LEASE-LEASEBACK AGREEMENT
For the Roseland Elementary TK/K and Sitework Project

THIS LEASE-LEASEBACK AGREEMENT ("Agreement") is entered into as of _____ __, 201_, by and between the Roseland School District, a California school district organized and existing under the laws of the State of California ("Owner"), and _____, a California corporation and contractor licensed by the State of California ("Contractor"). Owner and Contractor are individually a "Party" or collectively the "Parties" to this Agreement.

RECITALS

WHEREAS, the Owner intends to make certain tenant improvements to the Roseland Elementary School campus, located at **950 Sebastopol Rd, Santa Rosa, CA 95407** (the "Project"), which is more fully described below;

WHEREAS, California Education Code section 17406 permits the governing board of a school district to lease to any entity real property owned by the school district if the lessee is required to construct on the leased premises, or provide for the construction thereon, facilities for the use of the school district during the term of the lease, and provides that title to the facilities shall vest in the school district upon expiration of the lease, so long as the district complies with the 'best value' process outlined in the code;

WHEREAS, the Owner has published a Request for Proposals for lease leaseback construction services, including preconstruction services, and Contractor responded and was found to have provided the 'best value' proposal as further described in Exhibit A hereto,

WHEREAS, in connection with the approval of this Agreement, the Owner will enter into a site lease with Contractor (the "Site Lease"), attached hereto as Exhibit B, under which it will lease the Project site described and depicted in Attachment A to the Site Lease (the "Site") to Contractor in order for Contractor to construct the Project as described in this Agreement (the "Scope of Work");

WHEREAS, Contractor will lease the premises back to the Owner pursuant to a Facilities Lease (the "Facilities Lease"), attached hereto as Exhibit C, under which the Owner will be required to make lease payments to the Contractor for the use and occupancy of the Site, including the Project;

WHEREAS, upon expiration of the Site and Facilities Leases, title to the premises shall vest with the Owner; and

WHEREAS, Contractor is experienced in the construction of the type of school facilities and type of work desired by the Owner and is willing to perform the construction work for the Owner, all as more fully set forth this Agreement and the Contract Documents.

NOW, THEREFORE, in consideration of the covenants described herein, the Owner and Contractor agree as follows:

TERMS AND CONDITIONS

ARTICLE I. SCOPE OF WORK. The Contractor agrees to furnish all labor, equipment, materials, and supervision, and to perform and satisfactorily complete all the work, free from any and all liens, stop notices and claims, required for the Project, located in Sonoma California, all in strict compliance with the Contract Documents, including the plans, drawings and specifications prepared by Quattrocchi Kwok Architects ("Plans and Specifications").

Contractor warrants that it has a Class __ contractor's license (number _____) that Contractor shall maintain in good standing for the duration of Contractor's work on the Project.

The Scope of Work shall include construction in accordance with any revisions to the Plans and Specifications that are made as a result of DSA review or at the direction of DSA.

The Scope of Work includes Contractor's performance of the pre-construction services as set forth below.

Until DSA approval of the plans, drawings and specifications for the Project has been received by Owner, Contractor may not commence or perform any work on the Project for which a contractor's license is required and DSA approval is required.

Pre-Construction Services. Contractor shall perform the following pre-construction services:

a. *Site Evaluation.* Contractor shall perform an evaluation of the Site for the Project and make recommendations relating to scope, constructability, and schedule of the Project. Contractor shall also review the scope of necessary demolition work, if any, to develop a hazardous materials removal plan. The purpose of this evaluation is to improve the Project's design and minimize unforeseen conditions. At Owner's request, Contractor shall provide the results of its evaluation in written form to the Owner.

b. *Constructability Review.* Contractor shall provide at least 2 constructability reviews of the Plans and Specifications before or at each of the following intervals of preconstruction: (i) one upon the completion of design development; and (ii) one immediately prior to the submittal of the Plans and Specifications to DSA.

Contractor shall review the Plans and Specifications and related construction documents for errors and omissions, clarity, consistency, and coordination. Contractor's review shall emphasize ensuring that the Project can be completed within the Owner's available budget to the level of quality and educational goals desired, and can be completed within the established schedule. Contractor shall specifically provide recommendations on construction feasibility, energy conservation, availability of materials and labor, time requirements for installation and construction, and factors related to cost, including costs of alternative designs of materials, preliminary budgets, and possible economies of scale. Contractor shall provide written reports, identifying by page and detail the issues to be discussed and resolved. As part of the constructability review, Contractor shall identify areas where value engineering principles could be applied (including potential cost savings and the schedule impact of such savings), and identify items requiring a long lead time before construction. Contractor shall assist the District in considering operating or maintenance costs with respect to selecting systems and products for the Project.

c. *Design/Coordination Meetings*. Contractor shall be responsible for facilitating all design/coordination meetings as needed. Such meetings shall include participation of design professionals and specialty subcontractors.

d. *Schedule*. Contractor shall develop a master critical path method ("CPM") project schedule for the Project that shall include all milestone dates for the Project, including submittal of Contractor's Total Base Rent proposal for the Project, completion of design development, submittal of all estimates contemplated by the Contract, re-submission of the Plans and Specifications to DSA (if necessary), anticipated re-approval by DSA (if any), finalization of Contract Documents, construction sequencing and durations, preparation and processing of shop drawings and samples, delivery of materials or equipment requiring long-lead time procurements, phasing, and Owner move-in. Contractor's schedule shall be submitted to the Owner for approval within 30 days' of execution of this Agreement; the Owner shall have the right to request reasonable changes and updates in the schedule. Contractor shall provide schedule updates with each estimate, or more often if reasonably requested by the Owner or if required in Contractor's judgment to communicate changes in market conditions.

e. *Estimates*. Contractor shall provide an estimate of total Project cost, as well as necessary updates to that estimate. Contractor's initial estimate shall be due to the District within two weeks of completion of its first constructability review. Updated cost estimates shall be given in accordance with the approved CPM project schedule for the Project. Contractor shall also provide an updated estimate upon the submission of the Plans and Specifications to DSA (and at any other time required or reasonably necessary pursuant to this Agreement). Contractor's cost estimate shall identify all trades and unit costs and shall also identify all allowable general condition costs and fees. If any cost estimate submitted to the Owner exceeds a previously approved estimate, the Contractor shall make appropriate recommendations to the Owner for reducing the estimated cost of the Project. All estimates shall assume that construction of the Project is subject to the payment of prevailing wages under the California Labor Code and applicable regulations, and that the Project will be subject to compliance monitoring and enforcement by the California Department of Industrial Relations.

f. *Construction Planning*. Contractor shall provide assistance to Owner in construction planning, including phasing, staging, site logistics, sequencing, fencing, office locations and means and methods of construction. The Contractor shall (1) provide a preliminary evaluation of the Owner's schedule, cost and design requirements for the Project; (2) develop an anticipated construction schedule pursuant to Subsection d. above; (3) develop a preliminary cost estimate for each type of work contemplated by the Project pursuant to Subsection e. above; (4) clarify and delineate the Architect's, the Contractor's, and the Owner's respective duties and responsibilities; and (5) set forth a plan for the administration and coordination of all Work on the Project, including pre-construction meetings. The Architect and Owner shall review the above for acceptance. Contractor will also ensure that all Work complies with the guidelines established by the State of California Office of Public School Construction and any other Federal or State agencies having jurisdiction over the Project. The objective of this step will be to develop an overall program strategy as relates to timing, budgets, construction materials, means and methods and the program interface during construction.

ARTICLE II. CONTRACT DOCUMENTS. The Contractor and the Owner agree that this Agreement; the Request for Proposals; the General Conditions; the Site Lease; the Facilities Lease; the Plans and Specifications; the Drawings; any interpretation or direction to Contractor issued in accordance with the General Conditions; Change Orders; the Owner's Resolutions awarding or authorizing amendment to any of the foregoing; and the exhibits to any of the foregoing together form the "Contract Documents," which form the "Contract."

ARTICLE III. TIME TO COMPLETE AND LIQUIDATED DAMAGES. Time is of the essence in this Contract. The time for completion of the Project shall be as follows: __ **calendar days** from the date established in the Owner's Notice to Proceed. If there are multiple phases, the completion dates for the subsequent phases shall be determined by agreement of the Owner and the Contractor once the prior phase is complete. Failure to complete the Project within these times and in the manner provided for by the Contract Documents shall subject the Contractor to liquidated damages. The actual occurrence of damages and the actual amount of the damages which the Owner would suffer if the Project were not completed within the specified times set forth are dependent upon many circumstances and conditions which could prevail in various combinations and, from the nature of the Project, it is impracticable and extremely difficult to fix the actual damages. Damages that the Owner would suffer in the event of delay include, but are not limited to, loss of the use of the Project, disruption of activities, costs of administration, supervision and the loss suffered by the public.

Accordingly, the parties agree that the amount herein set forth shall be the amount of damages which the Owner shall directly incur upon failure of the Contractor to complete the Project within the time specified: $___ for each calendar day by which completion of the Project, or portion thereof, is delayed beyond the completion dates specified above.

If the Contractor becomes liable under this section, the Owner, in addition to all other remedies provided by law, shall have the right to withhold any and all retained lease payments which would otherwise be or become due the Contractor until the liability of the Contractor under this section has been finally determined. If the retained sums are not sufficient to discharge all liabilities of the Contractor incurred under this Article, the Contractor and its sureties shall continue to remain liable to the Owner for such liabilities until satisfied in full.

If the Owner accepts any work or makes any payment under this Agreement after a default by reason of delays, the payment or payments shall in not constitute a waiver or modification of any Agreement provisions regarding time of completion and liquidated damages.

ARTICLE IV. TOTAL BASE RENT. The Total Base Rent shall be the total sum paid by the Owner for the Project in the form of Lease Payments under the Facilities Lease. The Total Base Rent will be calculated following: (i) Contractor's completion of the preconstruction services set forth above for the Project; (ii) the selection of all subcontractors in accordance with Education Code section 17406(a)(4) and the Request for Sealed Proposals; and (iii) any required DSA approval of the Plans and Specifications for the Work.

Following the occurrence of all of the events set forth in the paragraph above, Contractor shall provide Owner with objectively verifiable information of its costs to perform the applicable the Work and a written rationale for the proposed Total Base Rent for the Project, including documentation sufficient to support the calculation. Contractor's written rationale shall detail the "base construction cost" for the Project,

consisting of (a) all subcontracts to be awarded by Contractor for the Project, plus (b) any separately awarded contracts for materials and supplies for the Project. The sum of the base construction cost, multiplied by the Percentage offered by the Contractor in its response to the Request for Sealed Proposals, shall be the "Contractor Fee", which shall also be set forth in Contractor's written rationale and added to the base construction cost to determine the Total Base Rent.

The proposed Total Base Rent shall be approved or rejected by the Owner at a public meeting before Contractor may proceed with any Work under the Contract Documents. Once approved, the Parties shall execute an amendment to this Agreement, including Exhibit D, setting forth the Total Base Rent and associated Lease Payment Schedule. Contractor shall commence Work upon Notice to Proceed by the Owner, and the time for completion of the Work shall commence to run upon such notice by the Owner. If the Owner rejects the proposed Total Base Rent adjustment and requests another calculation from Contractor, then Contractor shall submit another calculation complying with this Section's procedures. If the Owner rejects the proposed Total Base Rent adjustment and does not request another calculation from Contractor, then such rejection will be considered a termination of the Agreement and Contractor shall cease any further services under this Agreement.

Except as otherwise provided in the General Conditions, the Contractor shall assume the risk of all costs in excess of the Total Base Rent in the performance of such work and shall not be entitled to additional payments because of such excess costs. Should the Contractor believe that it is entitled to an increase in the Total Base Rent or a time extension for completion, it must request it pursuant to the procedures in the General Conditions for change orders and claims. Contractor shall finance the cost of construction of the Work. Contractor shall pay all subcontractors and suppliers as they perform Work or furnish supplies. The Owner shall pay Contractor payments pursuant to the terms and conditions of this Agreement. The sum of the payments shall not exceed the Total Base Rent, as it may be adjusted, established under this Agreement.

ARTICLE V. <u>PREVAILING WAGES</u>. The Project is a public work, the Work shall be performed as a public work, and under California Labor Code sections 1770 *et seq*., the Director of the California Department of Industrial Relations ("DIR") has determined the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality in which the Work is to be performed, for each craft, classification or type of worker needed to execute this Contract. Per diem wages shall be deemed to include employer payments for health and welfare, pension, vacation, apprenticeship or other training programs, and similar purposes. Copies of the rates are on file at the Owner's principal office. The rate of prevailing wage for any craft, classification or type of workmanship to be employed on this Project is the rate established by the applicable collective bargaining agreement which rate so provided is hereby adopted by reference and shall be effective for the life of this Agreement or until the Director of the DIR determines that another rate be adopted. It shall be mandatory upon the Contractor and on any subcontractor to pay not less than the said specified rates to all workers employed in the execution of this Agreement.

The Contractor and any subcontractor under the Contractor as a penalty to the Owner shall forfeit not more than Two Hundred Dollars ($200.00) for each calendar day or portion thereof for each worker paid less than the stipulated prevailing rates for such work or craft in which such worker is employed. The difference between such stipulated prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the stipulated prevailing wage rate shall be paid to each worker by the Contractor.

The Contractor and each Subcontractor shall keep or cause to be kept an accurate record for work on

this Project showing the names, addresses, social security numbers, work classification, straight time and overtime hours worked and occupations of all laborers, workers and mechanics employed by them in connection with the performance of this Contract or any subcontract thereunder, and showing also the actual per diem wage paid to each of such workers, which records shall be open at all reasonable hours to inspection by the Owner, its officers and agents and to the representatives of the Division of Labor Standards Enforcement of the DIR. Contractor and all subcontractors shall comply with Labor Code section 1776. In accordance with Labor Code section 1771.4(a)(1), the Project is subject to compliance monitoring and enforcement by the DIR. The Contractor and each subcontractor shall furnish a certified copy of all payroll records directly to the Labor Commissioner on a monthly basis, unless directed by the Owner to furnish such records more often, and in the format prescribed by the Labor Commissioner.

As a public work, the Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. In order to be qualified to submit a bid or to be listed in a bid proposal subject to the requirements of Public Contract Code section 4104, or enter into, or engage in the performance of any contract of public work (as defined by Division 2, Part 7, Chapter 1 (§§1720 *et seq*.) of the Labor Code), a contractor or subcontractor must be currently registered and qualified under Labor Code section 1725.5 to perform public work as defined by Division 2, Part 7, Chapter 1 (§§1720 *et seq*.) of the Labor Code.

ARTICLE VI. ENFORCEABLE COMMITMENT RE SKILLED AND TRAINED WORKFORCE. The Contractor and its subcontractors at every tier shall comply with Education Code section 17407.5 and Public Contract Code sections 2600-2603, which require the Contractor and its subcontractors at every tier to employ a skilled and trained workforce, as defined herein, to perform all work on the Project that falls within an apprenticeable occupation in the building and construction trades.

For the purpose of this Article, the following definitions apply:

A. "Apprenticeable occupation" means an occupation for which the Division of Apprenticeship Standards of the DIR had approved an apprenticeship program before January 1, 2014.

B. "Graduate of an apprenticeship program" means either (a) an individual that has been issued a certificate of completion under the authority of the California Apprenticeship Council for completing an apprenticeship program approved by the DIR pursuant to Section 3075 of the Labor Code, or (b) an individual that has completed an apprenticeship program located outside California and approved for federal purposes pursuant to apprenticeship regulations adopted by the federal Secretary of Labor.

C. "Skilled and trained workforce" means that all of the workers are either apprentices registered in an apprenticeship program approved by the DIR, or skilled journeypersons, with, for work performed on or after January 1, 2020, at least 60 percent of the skilled journeypersons employed on the Project must be graduates of an apprenticeship program for the applicable occupation, except for those occupations excluded below. Pursuant to Sections 2600-2602 of the Public Contract Code, the percentage requirement may be partially met in some apprenticeable occupations by skilled journeypersons who commenced working before an apprenticeship program existed, may be met by the hours performed by the skilled journeypersons, need not be

met if less than ten (10) hours of work were performed, and need not be met by some subcontractors. Notwithstanding the foregoing, for work performed on or after January 1, 2020, Contractor is not required to employ at least 60 percent of the skilled journeypersons from graduates of an apprenticeship program for the following occupations: acoustical installer, bricklayer, carpenter, cement mason, drywall installer or lather, marble mason, finisher, or setter, modular furniture or systems installer, operating engineer, pile driver, plasterer, roofer or waterproofer, stone mason, surveyor, teamster, terrazzo worker or finisher, and tile layer, setter, or finisher.

D. "Skilled journeyperson" means any of the following: (i) a person who has graduated from an apprenticeship program for the applicable occupation that was approved by the DIR, (ii) a person who has graduated from an apprenticeship program for the applicable occupation that was located outside of California and approved for federal purposes in accordance with regulations adopted by the federal Secretary of Labor, or (iii) a person who has at least as many hours of on-the-job experience in the applicable occupation as would be required to graduate from an apprenticeship program approved by the DIR.

For each calendar month during the Work, Contractor shall provide a compliance report to the Owner for each contractor or subcontractor before the fifth day of each month, using the format attached hereto as Exhibit E, or in a substantially similar format, demonstrating compliance with this Section. Such monthly compliance reports shall be subject to the California Public Records Act (commencing with Government Code section 6250), and shall be open to public inspection. In addition to relying upon the Department of Apprenticeship Standards website for proof of journeymen graduated from DIR-approved apprenticeship programs, Contractor and its subcontractors may rely upon Union hiring hall representation that it holds a valid apprenticeship certificate for its dispatched members, which Union hiring hall representation shall be in writing and maintained by Contractor or its subcontractors.

Notwithstanding any other provision of the Agreement or the General Conditions: (a) if Contractor fails to provide any required monthly compliance report pursuant to this Section on or before the fifth day of the following month, or provides an incomplete report, Owner shall withhold further payments to Contractor that would otherwise be due and payable under the terms of this Agreement, until Contractor provides a complete report; and (b) if a monthly report does not demonstrate compliance with these skilled and trained workforce requirements, Owner shall withhold further payments to Contractor that would otherwise be due and payable under the terms of this Agreement, until Contractor provides a plan to achieve substantial compliance with these requirements for the relevant apprenticeable occupation prior to completion of the Contract. If Owner is not reasonably assured by Contractor that compliance will be achieved by the end of the construction of the Project, or if Contractor fails to provide any missing or incomplete report within thirty (30) days of its original due date, then Owner, at its sole discretion, may terminate the Agreement pursuant to the General Conditions, in addition to any other rights or remedies provided to Owner in the Contract Documents.

If the failure of Contractor to provide a required monthly report is due to a subcontractor's failure to provide the required information to Contractor, then Contractor shall provide notice of this subcontractor failure to Owner within five (5) business days after the due date of the report. Ongoing failure of a subcontractor to provide the necessary information is grounds for Owner to object to the continued use of that subcontractor and to permit substitution and, if Contractor requests leave to substitute the subcontractor, then Contractor shall not be terminated for default solely based on a subcontractor's failure to provide the required skilled and trained workforce information.

ARTICLE VII. DSA OVERSIGHT PROCESS. The Contractor must comply with the applicable requirements of the Division of State Architect ("DSA") Construction Oversight Process ("DSA Oversight Process"), including but not limited to (a) notifying the Inspector of Record ("IOR") upon commencement and completion of each aspect of the work as required under DSA Form 156; (b) coordinating the Work with the IOR's inspection duties and requirements; (c) submitting verified reports under DSA Form 6-C; and (d) coordinating with the Owner, Owner's Architect, any Construction Manager, any laboratories, and the IOR to meet the DSA Oversight Process requirements without delay or added costs to the Project.

Contractor shall be responsible for any additional DSA fees related to review of proposed changes to the DSA-approved construction documents, to the extent the proposed changes were caused by Contractor's wrongful actions or omissions. If inspected Work is found to be in non-compliance with the DSA-approved construction documents or the DSA-approved testing and inspection program, then it must be removed and corrected. Any construction that covers unapproved or uninspected Work is subject to removal and correction, at Contractor's expense, in order to permit inspection and approval of the covered Work in accordance with the DSA Oversight Process.

ARTICLE VIII. TERMINATION. The Owner or Contractor may terminate the Contract as provided in the General Conditions.

ARTICLE IX. ENTIRE AGREEMENT. The Contract constitutes the entire agreement between the Parties, and supersedes any prior or contemporaneous agreement between the Parties, oral or written, unless such agreement is expressly incorporated herein. The Owner makes no representations or warranties, express or implied, not specified in the Contract. The Contract is intended as the complete and exclusive statement of the Parties' agreement pursuant to Code of Civil Procedure section 1856.

ARTICLE X. EXECUTION OF OTHER DOCUMENTS. The Parties to this Agreement shall cooperate fully in the execution of any and all other documents and in the completion of any additional actions that may be necessary or appropriate to give full force and effect to the terms and intent of the Contract. The Parties agree that they will, from time to time, execute, acknowledge and deliver such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Site or the Project hereby leased or intended to be leased.

ARTICLE XI. EXECUTION IN COUNTERPARTS. This Agreement may be executed in counterparts such that the signatures may appear on separate signature pages. A copy, or an original, with all signatures appended together, shall be deemed a fully executed Agreement.

ARTICLE XII. BINDING EFFECT. Each Party, by execution of this Agreement, acknowledges that it has read this Agreement and the other Contract Documents, understands them, and agrees to be bound by their terms and conditions. The Contract shall inure to the benefit of and shall be binding upon the Contractor and the Owner and their respective successors and assigns.

ARTICLE XIII. SEVERABILITY. If a court of competent jurisdiction shall hold any provision of the Contract invalid or unenforceable, such holding shall not invalidate or render unenforceable any other provision hereof. The laws of the State of California shall govern the Contract and venue shall be in the Superior Court in Sonoma County, California, and no other place.

ARTICLE XIV. AMENDMENTS. The terms of the Contract shall not be waived, altered, modified, supplemented, or amended in any manner whatsoever except by written agreement signed by the Parties

and approved or ratified by the Owner's Governing Board.

ARTICLE XV. ASSIGNMENT OF CONTRACT. Neither Party shall assign or transfer by operation of law or otherwise any or all of its rights, burdens, duties or obligations without the prior written consent of the other Party.

ARTICLE XVI. FORCE MAJEURE. Except as otherwise provided herein, 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 such obligation, in whole or in part, as a result of delays caused by the other Party or third parties (other than third parties under the control or supervision of the Party charged with the delay), a governmental agency or entity, an act of God, war, terrorism, civil disturbance, forces of nature, fire, flood, earthquake, strikes or lockouts, and such non-performance will not be a default hereunder or a grounds for termination of any of the Contract Documents.

ARTICLE XVII. WRITTEN NOTICE. Written notice shall be deemed to have been duly given on the business day delivered if delivered in person to the individual identified below, or if delivered at or sent by registered or certified or overnight mail to the address identified below.

To the Owner: Roseland School District
1691 Burbank Ave
Santa Rosa, CA 95407
Attention: Raul Guerrero, Superintendent

To the Contractor: _____
_____
_____, CA _____
Attention: _____

ARTICLE XVIII. EXHIBITS INCORPORATED. All Exhibits attached to this Agreement are hereby incorporated into the Agreement by this reference as if set forth in full.

ARTICLE XIX. HEADINGS. The headings in the Contract Documents are included for convenience only and shall neither affect the construction or interpretation of any provision in the Contract Documents nor affect any of the rights or obligations of the parties to the Contract.

The Parties have, by their duly authorized representatives, executed this Agreement, in duplicate, as of the day and year first above written.

CONTRACTOR: _____

BY: _____

TITLE: _____

_____
CONTRACTOR'S LICENSE NO.

_____

LICENSE EXPIRATION DATE

OWNER: ROSELAND SCHOOL DISTRICT

BY: _____

Superintendent

NOTE: Contractor must give the full business address of the Contractor and sign with Contractor's usual signature. Partnerships must furnish the full name of all partners and the Agreement must be signed in the partnership name by a general partner with authority to bind the partnership in such matters, followed by the signature and designation of the person signing. The name of the person signing shall also be typed or printed below the signature. Corporations must sign with the legal name of the corporation, followed by the name of the state of incorporation and by the signature and designation of the chairman of the board, president or any vice president, and then followed by a second signature by the secretary, assistant secretary, the chief financial officer or assistant treasurer. All persons signing must be authorized to bind the corporation in the matter. The name of each person signing shall also be typed or printed below the signature. Satisfactory evidence of the authority of the officer signing on behalf of a corporation shall be furnished.

EXHIBIT A

BASIS OF AWARD TO CONTRACTOR

EXHIBIT B

SITE LEASE

by and between

_____ Company

and

Roseland School District

_____ ___, 20__

SITE LEASE

Roseland School District Roseland Elementary TK/K and Sitework Lease Leaseback Project

THIS SITE LEASE is made as of _____ __, 20__, between the:

Roseland School District ("Lessor" or "District"), and _____("Lessee").

WHEREAS, the District owns real property located as depicted on Attachment A hereto, incorporated herein by this reference ("Site"), at which the District desires to provide for the construction of the above described Project, as described in the Contract Documents.

WHEREAS, the District has determined that it is in the best interests of the District and for the common benefit of those people residing in the District to construct the Project by leasing a portion of the Site to the Lessee and by thereafter entering into the Facilities Lease under which the District will sublease the Site and lease the Project from the Lessee;

WHEREAS, the District is authorized under section 17406 of the Education Code of the State of California to lease the Site to the Lessee for Lessee to construct the Project on the Site and to leaseback to the District the Site and the Project, and has duly authorized the execution and delivery of this Site Lease;

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

WHEREAS, the District has performed all acts, conditions and things required by law to exist, to have happened and to have been performed precedent to and in connection with the execution and entering into this Site Lease do exist 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 mutual covenants contained herein, the District and Lessee agree as follows:

1 **DEFINITIONS.**

1.1 Contract documents: those documents identified as such in the Lease Leaseback Agreement ("Agreement").

1.2 Contractor: _____.

1.3 Lessee: _____.

1.4 Lessee Representative: any person authorized by Lessee to act on its behalf.

1.5 District: Roseland School District.

1.6 District Representative: any person authorized by District to act on its behalf.

1.7 Facilities: the Project and the Site

1.8 Facilities Lease: the Facilities Lease dated _____ __, 20__, entered into by and between the District and Lessee, as originally executed and as it may from time to time be amended or supplemented pursuant to the provisions hereof.

1.9 Permitted Encumbrances: as defined in the Facilities Lease.

1.10 Project: the Work described in the Contract documents.

1.11 Site: those certain parcels of real property and improvements thereon more particularly described

in Attachment A.

1.12 Site Lease: this Site Lease as originally executed and as it may from time to time be amended or supplemented pursuant to the provisions hereof.

1.13 Work: all labor, materials, equipment, utilities, services and transportation necessary to complete the Project in accordance with the Contract documents.

2 DEMISING CLAUSES.

2.1 **Lease of the Site.** The District hereby leases to the Lessee, and the Lessee hereby leases from the District the Site, 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 Lessee within three (3) calendar days of execution of this Site Lease.

2.2 **Purpose.** The Lessee shall use the Site solely for the purpose of constructing and equipping the Project thereon and leasing the Facilities to the District pursuant to the Facilities Lease and for such purposes as may be incidental thereto.

2.3 **Rental.** In consideration for the lease of the Site by the District to the Lessee and for other good and valuable consideration, the Lessee shall pay One Dollar ($1.00) per year to the District, payable in arrears on the last day of each year for the Term of this Site Lease without further notice or invoice from the District.

2.4 **No Merger.** The leasing of the Site by the Lessee to the District pursuant to the Facilities Lease shall not effect or result in a merger of the estates of the District in the Site, and the Lessee shall continue to have a leasehold estate in the Site pursuant to this Site Lease throughout the term hereof.

3 QUIET ENJOYMENT.

QUIET ENJOYMENT. The parties intend that the Site will be leased back to the District pursuant to the Facilities Lease for the term thereof. Subject to any rights the District may have under the Facilities Lease to possession and enjoyment of the Site, the District hereby covenants and agrees that it will not take any action to prevent the Lessee from having quiet and peaceable possession and enjoyment of the Site during the term hereof and prior to the filing of the Notice of Completion, and will, at the request of the Lessee, to the extent that it may lawfully do so, join in any legal action in which the Lessee asserts its right to such possession and enjoyment.

4 SPECIAL COVENANTS AND PROVISIONS.

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

4.2 **Further Assurance and Corrective Instruments.** The District and the Lessee agree that they will, 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 Site hereby leased or intended so to be or for carrying out the expressed intention of this Site Lease and the Facilities Lease.

4.3 **Right of Entry**. The District and/or its duly authorized representatives shall have the right to enter upon the Site at any reasonable time to inspect the same and/or the improvements, provided that, during construction, the District follows all safety precautions Lessee requires.

4.4 **Representations of the District.** The District represents and warrants to the Lessee as follows:

4.4.1 The District is a school district, duly organized and existing under the Constitution and laws of the State of California;

4.4.2 The District has the full power and authority to enter into, to execute and to deliver this Site

Lease, and to perform all of its duties and obligations hereunder, and has duly authorized the execution of this Site Lease;

4.4.3 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 instruction to which the District is now a party or by which the District is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the District, or upon the Site, except Permitted Encumbrances.

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

4.5.1 The Lessee is duly organized and existing under the laws of the State of California, with an active California contractor's license. It has full power and authority to enter into this Site Lease and the Facilities Lease; is possessed of full power to own and hold real and personal property, to lease and sell the same, and to perform all of its duties and obligations hereunder; and has duly authorized the execution and delivery of all of the aforesaid agreements.

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

4.5.3 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 Lessee is now a party or by which the Lessee 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 Lessee, or upon the Site, except Permitted Encumbrances.

4.6 **Contractor.** The Lessee agrees that it will cause the applicable terms of the Contract documents to be incorporated into any contracts or subcontracts Lessee enters into for the construction of the Project. The Lessee agrees to perform the Work and construct the Project in accordance with the Contract documents. Lessee, as Contractor, shall provide the District on forms provided by the District the following: (1) Payment Bond; (2) Performance Bond; (3) Drug-Free Certification; (4) Fingerprint Certification; and (5) Workers' Compensation Certificate.

4.7 **Real Property Taxes**. Except to the extent it is exempt from doing do, the District shall pay all real property taxes on the Site (including any fees, taxes or assessments against, or as a result of, any Lessee improvements installed on the Site) during the Lease Term. "Real property tax" means: (i) any fee, levy, charge, assessment, penalty or tax imposed by any taxing authority against the

Site; (ii) any tax or charge for fire protection, streets, sidewalks, road maintenance, refuse or other services provided to the Site by any governmental agency; (iii) any tax imposed upon this transaction or based upon a reassessment of the Site due to a change of ownership, as defined by applicable law, or other transfer of all or part of the District's interest in the Site; and (iv) any charge or fee replacing any tax previously included within the definition of real property tax.

5 **ASSIGNMENT**

5.1 **Assignment and Subleasing**. Lessee shall not assign this Site Lease or any of the rights, obligations or liabilities hereunder, or sublet the Site or improvements, without the District's prior written consent, in the District's sole and absolute discretion; provided, however, in such event Lessee shall not be relieved of its obligations or liabilities under the Lease or Contract documents.

5.2 **Restrictions on the District**. The District agrees that it will not mortgage, sell, encumber, assign, transfer or convey the Site or any portion thereof during the term of this Site Lease. To the extent permitted by law, the District shall not abandon the Site for its intended use as stated in this Lease and the Facilities Lease, for the Lease Term, nor seek other property to substitute for this Site.

5.3 **Liens.** Lessee agrees to keep the Site and every part thereof free and clear of any and all liens, including without limitation, pledges, charges, encumbrances, claims, stop notices, liens of any type arising out of or in connection with work or labor done, services performed, or materials or appliances used or furnished for or in connection with the Site or the Project or otherwise. Lessee further agrees to pay promptly and fully and discharge any and all claims on which any such lien may or could be based, or otherwise extinguish liens (as for example by posting appropriate bonds) and in any event to hold District harmless from any and all such liens, mortgages, including without limitation, and claims of liens and suits or other proceedings pertaining thereto.

6 **Improvements.** Title to all improvements made on the Site during the term hereof shall vest in the Lessee or the District in accordance with the terms of the Facilities Lease.

7 **TERM AND TERMINATION**

7.1 **Expiration of Site Lease.** This Site Lease shall expire simultaneously with the expiration of the Facilities Lease as provided therein.

7.2 **Term of Site Lease**. The term of this Site Lease shall commence as of the date of the issuance of the Notice to Proceed from District to Lessee, and shall continue until the last day of the Term of the Facilities Lease.

7.3 **Termination**. The District and Lessee shall have the right to terminate the Lease Documents in accordance with the General Conditions. Notwithstanding any other provision of this Site Lease, upon termination of the Facilities Lease for any reason whatsoever, this Site Lease shall be deemed terminated simultaneously therewith.

8 **MISCELLANEOUS**

8.1 **Governing Law; Interpretation.** This Site Lease shall be governed and interpreted in accordance with the laws of the State of California in accordance with its fair meaning and not strictly for or against District or Lessee.

8.2 **Successors.** This Site Lease and all terms hereof are binding upon and inure to the benefit of the successors and assigns of the parties.

8.3 **Authority.** The individual executing this Site Lease on behalf of Lessee warrants and represents that he/she is authorized to execute this Site Lease and bind Lessee to all terms hereof. The individual executing this Site Lease on behalf of District warrants and represents that he/she has been authorized to execute this Site Lease by the District's Governing Board and to bind District to

all terms hereof.

8.4 **Marginal Headings; Captions.** The titles of the various Paragraphs of the Site Lease are for convenience of reference only and are not intended to and in no way shall enlarge or diminish the rights or obligations of Lessee and District hereunder.

8.5 **Cumulative Rights; No Waiver.** Duties and obligations imposed by this Site Lease and rights and obligations hereunder are in addition to and not in lieu of any imposed by or available at law or in equity. No action or failure to act by District or Lessee hereunder shall be deemed a waiver of any right or remedy afforded hereunder or acquiesce or approval of any breach or default by Lessee or the District.

8.6 **Severability.** If any provision of this Site Lease is deemed unconscionable, herein defined to include illegal, invalid unenforceable or void 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 the Facilities Lease or this Site Lease.

8.7 **Counterparts and Facsimiles.** This Site Lease may be executed in counterparts, each of which shall be deemed an original, but such counterparts shall be deemed to constitute one and the same instrument; a facsimile signature by a party may be relied upon by the other parties as an original signature.

8.8 **Dispute Resolution.** Notwithstanding any other provision of the Contract documents, any and all claims arising under this Site Lease shall be resolved in accordance with Article 50 of the General Conditions. Any claim not covered by that provision shall be pursued, if at all, pursuant to the California Government Claims Act.

8.9 **Notices.** Notices Lessee or District are required or desire to serve on the other shall be valid only if addressed to the other as set forth in the Site Lease or modified by notice hereunder from time to time. Notices shall be effective only if by personal delivery requiring signature acknowledging receipt or by United States Mail, Certified, Return Receipt Requested, First Class, postage fully pre-paid, addressed and delivered as follows:

If to District:	If to Lessee:
Raul Guerrero, Superintendent	Attn:_____
1691 Burbank Ave	_____
Santa Rosa, CA 95407	_____

8.10 **Entire Agreement**. This Site Lease and Attachment A hereto form the Site Lease. The foregoing constitutes the entire agreement and understanding between the District and Lessee concerning the subject matter hereof, replacing and superseding all prior agreements or discussions, whether written or oral. No term or condition of this Site Lease shall be modified or amended except by a writing executed by the District and Lessee.

8.11 **Triple Net Lease**. Except as otherwise provided herein, this Site Lease shall be deemed a "net-net-net" lease, and the Contractor agrees that the Lease Payments shall be an absolute net return to the Lessor, free and clear of any expenses, charges or setoffs, except as otherwise provided in the Contract Documents.

This Site Lease entered into as of the day and year first written above.

Roseland School District	_____
By: _____	By: _____
Title: Superintendent	Title: _____

ATTACHMENT A

DESCRIPTION OF SITE

EXHIBIT C

FACILITIES LEASE

by and between

Roseland School District

and

_____

_____ ___, 20__

Roseland School District

Roseland School District Roseland Elementary TK/K and Sitework Lease Leaseback Project

FACILITIES LEASE

This FACILITIES LEASE is made as of the _____ ___, 20__, between the Roseland School District ("District") and the Lessor, _____ (CSLB # _____) ("Lessor").

WHEREAS, on the date hereof, the District has leased to the Lessor pursuant to a Site Lease certain real property, more particularly described in the Attachment A to the Site Lease ("Site"), for the construction of the Roseland Elementary TK/K and Sitework Project, including site work, located at Roseland Elementary, 950 Sebastopol Rd, Santa Rosa, CA 95407 (the "Project").

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

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

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

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

NOW THEREFORE, in consideration of the mutual covenants contained herein, the District and Lessor agree as follows:

1 **DEFINITIONS.**

1.1 Contract Documents: those documents identified as such in the Agreement.

1.2 Lease Documents. This Facilities Lease, the Site Lease, and the Agreement (including all Exhibits thereto).

1.3 Lessor: _____

1.4 Lessor Representative: any person authorized and designated by the Lessor to act on its behalf.

1.5 District: the Roseland School District

1.6 District Representative: any person authorized and designated by District to act on its behalf.

1.7 Facilities: the Project and the Site.

1.8 Facilities Lease: this Facilities Lease as originally executed and as it may from time to time be amended or supplemented pursuant to the provisions hereof.

1.9 Lease Payment Schedule: the lease payment schedule set forth in Exhibit D of the Agreement.

1.10 Permitted Encumbrances: as of any particular time: (i) the Site Lease; (ii) this Facilities Lease; (iii) easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions or restrictions which exist of record as of the date of this Facilities Lease and which will not materially impair the use of the Site; and (iv) 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 District consents in writing which will not impair or impede the operation of the Site.

1.11 Project: the Roseland Elementary TK/K and Sitework Lease Leaseback Project.

1.12 Site: those certain parcels of real property and improvements thereon more particularly described in the Site Lease.

1.13 Site Lease: the Site Lease dated as of _____, 20__, entered into by the District and _____, as originally executed and as it may from time to time be amended or supplemented pursuant to the provisions hereof.

1.14 Term: the time during which this Facilities Lease is in effect, as provided for herein.

1.15 Total Base Rent: The Total Base Rent shall be the total sum paid by the District for construction of the Project, including any financing costs, in the form of Lease Payments under the terms of this Facilities Lease. The Total Base Rent shall not be exceeded except in accordance with use of any approved contingency funds, allowances, or change to the Project, as provided for in the General Conditions.

1.16 Work: all labor, materials, equipment, utilities, services and transportation necessary to complete the Project in accordance with the Contract Documents.

2 REPRESENTATIONS, COVENANTS, AND WARRANTIES.

2.1 **District.** The District represents, covenants, and warrants as follows:

2.1.1 The District is a California public school district, duly organized and existing under the laws of the State of California.

2.1.2 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.

2.1.3 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 Site, except Permitted Encumbrances.

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

2.2 **Lessor**. The Lessor represents, covenants, and warrants as follows:

2.2.1 The Lessor is 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; holds a valid California contractor's license, is possessed of full power to own and hold real and personal property,

and to lease and sell the same; and has duly authorized the execution and delivery of all of the aforesaid agreements.

2.2.2 Neither the execution and delivery of this Facilities Lease or 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 Lessor is now a party or by which the Lessor is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the Lessor, or upon the Site, except Permitted Encumbrances.

2.2.3 Except as otherwise provided herein, the Lessor shall not assign this Facilities Lease, its right to receive Lease Payments and prepayments from the District, or its duties and obligations hereunder to any other person, firm or Lessor so as to impair or violate the representations, covenants and warranties contained in this Paragraph 2.2.

2.2.4 The Lessor 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.

3 **CONSTRUCTION OF PROJECT.** The Lessor shall perform the Work and construct the Project in accordance with the Contract Documents. Lessor, as Contractor, shall provide the District on forms provided by the District the following: (1) Payment Bond; (2) Performance Bond; (3) Drug-Free Certification; (4) Fingerprint Certification; and (5) Workers Compensation Certificate. The Performance Bond shall name the District as obligee. Lessor and any subcontractors shall be licensed by the Contractors' State License Board at all times during the Project.

4 **AGREEMENT TO LEASE**

4.1 **Purpose of Facilities Lease.** Lessor hereby leases the Facilities to the District and the District hereby rents said Facilities from the Lessor under the terms and conditions hereafter set forth and subject to all easements, encumbrances and restrictions, including without limitation the terms and conditions of the Site Lease. The District shall not utilize any of the Facilities until authorized to do so by the Architect. Nothing in this Facilities Lease alters the duties of the Contractor to complete the Project in accordance with the Contract Documents. The Lessor shall maintain Builder's Risk Insurance on the Project until final completion and acceptance by the District. The District shall, during the Term of this Facilities Lease, make Lease Payments to Lessor on the dates and in the amounts set forth in the Lease Payment Schedule.

4.2 **No Merger.** The leasing of the Site by the Lessor to the District pursuant to this Facilities Lease shall not affect or result in a merger of the District's leasehold estate and its fee estate as lessor under the Site Lease throughout the term thereof and the Term of this Facilities Lease. As to the Site, this Facilities Lease shall be deemed and constitute a sublease.

4.3 **Expiration of Facilities Lease.** This Facilities Lease shall expire upon the earliest of any of the following events: (1) upon completion of the Project, as provided in the Contract Documents, and payment of the final Lease Payment, as provided in the Lease Payment Schedule, provided, however, that if on the scheduled date for expiration of this Facilities Lease the Lease Payments shall not have been fully paid by District, then the Term of this Facilities Lease and the Site Lease shall be extended until the date upon which all such Lease Payments shall be fully paid, notwithstanding anything to the contrary in this Facilities Lease or the Site Lease.; (2) upon

Termination by the District in accordance with Paragraph 4.5.1 below; or (3) upon Termination by the Lessor in accordance with Paragraph 4.5.2 below ("Expiration Date"). Notwithstanding any other provision of this Facilities Lease, upon expiration of this Facilities Lease for any reason whatsoever, the Site Lease shall be deemed expired simultaneously therewith.

4.4 **Term of Facilities Lease**. The term of this Facilities Lease shall commence as of the effective date stated above, and shall continue until the Expiration Date.

4.5 **Termination.**

4.5.1 **Termination by District.** The District shall have the right to terminate the Lease Documents, including this Facilities Lease, in the event of a default by Lessor in accordance with the General Conditions.

4.5.2 **Termination by Lessor.** The Lessor shall have the right to terminate the Lease Documents, including this Facilities Lease, in the event that the District fails to timely disburse Lease Payments, despite faithful performance of Lessor of all its obligations under the Contract Documents, and the District fails to cure same within thirty (30) days from receipt of written notice by Lessor of its intent to terminate the Contract Documents pursuant to this paragraph. Notwithstanding any other provision of this Facilities Lease, upon termination of this Facilities Lease for any reason whatsoever, the Site Lease and Agreement shall be deemed terminated simultaneously therewith.

4.6 **Possession**. The District shall take possession of the Project in accordance with the Contract Documents.

4.7 **Lease Payments.**

4.7.1 Subject to the provisions of Paragraphs 4 and 9 hereof, and in accordance with the General Conditions, the District agrees to pay to Lessor as rental for the use and occupancy of the Project and the Site Lease Payments during the Term in the amounts and on the dates specified in the Lease Payment Schedule.

4.7.2 The District and the Lessor understand and intend that the obligation of the District to pay Lease Payments and other payments hereunder constitutes a current expense of the District and shall not in any way be construed to be a debt of the District in contravention of any applicable constitutional or statutory limitation or requirement concerning the creation of indebtedness by the District, nor shall anything contained herein constitute a pledge of the general tax revenues, funds or moneys of the District. Lease Payments due hereunder shall be payable only from current funds which are budgeted and appropriated, or otherwise legally available, for the purpose of paying Lease Payments or other payments due hereunder as consideration for use of the Site during the fiscal year of the District for which such funds were budgeted and appropriated or otherwise made legally available for such purpose. The District has appropriated the Total Base Rent from the District's current fiscal year and/or State funds to be received during the District's current fiscal year, and has segregated such funds in a separate account to be utilized solely for the Lease Payments. This Facilities Lease shall not create an immediate indebtedness for any aggregate payments that may become due hereunder. The District has not pledged the full faith and credit of the District, the State of California or any agency or department thereof to the payment of the Lease Payments or any other payments due hereunder.

4.7.3 The Lease Payments coming due and payable during each month of the Term constitute the total rental for the Project and shall be paid by the District as set forth in the Lease Payment Schedule for and in consideration of the right to use and occupy the Project. The District and the Lessor have agreed and determined that the total Lease Payments do not exceed the

fair rental value of the Project. In making such determination, consideration has been given to the obligations of the parties under the Agreement, the Facilities Lease, and the Site Lease, the uses and purposes which may be served by the Project, and the benefits there from which will accrue to the District and the general public.

4.7.4 The District may use the Owner's Contingency specified in the Lease Payment Schedule, as it may be amended, to cover any additional costs to the Project that entitle Lessor to a change order. If the Owner's Contingency is used, then the Lease Payment immediately following the date that the change order is issued by the District shall be increased by the amount of the contingency used.

4.8 **Quiet Enjoyment.** Excepting any interference resulting from the Lessor's performance of the Work of the Project, during the term of this Facilities Lease, the Lessor shall provide the District with quiet use and enjoyment of the Site, and the District shall during such Term peaceably and quietly have and hold and enjoy the Site, without suit, trouble or hindrance from the Lessor, except as expressly set forth in this Facilities Lease. The Lessor will, at the request of the District, join in any legal action in which the District asserts its right to such possession and enjoyment to the extent of the Lessor may lawfully do so. Notwithstanding the foregoing, the Lessor shall have access to the Site as provided in Paragraph 7 hereof.

4.9 **Title to the Site and Project**. During the Term of this Facilities Lease, the District shall hold title to the Site and the Lessor shall have a leasehold interest in the Site pursuant to the Site Lease. The title to the Project and any and all additions which comprise fixture, repairs, replacements or modifications thereof, as construction progresses shall remain in the Lessor until the final lease payment is made, at which time title shall vest in the District, unless Lessor or District terminates this Facilities Lease; if and when Lessor or District terminates this Facilities Lease, title to work in place, including stored materials for which payment is made by or on behalf of District, shall vest thereupon in District. Lessor shall not convey or transfer title to the Project or any portion thereof including any additions thereto to any third party.

5 **TAXES AND ASSESSMENTS.** The District shall cause to be paid all taxes and assessments of any type or nature charged the District affecting the Project and the Site. Notwithstanding the foregoing, the Lessor shall pay all taxes charged against trade fixtures, furnishings, equipment or any other personal property belonging to the Lessor. The Lessor shall try to have personal property taxed separately from the Site.

6 **EMINENT DOMAIN.**

6.1 **Eminent Domain Takings.** If all of the Project and the Site shall be taken permanently under the power of eminent domain, the term of this Facilities Lease shall cease on the day possession shall be so taken, provided that if the taking occurs prior to full completion of the Project or any Phase thereof, the Lessor shall be entitled to the value of the construction completed, plus reasonable costs of termination, plus a pro rata share of overhead and profit, less any Lease Payments and other payments made prior to the taking. If less than all of the Project and the Site shall be taken permanently, or if all of the Project and the Site or any part thereof shall be taken temporarily, under the power of eminent domain:

6.1.1 This Facilities Lease shall continue in full force and effect and shall not be terminated by virtue of such taking and the parties waive the benefit of any law to the contrary; and,

6.1.2 There shall be a partial abatement of Lease Payments as a result of the application of the net proceeds of any eminent domain award to the prepayment of the Lease Payments

hereunder, such that the remaining Lease Payments represent fair consideration for the use and occupancy of the portion of the Project and the Site which is not taken under the power of eminent domain.

6.2 **Eminent Domain Award**. The net proceeds of any eminent domain action relating to the Project and/or the Site shall be payable to the District. The term "net proceeds" as used herein shall mean the amount of the Eminent Domain Award less payments made to Lessor under this Facilities Lease, except as provided in section 6.1.

7 **ACCESS.** Lessor shall have the right at all reasonable times to enter upon the Site to construct the Project pursuant to the Contract Documents. Following the acceptance of the Project by District, Lessor 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 Lessor. District and/or any of its authorized representatives shall have the right at all reasonable times to enter upon the Site for any purpose at its sole discretion, providing that, during construction, the District shall comply with all safety precautions required by the Lessor.

8 **ASSIGNMENT OR SUBLEASING.** Any sublease by the District of this Facilities Lease shall be upon thirty (30) days' written notice to the Lessor and shall be subject to the following conditions: (1) this Facilities Lease and the obligation of the District to make Lease Payments hereunder shall remain obligations of the District; (2) the District shall, within thirty (30) days after the delivery thereof, furnish or cause to be furnished to the Lessor a true and complete copy of such sublease; and (3) no such sublease by the District shall cause the Project or the Site to be used for a purpose other than a governmental or proprietary function authorized under the provisions of the Constitution and laws of the State of California. This Facilities Lease may be assigned or subleased by the Lessor only to a successor entity or an affiliate of the Lessor, but the Lessor shall not be released from any liability under the terms of this Lease.

9 **MISCELLANEOUS**

9.1 **Triple Net Lease.** This Facilities Lease shall be deemed a "net-net-net" lease and the District agrees that the Lease Payments shall be an absolute net return to the Lessor, free and clear of any expenses, charges or setoffs, except as otherwise provided in the Contract Documents.

9.2 **Governing Law; Interpretation.** This Facilities Lease shall be governed and interpreted in accordance with the laws of the State of California in accordance with its fair meaning and not strictly for or against District or Lessor.

9.3 **Successors.** This Facilities Lease and all terms hereof shall be binding upon, and shall inure to the benefit of, the successors and assigns of the parties.

9.4 **Authority.** The individual executing this Facilities Lease on behalf of Lessor warrants and represents that he /she is authorized to execute this Facilities Lease and bind Lessor to all terms hereof. The individual executing this Facilities Lease on behalf of District warrants and represents that he/she has been authorized to execute this Facilities Lease by District's Governing Board and to bind District to all terms hereof.

9.5 **Marginal Headings; Captions.** The titles of the various Paragraphs of the Facilities Lease are for convenience of reference only and are not intended to and in no way shall enlarge or diminish the rights or obligations of Lessor and District hereunder.

9.6 **Cumulative Rights; No Waiver.** Duties and obligations imposed by this Facilities Lease and rights and obligations hereunder are in addition to and not in lieu of any imposed by or available at

law or in equity. No action or failure to act by District or Lessor hereunder shall be deemed a waiver of any right or remedy afforded hereunder or acquiesce or approval of any breach or default by Lessor or the District.

9.7 **Dispute Resolution.** Notwithstanding any other provision of the Contract Documents, any and all claims arising under this Facilities Lease shall be resolved in accordance with Article 50 of the General Conditions. Any claim not covered by that provision shall be pursued, if at all, pursuant to the California Government Claims Act.

9.8 **Severability.** If any provision of this Facilities Lease is deemed unconscionable, herein defined to include illegal, invalid unenforceable or void 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.

9.9 **Counterparts and Facsimiles.** This Facilities Lease may be executed in counterparts, each of which shall be deemed an original, but such counterparts shall be deemed to constitute one and the same instrument; a facsimile signature by a party may be relied upon by the other parties as an original signature.

9.10 **Notices.** Notices Lessor or District are required or desire to serve on the other shall be valid only if addressed to the other as set forth in the Facilities Lease or modified by notice hereunder from time to time. Notices shall be effective only if by personal delivery requiring signature acknowledging receipt or by United States Mail, Certified, Return Receipt Requested, First Class, postage fully pre-paid, addressed and delivered as set forth in the Site Lease.

9.11 **Entire Agreement**. This Facilities Lease is the entire agreement and understanding between the District and Lessor concerning the subject matter hereof, replacing and superseding all prior agreements or discussions, whether written or oral. No term or condition of this Facilities Lease or the Lease Payment Schedule shall be modified, amended or supplemented except by a writing executed by the District and the Lessor.

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

This Facilities Lease entered into as of the day and year first written above.

Roseland School District _____

By: By:

Title:_____ Title:_____

EXHIBIT D

SCHEDULE OF LEASE PAYMENTS

The Roseland School District shall make payments to [Contractor] for _____ Project totaling the amount of no more than: $_____ ("Total Base Rent").

Included in the above is a District-controlled contingency of $_____, which has been approved by the District for unforeseen conditions, design oversights, owner-added work and jurisdictional requests. Contractor shall use the Modifications of Contract process provided in the General Conditions to request contingency payments.

The Total Base Rent for all construction costs of the Project is based on the plans, specifications, drawings, and design packages prepared by Quattrocchi Kwok Architects dated _____, 20__ (DSA Application #_____).

Upon approval of the Total Base Rent, ninety-five percent (95%) of the Total Base Rent shall be paid on the level of completion as shown in the monthly Applications for Payment. Commencing on the month immediately following Final Completion of the construction work, as defined in the General Conditions, the monthly rental payments shall equally divide the remaining amount of the Total Base Rent across a total of six (6) months plus 3.35% annual interest. Payments will be made to Contractor contingent upon timely receipt of all documents required as a condition precedent to payment of monthly lease amounts.

The District shall have the option to purchase not less than all of the Project in its "as-is, where-is" condition and terminate the Facilities Lease and Site Lease by paying the balance of the Total Base Rent, which is exclusive of interest that would have otherwise been owed, as of the date the option is exercised ("Option Price"). Said payment shall be made on or before the date on which the District's lease payment would otherwise be due for that month ("Option Date").

The District shall provide to Contractor a written notice no less than ten (10) days prior to the Option Date. The notice will include that the District is exercising its option to purchase the Project as set forth above on the Option Date. If the District exercises this option, the District shall pay directly to Contractor the Option Price on or prior to the Option Date and Contractor shall at that time deliver to the District an executed Termination Agreement and Quitclaim Deed in recordable form to terminate the Facilities Lease and the Site Lease.

Under no circumstances can the first Option Date be on or before ninety (90) days after Final Completion of the construction work, as defined in the General Conditions.

During the post-construction time period, the District shall have exclusive occupancy of the Premises. However, the Contractor is entitled to reasonable access to the Premises to resolve warranty and repair issues. The District's insurance of the Premises shall be primary during this time period. The District shall be responsible for the cost of all utilities incurred during its use of the Premises. The District shall be liable for damages to the premises caused by its willful or reckless misconduct during the construction period and all damages to the Premises, other than warranty repairs, during the post-construction period.

Roseland School District	[Contractor]
_____	_____
_____	_____
Title Date	Title Date

EXHIBIT E

SKILLED AND TRAINED WORKFORCE COMPLIANCE REPORT
FOR WORK PERFORMED
ON OR AFTER JANUARY 1, 2020
(Education Code §17407.5 and Public Contract Code §§2600-2602)

Owner: Roseland School District

Contract: Roseland Elementary TK/K and Sitework Project
Santa Rosa, Sonoma County, California

The undersigned declares:

I am the ____[position]_____ of ___[entity]_____, ☐ the "Contractor" or ☐ a subcontractor to the "Contractor" (check one) on the Project identified above. I hereby certify that during the month of _____ , 20__, there were a total of _____ workers employed by my company in the apprenticeable occupation of _____ and these workers performed a total of _____ hours of work within this apprenticeable occupation. I certify that all of these workers in this apprenticeable occupation are either skilled journeypersons or apprentices registered in an apprenticeship program approved by the Department of Industrial Relations (DIR), and that all of these hours performed in this apprenticeable occupation were performed by such skilled journeypersons and apprentices.

I also certify as to either Section A, B, or C for this apprenticeable occupation *[check applicable box]*:

☐ **A. Exemption from Percentage Compliance**

Of the above total number of hours of work performed by workers employed by _____in this apprenticeable occupation this month, _____ (___) were performed by skilled journeypersons, which is less than the statutory threshold of ten (10) hours.

In the alternative, the work was in one of the following occupations, which is exempt from the percentage compliance requirements for skilled journeypersons: acoustical installer, bricklayer, carpenter, cement mason, drywall installer or lather, marble mason, finisher, or setter, modular furniture or systems installer, operating engineer, pile driver, plasterer, roofer or waterproofer, stone mason, surveyor, teamster, terrazzo worker or finisher, and tile layer, setter, or finisher.

☐ **B. Percentage Compliance by Number of Workers**

1. Of the above total number of workers employed by my company in this apprenticeable occupation this month, _____ (____) were apprentices registered in an apprenticeship program approved by the DIR.

2. Of the above total number of workers employed by my company in this apprenticeable occupation in this month, _____ were skilled journeypersons. Included

in these skilled journeypersons are the following:

a. _____who are graduates of an apprenticeship program for the applicable occupation (as defined in Section 13 of the Agreement); and

b. _____ who are not graduates of an approved apprenticeship program for this apprenticeable occupation, but (a) no apprenticeship program had been approved by the DIR before January 1, 1995, for this apprenticeable occupation; and (b) these workers commenced working in this apprenticeable occupation before DIR approval of an apprenticeship program for that occupation in the county in which the Project is located.

The combined number of skilled journeypersons listed in Section B.2(a) and (b) is 60% or more of the total number of skilled journeypersons identified above, with no more than half of this percentage requirement being satisfied by the number of skilled journeypersons listed in Section B.2.b.

☐ **C. Percentage Compliance by Number of Hours**

1. Of the above total number of hours of work performed by workers employed by my company in this apprenticeable occupation this month, _____ hours were performed by apprentices registered in an apprenticeship program approved by the DIR.

2. Of the above total number of hours of work performed by workers employed by my company in this apprenticeable occupation in this month, _____ hours were performed by skilled journeypersons. Included in these hours are the following:

   a. _____ hours performed by graduates of an apprenticeship program for the applicable occupation; and

   b. _____ hours performed by skilled journeypersons who are not graduates of an approved apprenticeship program for this apprenticeable occupation, but (a) no apprenticeship program had been approved by the DIR before January 1, 1995, for this apprenticeable occupation; (b) these workers commenced working in this apprenticeable occupation before DIR approval of an apprenticeship program for that occupation in the county in which the Project is located.

The combined hours of work performed by skilled journeypersons listed in Section C.2(a) and (b) is 60% or more of the total number of hours of work performed by skilled journeypersons identified above, with no more than half of this percentage requirement being satisfied by the hours performed by skilled journeypersons listed in Section C.2.b.

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 _____, 20__, at _____ *[city]*, California.

_____

[Name]

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 _____, 20__, at _____ *[city]*, California.

_____

[Name]

Roseland School District

Roseland Elementary TK/K and Sitework
Lease Leaseback Project

LEASE LEASEBACK GENERAL CONDITIONS

1. DEFINITIONS

Approved: Approved by the District or the District's authorized representative unless otherwise indicated in the Contract Documents.

Architect: The person or firm holding a valid license to practice architecture or engineering in California which has been designated to provide architectural or engineering design services on this Project.

As Directed: As directed by the District or its representative, unless otherwise indicated in the Contract Documents.

As Selected: As selected by the District or its representative, unless otherwise indicated in the Contract Documents.

Change Order: "Change Order" shall mean a written order to the Contractor signed by the Owner and the Contractor or signed unilaterally by the Owner, issued after execution of the Lease Leaseback Agreement for the Project, authorizing a change in the Work and/or an adjustment in the Total Base Rent and/or the Contract Time. A Change Order shall be memorialized as an amendment to the Contract Documents, as defined in the Lease Leaseback Agreement.

Construction Manager: The individual or entity named as such by the District. If no Construction Manager is designated for the Project, all references to the Construction Manager in these Contract Documents shall mean the District and/or its designee.

Contract: The legally binding agreement between the District and the Contractor wherein the Contractor agrees to furnish the labor, materials, equipment, and appurtenances required to perform the work described in the Contract Documents and the District agrees to pay the Contractor for such work.

Contract Documents: The Contract Documents shall have the meaning ascribed to them in the Lease Leaseback Agreement.

Contract Time. "Contract Time" shall mean the period specified for completion of the work, as adjusted by any Change Order issued pursuant to the Contract Documents.

Contractor: The person or entity holding a valid license in the State of California required for

performing this Project and who has contracted with the District to perform the construction work described in the Contract Documents. Contractor shall mean all of the officers, agents, or employees of the entity with which the Owner has contracted for the Project.

Contractor's Fee: The Total Base Rent as defined in Article IV of the Lease-Leaseback Agreement.

Day: Unless otherwise expressly defined, a "day" shall mean a calendar day of 24 hours.

District and/or Owner: The District, its authorized officers and employees, and authorized representatives.

DSA: The State of California Division of the State Architect which has the authority to review, approve and inspect the design, alteration and construction of school buildings.

Final Completion: Final Completion is achieved when the Contractor has fully completed all Project construction work, including, but not limited to, all final punch list items, to the District's satisfaction.

Inspector: The person engaged by the District to conduct the inspections required by the Education Code and Title 24.

Furnish: Purchase and deliver to the site of installation.

Governing Board: The Governing Board of the District.

Indicated or As Shown: Shown on drawings and/or as specified.

Install: Fix in place, for materials; and fix in place and connect, for equipment.

Modification: An authorized change to the Contract Documents which may or may not include a change in contract price and/or time.

Notice to Proceed. "Notice to Proceed" is the notice given to the Contractor by the Owner following approval of the Plans and Specifications by DSA which establishes the start of construction work and authorizes the Contractor to begin construction on the Project.

Project: The total construction work described in these Contract Documents.

Secure: Obtain.

Subcontractor: A person, firm, or corporation, duly licensed by the State of California, who has a contract with the Contractor to furnish labor, materials and equipment, and/or to install materials and equipment for work in this Contract.

2. ARCHITECT

The Architect is responsible for the overall design of the Project. The working drawings, technical Specifications, sketches and other information necessary to define the work covered by these Contract Documents have been prepared by the Architect.

3. CONTRACT DOCUMENTS

a. Contents and Precedence

The Contract Documents consist of the executed Lease Leaseback Agreement and all amendments, these General Conditions, all approved change orders, any interpretation or direction to Contractor issued in accordance with the General Conditions, the Owner's Resolutions awarding or authorizing amendment to any of the foregoing, the required Bonds and the Insurance documents, the Notice to Proceed, any Supplemental Conditions, the Technical Specifications, the Drawings, the Site Lease and the Facilities Lease. The Contract Documents are complementary and anything required by one shall be as binding as if required by all. In case of conflicts within the Contract Documents, the order of precedence of interpretation shall be as listed above, with the executed Contract and any change order or amendment thereto having priority over the original document. In case of conflict within the drawings, larger scale drawings shall govern smaller scale drawings, and written dimensions shall govern over scaled dimensions.

b. Ambiguities, Errors, and Inconsistencies

The goal of the preconstruction involvement of Contractor was to maximize the Parties' understanding of the design requirements, including the design intent and all technical requirements of the Project, prior to construction. If the Parties have maximized this opportunity, then there will be little or no need for clarification after construction is commenced. Contractor acknowledges that, prior to the start of construction, it has reviewed the Plans and Specifications and pointed out any design errors or omissions that are reasonably observable by an experienced construction professional and will have determined that, prior to commencement of construction of the Work, that the Plans and Specifications are adequate for the Project's construction. The Parties understand that Contractor has not conducted an architectural or engineering or code compliance review of the Plans and Specifications. Involvement in preconstruction services in no way shifts responsibility for the design to Contractor. During the Project, should any discrepancy appear or any misunderstanding arise as to the import of anything contained in the Contract Documents, the matter shall be promptly referred to the Architect, who will issue instructions or corrections.

c. Lines and Planes

All lines and planes appearing on Contract drawings to be horizontal or vertical and not explicitly indicated otherwise shall be constructed true and plumb. All lines and planes appearing on Contract drawings to intersect at right angles and not explicitly indicated otherwise shall be constructed at true right angles. Where details are indicated covering specific conditions, such details also apply to all similar conditions not specifically

indicated.

d. Standards

The specification standards of the various sections of the Specifications shall be the procedural, performance, and material standards of the applicable association publications identified and shall be the required level of installation, materials, workmanship, and performance for the applicable work. Except where a specific date of issue is mentioned hereinafter, references to specification standards shall mean the edition, including amendments and supplements, in effect on the date of the Contract. Where no standard is identified and a manufacturer is specified, the manufacturer's specifications are the standards. All standards shall be subordinate to the requirements of the applicable codes and regulations.

e. Reference to the Singular

Wherever in the Specifications an article, device or piece of equipment is referred to in the singular number, such reference shall include as many such items as are shown on drawings or required to complete the installation.

4. INTENT OF DRAWINGS AND SPECIFICATIONS

a. Drawings and Specifications are to be read as an integrated document.

b. Figured dimensions shall be followed in preference to scaled dimensions, and the Contractor shall make all additional measurements necessary for the work and shall be responsible for their accuracy. Before ordering any material or doing any work, the Contractor shall verify all measurements at the Project site and shall be responsible for the correctness of same.

c. It is the intent of the drawings and Specifications to show and describe complete installations. Items shown but not specified, or specified but not shown, shall be included unless specifically omitted.

1) The Specifications shall be deemed to include and require everything necessary and reasonably incidental to the completion of all work described and indicated on the drawings, whether particularly mentioned or shown, or not.

5. TRADE DIVISIONS

Segregation of the Specifications into the designated trade divisions is only for the purpose of facilitating descriptions and shall not be considered as limiting the work of any subcontract or

trade. Subject to other necessary provisions set forth in the Specifications, the terms and conditions of such limitations or inclusions shall lie solely between the Contractor and its Subcontractors. "Scope" as indicated in each section of the Specifications shall serve only as a general guide to what is included in that section. Neither the stated description nor the division of the plans and Specifications to various sections, which is done solely for convenience, shall be deemed to limit the work required, divide or indicate it by labor jurisdiction or trade practice, or set up any bidding barriers to the various sub-contractors or suppliers.

a. The Contractor shall be responsible for the proper execution of all work required by the Contract Documents and for allocating such portions as the Contractor sees fit to the various Subcontractors, subject to applicable law. The Contractor is cautioned that the various individual sections may not contain all work that the Contractor may wish to allocate to a particular Subcontractor or everything bearing on the work of a particular trade, some of which may appear in other portions of the plans or Specifications.

b. If the Contractor elects to enter into any subcontract for any section of the work the Contractor assumes all responsibility for ascertaining that the Subcontractor for the work is competent, licensed, solvent, thoroughly acquainted with all conditions and legal requirements of the work, has included all materials and appurtenances in connection therewith in the subcontract, and has performed its work in strict compliance with the Contract Documents.

c. It shall be the responsibility of the Contractor to promptly notify each prospective Subcontractor of all portions of the Contract Documents, including the General Conditions, Supplemental Conditions and any parts of sections of Specifications or plans that the Contractor intends to include as part of the subcontract.

6. MASTER MANDATORY PROVISIONS

a. Any material, item, or piece of equipment mentioned, listed or indicated without definition of quality, shall be consistent with the quality of adjacent or related materials, items, or pieces of equipment on the Project and in accordance with best practices.

b. Any method of installation, finish, or workmanship of an operation called for, without definition of standard of workmanship, shall be followed or performed and finished in accordance with best practices and consistent with adjacent or related installations on the Project.

c. Any necessary material, item, piece of equipment or operation not called for but reasonably implied as necessary for proper completion of the work shall be furnished, installed or performed and finished; and shall be consistent with adjacent or related materials, items, or pieces of equipment on the Project, and in accordance with best practices.

d. Names or numbered products are to be used according to the manufacturers' directions or recommendations unless otherwise specified.

7. CONTRACTOR

a. The Contractor shall perform all the work and activities required by the Contract Documents and furnish all labor, materials, equipment, tools and appurtenances necessary to perform the work and complete it to the District's satisfaction within the time specified. The Contractor shall at all times perform the work of this Contract in a competent and workmanlike manner and, if not specifically stated, accomplish the work according to the best standards of construction practice. The Contractor in no way is relieved of any responsibility by the activities of the inspector in the performance of such duties.

b. The Contractor shall employ a full-time competent superintendent and necessary assistants who shall have complete authority to act for the Contractor on all matters pertaining to the work. The superintendent shall be satisfactory to the District and, if not satisfactory, shall be replaced by the Contractor with one who 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.

c. Contractor shall make the layout of lines and elevations and shall be responsible for the accuracy of both the Contractor's and the Subcontractors' work resulting therefrom. All dimensions affecting proper fabrication and installation of all Contract work must be verified by the Contractor prior to fabrication and installation by taking field measurements of the true conditions. The Contractor shall take, and assist Subcontractors in taking, all field dimensions required in performance of the work, and shall verify all dimensions and conditions on the site. If there are any discrepancies between dimensions in drawings and existing conditions which will affect the work, the Contractor shall promptly bring such discrepancies to the attention of the Architect for adjustment before proceeding with the work. Contractor shall be responsible for the proper fitting of all work and for the coordination of all trades, Subcontractors and persons engaged upon this Contract.

d. Contractor shall do all cutting, fitting, or patching of Contractor's work that may be required to make its several parts come together properly and fit it to receive or be received by work of other contractors as shown, or reasonably implied by, the drawings and Specifications for the completed work. Any cost incurred by the District due to defective or ill-timed work shall be borne by the Contractor.

8. RESPONSIBILITY OF CONTRACTOR

a. Contractor shall be held strictly responsible for the proper performance of all work covered by the Contract Documents, including all work performed by Subcontractors. All work performed under this Contract shall comply in every respect to the rules and regulations of all agencies having jurisdiction over the Project or any part thereof.

b. Contractor shall submit Verified Reports as defined in §§4-336 and 4-343 (c), Group 1, Chapter 4, Part I, Title 24, California Code of Regulations ("CCR"). The duties of the Contractor are as defined in §4-343, Group 1, Chapter 4, Part I, Title 24, of the CCR.

Contractor shall keep and make available a copy of Title 24 of the CCR at the job site at all times.

c. Where, because of short supply, any item of fabricated materials and/or equipment, indicated on drawings or specified is unobtainable and it becomes necessary, with the consent of the Architect, to substitute equivalent items differing in details or design, the Contractor shall promptly submit complete drawings and details indicating the necessary modifications of the work. This provision shall be governed by the terms of the General Conditions regarding Submittals: Shop Drawings, Cuts and Samples.

d. With respect to work performed at and near a school site, Contractor shall at all times take all appropriate measures to ensure the security and safety of students and staff, including, but not limited to, ensuring that all of Contractor's employees, Subcontractors, and suppliers entering school property strictly adhere to all applicable District policies and procedures that have been provided to Contractor, e.g., sign-in requirements, visitor badges, and access limitations.

9. SUBCONTRACTORS

a. Nothing contained in the Contract Documents shall create any contractual relationship between any Subcontractor and the District. If the Contractor does not specify a Subcontractor for any portion of the work to be performed under this Contract, as required by law, Contractor shall perform that portion of the work with its own forces. The Contractor shall not substitute any other person or firm as a Subcontractor for those listed in the list submitted by the Contractor, without the written approval of the District and in conformance with the requirements of the Public Contract Code. The District reserves the right of approval of all Subcontractors proposed for use on this Project, and to this end, may require financial, performance, and such additional information as is needed to secure this approval. If a Subcontractor is not approved, the Contractor shall promptly submit another firm of the same trade for approval.

b. The Contractor shall insert appropriate provisions in all subcontracts pertaining to work on this Project requiring the Subcontractors to be bound by all applicable terms of the Contract Documents. The Contractor shall be as fully responsible for the acts and omissions of the Subcontractors, and of persons either directly or indirectly employed by them, as the Contractor is for the acts and omissions of persons directly employed by the Contractor.

10. PERFORMANCE AND PAYMENT BONDS

a. Prior to commencing any work, the Contractor shall file with the District the following bonds, using the bond forms provided by the Owner:

1) A corporate surety bond (performance bond), in a sum not less than 100 percent of the Total Base Rent, to guarantee the faithful performance of the Contract.

2) A corporate surety bond (payment bond), in a sum not less than 100 percent of the Total Base Rent, to guarantee the payment of wages for services engaged and of bills contracted for materials, supplies, and equipment used in the performance of the Contract.

b. If the Project has multiple phases, payment and performance bonds supplied by the Contractor in shall be updated to reflect the revised Total Base Rent amount after each phase is approved by the District's Board and prior to commencing construction of that phase's work. The amount of the Contract, as used to determine the amounts of the bonds, shall be the total amount accepted by the District as the Total Base Rent for the performance of the required phase of work.

c. Corporate sureties on these bonds must be admitted sureties as defined by law, legally authorized to engage in the business of furnishing surety bonds in the State of California. All sureties and bond forms must be satisfactory to the District. Failure to submit the required bonds within the time specified by the Contract, using the forms provided by the District, may result in cancellation of the award of Contract.

d. During the period covered by the Contract, if any of the sureties upon the bonds shall become insolvent, the Contractor, within thirty (30) days after notice given by the District to the Contractor, shall provide supplemental bonds or otherwise substitute another and sufficient surety approved by the District in place of the surety becoming insolvent or unable to pay. If the Contractor fails within such thirty (30) day period to substitute another and sufficient surety, the Contractor shall, if the District so elects, be deemed to be in default in the performance of its obligations hereunder, and the District, in addition to any and all other remedies, may terminate the Contract or bring any proper suit or other proceedings against the Contractor and the sureties or any of them, or may deduct from any monies then due or which thereafter may become due to the Contractor under the Contract, the amount for which the surety shall have been liable on the bonds, and the monies so deducted shall be held by the District as collateral security for the performance of the conditions of the bonds.

11. INSURANCE

Contractor shall obtain insurance from a company or companies acceptable to District, which shall comply with all the following requirements:

a. All required insurance must be written by an admitted company licensed to do business in the State of California at the time the policy is issued. All required insurance shall be equal to or exceed an A VIII rating as listed in Best's Insurance Guide's latest edition. Required documentation of such insurance shall be furnished to the District at the time Contractor returns the executed Contract. Contractor shall not commence work nor shall it allow its employees or Subcontractors or anyone to commence work until all insurance required hereunder has been submitted and approved by the District and a notice to proceed has been issued.

b. Contractor, and each of its Subcontractors, shall take out and maintain at all times during the life of this Contract, up to the date of acceptance of the work by the District, the following policies of insurance:

1) General Liability Insurance: Personal injury and replacement value property damage insurance for all activities of the Contractor arising out of or in connection with this Contract, written on a comprehensive general liability form including contractor's protected coverage, blanket contractual, completed operations, vehicle coverage and employer's non-ownership liability coverage, in an amount no less than either:

a. $2,000,000.00 combined single limit personal injury and property damage for each occurrence and $4,000,000.00 annual aggregate with a $2,000,000 umbrella/excess; or

b. $5,000,000.00 annual combined single limit.

2) Builders Risk Insurance:

Contractor shall procure and maintain builders' risk insurance (all-risk coverage) on a one hundred percent completed value basis on the insurable portion of the project for the benefit of the District, and the Contractor and subcontractor as their interest may appear. Subcontractors shall not be obligated to obtain separate Builders' Risk Insurance policies.

3) Automobile Liability Insurance: Covering bodily injury and property damage in an amount no less than $1,000,000 combined single limit for each occurrence. Such insurance shall include coverage for owned, hired, and non-owned vehicles and be included on the umbrella/excess policy.

c. The certificate(s) for the both the General Liability Policy(ies) and the Automobile Liability Policy specified above must state that the insurance is under an occurrence based, and not claims made, policy(ies) and shall be endorsed with the following specific language, or language to that effect:

"The Roseland School District is named as additional insured for all liability arising out of the operations by or on behalf of the named insured, and this policy protects the additional insured, its officers, agents and employees against liability for bodily injuries, deaths or property damage or destruction arising in any respect directly or indirectly in the performance of the Contract."

d. The certificate(s) for the both the General Liability Policy and the Automobile Liability Policy, as well the Builders' Risk Policy if required above, shall be endorsed with the following specific language, or language to that effect:

1) The inclusion of more than one insured shall not operate to impair the rights of one insured against another insured and the coverages afforded shall apply as though separate policies have been issued to each insured.

2) The insurance provided herein is primary and no insurance held or owned by the District shall be called upon to contribute to a loss.

3) Coverage provided by this policy shall not be reduced or canceled without thirty (30) days written notice (10 days for non-payment of premium) given to the Owner by certified mail.

4) This policy does not exclude explosion, collapse, underground excavation hazard, or removal of lateral support.

5) The certificates must state that the insurance is under an occurrence based, and not a claims-made, or "modified occurrence," policy (policies).

e. The following documentation of insurance shall be submitted to District for approval prior to proceeding with construction: Certificates of insurance showing the limits of insurance provided, certified copies of all policies, and signed copies of the specified endorsements for each policy. At the time of making application for an extension of time, the Contractor shall submit evidence that the insurance policies will be in effect during the requested additional period of time.

f. If the Contractor fails to maintain such insurance, and after five (5) business days' notice of Contractor's failure to provide such notice, the District may take out such insurance to cover the required insurance which has not been provided, and deduct and retain the amount of the premiums from any lease payments otherwise due the Contractor under the Facilities Lease.

g. Workers' Compensation Insurance:

1) The Contractor shall furnish to the District satisfactory proof that the Contractor and all Subcontractors that it employs have procured full Workers' Compensation insurance and employer's liability with limits of at least $1,000,000 with an insurance carrier satisfactory to the District for all persons whom the Contractor may employ in carrying out the work contemplated under this Contract in accordance with section 3700 of the Labor Code. Such insurance shall be maintained in full force and effect during the period covered by the Contract. In the event the Contractor is self-insured, Contractor shall furnish a Certificate of Permission to Self-Insure, signed by the Department of Industrial Relations Administration of Self-Insurance, Sacramento, California.

2) If an injury occurs to any employee of the Contractor or any Subcontractor for which the employee, or the employee's dependents in the event of the employee's

death, is entitled to workers' compensation at any time during which the Contractor or the applicable Subcontractor has failed to maintain required workers' compensation insurance, then the District may retain from the sums otherwise due the Contractor under the Facilities Lease an amount sufficient to cover such workers' compensation, as fixed by Labor Code sections 4451 *et seq.*, until such compensation is paid, or until it is determined that no compensation is due. If the District is compelled by any applicable legal process to pay such compensation to the injured employee, it will deduct such sums from amounts otherwise due to the Contractor, or otherwise recover this sum from the Contractor or its Surety.

3) The policies represented by the certificates shall be endorsed with a Waiver of Subrogation and must contain the provision (and the certificates must so state) that the insurance cannot be canceled until thirty (30) days after written notice of intended cancellation (ten (10) days for non-payment of premium) has been given to the District by certified mail.

12. CODES AND REGULATIONS

a. The Contractor shall be knowledgeable regarding and shall comply with applicable portions of California Code of Regulations Title 24, the applicable Building Code, and all other codes, ordinances, regulations or orders of properly constituted authority having jurisdiction over the work of this Project. The Contractor shall examine the Contract Documents for compliance with these codes and regulations and shall promptly notify the Architect of any discrepancies identified by the Contractor.

b. All work and materials shall be in full accordance with the latest rules and regulations of the Safety Orders of the Division of Industrial Safety and the applicable State laws and/or regulations. Nothing in the Project plans or Specifications is to be construed to permit work not conforming to the applicable Codes. Buildings and/or all other construction covered by this Contract shall meet all the regulations for access by the physically handicapped as administered by the Division of the State Architect and as may be required by federal or state law.

c. If the work under this Contract is for the construction of a school building as defined by the Education Code, then the following provisions shall apply to the Contract:

1) All work shall be executed in accordance with the current requirements of the Education Code and California Code of Regulations: Title 24 and Title 19. No deviations from the DSA approved plans and Specifications will be permitted except upon a Change Order or Addenda, signed by the District and Architect and approved by the Division of the State Architect and the State Fire Marshal, if applicable.

2) The Division of the State Architect shall be notified 48 hours in advance of the first pour of concrete.

13. PERMITS AND TAXES

a. The Contractor shall obtain and pay for all permits, fees and licenses that are required in order to perform the work under this Contract. The Owner shall pay all fees required by DSA. The Owner shall reimburse the Contractor for specific construction permits, as agreed upon by the Parties, which are related exclusively to the Project and/or Project location. The District shall pay connection charges and meter costs for new permanent utilities required by these Contract Documents. The Contractor shall notify the District sufficiently in advance to submit requests for service to the appropriate utility companies so as to insure connections or installation of utility services in accordance with the Project schedule.

b. The Contractor shall pay for all taxes on materials and equipment. The District is exempt from Federal Excise Tax. Contractor shall not pay Federal Excise Tax on any item in this Contract.

14. PATENTS AND ROYALTIES

All fees or claims for patents, royalties or licenses on materials, equipment or processes used in the performance of work on this Project shall be included in the amount of the contract price. The Contractor shall indemnify, defend, and hold harmless the District, its Governing Board, the Architect, and their officers and employees, from all claims or liability, including costs and expenses, which may arise from the use on this Project of any patented or copyrighted materials, equipment, or processes.

15. SAFETY AND FIRE PREVENTION

a. The Contractor, Subcontractors and all of their agents and employees shall fully comply with all of the provisions and requirements of CAL/OSHA, Title 8, California Code of Regulations and all other safety codes applicable to the Project, including but not limited to, all federal, state, local and District ordinances and protocols relating to COVID-19. The Contractor shall take thorough precautions at all times for the protection of persons and property, and shall be liable for all damages to persons or property, either on or off the site, which occur as a result of Contractor's prosecution of the work. The Contractor shall obtain permits for, install and maintain in safe condition barricades, walkways, fences, railings, and whatever other safeguards that may be necessary to protect persons and property from damage as a result of the construction under this Contract.

b. Contractor is required to ensure Material Safety Data Sheets ("MSDS") are available in a readily accessible place at the work site for any material requiring a MSDS pursuant to the federal "Hazard Communication" standard or employee "right to know" laws. Contractor is also required to ensure proper labeling on materials brought on the job site such that any person working with the material or within the general area of the material is informed of the hazards of the material and follows proper handling and protection procedures. A copy

of the MSDS shall also be promptly submitted directly to the District.

c. Contractor shall not endanger any work by cutting, excavating, or otherwise altering the work and shall not cut or alter the work of any other contractor except with the written consent of the Architect, nor overload any new or existing structures by the placing or storage of materials, equipment, or other items thereon, and, if necessary, shall provide calculations proving the safety in so doing.

d. If it is necessary to work at night, or where daylight is obscured, the Contractor shall provide and maintain lighting of an adequate level to properly prosecute the work, to permit the thorough inspection of same, and to ensure the safety to workers and others.

e. Contractor shall take extraordinary care to prevent fires and keep all flammable materials and oily rags in tightly closed metal containers. Contractor shall exercise particular care when welding or cutting, and with regard to the disposition of waste materials, the nature and quantity of which might create or increase a fire hazard.

16. HAZARDOUS MATERIALS

Unless otherwise specified, this Contract does not include the removal, handling, or disturbance of any hazardous substances or materials encountered in the new construction or on the Project grounds. If such substances or materials are encountered, work shall cease in that area and the District shall be promptly notified to take appropriate action for removal or otherwise abating the condition in accordance with current regulations applicable to the District.

a. General

1) No asbestos, asbestos-containing products or other hazardous materials shall be used in this construction or in any tools, devices, clothing or equipment used to further this construction.

2) Asbestos and/or asbestos containing products shall be defined as all items containing but not limited to chrysotile, crocidolite, amosite, anthophyllite, tremolite or actinolite.

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

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

5) All work or materials found to contain asbestos or work or material installed with asbestos containing equipment will be immediately rejected and this work shall be removed by the Contractor at no additional cost to the District.

b. Decontamination and Removal of hazardous material from prior work

1) Decontamination and removal of work found to contain asbestos or work installed with asbestos containing equipment shall be done only under the supervision of a qualified consultant, knowledgeable in the field of asbestos abatement and accredited by the Environmental Protection Agency ("EPA").

2) The asbestos removal contractor shall be an EPA-accredited contractor qualified in the removal of asbestos subject to the approval of the District.

3) The asbestos consultant shall be chosen and approved by the District which shall have sole discretion and final determination in this matter.

4) The work will not be accepted until asbestos contamination is reduced to levels deemed acceptable by the asbestos consultant.

c. Hold Harmless

1) Interface of work under this Contract with work containing asbestos shall be executed by the Contractor at Contractor's risk and at Contractor's discretion with full knowledge of the currently accepted standards, hazards, risks and liabilities associated with asbestos work and asbestos containing products. By execution of this Contract the Contractor acknowledges the above and agrees to hold harmless, as set forth in the indemnity provisions of this Contract, the Owner, its employees, agents and assigns for all asbestos liability which may be associated with this work and agrees to instruct Contractor's employees and agents with respect to the above-mentioned standards, hazards, risks and liabilities.

2) The Contractor shall, prior to commencement of any work involving hazardous materials, provide a duly signed affidavit that Contractor has instructed Contractor's employees and agents with respect to the above mentioned standards, hazards, risks and liabilities and the contents and requirements of this portion of the Contract Documents.

d. Certification

The Contractor agrees that materials containing asbestos or other hazardous materials as defined in Federal and State law shall not be used in construction.

17. TEMPORARY FACILITIES

a. The Contractor shall obtain permits for, install and maintain in safe condition all scaffolds, hoisting equipment, barricades, walkways, or other temporary structures that may be required to accomplish the work. Such structures shall be adequate for the intended use and capable of safely accepting all loads that may be imposed upon them. They shall be installed and maintained in accordance with all applicable codes and regulations.

b. The Contractor shall provide and maintain temporary heat from an approved source whenever in the course of the work it may become necessary for curing, drying or warming spaces as may be required for the proper installation of materials or finishes. The Contractor shall provide and maintain any and all facilities that may be required for dewatering in order that work may proceed on the Project. If it is necessary for dewatering to occur continually, the Contractor shall have on hand whatever spare parts or equipment that may be required to avoid interruption of service or work.

c. The Contractor shall promptly remove all such temporary facilities when they are no longer needed for the work or on completion of the Project. The Contractor shall repair any damage to premises or property which resulted from the construction, use, or removal of temporary facilities and shall restore the premises and property to their original condition.

d. See the Supplemental General Conditions and/or specifications for requirements concerning temporary sanitary facilities and utilities.

18. SIGNS

No signs may be displayed on or about the District's property (except those which may be required by law) without the District's prior written approval of size, content and location. Any signs required by the District will be designated in the Supplemental General Conditions.

19. TIME

a. The Contractor shall commence the work on or about the date indicated in the Notice to Proceed. Time is of the essence regarding the Contract work, and the Contractor shall prosecute the work diligently and regularly at such a rate of progress as to ensure completion of this Project within the time specified.

b. The Contractors and Subcontractors shall investigate and become aware of the amount of time required for the delivery of all equipment and materials required to perform the work under this Contract, and no extension of time shall be granted due to failure to order the equipment and materials sufficiently before their incorporation into the work so as to avoid delay to the Project.

c. The Contractor and Subcontractors shall provide and maintain sufficient labor, materials and equipment to ensure a rate of construction progress that will complete the Project within the time specified and according to the schedule of work. If, in the District’s opinion, the Contractor and/or any Subcontractor is not prosecuting the work at a sufficient rate of progress to meet the Project’s schedule, the District may direct the Contractor to provide additional labor, materials or equipment, or to work additional hours, holidays or weekends without additional cost to the District until the work is progressing in a manner satisfactory to the District.

20. CONSTRUCTION SCHEDULE

a. Within fifteen (15) calendar days after execution of the Lease Leaseback Agreement by the District, the Contractor shall prepare and submit to the District an as-planned construction schedule showing in detail how the Contractor plans to prosecute the work within the Contract Time. The schedule shall include the work of all trades necessary for construction of the Project, and shall be sufficiently complete and comprehensive to enable progress to be monitored on a day-by-day basis. The information for each activity shall include at a minimum the activity description, duration, start date and completion date. If the District authorizes construction of multiple phases of the Project, then the Contractor shall prepare a submit an updated as-planned construction schedule in accordance with the requirements of this paragraph showing in detail how the Contractor plans to prosecute the new phase work within the Contract Time.

b. The Contractor shall take care in the preparation of the schedule to ensure that it represents an accurate and efficient plan for accomplishing the work. If the Project is more than one week behind schedule, it must be promptly revised showing how the Contractor plans to complete the work, but in no case shall it show a completion date later than that required by the Contract, unless a time extension has been granted. The current schedule shall be kept posted in the Contractor's project office on site.

c. The Contractor shall be responsible for the coordination of all work necessary and pertaining to the construction whether actually a part of this Contract or attendant thereto. The Contractor shall notify the District and various utility companies, as far as possible in advance of their required work, in order that work schedules may be developed for all concerned, which will permit the most effective and timely accomplishment of the entire Project.

21. DELAYS AND TIME EXTENSIONS

a. The Contractor may be granted a time extension if the Contractor encounters an unavoidable delay of the work due to causes completely beyond the Contractor’s control and which the Contractor could not have avoided by the exercise of reasonable care, prudence, foresight and diligence. Causes for which a claim for extension of time may be made include: acts of the public enemy, acts of another contractor in the performance of another contract with the District, priority of a governmental agency for materials or equipment, fire, flood, violent wind storm, epidemic, quarantine restriction, strike, freight embargo, or weather of an unusually severe nature. The Contractor will not be granted time extensions for weather conditions which are normal for the location of the Project, according to the U. S. Weather Bureau Records.

b. A request for extension of time and compensation related thereto shall be made in writing to the District within ten (10) calendar days of the date the delay is encountered, or shall be deemed waived. The request shall include a detailed description of the reasons for the

delay and corrective measures by the Contractor. The request shall be accompanied by evidence that the insurance policies required by the Contract shall be in effect during the requested additional period of time. In order for the Architect to consider a request for time extension, the Contractor must prove that the reasons stated for the delay actually caused a delay in portions of the work which will result in completion beyond the date specified in the Contract. The Contractor may also be granted a time extension for a significant change in the scope of work which request for extension of time shall be included in the Proposed Change Order Form.

c. No damages or compensation or any kind shall be paid to a Contractor because of delays in the progress of work, whether such delays be avoidable or unavoidable, that are not the responsibility of District. District's liability to Contractor for delays for which District is responsible shall be limited to an extension of time unless such delays were unreasonable under the circumstances involved and were not within the contemplation of the parties when the Contract was awarded. The Contractor shall provide to the District the actual, substantiated costs to Contractor for which the Contractor may claim damages from District. Such costs, if any, shall be directly related to the Project, and shall not include costs that would be borne by the Contractor in the regular course of business, including, but not limited to, office overhead and ongoing insurance costs. Delay damages shall not include Contractor or Subcontractor markup for overhead and profit, but only actual, documented, and direct actual costs. The District shall not be liable for any damages which the Contractor could have avoided by any reasonable means including, but not limited to, the more judicious handling of forces or equipment.

d. The granting of an extension of time because of unavoidable delays shall in no way operate as a waiver on the part of the District of the right to collect liquidated damages for other delays or of any other rights to which the District is entitled.

22. LIQUIDATED DAMAGES

a. Should the Contractor fail to complete each the Project, or each phase, within the specified Contract Time, together with extensions granted by the District, Contractor shall become liable to the District in the amount specified in the Contract per calendar day for each day the work, or phase work, remains incomplete beyond the Contract Time, as liquidated damages and not as a penalty. Contractor shall not be charged with liquidated damages when the delay in completion of the work beyond the time for Final Completion is due to acts of the District. It is expressly stipulated and agreed by Contractor and District that it would be impractical and extremely difficult to fix the actual amount of damages.

b. The District may withhold from any Lease Payment otherwise due to Contractor an amount sufficient to cover liquidated damages accrued as of the date the Lease Payment is due. Should such money not be sufficient to cover the liquidated damages actually assessed, the District shall have the right to recover the balance from the Contractor or Contractor’s sureties.

c. Should the District suspend the work for any cause, the time work is suspended will be added to the time for completion. Suspension of the work by the District shall not be a waiver of the right to claim liquidated damages as set forth in this section, following extension of the Contract Time for the period of the suspension.

d. The assessment of Liquidated Damages does not otherwise limit the right of the Owner to claim a loss or damages incurred by the Owner for reasons other than delay (e.g. damages due to defective work).

23. DISTRICT'S RIGHT TO STOP WORK; TERMINATION OR SUSPENSION OF THE CONTRACT

a. District's Right to Stop Work:

In addition to or as an alternative to any and all other remedies available to the District, if the Contractor fails to correct work which is not performed in accordance with the Contract Documents, or if the Contractor persistently fails to perform the work in accordance with the Contract Documents, the District may by written order direct the Contractor to stop that portion of the work until the cause for such order has been eliminated to the satisfaction of the District. However, the right of the District to stop the work shall not give rise to a duty on the part of the District to exercise this right for the benefit of the Contractor or any other person or entity, and the failure of the District to do so shall not be raised as a defense to the Contractor's failure to perform the work in accordance with the Contract Documents.

b. Termination for Cause:

1) If the Contractor refuses or fails to furnish sufficient materials, work force, equipment, and appurtenances to properly prosecute the work in a timely manner, or if Contractor refuses or fails to comply with any provisions of the Contract Documents, or if Contractor should file a bankruptcy petition or make a general assignment for the benefit of Contractor's creditors or if a receiver should be appointed on account of Contractor's insolvency, then the District may give the Contractor and Contractor's Surety written notice of intention to terminate the Contract. Unless, within seven (7) calendar days after the serving of such notice upon the Contractor and Contractor's Surety, such violation shall cease and arrangements for correction of such conditions shall be made satisfactory to the District, the District may terminate the Contract by written notice thereof to the Contractor and Contractor's Surety.

2) In the event of termination for cause, in addition to all remedies available to the District, the Contractor's Surety shall have the right to take over and complete the Project by giving the District written notice of its intent to do so within fifteen (15) days of the Surety's receipt of the notice of termination; provided, however, that if the Surety does not commence performance within thirty (30) calendar days from the date of its notice of its intent to complete the Project to the District, the District

may take over the work and prosecute the same to completion by letting another Contract, or by any other method that the District deems advisable. The Contractor and Contractor's Surety shall be liable for any excess cost reasonably incurred by the District thereby, and in any such event the District may take possession of such materials, equipment, and other property belonging to the Contractor as may be on the site and necessary to complete the work.

3) If the District terminates for default, then the Parties shall meet and confer and review the accounts and records of the Contractor to determine the actual costs incurred by the Contractor for the work completed to the date of termination ("Actual Costs"), including both paid and unpaid. The Actual Costs of the work completed shall include the cost of any materials or equipment ordered and paid for (including any deposits paid toward final costs) but which have not been shipped or are stored off-site and any contractual obligations incurred by the Contractor that cannot be cancelled or terminated without penalty. The Actual Costs shall include the proportional share of the Contractor's Fee for the work performed prior to termination. Once the Actual Costs have been agreed to by the Parties, or otherwise determined, if the Actual Costs are greater than the Total Base Rent and other payments made by the District for the work that is terminated, then the difference will be payable by the District. If the Actual Costs are less than the Base Rent paid by the District, the Contractor will pay the difference to the District. The District will assume any accounts payable and contractual obligations that cannot be cancelled or terminated for labor, materials or equipment ordered but not fully paid for by the Contractor as of the date of termination. The Contractor will cooperate with the District and assign any subcontracts with subcontractors or material providers to the District at the District's election. Any payments required hereunder shall be paid within ten (10) days of the final determination of the amounts due.

c. Termination for Convenience:

The District reserves the right, in its sole discretion, to terminate the Lease Leaseback Agreement, including the associated Site Lease and Facilities Lease, for convenience following three (3) working days' written notice to the Contractor. In the event of termination for convenience, Contractor shall have no claims against the District, except that the District shall pay the Contractor the earned but unpaid actual costs, calculated in accordance with Section 23(b)(3) above, plus five percent (5%) of the remaining Contractor's Fee for the Project. The parties agree that this amount shall constitute full and fair compensation for all Contractor's lost profits and other damages resulting from the termination for convenience.

24. ASSIGNMENT OF CONTRACT

The Contractor may not assign or delegate all or any portion of this Contract without the written consent of the District and no such consent shall be given which would relieve the Contractor or its Surety of their responsibilities under the Contract. The Contractor may assign, without liability to

the District, monies due the Contractor under the Contract to banks, trust companies or other financial institutions provided written notice thereof is promptly delivered to the District. Assignment of monies earned by the Contractor shall be subject to setoffs, withholds, and back charges as provided by this Contract.

25. COORDINATION WITH OTHER CONTRACTS

a. The District reserves the right to do other work or award other contracts in connection with this Project. By entering into this Contract, Contractor acknowledges that there may be other contractors on or adjacent to the Project site whose work must be coordinated with that of its own. Contractor expressly warrants and agrees that it will cooperate with other contractors and will do nothing to delay, hinder, or interfere with the work of other contractors, or that of the District, its Architect and Construction Manager. Contractor also expressly agrees that in the event its work is hindered, delayed, interfered with, or otherwise affected by a separate contractor it shall provide immediate notice to the District, sufficient to allow the District to bring a claim or withhold funds from the other contractor. Contractor also agrees to cooperate with the District and participate in any meeting which the District deems necessary in order to resolve a claim between the Contractor and a separate contractor.

b. If any part of Contractor's work depends upon the work of a separate contractor, Contractor shall inspect such other work and promptly report in writing to the District and Architect any defects in such other work that render it unsuitable to receive the work of Contractor. Failure of the Contractor to so inspect and report shall constitute an acceptance of the other contractor's work, except as to defects which the Contractor could not have detected through the reasonable inspection of the other contractor's work prior to the execution of Contractor's work.

c. If Contractor is aware of a current or potential conflict between Contractor's work and the work of another contractor on the site, and is unable to informally resolve the conflict directly with the other contractor, Contractor shall promptly provide written notice to the District, with a copy to the Architect and the other contractor, specifying the nature of the conflict, the date upon which the conflict arose, and the steps taken to attempt to resolve the conflict. The District may issue written instructions to address the conflict.

d. If, through Contractor's negligence, any other contractor or subcontractor shall suffer loss or damage to the work, Contractor shall make a reasonable effort to settle with such other contractor and subcontractor by agreement or arbitration. If such other contractor or subcontractor shall assert any claim against the District or Architect, on account of any damage alleged to have been so sustained, the District or Architect shall notify the Contractor, who shall defend such proceedings at Contractor's own expense and save harmless and indemnify the District and the Architect from any such claim.

26. SUBMITTALS: SHOP DRAWINGS, CUTS AND SAMPLES

a. Five (5) copies of shop drawings, brochures and cuts and samples in quantities specified by

the Architect shall be submitted to the Architect for all items for which they are required by the plans and Specifications. Prior to transmittal, the Contractor shall examine all submittals for accuracy and completeness in order to verify their suitability for the work and compliance with the Contract Documents and shall sign and date each submittal. Submittals shall be made sufficiently before the items are required for the work so as to cause no delay and shall be in accordance with the Project construction schedule.

b. In addition to information furnished as common practice, submittals shall contain the Project name and location, Contractor's name and address, Subcontractor's or supplier's name and address, date of submittal and any revisions, and reference to appropriate specification section, and/or drawing and detail numbers. The Contractor and/or the Subcontractors shall verify in the field all dimensions and relationships to adjacent work necessary to ensure the proper fit of the items submitted. If necessary, the Contractor shall make any corrections required and resubmit with all due haste in the same number as initially required.

c. Review of submittals, shop drawings, cuts or samples by the District or Architect shall not relieve the Contractor from complying with the requirements of the Contract Documents.

d. Any materials or equipment installed without approval shall be at the Contractor's own risk, and Contractor may be required to remove any such materials or equipment and install the specified items at Contractor's own cost, including repairs to adjacent work.

27. PAYMENTS

a. Cost Breakdown:

Within ten (10) days of the Notice to Proceed, the Contractor shall prepare and submit to the Architect and District a cost breakdown (schedule of values) showing the major work items for each trade or operation required in construction of the Project. The work items shall be sufficiently detailed to enable the Architect to accurately evaluate the completion percentages requested by the Contractor. The cost for each work item shall include the applicable percentage of the Contractor's Fee. The total of all work item costs shall equal the Total Base Rent.

b. Scope of Payment:

The schedule of Lease Payments is set forth in Exhibit D to the Lease Leaseback Agreement. Lease Payments to the Contractor shall be full compensation for furnishing all labor, materials, equipment and tools necessary to the work, and for performing and completing, in accordance with the Specifications, all work required under the item or under the Contract, and for all expense incurred by the Contractor for any purpose in connection with the performance and completion of the work.

c. Lease Payments:

The Contractor will, on or about the last day of each month, make an estimate of the value of the work completed by Contractor in the performance of the Contract. These estimates shall be subject to the review and approval of the Architect. The first such estimate will be of the value of the work completed after the Contractor commenced the performance of the Contract, and every subsequent estimate, except the final estimate, will be of the value of the work completed since the immediately preceding estimate. Such estimates will be based on labor, materials and equipment incorporated into the work, and items of materials and equipment delivered to the Project. The Contractor shall be responsible for the security and protection of such materials and equipment delivered to the Project and not incorporated in the work. Within thirty (30) calendar days after the approval of each estimate for progress payment, the District will pay to the Contractor an amount equal to 95% percent of the approved estimate.

Because satisfactory completion of the Project is essential to the District's educational services, rights of quiet enjoyment, and other rights of tenancy, the District may withhold from any Lease Payment a sufficient amount as in its reasonable judgment may be necessary to protect the District due to the Contractor's failure to make progress, as reflected on its schedule of values, in accordance with the Contract Documents. The District also retains the right to withhold from any Lease Payment otherwise due amounts required due to stop payment notices timely filed or where the District has incurred costs or requests reasonable financial assurances regarding defective work by the Contractor.

d. Payments Do Not Imply Acceptance of Work:

The payment of any Lease Payment by the District or the receipt thereof by the Contractor shall not constitute acceptance of the work or of any portion thereof, and shall in no way lessen the liability of the Contractor to replace unsatisfactory work or material, whether or not the unsatisfactory character of such work or material was apparent or detected at the time such payment was made.

e. Retention of Sums Charged Against Contractor:

It is mutually understood and agreed that when, under any provision of this Contract, the District shall charge any sums of money against the Contractor, the amount of such charge shall be deducted and retained by the District from the amount of the next succeeding Lease Payment, or from any other monies due or that may become due the Contractor on account of the Contract. If on completion or termination of the Contract such monies due the Contractor are found insufficient to cover the District's charges against the Contractor, the District shall have the right to recover the balance from the Contractor or the Contractor's Sureties.

f. Release:

The Contractor shall, if required by the District, execute and deliver at the time of the final Lease Payment and as a condition precedent to the final Lease Payment, a release in the

form required by Civil Code section 8136. In addition, if required by the District, the Contractor shall provide a release in the form required by Civil Code section 8138 upon receipt of the final Lease Payment.

g. Payment to Subcontractors and Suppliers:

The Contractor shall pay each Subcontractor and supplier promptly on receipt of each Lease Payment from the District for the materials, labor and equipment delivered to the site or incorporated in the work by each Subcontractor, less any withhold for disputed amounts.

h. Stop Payment Notice Costs:

The District reserves the right to charge the Contractor or Surety all costs incurred by the District, including attorney's fees, for defending stop payment notice claims.

28. MODIFICATIONS OF CONTRACT

a. Changes In The Work:

1) The District, before the date of acceptance of the work, may, without notice to the Sureties, order changes in the work ("Modifications"), may order extra materials and extra work in connection with the performance of the Contract, and the Contractor shall promptly comply with such orders. All Modifications must be approved by DSA and the State Fire Marshall, if applicable, as required by law.

2) If changes ordered in design, workmanship or materials are of such a nature as to increase or decrease the cost of any part of the work, Total Base Rent shall be increased or decreased by such amount as represents the reasonable and proper allowance for the increase or decrease in the cost of the work in accordance with the provisions of this Article, and any other applicable terms of the Contract, including, but not limited to, the Contractor's schedule of values and the price for allowances, if any. Except as provided by law or as set forth in Exhibit D, the total cost of all Modifications shall not exceed ten (10) percent of the original Contract price.

3) In the case of a disputed work item, the District may direct the Contractor to perform the disputed work at no additional cost to the District on the grounds that the work is adequately indicated in the Contract Documents. If the Contractor maintains that the disputed work represents a modification to the Contract, Contractor may submit a claim in accordance with Article 50, Resolution of Construction Claims. Notwithstanding any dispute regarding the requirements of the Contract Documents, Contractor shall promptly and fully comply with the District's directive. Contractor's failure to do so shall be deemed a material breach of this Contract, and in addition to all other remedies, District may, at its sole discretion, hire another contractor and/or use its own forces to complete the disputed work at Contractor's sole expense, and may deduct the cost of such work

from the Total Base Rent.

b. Cost Breakdown:

When the Modification is proposed, the Contractor shall furnish a complete breakdown of actual costs of both credits and extras, itemizing materials, labor, taxes, overhead and profit. Subcontract work shall be so indicated. All costs must be fully documented. The following limitations shall apply:

1) Limitations Where Contract Price Changes are Involved:

(a) Overhead and Profit for the Contractor. The Contractor's overhead and profit on the cost of subcontracts shall be a sum not exceeding ten percent (10%) of such costs. The Contractor's overhead and profit on the costs of work performed by the Contractor shall be a sum not exceeding fifteen percent (15%) of such costs. Overhead and profit shall not be applied to the cost of taxes and insurance, if applicable, by Contractor or Subcontractors or to credits. No processing or similar fees may be charged by the Contractor in connection with the Modification.

(b) Bond Premiums. The actual rate of bond premiums as paid on the total cost (including taxes) will be allowed, but with no markup for profit and overhead.

(c) Taxes. State and city sales taxes should be indicated. Federal excise tax shall not be included. (District will issue an exemption on request.)

2) Change Order Certification:

All change orders and requests for proposed change orders shall include the following language, unless modified by agreement of the Parties:

"The undersigned Contractor approves the foregoing as to the changes in work, if any, and as to the price specified for each item and as to the extension of time allowed, if any, for completion of the Project as stated herein, and agrees to furnish all labor, materials, and service and to perform all work necessary to complete any additional work specified for the consideration stated herein. Submission of claims which have no basis in fact or which Contractor knows are false are made at the sole risk of the Contractor and may be a violation of the False Claims Act, as set forth in Government Code sections 12650 *et seq.* It is understood that the changes to the Contract Documents set forth herein shall only be effective upon approval 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 herein are

deemed waived."

c. Time and Materials:

If it is impractical, because of the nature of the work, or for any other reason, to fix an increase in price in advance, the Change Order may fix a maximum price which shall not under any circumstances be exceeded, and subject to such limitation, such alteration, modification or extra shall be paid for at the actual necessary cost as determined by the sum of the following items (1) to (5) inclusive:

1) Labor, including premium on compensation insurance and charge for Social Security taxes, and other taxes pertaining to labor.

2) Material, including sales taxes and other taxes pertaining to materials.

3) Plant and equipment rental.

4) Overhead and profit computed at fifteen percent (15%) of the total of Items (1) to (3) inclusive.

5) The proportionate cost of premiums on bonds computed at one and one-half percent (1-1/2%) of the total of items (1) to (4) inclusive.

If the Time and Materials work is done by a Subcontractor, the amount shall be determined as set forth above under items (1) to (5) inclusive. The Contractor's overhead and profit on the costs of subcontracts (exclusive of taxes and insurance) shall not exceed ten percent (10%) of such costs.

The District reserves the right to furnish such materials as it may deem expedient, and no allowance will be made for profit thereon. The above-described methods of determining the payment for work and materials shall not apply to the performance of any work or the furnishing of any material which, in the judgment of the District, may properly be classified under items for which prices are established in the Contract.

d. Oral Modifications:

No oral statements of any person shall in any manner or degree modify or otherwise affect the terms of the Contract.

29. INDEMNITY

Contractor shall defend with counsel acceptable to the District, indemnify and hold harmless to the full extent permitted by law, the District and its Board of Trustees, officers, agents, Architect, construction manager, employees and volunteers from and against any and all liability, loss, damage, claims, expenses, fines, judgments and costs (including, without limitation, reasonable attorney’s fees and costs and fees of litigation) (collectively, "Liability") of every nature arising out

of or in connection with Contractor's performance of the Contract or its failure to comply with any of its obligations contained in these Contract Documents, except such Liability caused by the active negligence, sole negligence or willful misconduct of the District. Such indemnification shall extend to all claims, demands, or liabilities occurring after completion of construction of the Project as well as during the progress of the work. Pursuant to Public Contract Code section 9201, District shall timely notify Contractor of receipt of any third-party claim relating to this Project.

30. WARRANTY OF TITLE

Contractor warrants that title to all work, materials or equipment included in a request for payment shall pass and transfer to the District whether or not they are installed or incorporated in the Project, free from any claims, liens or encumbrances, when such payment is made to the Contractor. Contractor further warrants that no such work, materials or equipment have been purchased for work under the Contract subject to an agreement by which an interest therein or an encumbrance thereon is retained by the seller or supplier.

31. USE OF COMPLETED PARTS OF THE WORK BEFORE ACCEPTANCE

Whenever the work or any part thereof is in a condition suitable for use, and the best interest of the District requires such use, as determined by the District, the District may take possession of, connect to, open for public use, or use the work or a part thereof. When so used, maintenance and repairs due to ordinary wear and tear or vandalism will be made at District's expense. The use by the District of the work or part thereof as contemplated in this section shall in no case be construed as constituting acceptance of the work or any part thereof, including, but not limited to, the right to assess liquidated damages. Such use shall neither relieve the Contractor of any of Contractor's responsibilities under the Contract nor act as a waiver by the District of any of the conditions thereof. Contractor shall continue to maintain all insurance, including Builder's Risk insurance, if applicable, on the entire Project, and diligently pursue full completion of the work.

32. GUARANTEE AND WARRANTY

a. By signing this Contract, Contractor agrees to the following guarantee and warranty:

Guarantee & Warranty

Contractor hereby guarantees and warrants its work on the Project for a period of one (1) year from the date of Final Completion as follows.

Contractor shall promptly repair or replace to the satisfaction of the District any or all work that is defective in workmanship, equipment and/or materials for whatever reason, ordinary wear and tear and unusual abuse or neglect excepted, together with any other work which may be

damaged or displaced in so doing.

Contractor agrees to promptly correct and remedy any failure by the Contractor to conform its work, activities and services to the requirements of the Contract Documents.

In the event of the Contractor's failure to comply with the above-mentioned obligations within ten (10) calendar days of notice, or sooner if required by an emergency, Contractor hereby authorizes the District to have the defects or deficiencies repaired, remedied, corrected and made good at Contractor's expense, and Contractor shall pay the costs and charges therefore upon demand. The Surety agrees to be responsible for these costs and charges as well.

33. PROTECTION OF WORK AND PROPERTY

a. The Contractor shall be responsible for each operation and all work on the Project, both permanent and temporary. The Contractor shall protect the work and materials from damage due to negligence, the action of the elements, the carelessness of third parties, vandalism, or any other cause whatsoever, until the final completion and acceptance of the Project. Should improper work by the Contractor be covered by another contractor and damage or defects result, the whole work affected shall be made good by the Contractor to the satisfaction of the Architect and District without expense to the District. The Contractor shall take reasonable care to avoid damage to existing facilities or utilities, whether on the Project or adjacent to it, and Contractor shall be liable for any damage thereto or interruption of service due to Contractor's operations. If the Contractor encounters any facilities or utilities not shown on the drawings or not reasonably inferable therefrom, Contractor shall promptly notify the Architect about them, and shall do no further work which may cause damage to same. If it is determined that some action needs to be taken regarding facilities not shown, the Contractor will be given directives on what action to take, and any additional cost to the Contractor incurred thereby will be handled by Change Order.

b. The property limits of the area of the Project are indicated in the Site Lease. Except for work specifically shown or noted, Contractor shall confine Contractor's operations within the indicated property limits. The Contractor shall provide, install, and maintain all shoring, bracing and underpinning necessary to support adjacent property, streets, buildings and structures, that may be affected by building operations for this work; shall serve or cause to be served all legal notices to adjoining property owners that may be necessary for their protection; and shall protect from damage all adjacent buildings, fences, landscaping, and repair or replace any such property damaged in the course of work under the Contract.

34. USE OF ROADWAYS AND WALKWAYS

The Contractor shall not unnecessarily interfere with use of any roadway, walkway or other facility for vehicular or pedestrian traffic by any party entitled to use it. Wherever such interference becomes necessary for the proper and convenient performance of the work and no satisfactory detour route exists, the Contractor shall, before beginning the interference, provide a satisfactory detour, temporary bridge, or other proper facility for traffic to pass around or over the interference and shall maintain it in satisfactory condition as long as the interference continues, all without extra payment unless otherwise expressly stipulated in the Contract Documents.

35. MATERIALS

a. Unless explicitly stated otherwise, all specified equipment and material comprising the work of this Contract, as being provided or furnished or installed, shall imply the inclusion of all components, hardware and accessories, required for complete installation and satisfactory operation as intended by the manufacturer. Wherever the method of installation of any material is not explicitly specified, the installation shall be as recommended by manufacturer.

b. Wherever in the Contract Documents it is provided that the Contractor shall furnish materials or equipment for which no detailed specifications are set forth, such materials or equipment shall be new and of the best grade for the purpose for which they will be used when incorporated in the work. Materials specified by reference to a number or symbol of a specific standard, such as A.S.M., Federal Specification, State Standard, Trade Association, or similar standards, shall comply with requirements in the latest revision thereof and any amendment or supplement in effect on the date of the award of the contract.

c. None of the materials to be provided furnished or installed on this project shall contain asbestos or any other "hazardous substance" as that term is defined by federal or state law.

36. SUBSTITUTIONS

a. Wherever in the drawings or Specifications a material or product is called for by trade or brand names or manufacturer and model number, alternative items of equal quality and purpose may be proposed for use by the Contractor. The burden of proof of equality is on the Contractor, and Contractor shall furnish all information and supplies necessary for the Architect to make a thorough evaluation of the proposed substitution. The Architect's decision about the equality of the proposed substitution is final, and if the proposed substitution is not approved, the Contractor shall install the item called for. Proposed substitutions and any changes in adjacent work caused by them shall be made by the Contractor at no additional cost to the District.

b. No substitutions will be considered after Notice to Proceed unless compelling circumstances are presented (e.g. items are unavailable).

c. In the event Contractor makes substitutions in materials, equipment, or designs, with or without the District's approval, other than those authorized herein, the Contractor shall then assume full responsibility for the effects of such substitutions on the entire Project, including the design, and shall reimburse the District for any charges resulting from such substitutions, including any charges for modifications in the work of other trades, and including any charges for additional design and review, plus reasonable and customary mark-ups.

37. TESTING

a. Materials, equipment, or other work requiring tests may be specified in the Contract Documents, and they shall be adequately identified and delivered to the site in ample time before intended use to allow for testing. If such materials, equipment or other work should be covered without required testing and approval, they shall be uncovered at the Contractor's expense, including any repairs or replacement resulting therefrom. The Contractor shall notify the District and Architect when and where such materials, equipment or other work are ready for testing, and Contractor shall bear the cost of making them available for testing. The Contractor shall notify the District and Architect sufficiently before the need for testing so as to cause no delay in the work and, in any case, at least forty-eight (48) hours prior to the need for testing.

b. The cost of initial tests called for will be paid by the District and will be performed by independent testing consultants retained by the District, but if so specified in the Contract Documents, the amount paid or a portion thereof may be collected from the Contractor. All other tests and inspections specified or otherwise required to substantiate compliance with specified requirements for quality of material or performance of operation shall be paid for by the District, but if so specified in the Contract Documents, the amount paid may be collected from the Contractor. If retesting or additional testing is necessary because of substandard initial test results, the costs thereof shall be paid by the District, but if so specified by the District, the amount paid may be collected from the Contractor, including any repairs or replacement resulting therefrom.

38. INSPECTION

a. All materials, equipment and workmanship used in the work of the Project shall be subject to inspection or testing at all times and locations during construction and/or manufacture. The District's and Architect's authorized representatives and representatives of other agencies having authority over the work shall have access to the work for the above purposes at all reasonable times and locations. Any material or work found to be unsatisfactory or not according to the Contract Documents shall be replaced with the correct material or work and the defective items promptly removed, all at the Contractor's expense, when directed to do so by any of the above-named persons having authority over

the work. The cost of review time and analysis by the Architect or other District consultants necessitated by incomplete or defective work by the Contractor shall be charged to the Contractor.

b. Inspection and testing by the District or its representatives shall not relieve the Contractor from complying with the requirements of the Contract Documents. The Contractor is responsible for its own quality control.

c. Whenever required by the District or Architect, the Contractor shall furnish all tools, labor and materials necessary to make an examination of work in place by uncovering the same. Should such work be found unsatisfactory, the cost of examination and reconstruction shall be paid by the Contractor. Should such work be found satisfactory, the cost of examination and reconstruction of the work shall be paid by Change Order unless the Contractor improperly covered the work before it could be inspected or tested. If the Contractor considers it necessary or desirable to work on Saturday, Sunday or a holiday, Contractor shall seek written approval from the District at least forty-eight (48) hours before the commencement of such work.

39. CLEANUP

a. The Contractor shall maintain the premises and area of the work in a neat and clean condition. No burning of rubbish on site shall be allowed. The Contractor shall control dust on the site by sprinkling at whatever intervals are necessary to keep it laid down and shall take measures to prevent dust and debris from being accidentally transported outside the area of the work.

b. Final cleaning, such as sweeping, dusting, vacuuming, dry and wet mopping, polishing, sealing, waxing and other finish operations normally required on newly installed work shall be taken to indicate the finished conditions of the various new and existing surfaces at the time of acceptance. Prior to the time of acceptance, all marks, stains, fingerprints, dust, dirt, splattered paint and blemishes resulting from the various operations shall be removed throughout the Project. Stair treads and risers shall be wet-mopped. Glass shall be left clean and polished both inside and outside. Plumbing fixtures and light fixtures shall be washed clean. Hardware and other unpainted metals shall be cleaned and all building papers and other temporary protections shall be removed throughout the building, or portion of the building where Contractor was involved, all to the satisfaction of the Architect and District. The exterior of the buildings, playfields, exterior improvements, and planting spaces and other work areas shall be similarly clean and in good order.

40. CONSTRUCTION WASTE MANAGEMENT REQUIREMENTS

a. Scope

1) This Article includes requirements for the diversion by the Contractor of

construction and demolition debris from landfills. The Contractor shall develop and implement a Waste Management Plan as specified herein for the construction work. The Contractor shall take a pro-active, responsible role in the management of construction and demolition waste and require all subcontractors, vendors, and suppliers to participate in the effort.

2) The District has established that this Project shall generate the least amount of waste practicable and that processes shall be utilized that ensure the generation of as little waste as possible due to over-packaging, error, poor planning, breakage, mishandling, contamination or other factors.

3) As much of the waste materials as economically feasible shall be reused, salvaged or recycled. Waste disposal in landfills shall be minimized.

4) The Contractor is encouraged to use waste hauling companies that separate recyclable materials. The Contractor shall work with its waste haulers in providing other recycling methods as appropriate.

5) The Contractor is responsible for implementation of any special programs involving rebates or similar incentives related to the recycling of waste. Revenues or other savings obtained for salvage or recycling accrue to the Contractor.

b. References

1) "Builders' Guide to Reuse and Recycling, A Directory for Construction and Demolition Materials."

2) "Construction Site Recycling, a Guide for Building Contractors ". For a copy of the guide call 1-888-442-2666 or go to www.recycleworks.org.

3) "Where to Recycle Construction and Demolition Debris." For a copy of the guide call 1-888-442-2666 or go to www.recycleworks.org.

c. Definitions

1) General: Construction and demolition waste includes products of demolition or removal, excess or unusable construction materials, packaging materials for construction products, and other materials generated during the construction process but not incorporated into the work.

2) Divert" means to use material for any lawful purpose other than disposal in a landfill or transfer facility for disposal

3) "Recycling Service" means an off-site service that provides processing of material and diversion from a landfill.

4) "Hauler" means the entity that transports construction and demolition debris to either a landfill or a recycling service.

d. Compliance with regulatory requirements:

1) The Contractor shall perform all handling, storage, transportation and disposal of construction debris in compliance with all applicable Federal, State, regional, and local statutes, laws, regulations, rules, ordinance, codes and standards.

2) Nothing stated on the drawings, in this Article 40 or in any other provision of the Contract Documents shall be construed as allowing work that is not in strict compliance with all applicable Federal, State, regional, and local statutes, laws, regulations, rules, ordinances, codes and standards.

e. Performance Requirement

1) The Contractor shall divert a minimum of 50 percent (50%) of the total Project construction and demolition waste from landfills.

f. Quality Control

1) General:

i) The Contractor shall not permit materials designated for diversion to become contaminated or to contaminate the site or surrounding areas.

2) Training and Coordination:

i) The Contractor shall designate an on-site party [or parties] who will be responsible for instructing workers and subcontractors, and overseeing and documenting the results of the Waste Management Plan for the Project.

ii) The Contractor shall furnish copies of the Waste Management Plan to all on-site supervisors, each subcontractor, and the District's representative.

iii) The Contractor shall include construction waste management as an item on the agenda of all progress meetings.

3) The Waste Management Plan:

i) The Contractor shall prepare a Waste Management Plan for diverting the specified percentage of construction debris from landfills, including written and graphic information indicating how the waste will be diverted.

ii) Include in the plan both on-site recycling of construction debris and off-site diversion from landfills.

iii) Identify the means and methods for collecting and separating each type of debris deemed reusable or recyclable.

iv) List the off-site recycling service and hauler of each designated debris item who has agreed to accept and divert that item from the landfill in the proposed quantities anticipated. List the service and hauler company name, address, telephone number, and persons contacted.

v) List the name of individuals on the Contractor's staff responsible for waste prevention and management.

vi) List the actions that will be taken to reduce solid waste generation, including coordination with subcontractors to ensure awareness and participation.

vii) Describe the specific approaches to be used in recycling/reuse of the various materials generated, including the areas on site and equipment to be used for processing, sorting, and temporary storage of wastes.

viii) Characterize the waste to be generated, including estimated types and quantities. Name the landfills and/or incinerator to be used.

ix) List the specific waste materials that will be salvaged for resale, salvaged and reused on the Project, salvaged and stored for reuse on a future project, or recycled. Recycling facilities that will be used shall be identified by name, location, and phone number.

x) Identify the materials that cannot be recycled or reused with an explanation or justification, to be approved by the Architect.

The Contractor shall submit the Plan to the Architect within 10 calendar days after receipt of the Notice to Proceed, or prior to any waste removal in connection with the work, whichever occurs first. The Contractor shall promptly revise and resubmit the Plan as required by the Architect. Review of the Contractor's Waste Management Plan will not relieve the Contractor of responsibility for compliance with applicable environmental regulations or meeting Project diversion requirements.

g. Plan Implementation

1) The Contractor shall implement the approved Waste Management Plan.

2) The Contractor shall maintain a log of each load and of each category of waste that is diverted from the landfill. The Contractor shall separately log the debris sent to a Class III landfill and materials sent to recycling facilities.

3) The Contractor shall include in the log the type of load, load weight, name of the

hauling service, recycling service or landfill, and the date accepted by the recycling service or by the landfill.

4) The Contractor shall retain and make available all weight tickets and copies of receipts and invoices relating to the implementation of the Plan.

5) The District reserves the right to audit the log at any time.

h. Material Handling

1) Designate a specific area or areas on site to facilitate the separation of materials for potential reuse, salvage, recycling, and return. Clearly mark bins for each category of waste.

2) Keep waste bins and pile areas neat and clean. Do not contaminate non-recyclable waste with materials designated for reuse or recycling.

i. Contractor's Responsibilities

1) Provide on-site instruction of the appropriate separation, handling, recycling, salvage, reuse, and return methods to be used by all parties in the Project.

2) Separate, store, protect, and handle at the site identified recyclable and salvageable waste products in a manner that maximizes recyclability and salvagability of identified materials. Provide the necessary containers, bins and storage areas to facilitate effective waste management. Provide barriers and enclosures around recyclable material storage areas which are non hazardous and recyclable or reusable and which shall be located away from construction traffic. Provide adequate space for pick-up and delivery. Use cleaning materials that are non hazardous and biodegradable.

41. INSTRUCTIONS AND MANUALS

Three copies of the maintenance instructions, application/installation instructions and service manuals called for in the Specifications shall be provided by the Contractor. These shall be complete as to drawings, details, parts lists, performance data and other information that may be required for the District to easily maintain and service the materials and equipment installed under this Contract. All manufacturer's application/installation instructions shall be given to the Architect at least ten (10) days prior to first material application or installation of the item. The maintenance instructions and manuals, along with any specified guarantees, shall be delivered to the Architect for review prior to submitting to District, and the Contractor or appropriate Subcontractors shall instruct District's personnel in the operation and maintenance of the equipment prior to final acceptance of the Project.

42. AS-BUILT DRAWINGS

The Contractor and all Subcontractors shall maintain on the work site a separate complete set of contract drawings which will be used solely for the purpose of recording changes made in any portion of the work during the course of construction, regardless of the reason for the change. As changes occur, there will be included or marked on this record set on a daily basis if necessary to keep them up to date at all times. Actual locations to scale shall be identified on the drawings for all runs of mechanical and electrical work, including all site utilities installed underground, in walls, floors, and furred spaces, or otherwise concealed. Deviations from the drawings shall be shown in detail. All main runs, whether piping, conduit, duct work, drain lines, etc., shall be located in addition by dimension and elevation. The Contractor shall verify that all changes in the work are included in the "AS-BUILT" drawings and deliver the complete set thereof to the Architect for review and approval within thirty (30) calendar days after District's notice of completion.

43. NO DISCRIMINATION

It is the policy of the District that there shall be no discrimination against any prospective or active employee or any other person engaged in the work because of actual or perceived race, color, ancestry, national origin, ethnic group identification, religion, sex, gender, sexual orientation, age, physical or mental disability, or marital status. The Contractor agrees to comply with applicable Federal and California laws including, but not limited to, the California Fair Employment Practice Act, beginning with Government Code §12900, Government Code §11135, and Labor Code §§ 1735, 1777.5, 1777.6 and 3077.5. In addition, the Contractor agrees to require like compliance by all Subcontractors and suppliers.

44. LABOR STANDARDS

a. Work Hours:

In accordance with Labor Code section 1810, eight (8) hours of labor shall constitute a legal day's work under this Contract. Contractor and any Subcontractor shall pay workers overtime pay as required by Labor Code section 1815. The Contractor shall pay each worker, laborer, mechanic or persons performing work under this Contract at a rate not less than the prevailing wage for each craft or classification covering the work actually performed.

b. Penalty:

Contractor shall forfeit to District as a penalty the sum of twenty-five dollars ($25.00) for each worker employed in the execution of this Contract by Contractor or any Subcontractor for each calendar day during which the worker is required or permitted to work more than eight (8) hours in any one (1) calendar day or more than forty (40) hours per calendar week in violation of Article 3, Division 2, Part 7, Chapter 1 of the California Labor Code.

c. Employment of Apprentices:

Contractor shall comply with Labor Code sections 1773.3, 1777.5 and 1777.6, and 3077 *et. seq*., each of which is incorporated by reference into this Contract. These sections require that contractors and subcontractors employ apprentices in apprenticeable occupations in a ratio of not less than one (1) hour of apprentice work for every five (5) hours of labor performed by a journeyman, unless an exception is granted and that Contractors and Subcontractors shall not discriminate against otherwise qualified employees as apprentices on any public works solely on the ground of actual or perceived race, religion, color, national origin, ethnic group identification, sex, gender, sexual orientation, age, or physical or mental disability. Only apprentices who are in training under written apprenticeship occupations shall be employed. The responsibility for compliance with these provisions for all apprenticeable occupations rests with Contractor.

d. The Contractor shall be knowledgeable of and comply with Labor Code sections 1727, 1773.5, 1775, 1777, 1777.5, 1810, 1813, 1860, including all amendments thereto; each of these sections is incorporated by reference into this Contract.

45. GENERAL RATE OF PER DIEM WAGES

a. On File:

As required by Labor Code section 1773.2, the District has available copies of the general prevailing rate of per diem wages for workers employed on public work as determined by the Director of the Department of Industrial Relations, which shall be available to any interested party on request. Contractor shall post a copy of the document at each job site.

b. Prevailing Wage Rate:

The Contractor and each Subcontractor shall pay each worker performing work under this Contract at a rate not less than the prevailing wage as defined in Labor Code sections 1771 and 1774 and section 16000(a) of Title 8, California Code of Regulations.

c. Penalty:

In accordance with section 1775 of the Labor Code, the Contractor shall forfeit to the District as penalty, the sum of $200 for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rates, as determined by the Director of the California Department of Industrial Relations, for any work done under this Contract by Contractor or by any Subcontractor. Contractor shall also pay each worker the difference between the stipulated prevailing wages rates and the amount actually paid to such worker.

46. RECORD KEEPING

a. The Contractor agrees to comply with the provisions of sections 1776 and 1812 of the

Labor Code. The Contractor and each Subcontractor shall keep or cause to be kept an accurate record showing the names, addresses, social security numbers, work classifications, straight time and overtime hours worked each day and week of all workers employed by Contractor in connection with the execution of this Contract or any subcontract thereunder and showing the actual per diem wages paid to each of such workers. These records shall be certified and shall be open at all reasonable hours to the inspection of the District, its officers and agents, and to the Chief of the Division of Labor Statistics and Law Enforcement of the State Department of Industrial Law Enforcement of the State Department of Industrial Relations, and his or her other deputies and agents.

b. In addition, copies of the above records shall be available as follows:

1) A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or his or her authorized representative on request;

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

3) A certified copy of all payroll records 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, the Division of Apprenticeship Standards, or the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. If the requested payroll records have not been previously provided, the requesting party shall, prior to being provided the records, reimburse the costs of the 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 the Contractor.

c. The Contractor shall file a certified copy of the records with the entity requesting the records within ten days after receipt of a written request. Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the District, 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 the Contractor awarded the Contract or performing the Contract shall not be marked or obliterated.

d. The Contractor shall inform the Owner of the location of the records, including the street address, city and county, and shall, within five working days, provide a notice of a change of location and address.

e. In the event of noncompliance with the requirements of this section, the Contractor shall have ten days in which to comply subsequent to receipt of written notice specifying in what respects the Contractor must comply with this section. Should noncompliance still be

evident after the ten day period, the Contractor shall, as a penalty to the District, forfeit $100 for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, these penalties shall be withheld from Lease Payments then due.

f. Responsibility for compliance with this provision shall be with the Contractor.

47. PROJECT COMPLETION

a. When all of the construction work to be performed under this Contract has been fully completed, the Contractor shall notify the Architect and District, in writing, setting a date for inspection. The Contractor and Subcontractor representatives shall attend the inspection. As a result of this inspection, the Architect will prepare a list of items ("punch list") that are incomplete or not installed according to the Contract Documents. Failure to include items on this list does not relieve the Contractor from fulfilling all requirements of the Contract Documents.

b. The Architect will promptly deliver the punch list to the Contractor and it will include a period of time by which the Contractor shall complete all items listed thereon. On completion of all items on the punch list, verified by a final inspection, and all other Contract requirements, so that Final Completion has been achieved to the District's satisfaction, the District will file a Notice of Completion with the County Recorder.

48. TRENCHING OR OTHER EXCAVATIONS

a. Excavations or Trenches Deeper than Four Feet:

If the Project involves digging trenches or other excavations that extend deeper than four feet, the following provisions shall be a part of this Contract:

1) The Contractor shall promptly, and before the following conditions are disturbed, provide written notice to the District if the Contractor finds any of the following conditions:

(a) Material that the Contractor believes may be a hazardous waste, as defined in section 25117 of the Health and Safety Code, which is required to be removed to a Class I, Class II, or Class III disposal site in accordance with the provisions of existing law.

(b) Subsurface or latent physical conditions at the site which are different from those indicated or expected.

(c) Unknown physical conditions at the site of any unusual nature or which are materially different from those ordinarily encountered and generally recognized as inherent in work which the Contractor generally performs.

2) In the event that the Contractor notifies the District that Contractor has found any of the conditions specified in subparagraphs (a), (b) or (c), above, the District shall promptly investigate the condition(s). If the District finds that the conditions are materially different or that a hazardous waste is present at the site which will affect the Contractor's cost of, or the time required for, performance of the Contract, the District shall issue a change order in accordance with the procedures set forth in this Contract.

3) In the event that a dispute arises between the District and the Contractor regarding any of the matters specified in Paragraph (2), above, the Contractor shall proceed with all work to be performed under the Contract and the Contractor shall not be excused from completing the Project as provided in the Contract. In performing the work pursuant to this Paragraph, the Contractor retains all rights provided by Article 50 which pertains to the resolution of disputes between the contracting parties.

b. 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 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 or delays arising from Contractor's failure to make appropriate notification shall be at the sole risk and expense of the Contractor and shall not be considered for an extension of the Contract time.

c. Existing Utility Lines:

1) Pursuant to Government Code section 4215, the 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 liquidated damages for delay in completion of the Project caused by the failure of the District or the owner of a utility to provide for removal or relocation of such utility facilities.

2) Locations of existing utilities provided by the 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. The District shall compensate Contractor for the costs of locating and 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.

3) No provision herein shall be construed to preclude assessment against Contractor for any other delays in completion of the Project. Nothing in this section shall be deemed to require the District to indicate the presence of existing service laterals, appurtenances, or other utility lines, with the exception of main or trunklines, whenever the presence of such utilities on the site of the construction Project can be inferred from the presence of other visible facilities, such as buildings, meter and junction boxes, on or adjacent to the site of the construction.

4) If Contractor, while performing work under this Contract, discovers utility facilities not identified by the District in the Project plans and Specifications, Contractor shall immediately 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.

d. Prompt 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 conditions. 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 incurred as a result of the conditions.

e. Trenches Five Feet and Deeper:

Pursuant to Labor Code section 6705, if the Contract price 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.

49. RESOLUTION OF CONSTRUCTION CLAIMS

Claims shall be subject to the requirements of Public Contract Code sections 20104 *et seq*. and 9204. A summary of those provisions is set forth below. A waiver of the rights granted by the referenced statutes is void and contrary to public policy, provided, however, that upon receipt of a claim, the parties may mutually agree to waive, in writing, mediation and proceed directly to the commencement of a civil action or binding arbitration, as applicable. To the extent that the summary below is inconsistent with any requirement of those statutes, the statutes shall control.

a. Public work claims of $375,000 or less between the Contractor and the District are subject to the provisions of Article 1.5 (commencing with section 20104) of Chapter 1 of Part 2 of the Public Contract Code (“Article 1.5 Claim”). For purposes of Article 1.5, "public work" has the same meaning as set forth in sections 3100 and 3106 of the Civil Code; "claims" means a separate demand by Contractor for a time extension or payment of money or

damages arising from work done by or on behalf of Contractor pursuant to the Contract and payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled to or the amount of the payment which is disputed by the District. To the extent that this subsection is inconsistent with section 21, section 21 shall control.

b. All Article 1.5 Claims shall be submitted on or before the date of the final Lease Payment and shall include all documents necessary to substantiate the claim. District shall respond in writing within 45 days of receipt of claim if the claim is less than or equal to $50,000 ("$50,000 claim") or within 60 days if the claim is over $50,000 but less than or equal to $375,000 ("50,000 - $375,000 claim"). In either case, District may request in writing within 30 days of receipt of claim any additional documentation supporting the claim or relating to any defenses to the claim which the District may have against the Contractor. Any additional information shall be requested and provided upon mutual agreement of the District and the Contractor. District's written response to the claim shall be submitted to Contractor within 15 days after receipt of the further documentation for $50,000 claims or within 30 days after receipt of the further documentation for $50,000 - $375,000 claims or within a period of time no greater than that taken by the Contractor in producing the additional information, whichever is greater.

c. Within 15 days of receipt of the District's response, if Contractor disputes the District's written response, or within 15 days of the District's failure to respond within the time prescribed, the Contractor shall provide written notification to District demanding an informal conference to meet and confer ("conference") to be scheduled by District within 30 days. Following the conference, if any claim or portion remains in dispute, the Contractor may file a claim as provided in Chapter 1 (commencing with section 900) and Chapter 2 (commencing with section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code. For purposes of those provisions, the period of time within which a claim must be filed is tolled from the time the claimant submits a written claim pursuant to this section until the time that claim is denied as a result of the conference process, including any period of time utilized by the meet and confer process.

d. Pursuant to Public Contract Code section 20104.2(f), this section does not apply to tort claims and does not change the period for filing claims or actions specified by Chapter 1 (commencing with section 900) and Chapter 2 (commencing with section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code.

e. If a civil action is filed, within 60 days, but no earlier than 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. The mediation process shall provide that both parties select a disinterested third person mediator within 15 days, shall be commenced within 30 days of the submittal, and shall be concluded within 15 days of the commencement of the mediation unless time is extended upon a good cause showing to the court or by stipulation of the parties. If the parties fail to select a mediator within the 15-day period, any party may petition the court to appoint the mediator.

f. If the matter remains in dispute, the case shall be submitted to judicial arbitration as set

forth in Public Contract Code sections 20104.4 (b)(1) through (b)(3).

g. For any claim in excess of $375,000, the Contractor and the District shall follow the same process as for an Article 1.5 Claim. The District will forward a response within 60 days of submittal of any such claim. Judicial arbitration is not required for claims in excess of $375,000.

Claims shall also be processed consistent with Public Contract Code section 9204, which provides processing timelines and procedures, and requires that undisputed claims be promptly paid in accordance with this code provision.

h. In addition, for all unresolved claims that the Contractor wishes to pursue, the Contractor shall file a timely claim pursuant to the Government Claims Act and shall otherwise comply with the procedures set forth in that Act prior to commencing any litigation against the District. The accrual date for any such claim is the date the dispute or controversy first arose regarding the issues raised in the claim.

i. "The date of Final Payment," as used in this Article 50, means the date of the final Lease Payment.

j. The claims required by this Article are jurisdictional and conditions precedent to the commencement of any further legal proceedings. Strict compliance with all filing deadlines is mandatory.

50. FINGERPRINTING

District Determination of Fingerprinting Requirement Application

The District has considered the totality of the circumstances concerning the Project and has determined that the Contractor and Contractor's employees (which includes Subcontractor employees) are subject to the requirements of Education Code §45125.2 and Paragraph (a) below is applicable.

a. Contracts for Construction, Reconstruction, Rehabilitation or Repair of a School Facility Involving More than Limited Contact with Students (§45125.2)

By execution of the Contract, the Contractor acknowledges that Contractor is entering into a contract for the construction, reconstruction, rehabilitation, or repair of a school facility where the Contractor and/or Contractor's employees will have more than limited contact with students and the services to be provided do not constitute an emergency or exceptional situation. In accordance with Education Code §45125.2 the Contractor shall, at Contractor's own expense, (1) install a physical barrier to limit contact with students by Contractor and/or Contractor's employees, and/or (2) provide for the continuous supervision and monitoring of the Contractor and/or Contractor's employees by an employee of the Contractor who has received fingerprint clearance from the California Department of Justice, and/or (3) provide for the surveillance of the Contractor and

Contractor's employees by a District employee.

b. Other Conditions

The parties agree that the following conditions apply to any work performed by the Contractor and Contractor's employees on a school site: (1) Contractor and Contractor's employees shall check in with the school office each day immediately upon arriving at the school site; (2) Contractor and Contractor's employees shall inform school office staff of their proposed activities and location at the school site; (3) Once at such location, Contractor and Contractor's employees shall not change locations without contacting the school office; (4) Contractor and Contractor's employees shall not use student restroom facilities; and (5) If Contractor and/or Contractor's employees find themselves alone with a student, Contractor and Contractor's employees shall immediately contact the school office and request that a member of the school staff be assigned to the work location.

51. DRUG-FREE WORKPLACE CERTIFICATION

Contractor certifies all of the following:

1) Contractor is aware of the provisions and requirements of California Government Code §§ 8350 et seq., the Drug Free Workplace Act of 1990.

2) Contractor is authorized to certify, and does certify, that a drug free workplace will be provided by doing all of the following:

a) Publishing a statement notifying all employees that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited in Contractor's workplace and specifying actions which will be taken against employees for a violation of the prohibition;

b) Establishing a drug-free awareness program to inform employees about all of the following:

(i) The dangers of drug abuse in the workplace;

(ii) Contractor's policy of maintaining a drug-free workplace;

(iii) The availability of drug counseling, rehabilitation and employee-assistance programs; and

(iv) The penalties that may be imposed upon employees for drug abuse violations;

c) Requiring that each employee engaged in the performance of Work on the Project be given a copy of the statement required by subdivision (a), above, and that as a condition of employment by Contractor in connection with the Work on the Project, the employee agrees to abide by the terms of the statement.

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

52. PROVISIONS REQUIRED BY LAW DEEMED INSERTED

Every provision of law and clause required by law to be inserted in this Contract shall be deemed to be inserted, and this Contract shall be read and enforced as though it were included, and if through mistake or otherwise any provision is not inserted or is not correctly inserted, upon application of either party the Contract shall be amended to make the insertion or correction. All references to statutes and regulations shall include all amendments, replacements, and enactments on the subject which are in effect as of the date of this Contract.

--END--

PAYMENT BOND

WHEREAS, the _____ District ("District") and _____ ("Principal") have entered into a contract ("Contract") for the furnishing of all materials, labor, services, equipment, tools, supervision and transportation necessary, convenient and proper for the _____ ("Project") which Contract dated _____, 2___, and all of the Contract Documents made part thereof are fully incorporated herein by this reference; and

WHEREAS, Contractor/Principal is required by Division 4, Part 6, Title 3, Chapter 5 (commencing at Section 9550) of the California Civil Code to furnish a bond in connection with the contract;

NOW, THEREFORE, we, the Contractor/Principal and _____ as Surety, are held firmly bound unto Owner in the penal sum of $_____ Dollars ($_____), lawful money of the United States of America for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if the Contractor/Principal, his/her or its heirs, executors, administrators, successors, or assigns, or a subcontractor, shall fail to pay any person or persons named in Civil Code Section 9100 or fail to pay for any materials 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 Code with respect to work or labor thereon of any kind, or shall fail to deduct, withhold, and pay over to the Employment Development Department any amounts required to be deducted, withheld, and paid over by Section 13020 of the Unemployment Insurance Code with respect to work and labor thereon of any kind, then said Surety will pay for the same, in or to an amount not exceeding the amount set forth above, and in case suit is brought upon this bond Surety will also pay such reasonable attorney's fees as shall be fixed by the court, awarded and taxed as provided in Division 4, Part 6, Title 3, Chapter 5 (commencing at Section 9550) of the California Civil Code.

This bond shall inure to the benefit of any of the persons named in Section 9100 of the California Civil Code so as to give a right of action to such person or their assigns in any suit brought upon this bond.

It is further stipulated and agreed that the Surety of this bond shall not be exonerated or released from the obligation of the bond by any change, extension of time for performance, addition, alteration, or modification in, to, or of any contract, plans, specifications, or agreement pertaining or relating to any scheme or work of improvement described above or pertaining or relating to the furnishing of labor, materials, or equipment therefor, nor by any change or modification of any terms of payment or extension of the time for any payment pertaining or relating to any scheme or work of improvement described above, nor by any rescission or attempted rescission of the contract, agreement, or bond, nor by any conditions precedent or subsequent in the bond attempting to limit the right of recovery of claimants otherwise entitled to recover under any such contract or agreement or under the bond, nor by any fraud practiced by any person other than the claimant seeking to recover on the bond, and that this bond be construed most strongly against the Surety and in favor of all persons for whose benefit such bond is given, and under no

circumstances shall Surety be released from liability to those for whose benefit such bond has been given, by reason of any breach of contract between the Owner and original contractor or on the part of any obligee named in such bond, but the sole conditions of recovery shall be that claimant is a person described in Section 8400 and 8402 of the California Civil Code and has not been paid the full amount of his/her or its claim and that Surety does hereby waive notice of any such change, extension of time, addition, alteration, or modification.

In witness whereof, this instrument has been duly executed by the Principal and Surety this _____ day of _____, 20__.

To be signed by Principal and Surety and acknowledgment and notarial seal to be attached.

_____
PRINCIPAL

By:
_____

_____
Title

_____
SURETY

By:
_____

_____
Title

The above bond is accepted and approved this _____ day of _____, 20__.

By:_____
Authorized District Signature

PERFORMANCE BOND

WHEREAS, the _____ School District ("District"), has awarded to _____ ("Principal"), the Contract for performance of the following project ("Project"): the _____ School Project.

WHEREAS, the Principal is required under the terms of the Contract to furnish a bond to the District as obligee ensuring its full and faithful performance of the Contract Documents, which are fully incorporated herein by this reference,

NOW, THEREFORE, we, the Principal and _____, as Surety, hereby guarantee the Principal's full, faithful and complete performance of the Contract Document requirements in the penal sum of _____ Dollars ($xxxxxx) for the payment of which sum will and truly be made, we bind ourselves, our heirs, executors, administrators and successors, jointly, severally, and firmly by this agreement to perform or have performed all of the work and activities required to complete the Project pursuant to the Contract Documents and to pay to the District all damages the District incurs as a result of the Principal's failure to fully perform in accordance with the Contract Documents.

The condition of the obligation is such that if the Principal, its heirs, executors, administrators, successors or assigns shall in all things abide by, and well and truly keep and perform the covenants, conditions and agreements in the Contract Documents and any amendment thereof made as therein provided, on its or their parts to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall insure and indemnify and save harmless the District, its 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.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the Contract Documents shall in any way affect its obligations on this bond and it does hereby waive notice of any such change, extension of time, alteration or addition.

Principal and Surety further agree to pay all costs incurred by the District in connection with enforcement of this bond, including, but not limited to the District's reasonable attorney's fees and costs incurred, with or without suit, in addition to any other sum required by this bond. Surety further agrees that death, dissolution, or bankruptcy of the Principal shall not relieve the Surety of its obligations hereunder.

In witness whereof, five (5) 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 on the _____ day of _____, 201_.

To be signed by Principal and Surety and acknowledgment and notarial seal to be attached.

_____
PRINCIPAL

By: _____

TITLE _____

_____
SURETY

By: _____

TITLE _____

The above bond is accepted and approved this _____ day of _____, 201_.

By: _____
Authorized District Signature

FORMAT FOR PROPOSED CHANGE ORDERS

Line	Item	Amount ($) (+/-)
1	**Direct Labor and *allowable* Fringe Benefit Costs (1A and 1B):** Attach applicable supporting documentation with itemized breakdowns of Total Basic Labor / Total Basic Fringe Benefits for each trade classification. **1A.** Total Basic Labor, per applicable DIR Published Determination(s) $ _____ **1B.** Total Basic Fringe Benefits, per applicable DIR Published Determination(s) $ _____	
	Line 1 ► *Subtotal of Lines*: 1A + 1B =	
2	**Materials**: Attach itemized quantity and unit cost plus sales tax and invoice(s) from vendor(s).	
3	**Equipment**: Attach invoice(s) from supplier(s).	
4	Line 4 ► ***Subtotal of Lines*: 1 + 2 + 3 =**	
5	**Markup on Self-Performed Work -** Single mark-up not-to-exceed 10% of Line 4. *(Applies to Contractor or Sub, regardless of tier)*	
6	**Prime Contractor or First Tier Sub Markup on Lower-Tier Subcontractor(s) Work-** not-to-exceed 5% of Line 4.	
7	Line 7 ► ***Subtotal of Lines*: 4 + 5 + 6 =**	
8	**Markup for Labor Burden** on Direct Labor Costs (payroll taxes and premiums), not-to-exceed 25% of **Line 1A**, absent supporting documentation. (FICA, FUTA , SUTA, WC, etc.)	
9	**Bonds & Insurance** for Prime/General Contractor Only, Applied only to Line 4 (Max 2%):	
10	**TOTAL ► *Subtotal of Lines*: 7 + 8 + 9 =**	

- **LINE 1A** **Basic/Direct Labor**
- **LINE 1B** **Fringe Benefits**

- Labor breakdown by trade classification, basic hourly rate and employer payments (e.g., fringe benefits) as published by the DIR, 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.

Maximum Allowable Labor Burden.

- The allowable labor burden ("Labor Burden") on changes shall be defined as including only (i) Contractor's net actual cost of payroll taxes (including FICA, Medicare, SUTA, FUTA) and (ii) Contractor's net actual cost for worker's compensation insurance (taking into consideration, without limitation, adjustments for experience modifiers, premium discounts, dividends, rebates, expense constants, assigned risk pool costs, net cost reductions due to policies with deductibles for self-insured losses, assigned risk rebates, etc.).

- With respect to pricing Labor Burden of PCOs and Change Orders, District has established a maximum allowable amount of twenty-five percent (25%) of the Labor Burden associated with the work of the change as a reasonable percentage to be used for pricing PCOs and Change Orders. However, the percentage-amount of Labor Burden allowed for the work of a change may be examined and adjusted by District, in its sole discretion, if documentation justifiably establishes the percentage-amount should be so adjusted; in no event shall the percentage-amount applied to a PCO or Change Order exceed thirty percent (30%).

- **LINE 2** **Material.**
  - Material quantities, and types of products, and transportation costs, if applicable.

- **LINE 3** **Equipment.** Equipment breakdown by make, type, size, rental rates, equipment hours and transportation costs, if applicable.

- 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.

- The actual time to be paid for equipment shall be the time that the equipment is in productive operation on the Work under Contract Modification. In computing the hourly rental of equipment, any time less than thirty (30) minutes shall be considered one-half (1/2) hour. No payment will be made for time while equipment is inoperative due to breakdown, or for non-workdays. In addition, the rental time shall not include the time required to move the equipment to and from the project site. No mobilization or demobilization will be allowed for equipment already on site. If such 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 Contract Modification.

- 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.

- 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.

- 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.

- **LINE 5 Maximum Allowable Markup on Self-Performed Work.** With respect to pricing the portion of PCOs and Change Orders involving self-performed work, the maximum markup percentage fee to be paid for self-performed work by Contractor or its Subcontractor (regardless of tier) for a change shall be a single markup percentage not-to-exceed ten percent (10%) of the net direct cost of the sum of: (i) direct labor and allowable fringe benefit costs (Format for Proposed Change, Lines 1A + 1B); (ii) the net cost of material and installed equipment incorporated into the change or extra work And (iii) net rental cost of major equipment and related fuel costs necessary to complete the change in the work.

- **LINE 6 Maximum Allowable Markup on Lower-Tier Subcontractor(s)-Performed Work.** With respect to pricing the portion of PCOs and Change Orders involving work performed by lower-tier Subcontractors, the maximum markup percentage fee allowable to the Contractor or Subcontractor supervising the lower-tier Subcontractor's work for a change shall be a single markup percentage not-to-exceed five percent (5%) of the net of all approved work of a Change Order performed by all Subcontractors combined on any particular PCO or Change Order.

- **Markup for Overhead and Profit.** Markup allowed for changes in work is inclusive of and shall be used to compensate Contractor for overhead and profit for all costs for all administration, general conditions, and supervision, including, without limitation:

- All field, field office and home 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.

- All field, field office and home office expenses including, but not limited to, field trailers, parking, storage sheds, office equipment and supplies, telephone service and long distance telephone calls, 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.

- 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.

- 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.

- **LINE 8 Maximum Allowable Labor Burden on Basic Labor LINE 1A.**

- The allowable labor burden ("Labor Burden") on changes shall be defined as including only (i) Contractor's net actual cost of payroll taxes (including FICA, Medicare, SUTA, FUTA) and (ii) Contractor's net actual cost for worker's compensation insurance (taking into consideration, without limitation, adjustments for experience modifiers, premium discounts, dividends, rebates, expense constants, assigned risk pool costs, net cost reductions due to policies with deductibles for self-insured losses, assigned risk rebates, etc.).

- With respect to pricing Labor Burden of PCOs and Change Orders, District has established a maximum allowable amount of twenty-five percent (25%) of the Labor Burden associated with the work of the change as a reasonable percentage to be used for pricing PCOs and Change Orders. However, the percentage-amount of Labor Burden allowed for the work of a change may be examined and adjusted by District, in its sole discretion, if documentation justifiably establishes the percentage-amount should be so adjusted; in no event shall the percentage-amount applied to a PCO or Change Order exceed thirty percent (30%).

- **LINE 9** **Contractor's Additional Bonds and Insurance, if any.** All costs for Contractor's additional bonds and insurance, if any applicable to the change.
Contractor shall not include any markup for these costs. The maximum allowable percentage for bonds and insurance for a change shall not exceed two percent (2%) of the direct labor and allowable fringe benefit costs (Format for Proposed Change,
Lines 1A + 1B).

- **Taxes**. Federal excise tax shall not be included. District will issue an exemption on request.

- **Time.** Justification for any adjustment in Contract Time including a schedule analysis identifying critical schedule activities delayed by the request.