subcontractors, and employees of subcontractors coming into contact with District pupils regardless of whether they are designated as employees or acting as independent contractors of the Contractor.

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**I ACKNOWLEDGE AND CERTIFY UNDER PENALTY OF PERJURY THAT I AM DULY AUTHORIZED TO LEGALLY BIND THE CONTRACTOR TO ALL PROVISIONS AND ITEMS INCLUDED IN THESE CERTIFICATIONS, THAT THE CONTENTS OF THESE CERTIFICATIONS ARE TRUE, AND THAT THESE CERTIFICATIONS ARE MADE UNDER THE LAWS OF THE STATE OF CALIFORNIA.**

Date: _____

Proper Name of Contractor: _____

Signature: _____

By: _____ (Print Name)

Title: _____

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