**LODI UNIFIED SCHOOL DISTRICT**
**REQUEST FOR QUALIFICATIONS AND PROPOSALS (RFQ/P) #0915-8215-470-36**
**ELKHORN ELEMENTARY SCHOOL MODULAR CLASSROOMS INC 2**
**LEASE-LEASEBACK CONSTRUCTION SERVICES**

Lodi Unified School District ("District") is seeking proposals from qualified persons, firms, partnerships, corporations, associations, or professional organizations to provide constructability review, value engineering, master scheduling, cost estimating, budgeting, and construction services for the development and construction for the Elkhorn Elementary School Modular Classrooms Inc 2 Project ("Project"), in accordance with the lease-leaseback structure set forth in Education Code section 17406, et seq.

The Request for Qualifications and Proposals ("RFQ/P"), which includes instructions for its completion, is enclosed for your consideration. Respondents to this RFQ/P shall submit a completed Statement of Qualifications ("SOQ") along with the Proposal (collectively "RFQ/P Packet"). Respondents must mail or deliver five (5) bound copies, one (1) unbound copy, and one (1) electronic copy on USB flash drive of the RFQ/P Packet conforming to the requirements of this RFQ/P to:

Lodi Unified School District
ATTN: Amberly Kidder
880 N Guild Ave
Lodi, CA 95240
RE: RFQ/P #0915-8215-470-36

**ALL RESPONSES ARE DUE BY 3:00 P.M. ON FRIDAY, DECEMBER 19, 2025**. Oral, telegraphic, facsimile, telephone or email RFQ/P Packets will not be accepted. RFQ/P Packets received after this date and time will not be accepted and returned unopened.

A mandatory information meeting will be conducted on **WEDNESDAY, NOVEMBER 19, 2025** at **1:00P.M.** The meeting will be held at **10505 DAVIS RD, STOCKTON, CA 95209.**

Questions regarding this RFQ/P may be directed to **Marc Karim, Mkarim@lodiusd.net** and must be submitted in writing on or by **3:00 P.M. ON WEDNESDAY, NOVEMBER 26, 2025**.

This Project is subject to labor compliance monitoring and enforcement of compliance with prevailing wage requirements by the Department of Industrial Relations pursuant to Labor Code § 1771.4, and skilled and trained workforce requirement pursuant to Public Contract Code § 2600. Contractors of all tiers must be currently registered and qualified to perform public work pursuant to Labor Code § 1725.5. All Respondents must be prequalified by the District in accordance with Public Contract Code § 20111.6. First tier electrical, mechanical and plumbing subcontractors must be prequalified prior to the time subcontractor bids are submitted.

**RFQ/P SCHEDULE SUMMARY**

| DATE | ACTION ITEM |
|---|---|
| **Saturday, November 8, 2025** | **Release of RFQ/P.** |
| **Saturday, November 8, 2025** | **RFQ/P packages available for distribution.** |
| **Saturday, November 8, 2025** | **First advertisement of RFQ/P in trade journal and local newspaper.** |
| **Saturday, November 15, 2025** | **Second advertisement of RFQ/P in trade journal and local newspaper.** |
| **Wednesday, November 19, 2025 at 1:00 P.M.** | **Mandatory Informational Meeting.** |
| **Wednesday, November 26, 2025 at 3:00 P.M.** | **Last day to receive written questions from Respondents.** |
| **Wednesday, December 10, 2025 at 3:00 P.M.** | **Last day for District to issue addenda to answer questions/clarifications.** |
| **Friday, December 19, 2025 at 3:00 P.M.** | **Deadline for submissions in response to RFQ/P.** |
| **Wednesday, February 4, 2026** | **Notice to selected developer to commence contract negotiation.** |

The District reserves the right to change the dates on the schedule without prior notice.

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**LODI UNIFIED SCHOOL DISTRICT**
**REQUEST FOR QUALIFICATIONS AND PROPOSALS**
**LEASE-LEASEBACK CONSTRUCTION SERVICES**

## I. INTRODUCTION

The District encompasses 350 square miles and serves the cities of Lodi, North Stockton, and the communities of Acampo, Clements, Lockeford, Victor, and Woodbridge in the Central Valley of Northern California. Student enrollment is 29,800, and there are 49 school sites, including, 33 elementary, 7 middle, 4 comprehensive high schools, and 2 continuation high schools.

The general obligation bonds – Measure U (2016) – has provided the District with a unique opportunity to carefully review its facilities needs and plan for the future.

This Request for Qualifications and Proposals ("RFQ/P") defines the services sought from Respondents and generally outlines the Project requirements. Respondents to this RFQ/P shall submit a completed Statement of Qualifications ("SOQ") along with the Proposal (collectively "RFQ/P Packet").

## I. PROJECT DESCRIPTION AND SCOPE OF SERVICES

### A. General

The purpose of this RFQ/P is to select a qualified person, firm, partnership, corporation, association, or professional organization to provide constructability review, value engineering, master scheduling, cost estimating, budgeting, and construction services for the development and construction for the Elkhorn Elementary School Modular Classrooms Inc 2 Project ("Project"), in accordance with the lease-leaseback structure set forth in Education Code section 17406 et seq. Selected developer shall have experience with the construction of public school facilities and complying with the requirements of the Office of Public School Construction ("OPSC"), the Division of the State Architect ("DSA"), and Title 24 of the California Code of Regulations.

To submit a proposal, Respondents must be properly licensed by the California Contractors State License Board and registered with the Department of Industrial Relations ("DIR") as required by law. Only Respondents who have been prequalified by the District in accordance with Public Contract Code section 20111.6 are eligible to respond to this RFQ/P.

The selected developer will be required to comply with the prevailing wage requirements, the skilled and trained workforce requirements, and the District's bonding and insurance requirements. The selected developer shall be required to work cooperatively with District staff, the Governing Board, all other technical consultants, the architect, the project inspector, and any program and/or construction manager, if any, retained by the District for the Project, citizens' oversight committee, other District committees, and the community at large to deliver a timely and professional completion of the Project.

The Project is further defined in the attached **APPENDIX A**, along with the District's construction budget and schedule for the Project. Respondents' Proposal shall include Respondent's proposed fees and costs to perform the Project if the Respondent is awarded the contract.

The District intends to select one Respondent that best meet the District's needs to perform the Project. The criteria on which the District makes its determination will be based on the District's adopted best value methodology and criteria provided in this RFQ/P.

## B. Scope of Work

Although the final scope of work will be negotiated in the executed Agreement (defined below at subparagraph G), the selected developer shall be responsible for performing the following scope of work, at a minimum:

**Preconstruction Services:**

1. Review design and support documentation for content, constructability, completeness, scheduling, clarity, consistency, and coordination.
2. Undertake value-engineering analysis and prepare reports with recommendations to District and Architect of Record to maintain established program budget and specifications.
3. Provide detailed cost estimates.
4. Expedite design reviews, including modifications, if any, based on value analysis.
5. Provide a proposed Guaranteed Maximum Price ("GMP") for the construction of the project with identified subcontractor bids and self-performed work.

**Construction Services:**

1. Construction of the Project.
2. Coordination of record drawings and specifications.
3. Compilation of operations and maintenance manuals, warranties/guarantees, and certificates.
4. Obtaining occupancy permits and coordinating testing, documentation, and governmental inspections and approvals.
5. Preparation of accounting and closeout reports and occupancy plan reports.
6. Other responsibilities as necessary for the completion of the program.

## C. Modular Building System

The Project will include a modular building system, proposed by the Successful Respondent and that meets the District's criteria in **APPENDIX A**, which will be added to the plans and specifications during the preconstruction phase.

## D. Lease-Leaseback Structure

The Project will be funded from various sources, and any agreement reached will conform to the statutory framework for the lease-leaseback delivery method pursuant to Education Code section 17406 et seq. Financing for a portion of the construction of the Project will be included in the Agreement attached to this RFQ/P as **APPENDIX B**. During construction, the District shall pay tenant improvement payments. Once the Project is complete, the developer shall lease the completed facilities back to the District for a predetermined monthly lease payment

amount. However, the District intends that the lease will include an early termination payment option for the District.

### E. District Project Management Description

District's Governing Board will be responsible for making final decisions, but the Superintendent will be responsible for day-to-day decisions and may designate a project manager who will be the primary point of contact between the selected developer and the District.

### F. Prequalification of Designated Subcontractors

If used, contractors holding C-4, C-7, C-10, C-16, C-20, C-34, C-36, C-38, C-42, C-43, and/or C-46 licenses (collectively, "MEP subcontractors") shall be prequalified by the District to perform electrical, mechanical and/or plumbing construction work as a first-tier subcontractor on the Project pursuant to Public Contract Code section 20111.6.

### G. Registration of Respondent and All Tiers of Subcontractors

The selected developer(s) shall not allow any employee or subcontractor to commence work on any contract or any subcontract until the proof of registration with the Department of Industrial Relations required of the developer or subcontractor has been provided to and accepted by the District.

### H. Form of Agreement

Selected developer must be able to execute the District's standard form of Site Lease and Facilities Lease ("Agreement"), attached to this RFQ/P as **APPENDIX B**. After the plans and specifications have been approved by DSA, the Facilities Lease will be amended to include the agreed upon Guaranteed Maximum Price.

### I. Indemnity

Respondents to this RFQ/P must acknowledge that they have reviewed the District's indemnity provision set forth in the Facilities Lease (**APPENDIX B**) and must agree to the indemnity provision and confirm in writing that, if given the opportunity to contract with the District, the Respondent has no substantive objections to the use of the District's standard indemnity provision.

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### J. Insurance

The District requires at least the following insurance coverage from the selected developer:

| | | |
|---|---|---|
| COMMERCIAL GENERAL LIABILITY | Product Liability and Completed Operations, Fire Damage Liability – Split Limit | $5,000,000 per occurrence; $10,000,000 in aggregate |
| AUTOMOBILE LIABILITY – ANY AUTO | Combined Single Limit | $1,000,000 |
| WORKERS' COMPENSATION | | Statutory limits pursuant to State law |
| EMPLOYER'S LIABILITY | | $1,000,000 |
| BUILDER'S RISK (COURSE OF CONSTRUCTION) | | Issued for the value and scope of Work. |
| POLLUTION LIABILITY | | $1,000,000 per claim; $2,000,000 aggregate |

The limits of insurance for those subcontractors whose scope of work does not exceed One million dollars ($1,000,000) shall not be less than the following amounts:

| | | |
|---|---|---|
| COMMERCIAL GENERAL LIABILITY | Product Liability and Completed Operations, Fire Damage Liability – Split Limit | $2,000,000 per occurrence; $4,000,000 in aggregate |
| AUTOMOBILE LIABILITY - ANY AUTO | Combined Single Limit | $1,000,000 |
| WORKERS' COMPENSATION | | Statutory limits pursuant to State law |
| EMPLOYER'S LIABILITY | | $1,000,000 |

Selected developer shall provide to the District certificate(s) of insurance and endorsements satisfactory to the District. Insurance policy(ies) shall not be amended or modified and coverage amounts shall not be reduced without thirty (30) days' written notice to District prior to modification and/or cancellation. For Commercial General Liability and Automobile Liability, District shall be named as an additional insured on all policies. Selected developer's policy(ies) shall be primary; any insurance carried by the District shall only be secondary and supplemental. Selected developer shall not allow any employee or subcontractor to commence work on any contract or any subcontract until the proof of insurance required of the developer or subcontractor has been provided to and accepted by the District.

### J. RESERVED

## II. FULL OPPORTUNITY

No respondent will be discriminated against on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, reproductive health decision-

making, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or veteran or military status in any consideration leading to the award of the contract. The District also affirmatively ensures that Disadvantaged Business Enterprises ("DBE"), Small Local Business Enterprises ("SLBE"), Small Emerging Local Business Enterprises ("SELBE"), and Disabled Veterans Business Enterprises ("DVBE") shall be afforded full opportunity to respond to this RFQ/P.

## III. LIMITATIONS

This RFQ/P is neither a formal request for bids, nor an offer by the District to contract with any party responding to this RFQ/P. The District reserves the right to add additional prequalified Respondents for consideration after distribution of this RFQ/P if it is found to be in the best interest of the District. All decisions concerning selection of the developer will be made in the best interests of the District. The awarding of the contract pursuant to this RFQ/P, if at all, is at the sole discretion of the District.

The District makes no representation that participation in the RFQ/P process will lead to an award of contract or any consideration whatsoever. The District shall in no event be responsible for the cost of preparing any RFQ/P Packet in response to this RFQ/P.

RFQ/P Packets and any other supporting materials submitted to the District in response to this RFQ/P will not be returned and will become the property of the District unless portions of the materials are designated as proprietary at the time of submittal, and are specifically requested to be returned. Vague designations and/or blanket statements regarding entire pages or documents are insufficient and will not bind the District to protect the designated matter from disclosure. Pursuant to *Michaelis, Montanari, & Johnson v. Superior Court* (2006) 38 Cal.4th 1065, RFQ/P Packets shall be held confidential by the District and shall not be subject to disclosure under the California Public Records Act until after either: (1) the District and the successful Respondent have completed negotiations and entered into an Agreement, or (2) the District has rejected all Proposals. Furthermore, the District will have no liability to the Respondent or other party as a result of any public disclosure of any RFQ/P Packet.

## IV. RESTRICTIONS ON LOBBYING AND CONTACTS

From the period beginning on the date of the issuance of this RFQ/P and ending on the date of the award of the contract, no person, or entity submitting in response to this RFQ/P, nor any officer, employee, representative, agent, or consultant representing such a person or entity shall contact through any means or engage in any discussion regarding this RFQ/P, the evaluation or selection process/or the award of the contract with any member of the District, Governing Board, selection members, or any member of the Citizens' Oversight Committee. Any such contact shall be grounds for the disqualification of the Respondent submitting an RFQ/P Packet.

## V. MANDATORY INFORMATIONAL MEETING AND SITE WALK

Respondents must attend the mandatory informational meeting and site walk, to be conducted on **WEDNESDAY, NOVEMBER 19, 2025 at 1:00P.M.** The meeting will be held at Elkhorn Elementary School, 10505 Davis Rd, Stockton, CA 95209. At this mandatory meeting, District representatives may distribute information and materials to further describe the Project, the scope of work, and walk the proposed Project site. Respondents shall consider and address the materials and information distributed at the meeting in their RFQ/P Packets. Respondents that fail to attend the mandatory informational meeting, in its entirety, shall be ineligible for responding to this RFQ/P.

## VI. SUBMITTAL FORMAT

### A. Format

Material must be in 8½ x 11-inch format with font no less than 11-point font size. The RFQ/P Packets shall include divider tabs labeled with boldface headers below (e.g. the first tab would be entitled "Executive Summary," the second tab would be entitled "Table of Contents," etc.) Five (5) bound copies, one (1) unbound copy, and one (1) electronic copy of the RFQ/P Packet shall be submitted. Each submittal shall not contain more than thirty (30) single-sided pages, and excluding front and back covers, tabs, certificates of insurance, detailed schedule charts, and Comments to the Form of Agreement (Tab 11). Any double-sided page is counted as two single-sided pages. Submittals containing more than the authorized number of pages will not be considered.

The unbound copy, marked "Copy for Reproduction," shall be formatted as follows:

- No divider sheets or tab
- Text printed on one side only (i.e., no back-to-back pages)
- Pages with proprietary information removed
- A cover sheet listing the firm's name, the total number of pages, and identification of those pages that were removed due to proprietary information

### B. General Overview

Each RFQ/P Packet shall include a description of the type, technical experience, backgrounds, qualifications and expertise of the Respondent. The description shall show that the firm possesses the demonstrated skills and professional experience to perform the general functions of the Project and fulfill the goals and vision of the District as its developer for the Project. Submittals shall describe in detail the Respondent's methods and plan for carrying out the Project. Included in this information must be a description of construction scheduling, staging, and logistics based on timelines and information provided by the District in this RFQ/P and the mandatory informational meeting. Describe the Respondent's approach to the Project, including any creative methodology and/or technology that the Respondent uses or unique resources that the Respondent can offer to the District and Project.

### C. Contents

Respondents shall comply with the following requirements for its RFQ/P Packet:

#### 1. TAB 1 – Executive Summary (max. 1 page)

This should be an overview of the entire RFQ/P Packet with a description of the general approach and/or methodology the Respondent will use to meet the goals and fulfill the general functions as set forth in this RFQ/P.

#### 2. TAB 2 – Table of Contents

This should be a complete and clear listing of the headings and pages to allow easy reference to key information.

#### 3. TAB 3 – Cover Letter Identifying Respondent (max. 1 page)

This should be a letter of introduction signed by an authorized officer of the Respondent. If the Respondent is a joint venture, duplicate the signature block and have a principal or officer sign on behalf of each party to the joint venture. The letter shall also include:

**a.** Respondent's name.

**b.** Address, include any branch office address and point of contact.

**c.** Telephone number.

**d.** Facsimile number.

**e.** E-Mail address.

**f.** Identify team.

**g.** Clearly identify the individual(s) who are authorized to speak for the Respondent during the evaluation process.

**h.** And, the following statement:

"[RESPONDENT'S NAME] received a copy of the District's Site Lease and Facilities Lease ("Agreement") attached as Appendix B to the RFQ/P. [RESPONDENT'S NAME] has reviewed the indemnity provisions and insurance requirements contained in the Agreement. If given the opportunity to contract with the District, [RESPONDENT'S NAME] has no objections to the use of the Agreement."

**i.** Respondent shall certify that no official or employee of the District, nor any business entity in which an official of the District has an interest, has been employed or retained to solicit or assist in the procuring of the resulting contract(s), nor that any such person will be employed in the performance of any/all contract(s) without immediate divulgence of this fact to the District.

**4. TAB 4 - Respondent Information**

**a.** A brief history of the Respondent. Please include any former names of the Respondent and the number of years the Respondent has participated in construction as a general contractor under each name. List any reasons for change or name or corporate structure.

**b.** Organizational chart for Respondent. This shall include the names of all key personnel, joint venture partners, and sub-consultants with their titles and specific task assignments for the Project. Resumes of personnel to be involved with the Project should be included, including their school construction experience. The District's evaluation will consider the entire team. Therefore, no changes in the Respondent's composition will be allowed without prior written approval by the District.

Identify up to three (3) persons who will be primarily responsible for working with the District and their respective roles and

responsibilities, including Superintendent and Foreman. If Respondent is selected for an interview, the identified individuals must attend the interview and any required in-person presentations.

**c.** Description of Respondent's technical competence, including a description of in-house resources (e.g. computer capabilities, software applications, modeling programs, etc.), and Respondent's ability to draw upon multi-disciplinary staff to address the services required under the RFQ/P.

**d.** Provide the volume of construction in dollars for each of the past three (3) years.

**e.** Provide a statement regarding the Respondent's availability and resources.

**f.** Provide a statement on financial resources, bonding capacity and insurance coverage.

**g.** Provide a claims statement *for all resolved or ongoing claims*: Submit a statement indicating any and all suits or claims in which the Respondent or its personnel instigated a claim and/or litigation regarding construction projects within the past five (5) years and indicating any and all claims in which claims and/or litigation have been pursued against the Respondent or its personnel. For each listed claim and/or litigation: state the issues in the claim and/or litigation, the status of the claim/litigation, the names of the parties involved, and the outcome, if any.

Respondent's claims statement **must** include resolved *and* ongoing claims. Respondent's claims statement **must** include claims history for Respondent *and* its personnel, as well as Associated Firms.

"Associated Firms" are businesses, corporations, companies, partnerships, or other entities associated with Respondent and/or its personnel (e.g., firm name changes, association as prior owner, general partner, limited partner, or other officer).

**h.** Contractor license number and whether license has been revoked or suspended in the last five (5) years. Respondent must hold a General Building Contractor License (B License), which is current, valid and in good standing with the Contractor's State License Board. Provide the following for each license:

i. Exact name of license holder on file.

ii. License Classification.

iii. License Number.

iv. Date Issued.

v. Expiration Date.

vi. Whether license has been suspended or revoked in the past five (5) years. If so, explain.

**i.** Provide signatory status.

**j.** Location of nearest local office and main office, if different.

**k.** Certificate(s) of Insurance identifying the firm's current insurance coverages.

**l.** Provide Non-Collusion Declaration. (**APPENDIX C-1**.)

**m.** Provide Iran Contracting Act Certification. (**APPENDIX C-2**.)

**n.** Provide Off-Road Diesel-Fueled Fleet Certification. (**APPENDIX C-3**.)

~~**o.** Provide Federal Debarment Certification (**APPENDIX C-5**.)~~

~~**p.** Provide Byrd Anti-Lobbying Certification (**APPENDIX C-6**.)~~

**5. TAB 5 – Methods and Strategic Plan**

Detailed description of Respondent's methods and plan for carrying out the Project, including:

**a.** The technical and managerial approach to the Respondent's partnership with the District. Take into account the District's goals for the Project and the general functions required. Respondent may identify additional necessary tasks and discuss these in its proposed method to accomplish the work.

**b.** How Respondent plans to incorporate skilled and trained workforce into the Project.

**c.** How Respondent plans to incorporate local subcontracting teams into the Project.

**d.** How Respondent plans to incorporate construction means and methods into the Project.

**e.** Proposed cost for completing preconstruction services for the Project for which the Proposal is being submitted.

**f.** Detailed discussion of costs related to fees, general conditions, insurance, supervision, and management of the construction portion of the scope of work.

Emphasis will be given to the methods and strategic plan as they relate to preconstruction services and how the preconstruction services will transition into the construction services.

**6. TAB 6 – Prior Relevant Experience**

Description of the Respondent's experience with respect to the areas of public schools or similar construction over the past five (5) years. Specifically, please provide a list of completed or ongoing projects the Respondent has been involved with for the past five (5) years where

the total project contracts exceeded 6 million dollars ($6,000,000) per project. Within that list:

**a.** Identify the method (e.g. lease-leaseback, bid-build, etc.) by which each project was constructed. For lease-leaseback projects, include the total cost of each project and a breakdown of the total cost by preconstruction services and construction services.

**b.** Include a discussion of Respondent's experience with working with the DSA on public school projects.

**c.** Identify and include discussion of Respondent's experience with projects performed in an occupied building and/or immediately adjacent to an occupied building and/or campus.

**d.** Identify and include a discussion on Respondent's experience with modular construction.

**e.** Identify whether the project is completed or ongoing.

**f.** Identify if any of the projects had phased completion.

For the projects listed, above, be sure to also include the following information:

**a.** Project's name and description;

**b.** Firm's role;

**c.** Award and completion dates;

**d.** Project's initial contract price and final contract price;

**e.** Amount of fees received;

**f.** Staffing, including Respondent's team members, subcontractors and consultants;

**g.** Relationship with owner/client;

**h.** References: Provide a contact name, telephone number and email address for the owner; and

**i.** Discussion of claims, demands, and/or litigation arising from the project and involving the Respondent, and resolution of the same.

**j.** Include examples of other similar project assignments on the part of the Respondent.

**k.** Prefabrication and/or modular components as a percent of the project's hard costs, and as a percent of total project square footage; specific prefabrication/modular vendor and model(s).

List projects Respondent has successfully completed that had some or all of the following obstacles, including the creative solutions from the Respondent on how these obstacles were overcome:

**a.** A very aggressive schedule.

**b.** Significant budgetary restrictions.

**c.** Be prepared to expand upon what you did to accommodate:

i. The complexity of the project;

ii. The needs of the clients;

iii. Minimizing inconvenience; and

iv. Maximizing safety.

### 7. TAB 7 – Contracting History

If any of the following have occurred, please describe in detail the circumstances of each occurrence:

**a.** Failure to enter into a contract or professional services agreement once selected.

**b.** Withdrawal of a proposal or bid as a result of an error.

**c.** Termination or failure to complete a contract.

**d.** Debarment by any municipal, county, state, federal, or local agency.

**e.** Involvement in litigation, arbitration, or mediation, whether concluded or ongoing.

**f.** Conviction of the Respondent or its principals for violating any state or federal antitrust laws by bid or proposal rigging, collusion, or restrictive competition between bidders or proposers, or conviction of any other federal or state law related to bidding or performance of services.

**g.** Knowing concealment of any deficiency in the performance of a prior contract.

**h.** Falsification of information or submission of deceptive or fraudulent statement in connection with a contract.

**i.** Willful disregard for applicable rules, laws, or regulations.

**j.** Failure to disclose information regarding any of the above may be deemed to indicate an unsatisfactory record of performance. Information regarding any of the above may be considered in determining the suitability of Respondent to perform the needed services. Accordingly, Respondent may describe mitigating factors as part of description of any of the above.

### 8. TAB 8 – Pricing and Contingency

The pricing will be evaluated based on the: (1) preconstruction services cost or method of calculation; (2) Respondent's fee, which includes profit and overhead; (3) general conditions cost; (4) bonds and insurance percentage; (5) construction contingency to be applied to errors and omissions; and (6) allowances, if any.

After the Agreement is awarded and DSA approves the plans and specifications, the selected developer will be required to provide a Guaranteed Maximum Price ("GMP") for the Project. As part of the District review of the GMP, the District will expect to have access to all subcontractor bids, contingency breakdown and tracking documents, general conditions breakdown and tracking documents, and Respondent's fees. The GMP shall include all of Respondent's cost for labor, materials, equipment, overhead and profit, general conditions, contractor contingency, and allowances, if any, but shall specifically exclude the amount of the District contingency. In the event the selected developer realizes a savings on any aspect of the Project, such savings shall be added to the District contingency and expended consistent with the District contingency. In addition, any portion of the contractor contingency and/or allowance remaining after completion of the Project shall be added to the District contingency. The Facilities Lease will be amended to include the agreed upon GMP, if the District proceeds with the construction phase of the Project.

### 9. TAB 9 – Insurance

Each Respondent must demonstrate that it can maintain adequate insurance as required herein. Therefore, each RFQ/P Packet must include a letter from the Respondent's insurance company indicating its ability to provide insurance coverage on behalf of Respondent in accordance with the insurance requirements in **APPENDIX B**.

### 10. TAB 10 – Assurances

The Respondent must acknowledge each of the following items and confirm that it will be willing and able to perform these items:

**Preconstruction Services:** Respondent shall provide services that relate to the organization and development of the Project prior to the start of construction including the following:

- **Site Evaluation:** Consult with District staff in relation to the existing site. Selected developer should make site visits, as needed to review the current site conditions. During this evaluation, selected developer may make recommendations relating to soils investigations and utility locations and capacities, in order to minimize unforeseen conditions.

- **Plan Review:** Provide plan review and constructability services. Refer to the Facilities Lease for the required scope. Place an emphasis on ensuring that the Project can be completed within the established schedule and within the available budget. During the review, selected developer shall review the documents for clarity, consistency, constructability and coordination. The results of the review shall be provided in writing and as notations on the documents to the District. The selected developer shall also make recommendations to the District with respect to constructability, construction cost, sequence of construction, and construction duration.

- **Pre-construction Meetings:** Attend meetings at the Project site with the architect of record and the District every two (2) weeks, until the Notice to

Proceed with Construction is issued (meeting duration is approximately 2 hours).

- **Value Engineering:** Provide a detailed analysis of all major Project systems with an emphasis on possible value engineering possibilities.

- **Detailed Construction Critical Path Schedule:** Produce detailed construction critical path schedules to be incorporated into the Project documents including identification of the Project critical path and agency approvals.

- **Preliminary and Detailed Estimates:** Provide preliminary construction estimates using like-kind construction costs. Upon receipt of the Project plans and specifications, provide detailed construction estimates showing the values of all major components of the Project.

- **Construction Planning:** Plan the phases and staging of construction, staging areas, temporary fencing, office trailer placement, access, etc. as required.

- **Other services:** Any other services that are reasonable and necessary to control the budget and schedule.

**Construction Services:**

- **Project Accounting and Management Systems:** In coordination with District staff, develop the Project accounting and budget management systems. A process of up-to-date costs management will be necessary. During construction, monthly reporting will be required.

- **General Conditions:** List what is included in the Respondent's general conditions (including full-time and part-time personnel) and a monthly value of the general conditions. Indicate what would be included as a cost of work versus a line item in the general conditions. See **APPENDIX C-4** for an example.

- **Management of Project:** Administer and coordinate on a daily basis the work of all trade contractors the successful Respondent hires to work on the Project. Enforce strict performance, scheduling, and notice requirements. Document the progress and costs of the Project. Report proactively on potential schedule impacts. Recommend potential solutions to schedule problems.

- **Trade Contractors:** Pursuant to Public Contract Code section 20111.6, each prospective MEP Contractor holding C-4, C-7, C-10, C-16, C-20, C-34, C-36, C-38, C-42, C-43, and/or C-46 licenses shall be prequalified by the District to perform electrical, mechanical and/or plumbing construction work as a first-tier subcontractor on the Project.

### 11. TAB 11 – Comments to Form of Agreement

Respondents must thoroughly review the Agreement attached to this RFQ/P as **Appendix B** and confirm in writing that, if given the opportunity to contract with the District, Respondent has no substantive objections to the use of the District's standard agreement. Respondent must also identify any term or condition of the Agreement that Respondent requests modifying, deleting, or adding. Respondents must set forth a clear explanation of what modification would be sought and specific alternate language. Comments on the form of Agreement will be excluded from the page count. ***If selected, Respondent will be***

***precluded from negotiating changes that have not been identified in its RFQ/P Packet.*** The District will review, but is not obligated to accept, any proposed changes.

## VII. SELECTION CRITERIA

### A. Best Value Evaluation

The RFQ/P Packets will be evaluated based on the District's adopted criteria and rating system to determine the qualified Respondent(s) providing the best value to the District for all candidates that meet the pass / fail criteria listed below (i.e., receive a PASS).

| CRITERIA ITEM | DESCRIPTION | MAXIMUM POINTS |
|---|---|---|
| **Price Points** | Price and Price Points Awarded | 100 points |
| **Technical Expertise** | Technical Expertise and experience with like-Projects, including past performance. | 50 points |
| **Safety** | Safety record | 10 points |
| **Subcontractors** | Workforce and available skilled and qualified subcontractors | 20 points |
| **Litigation History** | Past and current litigation | 20 points |
| **Life Cycle** | Life-cycle cost analysis | 15 points |
| **Schedule** | Project Schedule and Delivery Date | 10 points |
| **Staffing** | Management and Staffing Approach | 10 points |
| **CHPS** | Ability to meet/incorporate CHPS | 5 points |
| **Energy Savings** | Ability to meet energy savings goals | 5 points |
| **Durability** | Durability and warranty of building and building components and materials | 5 points |
| | | MAXIMUM POINTS: 250 |

Based on these criteria, District staff assign points to each proposer and then calculate the total points awarded to the proposer. The more points, the higher the proposer is ranked. The highest ranked proposer reflects the best combination of price and qualifications for the Project.

### B. District Investigations

The District may perform investigations of Respondents that extend beyond contacting the references identified in the proposals.

### C. Interviews

The District may invite some of the finalists to meet with a District selection committee. Key proposed Project staff will be expected to attend the interview. The interview will be an opportunity for the District selection committee to review the proposal, the firm's history, and other matters the committee deems relevant to evaluation with the firm. The interview will start with the firm presenting its proposal and its Project team. The finalists may be required to submit in advance of the interview a more detailed fee proposal. If requested, this fee

proposal shall include all charges and costs proposed to be charged to the District, including rates for extra work.

Any comments or objections to the form of Agreement attached hereto as **APPENDIX B** to this RFQ/P shall be provided in writing in the RFQ/P Packet and may be the subject of inquiry at the interview. District reserves the right to accept, reject or negotiate requested revisions. Any comments or objections to the form of Agreement not provided in writing before the interview will not be entertained by the District.

### D. Selection Process

RFQ/P Packets shall be evaluated and the Project awarded in the following manner:

**1.** All proposals received shall be reviewed to determine those that meet the format requirements and the standards specified in RFQ/P.

**2.** District shall evaluate the qualifications of the Respondents based solely upon the adopted criteria and evaluation methodology and shall assign a best value score to each proposal. Once the evaluation is complete, all responsive proposals shall be ranked from the highest best value to the lowest best value to the District.

**3.** The District's Governing Board shall award the Project to the responsive proposer whose proposal is determined, in writing by the Governing Board, to be the best value to the District.

**4.** If the selected developer refuses or fails to execute the tendered proposed contract, the Governing Board may award the contract to the proposer with the second highest best value score if it deems it to be for the best interest of the District. If the second selected developer refuses or fails to execute the tendered instrument, the Governing Board may award the instrument to the proposer with the third highest best value score if it deems it to be for the best interest of the District.

**5.** Notwithstanding any other law, upon issuance of a contract award, the District shall publicly announce its award, identifying the entity to which the award is made, along with a statement regarding the basis of the award. The statement regarding the District's contract award and the contract file shall provide sufficient information to satisfy an external audit.

### E. Final Determination and Award

It is expected that the selection committee will make recommendations to District staff regarding the candidates and awarding the contract. The awarding of contract(s) is at the sole discretion of the District.

The District reserves the right to contract with any entity responding to this RFQ/P for all or any portion of the work described herein and/or in an agreement offered to the entity, to reject any proposal as non-responsive, and/or not to contract with any firm for the services described herein. The District makes no representation that participation in the RFQ/P process will lead to an award of contract or any consideration whatsoever. The District reserves the right to seek proposals from or to contract with any firm not participating in this process. The District shall in no event be responsible for the cost of preparing any RFQ/P Packet in response to this RFQ/P.

The RFQ/P packet, and any other supporting materials submitted to the District in response to this RFQ/P will not be returned and will become the property of the District, unless portions of the materials are designated as proprietary at the time of submittal and are specifically requested to be returned. This RFQ/P does not commit the District to negotiate an agreement with any proposing firm or individual.

## VIII. SUBMISSION GUIDELINES

Respondents to this RFQ/P should mail or deliver five (5) bound copies, one (1) unbound copy, and one (1) electronic copy on a USB flashdrive of the RFQ/P Packet conforming to the requirements of this RFQ/P to:

Lodi Unified School District
ATTN: Amberly Kidder
880 N Guild Ave
Lodi, CA 95240
RE: RFQ/P #0915-8215-470-36

**ALL RESPONSES ARE DUE BY 3:00 P.M. ON FRIDAY, DECEMBER 19, 2025**. Oral, telegraphic, facsimile, telephone or email RFQ/P Packets will not be accepted. RFQ/P Packets received after this date and time will not be accepted and returned unopened.

Each submittal must conform and be responsive to the requirements set forth in this RFQ/P. The District reserves the right to waive any informalities or irregularities in the RFQ/P Packets. The District also reserves the right to reject any and all RFQ/P Packets and to negotiate contract terms with one or more Respondents. The District retains the sole discretion to determine issues of compliance and to determine whether a respondent is responsive, responsible, and qualified.

The District hereby notifies all Respondents that it will affirmatively insure that, in any contract entered into pursuant to this advertisement, no respondent will be discriminated against on the grounds of race, religious creed, color, national origin, ancestry, physical disability, mental disability, reproductive health decision-making, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or veteran or military status on consideration for the award.

**WE THANK YOU FOR YOUR INTEREST IN THE DISTRICT'S PROJECT.**

**APPENDIX A**
**Project Description**

Project Name: ELKHORN ELEMENTARY SCHOOL MODULAR CLASSROOMS INC 2 PROJECT NO. 0915-8215-470-36

Scope: CONSTRUCTION OF NEW SINGLE-STORY MODULAR CLASSROOM BUILDINGS

Completion Date: MAY 20, 2028

Project Estimate: $6,517,000

Architect: LPA DESIGN STUDIOS

**APPENDIX B**
**Form of Agreement**

See Attached:

Site Lease
Facilities Lease
LLB Contract Documents

# SITE LEASE

For all or a portion of the following Site:

[Name of] Project
[Address]
APN: _____

By and between

Lodi Unified School District
1305 East Vine Street
Lodi, CA 95240

And

[Developer]
[Address]

Dated as of _____, 20__

# SITE LEASE

This site lease ("Site Lease") dated as of _____, 20__ ("Effective Date"), is made and entered into by and between the Lodi Unified School District, a school district duly organized and validly existing under the laws of the State of California, as lessor ("District"), and _____ ("Developer"), a [California corporation] duly organized and existing under the laws of the State of [California], as lessee (together, the "Parties").

## RECITALS

WHEREAS, the District currently owns a parcel of land located at [Address], known as [Name of] School, as more particularly described in Exhibit A and shown on Exhibit B attached hereto and incorporated herein by this reference ("Site"); and

WHEREAS, the District desires to provide for the development and construction of certain work to be performed on portions of the Site, including construction of improvements to be known as the [Name of] Project ("Project"); and

WHEREAS, as more particularly described in the Facilities Lease between the Parties dated as of the Effective Date, the Developer agrees to perform the work of the Project and lease the completed Project and Site back to the District ("Facilities Lease"), which Facilities Lease is incorporated herein by this reference; and

WHEREAS, the Governing Board of the District ("Board") has determined that it is in the best interests of the District and for the common benefit of the citizens residing in the District to construct the Project by leasing the Site to Developer and by immediately entering into the Facilities Lease under which Developer will construct the Project and lease back the completed Project and Site from Developer; and

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

WHEREAS, this Site Lease and Facilities Lease are awarded based on a competitive solicitation process pursuant to Education Code section 17406 and in compliance with the required procedures and guidelines for evaluating the qualifications of proposers adopted and published by the Board to the proposer providing the best value to the school district, taking into consideration the proposer's demonstrated competence and professional qualifications necessary for the satisfactory performance of the services required; and

WHEREAS, the selection of the Developer was conducted in a fair and impartial manner; and

WHEREAS, based on the above findings, the District is authorized under Education Code section 17406 to lease the Site to Developer and to have Developer develop and cause the construction of the Project thereon and lease the completed Project and Site back to the District by means of the Facilities Lease, and the Board has duly authorized the execution and delivery of this Site Lease in order to effectuate the foregoing; and

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

happened, and have been performed in regular and due time, form, and manner as required by law, and the Parties hereto are now duly authorized to execute and enter into this Site Lease; and

WHEREAS, Developer as lessee is authorized and competent to lease the Site from District and to develop and cause the construction of the Project on the Site, and has duly authorized the execution and delivery of this Site Lease.

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

TERMS

1. Definitions

Unless the context clearly otherwise requires, all words and phrases defined in the Facilities Lease shall have the same meaning in this Site Lease.

2. Exhibits

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

2.1. Exhibit A - Legal Description of the Site: The legal description of the real property constituting the Site.

2.2. Exhibit B - Description of the Project: The map or diagram depiction of the Project on the Site.

3. Lease of the Site

The District hereby leases to the Developer, and the Developer 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 Developer within three (3) days of execution of this Site Lease.

4. Leaseback of the Project and Site

The Parties agree that the completed Project and Site will be leased back to the District pursuant to the Facilities Lease for the term thereof.

5. Term

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

6. Payment

In consideration for the lease of the Site by the District to the Developer and for other good and valuable consideration, the Developer shall pay One Dollar ($1.00) to the District upon execution of this Site Lease.

7. Termination

7.1. Termination Upon Purchase of Project

If the District exercises its option to purchase the Project pursuant to the Facilities Lease, then this Site Lease shall terminate concurrently with the District's buy out and termination of the Facilities Lease.

7.2. Termination Due to Default by Developer

If Developer defaults pursuant to the provision(s) of the Facilities Lease and the District terminates the Facilities Lease pursuant to the Facilities Lease provision(s) allowing termination, then the Developer shall be deemed to be in default of this Site Lease and this Site Lease shall also terminate at the same time as the Facilities Lease.

7.3. Termination Due to Default by District

If District defaults pursuant to the provision(s) of the Facilities Lease, the Developer, or its assignee, will have the right, for the then remaining term of this Site Lease, to:

7.3.1. Take possession of the Site.

7.3.2. If it deems it appropriate, cause appraisal of the Site and a study of the then reasonable uses thereof.

7.3.3. Re-let the Site; and

7.3.4. Stop all Work associated with the Site Lease.

8. Title to Site

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

9. Improvements

Title to all improvements made on the Site during the term hereof shall be held, vest and transfer pursuant to the terms of the Facilities Lease.

10. No Merger

The leaseback of the completed Project and Site by the Developer to the District pursuant to the Facilities Lease shall not affect or result in a merger of the estates of the District in the Site, and the Developer shall continue to have a leasehold estate in the Site pursuant to this Site Lease throughout the term hereof.

11. Right of Entry

The District reserves the right for any of its duly authorized representatives to enter upon the Site at any reasonable time to inspect the same, provided the District follows all safety precautions required by the Developer.

12. Quiet Enjoyment

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

13. Waste

The Developer 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 it will not willfully or knowingly use or permit the use of the Site for any illegal purpose or act.

14. Further Assurances and Corrective Instruments

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

15. Representations of the District

The District represents, covenants and warrants to the Developer as follows:

15.1. Due Organization and Existence

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

15.2. Authorization

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

15.3. No Violations

To the best of the District's actual knowledge, neither the execution and delivery of this Site Lease nor the Facilities Lease, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the District is now a party or by which the District is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge

or encumbrance whatsoever upon any of the property or assets of the District, or upon the Site, except Permitted Encumbrances.

15.4. CEQA Compliance

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

15.5. Condemnation Proceedings

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

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

15.6. Use and Zoning

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

15.7. Taxes

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

16. Representations of the Developer

The Developer represents, covenants and warrants to the District as follows:

16.1. Due Organization and Existence

The Developer is a [California company] duly organized and existing under the laws of the State of [California], has power to enter into this Site Lease and the Facilities Lease; is possessed of full power to lease, leaseback, and hold real and personal property and has duly authorized the execution and delivery of all of the aforesaid agreements.

16.2. Authorization

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

16.3. No Violations

Neither the execution and delivery of this Site Lease or the Facilities Lease, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the Developer is now a party or by which the Developer 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 Developer, or upon the Site, except for Permitted Encumbrances.

16.4. No Bankruptcy

Developer is not now nor has it ever been in bankruptcy or receivership.

16.5. No Litigation

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

17. Insurance and Indemnity

The Developer and the District shall comply with the insurance requirements and the indemnity requirements as indicated in the Facilities Lease.

18. Assignment and Subleasing

This Site Lease may be assigned and/or the Site subleased, as a whole or in part, by the Developer only upon the prior written consent of the District to such assignment or sublease, which shall not be unreasonably withheld.

19. Restrictions on District

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

20. Liens and Further Encumbrances

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

21. Notices

All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed to have been received five (5) days after deposit in the United States mail in registered or certified form with postage fully prepaid or one (1) business day after deposit with an overnight delivery service with proof of actual delivery:

| If to District: | If to Developer: |
|---|---|
| Lodi Unified School District<br>1305 East Vine Street<br>Lodi, CA 95240<br>ATTN: [Name, Title] | [Developer]<br>[Address]<br>[City], [State] [Zip Code]<br>Attn: [Name, Title] |
| With a copy to: | With a copy to: |
| Dannis Woliver Kelley<br>444 W. Ocean Blvd., Suite 1750<br>Long Beach, CA 90802<br>ATTN: Luke L. Punnakanta | |

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

22. Binding Effect

This Site Lease shall inure to the benefit of and shall be binding upon the Developer and the District and their respective successors and assigns.

23. No Additional Waiver Implied by One Waiver

In the event any agreement contained in this Site Lease should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive future compliance with any term hereof or any other breach hereunder.

24. Severability

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

25. Amendments, Changes and Modifications

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

26. Obligations Absolute

The Developer agrees that the obligations of the Developer are absolute and unconditional and not subject to any charges or setoffs against the District whatsoever.

27. Execution in Counterparts

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

28. Developer and District Representatives

Whenever under the provisions of this Site Lease approval by the Developer or the District is required, or the Developer or the District is required to take some action at the request of the other, such approval or such request shall be given for the Developer by the Developer Representative and for the District by the District Representative, and any party hereto shall be authorized to rely upon any such approval or request.

29. Applicable Law

This Site Lease shall be governed by and construed in accordance with the laws of the State of California, and venued in the County within which the Site is located.

30. Attorney's Fees

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

31. Captions

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

32. Prior Agreements

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

33. Further Assurances

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

34. Recitals Incorporated

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

35. Time of the Essence

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

36. Interpretation

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

IN WITNESS WHEREOF, the Parties have caused this Site Lease to be executed by their respective officers who are duly authorized, as of the Effective Date.

ACCEPTED AND AGREED on the date indicated below:

| | |
|---|---|
| Dated: _____, 20__ | Dated: _____, 20__ |
| Lodi Unified School District | [Developer] |
| By: _____ | By: _____ |
| Name: _____ | Name: _____ |
| Title: _____ | Title: _____ |

# EXHIBIT A

## LEGAL DESCRIPTION OF SITE

Attached is the Legal Description for:

[Name of] Project
[Address]
APN: _____

<INSERT>

# EXHIBIT B

## DESCRIPTION OF PROJECT

Attached is a map or diagram showing the location of the Site that is subject to this Site Lease and upon which Developer will construct the Project.

<INSERT>

# FACILITIES LEASE

For all or a portion of the following Site:

[Name of] Project
[Address]
APN: _____

By and between

Lodi Unified School District
1305 East Vine Street
Lodi, CA 95240

And

[Developer]
[Address]

Dated as of _____, 20__

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Exhibits A - H

# FACILITIES LEASE

This facilities lease ("Facilities Lease"), dated as of _____, 20__ ("Effective Date"), is made and entered into by and between [Name of Developer] ("Developer"), a [California corporation] duly organized and existing under the laws of the State of [California], as sublessor, and Lodi Unified School District, a school district duly organized and validly existing under the laws of the State of California, as sublessee ("District") (together, the "Parties").

## RECITALS

WHEREAS, the District is authorized under Section 17406 of the Education Code of the State of California to lease a site to a developer and to have that developer develop and construct the project on the site and to lease back to the District the completed project and site; and

WHEREAS, on the date hereof, the District has leased to Developer, a parcel of land located at [Address], known as [Name of] School, particularly described in Exhibit A and shown on Exhibit B attached hereto and incorporated herein by reference ("Site"); and

WHEREAS, District and Developer have executed a site lease at the same time as this Facilities Lease whereby the District is leasing the Site to Developer ("Site Lease"); and

WHEREAS, the District desires to provide for the development and construction of certain work to be performed on portions of the Site which will include construction of improvements to be known as the [Name of] Project ("Project"); and

WHEREAS, District has retained [Name of Architect] ("Architect") to prepare plans and specifications for the Project ("Plans and Specifications") and to act as the Design Professional in General Responsible Charge for the Project; and

WHEREAS, the Governing Board of the District ("Board") has determined that it is in the best interests of the District and for the common benefit of the citizens residing in the District to construct the Project by leasing the Site to Developer and by simultaneously entering into this Facilities Lease under which the District will lease back the completed Project and site from Developer and if necessary, make Lease Payments; and

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

WHEREAS, this Site Lease and Facilities Lease are awarded based a competitive solicitation process pursuant to Education Code section 17406 and in compliance with the required procedures and guidelines for evaluating the qualifications of proposers adopted and published by the Board to the proposer providing the best value to the school district, taking into consideration the proposer's demonstrated competence and professional qualifications necessary for the satisfactory performance of the services required; and

WHEREAS, the selection of Developer was conducted in a fair and impartial manner; and

WHEREAS, Developer has reviewed the Lease Documents; and

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

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

WHEREAS, Developer is authorized to lease the Site as lessee and to develop the Project by constructing the Project on the Site and to lease the completed Project and Site back to the District, and has duly authorized the execution and delivery of this Facilities Lease.

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

TERMS

1. Definitions

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

1.1 "Developer" or "Lessor" means _____, a [California corporation], organized and existing under the laws of the State of [California], Contractor's license number _____ issued by the State of California, Contractors' State License Board, in accordance with division 3, chapter 9, of the Business and Professions Code, and its successors and assigns.

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

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

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

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

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

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

1.6.2 The Site Lease.

1.6.3 This Facilities Lease.

1.6.4 Easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions or restrictions which exist of record as of the date of this Facilities Lease.

1.6.5 Easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions or restrictions established following the date of recordation of this Facilities Lease and to which Developer and the District consent in writing which will not impair or impede the operation of the Site.

2. Exhibits

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

2.1 Exhibit A - Legal Description of the Site: The description of the real property constituting the Site.

2.2 Exhibit B - Description of the Project: The map or diagram depiction of the Project.

2.3 Exhibit C - Guaranteed Maximum Price and Other Project Cost, Funding, and Payment Provisions: A detailed description of the Guaranteed Maximum Price and the provisions related to the payment of that amount to Developer, including Attachment 3, the Schedule of Lease Payments and Payoff Dates and Amounts.

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

2.5 Exhibit D-1 – Special Conditions Provisions: The provisions describing conditions specific to the Project's construction.

2.6 Exhibit E - Memorandum of Commencement Date: The Memorandum which will memorialize the commencement and expiration dates of the Lease Term.

2.7 Exhibit F - Construction Schedule

2.8 Exhibit G – Schedule of Values

2.9 Exhibit H – Project Labor Agreement

3. Lease of Project and Site

3.1 Developer hereby leases the compled Project to the District, and the District hereby leases said completed Project and Site from Developer upon the terms and conditions set forth in this Facilities Lease.

3.2 The leasing by Developer to the District of the completed Project and Site shall not affect or result in a merger of the District's leasehold estate pursuant to this Facilities Lease and its fee estate as lessor under the Site Lease. Developer shall

continue to have and hold a leasehold estate in the Site pursuant to the Site Lease throughout the Term thereof and the Term of this Facilities Lease.

3.3 As to the Site, this Facilities Lease shall be deemed and constitute a sublease.

4. Term

4.1 Facilities Lease is Legally Binding

This Facilities Lease is legally binding on the Parties upon execution by the Parties and the District Board's approval of this Facilities Lease. The "Term" of this Facilities Lease for the purposes of District's obligation to make Lease Payments shall commence on the date when Developer delivers possession of the Project to District and when all improvements to be provided by Developer are determined by the District to be completed as set forth in Exhibit D to this Facilities Lease.

Unless earlier terminated pursuant to the provisions of the Contract Documents, the Term of this Facilities Lease for the purposes of District's obligations to make Lease Payments shall terminate [one (1) year] thereafter or upon payment of the final lease payment.

4.2 After Developer has completed construction of the Project and the District has accepted the Project, the Parties shall execute the Memorandum of Commencement Date attached hereto as Exhibit E to memorialize the commencement date of the Lease Payments and expiration date of the Term. Notwithstanding this Term, the Parties hereby acknowledge that each has obligations, duties, and rights under this Facilities Lease that exist upon execution of this Facilities Lease and prior to the beginning of the Lease Payment obligations.

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

4.3.1 An Event of Default by District as defined herein and Developer's election to terminate this Facilities Lease as permitted herein; or

4.3.2 An Event of Default by Developer as defined herein and District's election to terminate this Facilities Lease as permitted herein; or

4.3.3 Consummation of the District's purchase option pursuant to the Guaranteed Maximum Price and Other Project Cost, Funding, and Payment Provisions indicated in Exhibit C ("Guaranteed Maximum Price Provisions"); or

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

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

5. Payment

In consideration for the lease of the completed Project and Site by Developer back to the District and for other good and valuable consideration, the District shall make all necessary payments pursuant to the Guaranteed Maximum Price Provisions indicated in Exhibit C.

6. Title

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

6.2 During the Term of this Facilities Lease, Developer shall have a leasehold interest in the Site pursuant to the Site Lease.

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

6.4 If the District exercises its Purchase Option pursuant to the Guaranteed Maximum Price Provisions indicated in Exhibit C or if District makes all necessary payments under the Guaranteed Maximum Price Provisions indicated in Exhibit C, all right, title and interest of Developer, its assigns and successors in interest in and to the Project and the Site shall be transferred to and vested in the District at the end of the Term. Title shall be transferred to and vested in the District hereunder without the necessity for any further instrument of transfer; provided, however, that Developer agrees to execute any instrument requested by District to memorialize the termination of this Facilities Lease and transfer of title to the Project.

7. Quiet Enjoyment

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

8. Representations of the District

The District represents, covenants and warrants to Developer as follows:

8.1 Due Organization and Existence

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

8.2 Authorization

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

8.3 No Violations

Neither the execution and delivery of this Facilities Lease nor the Site Lease, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the

consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the District is now a party or by which the District is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the District, or upon the Site, except Permitted Encumbrances.

8.4 Condemnation Proceedings

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

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

## 9. Representations of Developer

Developer represents, covenants and warrants to the District as follows:

9.1 Due Organization and Existence

Developer is a [California company] duly organized and existing under the laws of the State of [California], has the power to enter into this Facilities Lease and the Site Lease; is possessed of full power to lease, lease back, and hold real and personal property and has duly authorized the execution and delivery of all of the aforesaid agreements.

9.2 Authorization

Developer 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.

9.3 No Violations

Neither the execution and delivery of this Facilities Lease and the Site Lease, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which Developer is now a party or by which Developer 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 Developer, or upon the Site, except Permitted Encumbrances.

9.4 No Bankruptcy

Developer is not now nor has it ever been in bankruptcy or receivership.

9.5 No Encumbrances

Developer shall not pledge any District payments of any kind, related to the Site Lease, this Facilities Lease, or in any way derived from the Site, and shall not mortgage or encumber the Site, except as may be specifically permitted pursuant to the provisions of this Facilities Lease related to Developer's financing the construction of the project.

9.6 Continued Existence

Developer shall not voluntarily commence any act intended to dissolve or terminate the legal existence of Developer, at or before the latest of the following:

9.6.1 Eighteen (18) months following completion of the Project.

9.6.2 One (1) year following expiration or earlier termination of the Term.

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

While the lease documents are in effect, Developer shall give District one hundred twenty (120) days written notice prior to dissolving or terminating the legal existence of Developer.

10. Preconstruction Services

10.1 Scope of the Preconstruction Services

Developer shall perform management and coordination services, plan and specification constructability reviews, provide value-engineering reviews and recommendations and other reviews as necessary to verify that the drawings and specifications are clear and reasonably accurate to minimize the need for changes during the construction phase of the project, including but not limited to the following:

10.1.1 General Services

10.1.1.1 Developer shall attend meetings between the Architect, the District, District site personnel, and any other applicable consultants of the District as required to discuss the Project, including budget, scope and schedule.

10.1.1.2 Developer shall assist the Architect with making formal presentations to the governing board of District. Such assistance is anticipated to include floor plans and elevations necessary for any architectural presentation.

10.1.1.3 Developer shall prepare a rough schedule in a format acceptable to District, and update as necessary.

10.1.1.4 Developer shall prepare and update the components of the Guaranteed Maximum Price and shall be primarily responsible for ensuring that the Project can and is constructed for no more than that amount.

10.1.1.5 While the Architect is anticipated to provide primary assistance, Developer shall assist District with City land use issues.

10.1.1.6 Architect shall act as lead and Developer will assist District and Architect with DSA review, input, and timeframe for same.

10.1.1.7 Architect shall act as lead and Developer will assist with review and comment upon geotechnical / soils investigation and report.

10.1.1.8 Architect shall act as lead and Developer will assist with review and comment upon survey of the Site for the Project.

10.1.1.9 When requested, Developer will prepare meeting minutes.

10.1.1.10 Prepare schedule for preconstruction deliverables, subject to District's approval, and provide preconstruction deliverables within time frames of approved preconstruction schedule.

10.1.2 Review of Design Documents.

10.1.2.1 Review Project design and budget with District and Architect based on the 100% Construction Documents submitted to DSA to:

10.1.2.1.1 Provide recommendations on site use and improvements, selection of materials, building systems and equipment and methods of Project delivery;

10.1.2.1.2 Provide recommendations on relative feasibility of construction methods, availability of materials and labor, time requirements for procurement, installation and construction of the Project and subparts thereof if requested, and factors relating to cost including, but not limited to, construction costs of alternate designs of materials, preliminary budgets and possible economics that could be achieved through alternate methods or substitutions;

10.1.2.1.3 Provide recommendations on relative feasibility of construction methods, availability of materials and labor, time requirements for procurement, installation and construction of the Project and subparts thereof if requested, and factors relating to cost including, but not limited to, construction costs of alternate designs of materials, preliminary budgets and possible economics that could be achieved through alternate methods or substitutions;

10.1.2.1.4 Provide plan review.

10.1.2.1.5 Value-engineering. Prepare a value-engineering report for District review and approval that:

10.1.2.1.5.1 Details areas of cost saving (e.g. construction processes/procedures, specified materials and equipment, and equipment or other aspects of the

design documents that can be modified to reduce costs and/or the time for achieving final completion of the Project and/or to extend life-cycle and/or to reduce maintenance/operations costs, without diminution in the quality of materials/equipment/workmanship, scope or intended purposes of the Project);

10.1.2.1.5.2 Provides detailed estimate for proposed value-engineering items;

10.1.2.1.5.3 Defines methodology or approaches that maximize value; and

10.1.2.1.5.4 Identifies design choices that can be more economically delivered.

10.1.2.1.6 Constructability Review. Prepare detailed interdisciplinary constructability review within Fourteen (14) days of receipt of the plans from the District that:

10.1.2.1.6.1 Ensures construction documents are well coordinated and reviewed for errors;

10.1.2.1.6.2 Identifies to the extent known, construction deficiencies and areas of concern;

10.1.2.1.6.3 Back-checks design drawings for inclusion of modifications; and

10.1.2.1.6.4 Provides the District with written confirmation that:

10.1.2.1.6.4.1 Requirements noted in the design documents prepared for the Project are consistent with and conform to the District's Project requirements and design standards.

10.1.2.1.6.4.2 Various components have been coordinated and are consistent with each other so as to minimize conflicts within or between components of the design documents.

10.1.2.2 Confirm Modifications to Design Drawings. If the District accepts Developer's comments, including the value-engineering and/or constructability review comments, review the design documents to confirm that those comments are properly incorporated into the final design documents.

10.1.2.3 In doing so, it is recognized that Developer is not acting in the capacity of a licensed design professional, and that Developer's examination is made in good faith to facilitate construction and does not create an affirmative responsibility of a design professional to detect errors, omissions or inconsistencies in the Contract Documents or to

ascertain compliance with applicable laws, building codes or regulations. However, nothing in this provision shall abrogate Developer's responsibilities for discovering and reporting any error, inconsistency, or omission pursuant to the Contract within the Developer's standard of care including, without limitation, any applicable laws, ordinance, rules, or regulations.

10.1.3 Budget of Project Costs.

10.1.3.1 At each stage of plan review indicated above, Developer will update and refine the budget of the Guaranteed Maximum Price based on the most recent set of design documents. Developer shall also advise the District and the Architect if it appears that the total construction costs may exceed the Guaranteed Maximum Price established by the District and shall make recommendations for corrective action. Developer will further provide input to the District and Architect relative to value of construction, means and methods for construction, duration of construction of various building methods and constructability.

10.1.3.2 In each budget of the Guaranteed Maximum Price, Developer shall include values of scopes of work subdivided into component parts in sufficient detail to serve as the basis for progress payments during construction. This budget of the Guaranteed Maximum Price shall include, at a minimum, the following information divided into at least the following categories for each site:

10.1.3.2.1 Overhead and profit;

10.1.3.2.2 Supervision;

10.1.3.2.3 General conditions;

10.1.3.2.4 Layout & Mobilization (not more than 1%);

10.1.3.2.5 Submittals, samples, shop drawings (not more than 3%);

10.1.3.2.6 Bonds and insurance (not more than 2%);

10.1.3.2.7 Close-out documentation (not less than 3%);

10.1.3.2.8 Demolition;

10.1.3.2.9 Installation;

10.1.3.2.10 Rough-in;

10.1.3.2.11 Finishes;

10.1.3.2.12 Testing;

10.1.3.2.13 Owner and Maintenance Manuals; and

10.1.3.2.14 Punchlist and District acceptance.

10.1.4 Construction Schedule and Phasing Plan

Developer shall prepare a preconstruction schedule to guide the design team through to bid dates. That schedule shall show the multiple phases and interrelations of design, constructability review, and estimating. Developer shall also prepare a full construction schedule for the Project detailing the construction activities. Developer shall further investigate, recommend and prepare a schedule for the purchase of materials and equipment requiring long lead time procurement, and coordinate the schedule with the early preparation of portions of the Contract Documents by the Architect.

10.1.5 Construction Planning and Bidding

10.1.5.1 For all of Developer's activities relating to construction planning and bidding, Developer shall comply with all applicable legal requirements, including but not limited to those set forth in Education Code section 17406.

10.1.5.2 Consult with District staff in relation to the existing site. Selected developer should make site visits, as needed to review the current site conditions. During this evaluation, Respondent may make recommendations relating to soils investigations and utility locations and capacities, in order to minimize unforeseen conditions.

10.1.5.3 Attend meetings at the Site with the Architect and the design team as needed.

10.1.5.4 Provide plan review and constructability services with an emphasis on ensuring that the Project can be completed within the established schedule and within the available budget.

10.1.5.5 Provide a detailed analysis of all major Project systems with an emphasis on possible value engineering possibilities.

10.1.5.6 Prepare and distribute specifications and drawings provided by District to facilitate bidding to Developer's subcontractors.

10.1.5.7 Review the drawings and specifications to eliminate areas of conflict and overlapping in the work to be performed by various subcontractors, and with a view to eliminating change order requests by the Architect or subcontractors.

10.1.5.8 Conduct pre-bid conferences. Coordinate with District and the Architect in responding to subcontractor questions or providing clarification to all subcontractors.

10.1.5.9 DSA approved plans shall be utilized to receive subcontractor bids and develop the GMP in accordance with the lease-leaseback agreement forms, including the requirement that Developer engage in competitive bidding for subcontractors for all

scopes of work on the Project that constitute more than one half of one percent (0.5%) of the GMP. The District representative shall be present during the receipt of bids from subcontractors.

10.1.5.10 Each phase GMP shall be presented to the District in the following manner within a three ring binder as well as electronically on an external memory device such as a USB drive:

10.1.5.10.1 Cover sheet, signed by Developer indicating the GMP dollar amount with a certification, indicating that the GMP is all inclusive per the plans, specifications and addenda (contract documents). Also include certification stating, "Developer hereby certifies that they have reviewed all subcontractor proposals and whether the subcontractor excluded portions of their scope Developer has included all costs for a complete GMP in accordance with plans, specifications and addenda."

10.1.5.10.2 A bid tabulation sheet indicating the breakdown by subcontractor/trade along with the appropriate general condition amount, other fees (as submitted with the response to the RFQ/P).

10.1.5.10.3 Behind the bid tabulation sheet mentioned in subdivision 10.1.5.5.2 above should be a sheet that indicates what is included in the general conditions, which should match what was submitted in the response to the RFQ/P.

10.1.5.10.4 Copies of all subcontractor bids received divided by trade that corresponds to the final spread sheet with a cover sheet indicating the scope and subcontractors that provided bids as well as those that were asked to bid, but did not submit a proposal. This sheet should have the dollar amounts for each subcontractor that provided a bid with the first column being the proposed subcontractor for that trade.

10.1.5.10.5 Behind subdivision 10.1.5.5.4 above should be the bids for that trade with the proposed subcontractor bid on top and the other subcontractor bids in descending order based on best value score.

10.1.5.10.6 The minimum number of bona fide bids from contractors for a specific trade shall be as follows:

10.1.5.10.6.1 Two (2) bids for subcontracts up to One Hundred Thousand Dollars ($100,000);

10.1.5.10.6.2 Three (3) bids for subcontracts over One Hundred Thousand Dollars ($100,000).

10.1.5.10.7 If Developer intends to propose to self-perform portion(s) of the construction of the Project, it must receive the District's prior written approval. If approved, Developer must provide its pricing (its bid) to the District twenty-four (24) hours

prior to Developer's receipt of Subcontractor bids for those portion(s) of the Work.

10.1.5.10.7.1 Regardless of the scope of work and not in any way reducing the number of Subcontractor bids based on the other requirements of the Contract Documents, the minimum number of bona fide bids from Subcontractors for scope(s) of Work that Developer is bidding to self-perform shall be Two (2) Bids, not including Developer's pricing/bid.

10.1.5.11 Produce detailed construction CPM schedules to be incorporated into the Project documents including identification of the Project critical path and agency approvals.

10.1.5.12 Plan the phases and staging of construction, staging areas, temporary fencing, office trailer placement, access, etc. as required.

10.1.5.13 Any other services that are reasonable and necessary to control the budget and schedule. List those areas where subconsultants will be required and where the Respondent has in-house expertise. Provide resumes of persons providing each of these services and for key personnel assigned to the Project.

10.2 Schedule

Preconstruction services outlined above will commence on the date the District issues a Notice to Proceed with Preconstruction Services for the Agreement, and conclude upon approval of the Amendment to the Lease Agreements by District's Board, or termination of this Agreement by either party per the Agreement's terms. Any extension shall be subject to reasonable approval in writing by the Parties.

10.3 Ownership of Records

It is mutually agreed that all materials prepared by Developer under this Agreement shall become the property of the District and Developer shall have no property right therein whatsoever. Developer hereby assigns to District any copyrights associated with the materials prepared pursuant to the Agreement.

10.4 Open Book Policy

There will be an open book policy with Developer and its construction team. District shall have access to all subcontractor bids, value engineering back-up, contingency breakdown & tracking, and Developer fees.

10.5 Compensation to Developer for Preconstruction Services

District agrees to reimburse Developer in the total amount not to exceed [AMOUNT IN WORDS] DOLLARS ($[AMOUNT IN NUMBERS]), for the performance of services contemplated by this Agreement. Developer shall be paid monthly for the actual fees and allowed costs and expenses for all time and materials required and expended for work requested and specified by the District as completed. Said amount shall be paid

within thirty (30) days upon submittal to and verification by the District of a monthly billing statement showing completion of the tasks for that month on a line item basis. In the event Developer and District continue with the lease/leaseback agreements for the development of the Project, this compensation for services rendered will be included as part of the Guaranteed Maximum Price ("GMP") to be paid to Developer by District.

Developer shall be responsible for any and all costs and expenses incurred by Developer, including but not limited to the costs of hiring sub-consultants, contractors and other professionals, review of the Project's Plans and Specifications, review and preparation of necessary documentation relating to the development of the Project, all travel-related expenses, as well as for meetings with District and its representatives, long distance telephone charges, copying expenses, salaries of Developer staff and employees working on the Project, overhead, and any other reasonable expenses incurred by Developer in performance of the services contemplated by this Agreement.

10.6 Termination before Construction Phase

10.6.1 Before the notice to proceed with the Construction Phase is issued by the District, this Agreement may be terminated at any time without cause by District upon fourteen (14) days written notice to Developer. In the event of such a termination by District, the District shall pay Developer for all undisputed services performed and expenses incurred per this Agreement, supported by documentary evidence, including, but not limited to, payroll records, invoices from third parties retained by Developer pursuant to this Agreement, and expense reports up until the date of notice of termination plus any sums due Developer for Board-approved extra services. In ascertaining the services actually rendered hereunder up to the date of termination of this Agreement, consideration shall be given to completed work and work in process that would best serve the District if a completed product was presented.

10.6.2 In the event that the Parties do not reach an agreement on the GMP, this Agreement will be terminated at that time. In the event of such a termination, the District shall pay Developer no more than the not to exceed amount in Section 10.5 above.

10.7 Construction Phase

Developer shall not commence work for which a contractor is required to be licensed in accordance with Article 5 (commencing with Section 7065) of Chapter 9 of Division 3 of the Business and Professions Code and for which Division of the State Architect approval is required can be performed before receipt of the required Division of the State Architect approval.

11. Construction of Project

11.1 Construction of Project

11.1.1 Developer agrees to cause the Project to be developed, constructed, and installed in accordance with the terms hereof and the Construction Provisions set forth in Exhibit D, including those things reasonably inferred from the Contract Documents as being within the scope of the Project and

necessary to produce the stated result even though no mention is made in the Contract Documents.

11.1.2 Contract Time / Construction Schedule

It is hereby understood and agreed that the Contract Time for this Project shall be [days in words] ([days in numbers]) calendar days, commencing with the date upon which the Facilities Lease and the Site Lease are fully executed and delivered to both Parties and ending with completion of the Work which will occur no later than [Date] ("Contract Time"). The Construction Schedule must be approved by the District.

11.1.3 Schedule of Values

Developer will provide a schedule of values, approved by the District, which will be attached hereto as Exhibit G ("Schedule of Values"). The Schedule of Values must be approved by the District.

11.1.4 Liquidated Damages

Time is of the essence for all work Developer must perform to complete the Project. It is hereby understood and agreed that it is and will be difficult and/or impossible to ascertain and determine the actual damage that the District will sustain in the event of and by reason of Developer's delay; therefore, Developer agrees that it shall pay to the District the sum of _____ Dollars ($_____) per day as liquidated damages for each and every day's delay beyond the Contract Time.

11.1.4.1 It is hereby understood and agreed that this amount is not a penalty.

11.1.4.2 In the event any portion of the liquidated damages is not paid to the District, the District may deduct that amount from any money due or that may become due Developer under this Facilities Lease. The District's right to assess liquidated damages is as indicated herein and in Exhibit D.

11.1.4.3 The time during which the construction of the Project is delayed for cause as hereinafter specified may extend the time of completion for a reasonable time as the District may grant.

11.1.5 Guaranteed Maximum Price

Developer will cause the Project to be constructed within the GMP as set forth and defined in the GMP provisions in Exhibit C, and Developer will not seek additional compensation from District in excess of that amount.

11.1.6 Modifications

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

11.1.7 Labor Compliance Monitoring and Enforcement by Department of Industrial Relations

This Project is subject to labor compliance monitoring and enforcement by the Department of Industrial Relations pursuant to Labor Code section 1771.4 and Title 8 of the California Code of Regulations. Developer specifically acknowledges and understands that it shall perform the Work of this Contract while complying with all the applicable provisions of Division 2, Part 7, Chapter 1, of the Labor Code.

12. Maintenance

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

13. Utilities

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

14. Taxes and Other Impositions

All ad valorem real property taxes, special taxes, possessory interest taxes, bonds and special lien assessments or other impositions of any kind with respect to the Project, the Site and the improvements thereon, charged to or imposed upon either Developer or the District or their respective interests or estates in the Project, shall at all times be paid by District. In the event any possessory interest tax is levied on Developer, its successors and assigns, by virtue of this Facilities Lease or the Site Lease, District shall pay such possessory interest tax directly, if possible, or shall reimburse Developer, its successors and assigns for the full amount thereof within forty-five (45) days after presentation of proof of payment by Developer.

15. Insurance

15.1 Developer**'s Insurance**

Developer shall comply with the insurance requirements as indicated here and in Exhibit D-1, if applicable.

15.1.1 Commercial General Liability and Automobile Liability Insurance

15.1.1.1 Developer shall procure and maintain, during the life of the Project, Commercial General Liability Insurance in a form at least as broad as Insurance Services (ISO) Form CG 00 01 that shall

protect Developer, its agents, representative, employees, or subcontractors, District, its Board Members, employees, agents, Construction Manager(s), Project Manager(s), Project Inspector(s), and Architect(s) from all claims for products and completed operations, property damage, bodily injury and personal injury, death, advertising injury and medical payments arising from, or in connection with, the performance of the Work of the Project within the Contract Documents at the required limits, or Developer shall procure and maintain these coverages separately. Developer shall procure and maintain Automobile Liability in a form at least as broad as ISO Form CA 0001 covering Code 1 (any auto) at the required limits, or Developer shall procure and maintain these coverages separately.

15.1.1.2 Developer's deductible or self-insured retention for its Commercial General Liability Insurance policy shall not exceed five thousand dollars ($5,000) for deductible or twenty-five thousand dollars ($25,000) for self-insured retention, respectively, unless approved in writing by District.

15.1.1.3 All such policies shall be written on an occurrence form.

15.1.2 Excess Liability Insurance

15.1.2.1 If Developer's underlying policy limits are less than required, subject to 15.1.2.3 below, Developer may procure and maintain, during the life of the Project, an Excess Liability Insurance Policy to meet the policy limit requirements of the required policies in order to satisfy, in aggregate with its underlying policy, the insurance requirements herein including, but not limited to, primary and non-contributory, additional insured, Self-Insured Retentions (SIRs), indemnity, and defense requirements. The Excess Liability Insurance Policy shall be provided on a true "following form" or broader coverage basis, with coverage at least as broad as provided on the underlying Commercial General Liability insurance. No insurance policies maintained by the Additional Insureds, whether primary or excess, and which also apply to a loss covered hereunder, shall be called upon to contribute to a loss until Developer's primary and excess liability policies are exhausted.

15.1.2.2 There shall be no gap between the per occurrence amount of any underlying policy and the start of the coverage under the Excess Liability Insurance Policy. Any Excess Liability Insurance Policy shall protect Developer, District, its Board Members, employees, agents, Construction Manager(s), Project Manager(s), Project Inspector(s), and Architect(s) in amounts and including the provisions as set forth in Exhibit D-1 and/or the Supplementary Conditions (if any), and that complies with all requirements for Commercial General Liability and Automobile Liability and Employers' Liability Insurance.

15.1.2.3 The District, in its sole discretion, may accept the Excess Liability Insurance Policy that brings Developer's primary limits to the minimum requirements herein.

15.1.3 Subcontractor

Developer shall require its Subcontractor(s), if any, to procure and maintain Commercial General Liability Insurance, Automobile Liability Insurance, and Excess Liability Insurance (if Subcontractor elects to satisfy, in part, the insurance required herein by procuring and maintaining an Excess Liability Insurance Policy) with minimum limits at least equal to the amount required of Developer except where smaller minimum limits are permitted as set forth below. For Commercial General Liability coverage, subcontractors shall provide coverage with a form at least as broad as CG 20 38 04 13.

15.1.4 **Workers' Compensation and Employer's** Liability Insurance

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

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

15.1.4.3 The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of District for all work performed by Developer, its employees, agents and subcontractors.

15.1.5 **Builder's Risk Insurance: Builder's Risk "All Risk" Insurance**

15.1.5.1 Developer shall procure and maintain, during the life of this Contract, Builder's Risk (Course of Construction) insurance utilizing an "All Risk" (Special Perils) coverage form, with limits equal to the completed value of the Project and no coinsurance penalty provisions, or similar first party property coverage acceptable to the District. The cost value basis shall be consistent with the total replacement cost of all insurable Work of the Project included within the Contract Documents. Coverage is to insure against all risks of

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

15.1.6 Pollution Liability Insurance

15.1.6.1 Developer shall procure and maintain Pollution Liability Insurance in a form at least as broad as ISO Form CG 2415 that shall protect Developer, District, Construction Manager(s), Project Inspector(s), and Architect(s) from all claims for bodily injury, property damage, including natural resource damage, cleanup costs, removal, storage, disposal, and/or use of the pollutant arising from operations under this Facilities Lease, and defense, including costs and expenses incurred in the investigation, defense, or settlement of claims, or Developer shall procure and maintain these coverages separately. Coverage shall apply to sudden and/or gradual pollution conditions resulting from the escape or release of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids, or gases, natural gas, waste materials, or other irritants, contaminants, or pollutants, including asbestos.

15.1.6.2 Contractor warrants that any retroactive date applicable to coverage under the policy shall predate the effective date of the Contract and that continuous coverage will be maintained or an extended reporting or discovery period will be exercised for a period of three (3) years, beginning from the time that the Work under the Contract is completed.

15.1.6.3 If the services involve lead-based paint or asbestos identification/remediation, Developer's Pollution Liability policy shall not contain lead-based paint or asbestos exclusions. If the services involve mold identification/remediation, Developer's Pollution Liability policy shall not contain a mold exclusion, and the definition of Pollution shall include microbial matter, including mold.

15.1.6.4 If Developer is responsible for removing any pollutants from a site, then Developer shall ensure that Any Auto, including owned, non-owned, and hired, are included within the above policies and at the required limits, to cover its automobile exposure for transporting the pollutants from the site to an approved disposal site. This coverage shall include the Motor Carrier Act Endorsement, MCS 90.

15.1.7 Proof of Carriage of Insurance and Other Requirements Endorsements and Certificates

15.1.7.1 Developer shall not commence Work nor shall it allow any Subcontractor to commence Work on the Project, until Developer and its Subcontractor(s) have procured all required insurance and Developer has delivered in duplicate to the District complete endorsements (or entire insurance policies) and certificates indicating the required coverages have been obtained, and the District has approved these documents.

15.1.7.2 Endorsements, certificates, and insurance policies shall include the following:

15.1.7.2.1 A clause stating the following, or other language acceptable to the District:

"This policy shall not be canceled and the coverage amounts shall not be reduced until notice has been mailed to District, Architect, and Construction Manager stating date of cancellation by the insurance carrier. Date of cancellation may not be less than thirty (30) days after date of mailing notice."

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

15.1.7.2.3 All endorsements, certificates and insurance policies shall state that District, its Board Members, employees and agents, Construction Manager(s), Project Manager(s), Inspector(s) and Architect(s) are named additional insureds under all policies except Workers' Compensation Insurance and Employers' Liability Insurance. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10, CG 11 85 or both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 forms if later revisions used).

15.1.7.2.4 All endorsements shall waive any right to subrogation against any of the named additional insureds.

15.1.7.2.5 Developer's and Subcontractors' insurance coverage at least as broad as ISO CG 20 01 04 13 shall be primary and non-contributory to any insurance or self-insurance maintained by District, its Board Members, employees and/or agents, the State of California, Construction Manager(s), Project Manager(s), Inspector(s), and/or Architect(s). This requirement shall also apply to any Excess liability policies.

15.1.7.2.6 Developer's insurance limit shall apply separately to each insured against whom a claim is made or suit is brought.

15.1.7.3 No policy shall be amended, canceled, or modified, and the coverage amounts shall not be reduced, until Developer or Developer's broker has provided written notice to District, Architect, and Construction Manager stating date of the amendment, modification, cancellation or reduction, and a description of the change. Date of amendment, modification, cancellation or reduction may not be less than thirty (30) days after date of mailing notice.

15.1.7.4 Insurance written on a "claims made" basis shall be retroactive to a date that coincides with or precedes Developer's commencement of Work, including subsequent policies purchased as renewals or replacements. Said policy is to be renewed by Developer and all Subcontractors for a period of five (5) years following completion of the Work or termination of this Facilities Lease. Such insurance must have the same coverage and limits as the policy that was in effect during the term of this Facilities Lease, and will cover Developer and all Subcontractors for all claims made. If coverage is cancelled or non-renewed, and not replaced with another claims-made policy from with a retroactive date prior to the effective date of this Facilities Lease, or the start of Work date, the Developer must purchase extended reporting period coverage for a minimum of five (5) years after completion of contract work. A copy of the claims reporting requirements must be submitted to the District for review.

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

15.1.7.6 All of Developer's insurance shall be with insurance companies with an A.M. Best rating of no less than A: XI.

15.1.7.7 The insurance requirements set forth herein shall in no way limit Developer's liability arising out of or relating to the performance of the Work or related activities.

15.1.7.8 Failure of Developer and/or its Subcontractor(s) to comply with the insurance requirements herein shall be deemed a material breach of the Facilities Lease and constitute a Default by Developer pursuant to this Facilities Lease.

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15.1.8 Insurance Policy Limits

The limits of insurance shall not be less than the following amounts:

| | | |
|---|---|---|
| COMMERCIAL GENERAL LIABILITY | Product Liability and Completed Operations, Fire Damage Liability – Split Limit | $5,000,000 per occurrence; $10,000,000 in aggregate |
| AUTOMOBILE LIABILITY – ANY AUTO | Combined Single Limit | $1,000,000 |
| WORKERS' COMPENSATION | | Statutory limits pursuant to State law |
| EMPLOYER'S LIABILITY | | $1,000,000 per accident for bodily injury or disease |
| BUILDER'S RISK (COURSE OF CONSTRUCTION) | | Full replacement value for scope of Work. |
| POLLUTION LIABILITY | | $1,000,000 per claim; $2,000,000 aggregate |

If Developer normally carries insurance in an amount greater than the minimum amounts required by District, that greater amount shall become the minimum required amount of insurance for purposes of the Contract. Therefore, Developer hereby acknowledges and agrees that all insurance carried by it shall be deemed liability coverage for all actions it performs in connection with the Contract.

The limits of insurance for those subcontractors whose subcontract does not exceed One Million Dollars ($1,000,000) shall not be less than the following amounts:

| | | |
|---|---|---|
| COMMERCIAL GENERAL LIABILITY | Product Liability and Completed Operations, Fire Damage Liability – Split Limit | $2,000,000 per occurrence; $4,000,000 in aggregate |
| AUTOMOBILE LIABILITY - ANY AUTO | Combined Single Limit | $1,000,000 |
| WORKERS' COMPENSATION | | Statutory limits pursuant to State law |
| EMPLOYER'S LIABILITY | | $1,000,000 per accident for bodily injury or disease |

Notwithstanding anything in this Facilities Lease to the contrary, the above insurance requirements may be modified as appropriate for subcontractors, with District's prior written approval.

15.2 **District's Insurance**

15.2.1 Rental Interruption Insurance

District shall at all times from and after District's acceptance of the Project, for the benefit of District and Developer, as their interests may appear, maintain rental interruption insurance to cover loss, total or partial, of the use of the Project due to damage or destruction, in an amount at least equal to the maximum estimated Lease Payments payable under this Facilities Lease during the current or any future twenty-four (24) month period. This insurance may be maintained as part of or in conjunction with any other insurance coverage carried by the District, and such insurance may be maintained in whole or in part in the form of participation by the District in a joint powers agency or other program providing pooled insurance. This insurance may not be maintained in the form of self-insurance.

15.2.2 Property Insurance

District shall at all times from and after District's acceptance of the Project, carry and maintain in force a policy of property insurance for 100% of the insurable replacement value with no coinsurance penalty, on the Site and the Project, together with all improvements thereon, under a standard "all risk" contract insuring against loss or damage. Developer shall be named as additional insureds or co-insureds thereon by way of endorsement. District shall have the right to procure the required insurance through a joint powers agency or to self-insure against such losses or portion thereof as is deemed prudent by District.

16. Indemnification and Defense

16.1 To the fullest extent permitted by California law, Developer shall indemnify, keep and hold harmless the District, the Architect(s) and Construction Manager(s), their respective consultants, separate contractors, board members, officers, representatives, agents, and employees, in both individual and official capacities ("Indemnitees"), against all suits, claims, injury, damages, losses, and expenses ("Claims"), including but not limited to attorney's fees and costs, caused by, arising out of, resulting from, or incidental to the performance of the Work under this Contract by Developer or its Subcontractors, vendors and/or suppliers. However, Developer's indemnification and hold harmless obligation shall be reduced by the proportion of the Indemnitees' and/or Architect's liability to the extent the Claim(s) is/are caused by the active negligence or willful misconduct of the Indemnitees, and/or defects in design furnished by the Architect, as found by a court or arbitrator of competent jurisdiction. This indemnification and hold harmless obligation of Developer shall not be construed to negate, abridge, or otherwise reduce any right or obligation of indemnity that would otherwise exist or arise as to any Indemnitee or other person described herein. This indemnification and hold harmless obligation includes, but is not limited to, any failure or alleged failure by Developer to comply with any law and/or provision of the Contract Documents in strict accordance with their terms, and without limitation, any failure or alleged failure of Developers obligations regarding any stop payment notice actions or liens, including Civil Wage and Penalty Assessments and/or Orders by the DIR.

16.2 To the furthest extent permitted by California law, Developer shall also defend Indemnitees, at its own expense, including but not limited to attorneys' fees and costs,

against all Claims caused by, arising out of, resulting from, or incidental to the performance of the Work under this Facilities Lease by Developer, its Subcontractors, vendors, or suppliers. However, without impacting Developer's obligation to provide an immediate and ongoing defense of Indemnitees, Developer's defense obligation shall be reduced by the proportion of the Indemnitees' and/or Architect's liability to the extent caused by the active negligence, or willful misconduct of the Indemnitees, and/or defects in design furnished by the Architect, as found by a court or arbitrator of competent jurisdiction. The District shall have the right to accept or reject any legal representation that Developer proposes to defend the Indemnitees. If conflict of interest bars joint representation of Developer and Indemnitees, District shall have the right to select its own counsel, subject to Developer's reasonable right of rejection. If any Indemnitee provides its own defense due to failure to timely respond to tender of defense, rejection of tender of defense, or conflict of interest of proposed counsel, Developer shall reimburse such Indemnitee for any expenditures. Even if the Developer assumes the defense of the District with acceptable counsel, the District, at its sole option, may participate in the defense, at its own expense, with counsel of its own choice without relieving the Developer of any of its obligations hereunder. Developer's defense obligation shall not be construed to negate, abridge, or otherwise reduce any right or obligation of defense that would otherwise exist as to any Indemnitee or other person described herein. Developer's defense obligation includes, but is not limited to, any failure or alleged failure by Developer to comply with any provision of law, any failure or alleged failure to timely and properly fulfill all of its obligations under the Contract Documents in strict accordance with their terms, and without limitation, any failure or alleged failure of Developer's obligations regarding any stop payment notice actions or liens, including Civil Wage and Penalty Assessments and/or Orders by the DIR. Developer shall give prompt notice to the District in the event of any Claim(s).

16.3 Without limitation of the provisions herein, if Developer's obligation to indemnify and hold harmless the Indemnitees or its obligation to defend Indemnitees as provided herein shall be determined to be void or unenforceable, in whole or in part, it is the intention of the Parties that these circumstances shall not otherwise affect the validity or enforceability of Developer's agreement to indemnify, defend, and hold harmless the rest of the Indemnitees, as provided herein. Further, Developer shall be and remain fully liable on its agreements and obligations herein to the fullest extent permitted by law.

16.4 Pursuant to Public Contract Code section 9201, the District shall provide timely notification to Developer of the receipt of any third-party Claim relating to this Contract. The District shall be entitled to recover its reasonable costs incurred in providing said notification.

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

16.6 The District may retain so much of the moneys due to Developer as shall be considered necessary, until disposition of any such Claims or until the District, Architect(s) and Construction Manager(s) have received written agreement from

Developer that Developer will unconditionally defend the District, the Architect(s) and Construction Manager(s), their respective officers, agents and employees, and pay any damages due by reason of settlement or judgment.

16.7 Developer's defense and indemnification obligations hereunder shall survive the completion of Work, including the warranty/guarantee period, and/or the termination of the Contract.

17. Eminent Domain

17.1 Total Taking After Project Delivery

If, following delivery of possession of the Project by Developer to District, all of the Project and the Site is taken permanently under the power of eminent domain, the Term shall cease as of the day possession shall be so taken.

17.1.1 The financial interest of Developer shall be limited to the amount of principal payments pursuant to the GMP provisions indicated in Exhibit C that are then due or past due together with all remaining and succeeding principal payments pursuant to the GMP provisions indicated in Exhibit C for the remainder of the original Term. For example, if all of the Project and the Site is taken at the end of the third year of the Term, Developer shall be entitled to receive from the eminent domain award the sum of all principal payments pursuant to the GMP provisions indicated in Exhibit C that would have been owing for the fourth year through the end of the Term had there been no taking.

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

17.2 Total Taking Prior to Project Delivery

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

17.3 Partial Taking

If, following delivery of possession of the Project by Developer to District, less than all of the Project and the Site is taken permanently, or if all of the Project and the Site or any part thereof is taken temporarily, under the power of eminent domain.

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

17.3.2 There shall be a partial abatement of any principal payments pursuant to the GMP provisions indicated in Exhibit C as a result of the application of the net proceeds of any eminent domain award to the prepayment of those payments hereunder. The Parties agree to negotiate, in good faith, for an equitable split of the net proceeds of any eminent domain

award and a corresponding reduction in the payments required pursuant to the GMP provisions indicated in Exhibit C.

18. Damage and Destruction

If, following delivery of possession of all or a portion of the Project by Developer to District, the Project is totally or partially destroyed due to fire, acts of vandalism, flood, storm, earthquake, Acts of God, or other casualty beyond the control of either party hereto, the Term shall end and District shall no longer be required to make any payments required pursuant to the GMP provisions indicated in Exhibit C that are then due or past due or any remaining and succeeding principal payments pursuant to the GMP provisions indicated in Exhibit C for the remainder of the original Term.

19. Abatement

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

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

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

19.3.1 Repair the Project to full use.

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

19.3.3 Exercise the District's purchase option as indicated in the GMP provisions in Exhibit C to this Facilities Lease.

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

20. Access

20.1 By Developer

Developer shall have the right at all reasonable times to enter upon the Site to construct the Project pursuant to this Facilities Lease. Following the acceptance of the Project by District, Developer 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 Developer.

20.2 By District

The District shall have the right to enter upon the Site at all times. District shall comply with all safety precautions and procedures required by Developer.

21. Assignment, Subleasing

21.1 Assignment and Subleasing by the District

Any assignment or sublease by District shall be subject to all of the following conditions:

21.1.1 This Facilities Lease and the obligation of the District to make the payments required pursuant to the GMP provisions indicated in Exhibit C shall remain obligations of the District; and

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

21.2 Assignment by Developer

Developer may assign its right, title and interest in this Facilities Lease, in whole or in part to one or more assignees, only after the written consent of District, which District will not unreasonably withhold. No assignment shall be effective against the District unless and until the District has consented in writing. Notwithstanding anything to the contrary contained in this Facilities Lease, no consent from the District shall be required in connection with any assignment by Developer to a lender for purposes of financing the Project as long as there are not additional costs to the District.

22. Termination, Default And Suspension

22.1 Termination; Lease Terminable Only As Set Forth Herein

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

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

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

22.1.4 District acknowledges that Developer may assign an interest in some or all of the necessary payments pursuant to the GMP provisions indicated in Exhibit C to a lender in order to obtain financing for the cost of constructing the Project and that the lender may rely on the foregoing covenants and provisions in connection with such financing.

## 22.2 **District's Request for Assurances**

If District at any time reasonably believes Developer is or may be in default under this Contract, District may in its sole discretion notify Developer of this fact and request written assurances from Developer of performance of Work and a written plan from Developer to remedy any potential default under the terms of this Contract that the District may advise Developer of in writing. Developer shall, within ten (10) calendar days of District's request, deliver a written cure plan that meets the District's requirements in its request for assurances. Developer's failure to provide such written assurances of performance and the required written plan, within ten (10) calendar days of request, will constitute a material breach of this Contract sufficient to justify termination for cause.

## 22.3 District's Right to Terminate Developer for Cause

### 22.3.1 Grounds for Termination

The District, in its sole discretion, without prejudice to any other right or remedy, may terminate the Site Lease and Facilities Lease and/or terminate Developer's right to perform the work of the Facilities Lease based upon any of the following:

22.3.1.1 Developer refuses or fails to execute the Work or any separable part thereof; or

22.3.1.2 Developer fails to complete said Work within the time specified or any extension thereof; or

22.3.1.3 Developer persistently fails or refuses to perform Work or provide material of sufficient quality as to be in compliance with the Facilities Lease; or

22.3.1.4 Prior to completion of the Project, Developer is adjudged a bankrupt, files a petition for relief as a debtor, or a petition is filed against Developer without its consent, and the petition not dismissed within sixty (60) days; or

22.3.1.5 Prior to the completion of the Project, Developer makes a general assignment for the benefit of its creditors, or a receiver is appointed on account of its insolvency; or

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

22.3.1.7 Developer fails to make prompt payment to Subcontractors, or for material, or for labor; or

22.3.1.8 Developer persistently disregards laws, or ordinances, or instructions of District as indicated in Exhibit D, or otherwise in violation of Exhibit D; or

22.3.1.9 Developer fails to supply labor, including that of Subcontractors, that is sufficient to prosecute the Work or that can work in harmony with all other elements of labor employed or to be employed on the Work; or

22.3.1.10 Developer or its Subcontractor(s) is/are otherwise in breach, default, or in substantial violation of any provision of this Facilities Lease, including but not limited to a lapse in licensing or registration.

22.3.2 Notification of Termination

22.3.2.1 Upon the occurrence at District's sole determination of any of the above conditions, or upon Developer's failure to perform any material covenant, condition or agreement in this Facilities Lease, District may, without prejudice to any other right or remedy, serve written notice upon Developer and its Surety of District's termination of this Facilities Lease and/or Developer's right to perform the Work of this Facilities Lease. This notice will contain the reasons for termination.

22.3.2.2 Unless, within fifteen (15) days after the service of the notice, any and all condition(s) shall cease, and any and all violation(s) shall cease, or arrangement satisfactory to District for the correction of the condition(s) and/or violation(s) be made, this Facilities Lease and the Site Lease shall cease and terminate; provided, however, if the failure stated in the notice cannot be corrected within fifteen (15) days after the service of notice, District

may consent to an extension of time, provided Developer instituted and diligently pursued corrective action within the applicable fifteen (15)-day period and until the violation is corrected. Upon District determination, Developer shall not be entitled to receive any further payment until the entire Work is finished.

22.3.2.3 Upon Termination, District may immediately serve written notice of tender upon Surety whereby Surety shall have the right to take over and perform this Facilities Lease only if Surety:

22.3.2.3.1 Within three (3) days after service upon it of the notice of tender, gives District written notice of Surety's intention to take over and perform this Facilities Lease; and

22.3.2.3.2 Commences performance of this Facilities Lease within three (3) days from date of serving of its notice to District.

22.3.2.4 Surety shall not utilize Developer in completing the Project if the District notifies Surety of the District's objection to Developer's further participation in the completion of the Project. Surety expressly agrees that any developer which Surety proposes to fulfill Surety's obligations is subject to District's approval.

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

22.3.2.6 In the alternative, the District shall have the right (but shall have no obligation) to assume and/or assign to a general contractor or construction manager or other third party who is qualified and has sufficient resources to complete the Work, the rights of the Developer under its subcontracts with any or all Subcontractors. In the event of an assumption or assignment by the District, no Subcontractor shall have any claim against the District or third party for Work performed by Subcontractor or other matters arising prior to termination of the Facilities Lease. The District or any third party, as the case may be, shall be liable only for obligations to the Subcontractor arising after assumption or assignment. Should the District so elect, the Developer shall execute and deliver all documents and take all steps, including the legal assignment of its contractual rights, as the District may require, for the purpose of fully vesting in the District the rights and benefits of its Subcontractor under Subcontracts or other obligations or

commitments. All payments due the Developer hereunder shall be subject to a right of offset by the District for expenses and damages suffered by the District as a result of any default, acts, or omissions of the Developer. Developer must include this assignment provision in all of its contracts with its Subcontractors.

22.3.3 In the event of a termination for cause, if the expense to the District to finish the Work exceeds the unpaid Guaranteed Maximum Price, Developer and Surety shall pay difference to District within twenty-one (21) days of District's request. District may apply any amounts otherwise due to Developer to this difference.

22.3.4 In the event that a termination for cause is determined to have not been for cause, the termination shall be deemed to have been a termination for convenience effective as of the same date as the purported termination for cause

22.4 Termination of Developer for Convenience

22.4.1 District in its sole discretion may terminate the Facilities Lease in whole or in part upon three (3) days written notice to Developer.

22.4.2 Upon notice, Developer shall:

22.4.2.1 Cease operations as directed by the District in the notice;

22.4.2.2 Take necessary actions for the protection and preservation of the Work as soon as possible; and

22.4.2.3 Terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

22.4.3 Within 30 days of the notice, Developer shall submit to the District a payment application for the actual cost for labor, materials, and services performed, including all Developer's and Subcontractor(s)' mobilization and/or demobilization costs, that is unpaid. Developer shall have no claims against the District except for the actual cost for labor, materials, and services performed that adequately documented through timesheets, invoices, receipts, or otherwise. District shall pay all undisputed invoice(s) for work performed until the notice of termination.

22.4.4 If Developer objects to the termination for convenience, including disagreement on the actual cost, the District retains the right to all the options available to the District under a termination for cause.

22.5 Effect of Termination

22.5.1 If District terminates the Site Lease and the Facilities Lease pursuant to this section, the Site and any improvements built upon the Site shall vest in District upon termination of the Site Lease and Facilities Lease, and District shall thereafter be required to pay only the principal amounts then due and owing pursuant to the GMP provisions indicated in Exhibit C, less any damages incurred by District due to Developer's default, acts, or omissions.

22.5.2 The District shall retain all rights it possesses pursuant to this Facilities Lease including, without limitation.

22.5.2.1 The right to assess liquidated damages due because of any project delay; and

22.5.2.2 All rights the District holds to demand performance pursuant to Developer's required performance bond.

22.5.3 Developer shall, only if ordered to do so by the District, immediately remove from the Site all or any materials and personal property belonging to Developer that have not been incorporated in the construction of the Work, or which are not in place in the Work. The District retains the right, but not the obligation, to keep and use any materials and personal property belonging to Developer that have not been incorporated in the construction of the Work, or which are not in place in the Work. Developer and its Surety shall be liable upon the performance bond for all damages caused the District by reason of Developer's failure to complete the Work under this Facilities Lease.

22.5.4 In the event that the District shall perform any portion of, or the whole of the Work, pursuant to the provisions of the General Conditions, the District shall not be liable nor account to Developer in any way for the time within which, or the manner in which, the Work is performed by the District or for any changes the District may make in the Work or for the money expended by the District in satisfying claims and/or suits and/or other obligations in connection with the Work.

22.5.5 In the event that the Site Lease and Facilities Lease are terminated for any reason, no allowances or compensation will be granted for the loss of any anticipated profit by Developer or any impact or impairment of Developer's bonding capacity.

22.5.6 All payments due Developer hereunder shall be subject to a right of offset by the District for expenses, damages, losses, costs, claims, or reimbursements suffered by, or due to, the District as a result of any default, acts, or omissions of Developer.

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

22.6 Developer Remedies Upon District Default

22.6.1 Events of Default by District Defined

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

22.6.1.1 Failure by the District to pay payments required pursuant to the GMP provisions in Exhibit C, and the continuation of this failure for a period of forty-five (45) days.

22.6.1.2 Failure by the District to perform any material covenant, condition or agreement in this Facilities Lease and that failure continues for a period of forty-five (45) days after Developer provides District with written notice specifying that failure and requesting that the failure be remedied; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, Developer shall not withhold its consent to an extension of time if corrective action is instituted by the District within the applicable period and diligently pursued until the default is corrected.

22.6.2 Remedies on District's Default

If there has been an Event of Default on the District's part, Developer may exercise any and all remedies granted pursuant to this Facilities Lease; provided, however, there shall be no right under any circumstances to accelerate any of the payments required pursuant to the GMP provisions in Exhibit C or otherwise declare those payments not then past due to be immediately due and payable.

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

22.6.2.1.1 An amount determined by a mutually-agreed upon appraiser; or

22.6.2.1.2 If an appraiser cannot be agreed to, an amount equal to the mean between a District appraisal and a Developer appraisal for the Project and Site, both prepared by MAI-certified appraisers.

22.6.2.2 District's obligation to make the payments required pursuant to the GMP provisions indicated in Exhibit C shall be:

22.6.2.2.1 Increased by the amount of costs, expenses, and damages incurred by Developer in re-renting the Project and Site; and

22.6.2.2.2 Decreased by the amount of rent Developer receives in re-letting the Project and Site.

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

22.6.3 **District's Continuing Obligation**

Unless there has been damage, destruction, a Taking, or Developer has acted, failed to act, or is in default as indicated above providing District with the right to terminate for cause, the District shall continue to remain liable for the payments required pursuant to the GMP provisions in Exhibit C and those amounts shall be payable to Developer at the time and in the manner therein provided.

22.6.4 No Remedy Exclusive

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

22.7 Emergency Termination Pursuant to Public Contracts Act of 1949

22.7.1 This Facilities Lease is subject to termination as provided by sections 4410 and 4411 of the Government Code of the State of California, being a portion of the Emergency Termination of Public Contracts Act of 1949.

22.7.1.1 Section 4410 of the Government Code states:

In the event a national emergency occurs, and public work, being performed by contract, is stopped, directly or indirectly, because of the freezing or diversion of materials, equipment or labor, as the result of an order or a proclamation of the President of the United States, or of an order of any federal authority, and the circumstances or conditions are such that it is impracticable within a reasonable time to proceed with a substantial portion of the work, then the public agency and the contractor may, by written agreement, terminate said contract.

22.7.1.2 Section 4411 of the Government Code states:

Such an agreement shall include the terms and conditions of the termination of the contract and provision for the payment of compensation or money, if any, which either party shall pay to the other or any other person, under the facts and circumstances in the case.

22.7.2 Compensation to Developer shall be determined at the sole discretion of District on the basis of the reasonable value of the Work done, including preparatory work. As an exception to the foregoing and at the District's discretion, in the case of any fully completed separate item or portion of the Work for which there is a separate previously submitted unit price or item on the accepted schedule of values, that price may control. The District, at its sole discretion, may adopt the Schedule of Values Price as the value of the work done or any portion thereof.

22.8 Suspension of Work

22.8.1 District in its sole discretion may suspend, delay or interrupt the Work in whole or in part for such period of time as the District may determine upon three (3) days written notice to Developer.

22.8.1.1 An adjustment may be made for changes in the cost of performance of the Work caused by any suspension, delay or interruption. No adjustment shall be made to the extent:

22.8.1.1.1 That performance is, was or would have been so suspended, delayed or interrupted by another cause for which Developer is responsible; or

22.8.1.1.2 That an equitable adjustment is made or denied under another provision of the Site Lease or the Facilities Lease; or

22.8.1.1.3 That the suspension of Work was the direct or indirect result of Developer's failure to perform any of its obligations hereunder.

22.8.1.1.4 The delay could not have been avoided or mitigated by Developer's reasonable diligence.

22.8.1.2 Any adjustments in cost of performance may have a fixed or percentage fee as provided in the section on Format for Proposed Change Order in Exhibit D. This amount shall be full compensation for all Developer's and its Subcontractor(s)' changes in the cost of performance of the Facilities Lease caused by any such suspension, delay or interruption.

23. Limitation of District Liability

District's financial obligations under this Contract shall be limited to the payment of the compensation provided in this Contract. Notwithstanding any other provision of this Contract, in no event shall District be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, lost bonding capacity, arising out of or in connection with this Contract for the services performed in connection with this Contract.

24. Notices

All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed to have been received five (5) days after deposit in the United States mail in registered or certified form with postage fully prepaid or one (1) business day after deposit with an overnight delivery service with proof of actual delivery:

| If to District: | If to Developer: |
|---|---|
| Lodi Unified School District<br>1305 East Vine Street<br>Lodi, CA 95240<br>ATTN: [Name, Title] | [Developer]<br>[Address]<br>Attn: [Name, Title] |
| With a copy to: | |
| Dannis Woliver Kelley<br>444 W. Ocean Blvd., Suite 1750<br>Long Beach, CA 90802<br>ATTN: Luke L. Punnakanta | |

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

25. Binding Effect

This Facilities Lease shall inure to the benefit of and shall be binding upon Developer and District and their respective successors, transferees and assigns.

26. No Additional Waiver Implied by One Waiver

In the event any agreement contained in this Facilities Lease should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

27. Severability

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

28. Amendments, Changes and Modifications

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

29. Net-Net-Net Lease

This Facilities Lease shall be deemed and construed to be a "net-net-net lease" and the District hereby agrees that all payments it makes pursuant to the GMP provisions in Exhibit C shall be an absolute net return to Developer, free and clear of any expenses, charges or set-offs.

30. Execution in Counterparts

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

31. Developer and District Representatives

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

32. Applicable Law

This Facilities Lease shall be governed by and construed in accordance with the laws of the State of California, and venued in the County within which the Site is located.

33. Attorney's Fees

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

34. Captions

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

35. Prior Agreements

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

36. Further Assurances

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

37. Recitals and Exhibits Incorporated

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

38. Time of the Essence

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

39. Interpretation

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

IN WITNESS WHEREOF, the Parties have caused this Facilities Lease to be executed by their respective officers who are duly authorized, as of the Effective Date.

ACCEPTED AND AGREED on the date indicated below:

| | |
|---|---|
| Dated: _____, 20__ | Dated: _____, 20__ |
| Lodi Unified School District | [Developer] |
| By: _____ | By: _____ |
| Name: _____ | Name: _____ |
| Title: _____ | Title: _____ |

# EXHIBIT A

## LEGAL DESCRIPTION OF SITE

Attached is the Legal Description for:

[Name of] Project
[Address]
APN: _____

<INSERT>

# EXHIBIT B

## DESCRIPTION OF PROJECT

Attached is a map or diagram of the Site that is subject to this Facilities Lease and upon which Developer will construct the Project.

<INSERT>

# EXHIBIT C

## GUARANTEED MAXIMUM PRICE AND OTHER PROJECT COST, FUNDING, AND PAYMENT PROVISIONS

Attached are the terms and provisions related to Site Lease payments, the Facilities Lease, the Guaranteed Maximum Price and other related cost, funding, and payment provisions.

# EXHIBIT D

## GENERAL CONSTRUCTION PROVISIONS

Attached are the general construction terms and conditions for the Project.

# EXHIBIT D-1

## SPECIAL CONDITIONS

Attached are the special terms and conditions for the Project.

EXHIBIT E

MEMORANDUM OF COMMENCEMENT DATE

This MEMORANDUM OF COMMENCEMENT DATE is dated _____, 20__, and is made by and between _____ ("Developer"), as Lessor, and the Lodi Unified School District ("District"), as Lessee.

1. Developer and District have previously entered into a Facilities Lease dated as of _____, 20__, (the "Lease") for the leasing by Developer to District of the completed Project in [City], California, referenced in the Lease.

2. District hereby confirms the following:

A. That all construction of the Project required to be performed pursuant to the Facilities Lease has been completed by Developer in all respects;

B. That District has accepted and entered into possession of the Project and now occupies same; and

C. That the term for the Lease Payments under the Facilities Lease commenced on _____, 20__ and will expire at 11:59 P.M. on _____, 20__.

THIS MEMORANDUM OF COMMENCEMENT DATE IS ACCEPTED AND AGREED on the date indicated below:

| | |
|---|---|
| Dated: _____ __ , 20__ | Dated: _____ __ , 20__ |
| Lodi Unified School District | [Developer] |
| By: _____ | By: _____ |
| Name: _____ | Name: _____ |
| Title: _____ | Title: _____ |

# EXHIBIT F

## CONSTRUCTION SCHEDULE

Attached is a detailed Project Construction Schedule with a duration no longer than the Contract Time, and with specific milestones that Developer shall meet.

[To Be Attached.]

# EXHIBIT G

## SCHEDULE OF VALUES

Attached is a detailed Schedule of Values that complies with the requirements of the Construction Provisions (Exhibit "D") and that has been approved by the District.

[To Be Attached.]

# EXHIBIT H

## PROJECT LABOR AGREEMENT

Attached is the Project Labor Agreement applicable to this Project.

# CONTRACT DOCUMENTS

For all or a portion of the following Site:

[Name of] Project
[Address]
APN: _____

By and between

Lodi Unified School District
1305 East Vine Street
Lodi, CA 95240

And

[Developer]
[Address]

Dated as of _____, 20__

PERFORMANCE BOND
(100% of Contract Price)

KNOW ALL PERSONS BY THESE PRESENTS:

WHEREAS, the governing board ("Board") of the Lodi Unified School District ("District") and _____ ("Principal") have entered into a contract for the furnishing of all materials and labor, services and transportation, necessary, convenient, and proper to perform the following project:

_____ Project

("Project" or "Contract") which Contract dated _____, 20__, and all of the Contract Documents attached to or forming a part of the Contract, are hereby referred to and made a part hereof; and

WHEREAS, said Principal is required under the terms of the Contract to furnish a bond for the faithful performance of the Contract.

NOW, THEREFORE, the Principal and _____ _____ ("Surety") are held and firmly bound unto the Board of the District in the penal sum of

_____

Dollars ($_____), lawful money of the United States, 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, to:

- Promptly perform all the work required to complete the Project; and
- Pay to the District all damages the District incurs as a result of the Principal's failure to perform all the Work required to complete the Project.

Or, at the District's sole discretion and election, the Surety shall obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by the District of the lowest responsible bidder, arrange for a contract between such bidder and the District and make available as Work progresses sufficient funds to pay the cost of completion less the "balance of the Contract Price," and to pay and perform all obligations of Principals under the Contract, including, without limitation, all obligations with respect to warranties, guarantees and the payment of liquidated damages. The term "balance of the Contract Price," as used in this paragraph, shall mean the total amount payable to Principal by the District under the Contract and any modifications thereto, less the amount previously paid by the District to the Principal, less any withholdings by the District allowed under the Contract. District shall not be required or obligated to accept a tender of a completion contractor from the Surety for any or no reason.

The condition of the obligation is such that, if the above bounden Principal, his or its heirs, executors, administrators, successors, or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions, and agreements in the Contract and any alteration thereof made as therein provided, on his or its part to be kept and performed at the time and in the intent and meaning, including all contractual guarantees and warrantees of materials and

workmanship, and shall indemnify and save harmless the District, its trustees, officers and agents, as therein stipulated, then this obligation shall become null and void, otherwise it shall be and remain in full force and virtue.

Surety expressly agrees that the District may reject any contractor or subcontractor proposed by Surety to fulfill its obligations in the event of default by the Principal. Surety shall not utilize Principal in completing the Work nor shall Surety accept a Bid from Principal for completion of the Work if the District declares the Principal to be in default and notifies Surety of the District's objection to Principal's further participation in the completion of the Work.

As a condition precedent to the satisfactory completion of the Contract, the above obligation shall hold good for a period equal to the warranty and/or guarantee period of the Contract, during which time Surety's obligation shall continue if Developer shall fail to make full, complete, and satisfactory repair and replacements and totally protect the District from loss or damage resulting from or caused by defective materials or faulty workmanship. The obligations of Surety hereunder shall continue so long as any obligation of Developer remains. Nothing herein shall limit the District's rights or Developer or Surety's obligations under the Contract, law or equity, including, but not limited to, California Code of Civil Procedure section 337.15.

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

IN WITNESS WHEREOF, two (2) identical counterparts of this instrument, each of which shall for all purposes be deemed an original thereof, have been duly executed by the Principal and Surety above named, on the _____ day of _____, 20___.

| | |
|---|---|
| Principal | Surety |
| By | By |
| | Name of California Agent of Surety |
| | Address of California Agent of Surety |
| | Telephone No. of California Agent of Surety |

Developer must attach a Notarial Acknowledgment for all Surety's signatures and a Power of Attorney and Certificate of Authority for Surety. The California Department of Insurance must authorize the Surety to be an admitted surety insurer.

END OF DOCUMENT

# PAYMENT BOND
## Developer's Labor & Material Bond
## (100% of Contract Price)

KNOW ALL PERSONS BY THESE PRESENTS:

WHEREAS, the governing board ("Board") of the Lodi Unified School District ("District") and _____ ("Principal") have entered into a contract for the furnishing of all materials and labor, services and transportation, necessary, convenient, and proper to perform the following project:

_____ Project

("Project" or "Contract") which Contract dated _____, 20__, and all of the Contract Documents attached to or forming a part of the Contract, are hereby referred to and made a part hereof; and

WHEREAS, pursuant to law and the Contract, the Principal is required, before entering upon the performance of the work, to file a good and sufficient bond with the body by which the Contract is awarded in an amount equal to one hundred percent (100%) of the Contract price, to secure the claims to which reference is made in sections 9000 through 9510 and 9550 through 9566 of the Civil Code, and division 2, part 7, of the Labor Code.

NOW, THEREFORE, the Principal and _____ _____ ("Surety") are held and firmly bound unto all laborers, material men, and other persons referred to in said statutes in the sum of _____ Dollars ($_____), lawful money of the United States, being a sum not less than the total amount payable by the terms of Contract, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, or assigns, jointly and severally, by these presents.

The condition of this obligation is that if the Principal or any of his or its subcontractors, of the heirs, executors, administrators, successors, or assigns of any, all, or either of them shall fail to pay for any labor, materials, provisions, provender, 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 required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of the Principal or any of his or its subcontractors of any tier under Section 13020 of the Unemployment Insurance Code with respect to such work or labor, that the Surety will pay the same in an amount not exceeding the amount herein above set forth, and also in case suit is brought upon this bond, will pay a reasonable attorney's fee to be awarded and fixed by the Court, and to be taxed as costs and to be included in the judgment therein rendered.

It is hereby expressly stipulated and agreed that this bond shall inure to the benefit of any and all persons, companies, and corporations entitled to file claims under section 9100 of the Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

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

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

IN WITNESS WHEREOF, two (2) identical counterparts of this instrument, each of which shall for all purposes be deemed an original thereof, have been duly executed by the Principal and Surety above named, on the _____ day of _____, 20___.

| | |
|---|---|
| Principal | Surety |
| By | By |
| | Name of California Agent of Surety |
| | Address of California Agent of Surety |
| | Telephone No. of California Agent of Surety |

Developer must attach a Notarial Acknowledgment for all Surety's signatures and a Power of Attorney and Certificate of Authority for Surety. The California Department of Insurance must authorize the Surety to be an admitted surety insurer.

END OF DOCUMENT

# WORKERS' COMPENSATION CERTIFICATION

Labor Code section 3700, in relevant part, provides:

> Every employer except the State shall secure the payment of compensation in one or more of the following ways:
>
> a. By being insured against liability to pay compensation by one or more insurers duly authorized to write compensation insurance in this state; and/or
>
> b. By securing from the Director of Industrial Relations a certificate of consent to self-insure, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his employees.

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

Date: _____

Proper Name of Developer: _____

Signature: _____

Print Name: _____

Title: _____

(In accordance with Labor Code sections 1860 and 1861, the above certificate must be signed and filed with the awarding body prior to performing any Work under this Contract.)

END OF DOCUMENT

# PREVAILING WAGE AND RELATED LABOR REQUIREMENTS CERTIFICATION

I hereby certify that I will conform to the State of California Public Works Contract requirements regarding prevailing wages, benefits, on-site audits with 48-hours' notice, payroll records, and apprentice and trainee employment requirements, for all Work on the above Project including, without limitation, labor compliance monitoring and enforcement by the Department of Industrial Relations.

Date: _____

Name of Developer: _____

Signature: _____

Print Name: _____

Title: _____

END OF DOCUMENT

# CRIMINAL BACKGROUND INVESTIGATION /FINGERPRINTING CERTIFICATION

The undersigned does hereby certify to the District that I am a representative of the Developer currently under contract with the District; that I am familiar with the facts herein certified; and that I am authorized and qualified to execute this certificate on behalf of Developer.

Developer certifies that it has taken at least one of the following actions (check all that apply):

☐ Pursuant to Education Code section 45125.2(a), Developer has installed or will install, prior to commencement of Work, a physical barrier at the Work Site, that will limit contact between Developer's employees, Subcontractors or suppliers and District pupils at all times; and/or

☐ Pursuant to Education Code section 45125.2(a), Developer certifies that all employees will be under the continual supervision of, and monitored by, an employee of the Developer who the California Department of Justice ("DOJ") has ascertained, or as described below, will ascertain, has not been convicted of a violent or serious felony. The name and title of the employee who will be supervising Developer's and its subcontractors' or suppliers' employees is:

Name: _____

Title: _____

NOTE: If Developer is a sole proprietor, and elects the above option, Developer must have the above-named employee's fingerprints prepared and submitted by District for submission to the DOJ, in accordance with Education Code section 45125.1(h). No work shall commence until such determination by DOJ has been made.

☐ Pursuant to Education Code section 45125.2(a), the District will take appropriate steps to protect the safety of any pupils that may come in contact with Developer's employees, subcontractors or suppliers so that the fingerprinting and criminal background investigation requirements of Education Code section 45125.2 shall not apply to Developer under the Contract.

☐ The Work on the Contract is either (i) at an unoccupied school site and no employee of Developer and/or subcontractor or supplier of any tier of the Contract shall come in contact with the District pupils or (ii) if Developer's employees or any subcontractor or supplier of any tier of the Contract interacts with pupils, such interaction shall only take place under the immediate supervision and control of the pupil's parent or guardian or a school employee, so that the fingerprinting and criminal background investigation requirements of Education Code section 45125.1 shall not apply to Developer under the Contract.

[CONTINUED ON NEXT PAGE]

☐ The Developer, who is not a sole proprietor, has complied with the fingerprinting requirements of Education Code section 45125.1 with respect to all Developer's employees and all of its Subcontractors' employees who may have contact with District pupils in the course of providing services pursuant to the Contract, and the DOJ has determined (A) that none of those employees has been convicted of a felony, as that term is defined in Education Code section 45122.1 and/or (B) that the prohibition does not apply to an employee as provided by Education Code section 45125.1(e)(2) or (3). When the Developer performs the criminal background check, it shall immediately provide any subsequent arrest and conviction information it receives to the District pursuant to the subsequent arrest service. No work shall commence until the Department of Justice ascertains that Developer's employees and any subcontractors' employees have not been convicted of a felony as defined in Education Code Section 45122.1.

A complete and accurate list of Developer's employees and of all of its subcontractors' employees who may come in contact with District pupils during **the course and scope of the Contract is attached hereto as ATTACHMENT "A**;**"** and/or

☐ The Developer is a sole proprietor and intends to comply with the fingerprinting requirements of Education Code section 45125.1(h) with respect to all Developer's employees who may have contact with District pupils in the course of providing services pursuant to the Contract, and hereby agrees to the District's preparation and submission of fingerprints such that the DOJ may determine (A) that none of those employees has been convicted of a felony, as that term is defined in Education Code section 45122.1 and/or (B) that the prohibition does not apply to an employee as provided by Education Code section 45125.1(e)(2) or (3). No work shall commence until the Department of Justice ascertains that Developer's employees and any subcontractors' employees have not been convicted of a felony as defined in Education Code Section 45122.1.

Developer's responsibility for background clearance extends to all of its employees, Subcontractors or suppliers, and employees of Subcontractors or suppliers coming into contact with District pupils regardless of whether they are designated as employees or acting as independent contractors of the Developer.

Date: _____

Proper Name of Developer: _____

Signature: _____

Print Name: _____

Title: _____

[CONTINUED ON NEXT PAGE]

## ATTACHMENT "A"

List of Employees/Subcontractors

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

If further space is required for the list of employees/subcontractors, attach additional copies of this page.

END OF DOCUMENT

# DRUG-FREE WORKPLACE CERTIFICATION

This Drug-Free Workplace Certification form is required from the successful Bidder pursuant to Government Code section 8350 et seq., the Drug-Free Workplace Act of 1990. The Drug-Free Workplace Act of 1990 requires that every person or organization awarded a contract or grant for the procurement of any property or service from any state agency must certify that it will provide a drug-free workplace by doing certain specified acts. In addition, the Act provides that each contract or grant awarded by a state agency may be subject to suspension of payments or termination of the contract or grant, and the contractor or grantee may be subject to debarment from future contracting, if the contracting agency determines that specified acts have occurred.

The District is not a "state agency" as defined in the applicable section(s) of the Government Code, but the District is a local agency and public school district under California law and requires all contractors on District projects to comply with the provisions and requirements of Government Code section 8350 et seq., the Drug-Free Workplace Act of 1990.

Developer shall certify that it will provide a drug-free workplace by doing all of the following:

a. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the person's or organization's workplace and specifying actions which will be taken against employees for violations of the prohibition.

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

   (1) The dangers of drug abuse in the workplace.

   (2) The person's or organization's policy of maintaining a drug-free workplace.

   (3) The availability of drug counseling, rehabilitation, and employee-assistance programs.

   (4) The penalties that may be imposed upon employees for drug abuse violations.

c. Requiring that each employee engaged in the performance of the contract or grant be given a copy of the statement required above, and that, as a condition of employment on the contract or grant, the employee agrees to abide by the terms of the statement.

I, the undersigned, agree to fulfill the terms and requirements of Government Code section 8355 listed above and will publish a statement notifying employees concerning (a) the prohibition of controlled substance at the workplace, (b) establishing a drug-free awareness program, and (c) requiring that each employee engaged in the performance of the Contract be given a copy of the statement required by section 8355(a), and requiring that the employee agree to abide by the terms of that statement.

I also understand that if the District determines that I have either (a) made a false certification herein, or (b) violated this certification by failing to carry out the requirements of section 8355, that the Contract awarded herein is subject to termination, suspension of payments, or both. I further understand that, should I violate the terms of the Drug-Free Workplace Act of 1990, I may be subject to debarment in accordance with the requirements of the aforementioned Act.

I acknowledge that I am aware of the provisions of Government Code section 8350 et seq. and hereby certify that I will adhere to the requirements of the Drug-Free Workplace Act of 1990.

Date: _____

Proper Name of Developer: _____

Signature: _____

Print Name: _____

Title: _____

END OF DOCUMENT

# TOBACCO-FREE ENVIRONMENT CERTIFICATION

Pursuant to, without limitation, 20 U.S.C. section 6083, Labor Code section 6400 et seq., Health & Safety Code section 104350 et seq., and District Board policies, all District sites, including the Project site, are tobacco-free environments. Smoking and the use of tobacco products by all persons is prohibited on or in District property. District property includes school buildings, school grounds, school-owned vehicles and vehicles owned by others while on District property.

I acknowledge that I am aware of the District's policy regarding tobacco-free environments at District sites, including the Project site and hereby certify that I will adhere to the requirements of that policy and not permit any of my firm's employees, agents, subcontractors, or my firm's subcontractors' employees or agents, to use tobacco and/or smoke on the Project site.

Date: _____

Proper Name of Developer: _____

Signature: _____

Print Name: _____

Title: _____

END OF DOCUMENT

# DRUG AND ALCOHOL-FREE SCHOOLS CERTIFICATION

Pursuant to, without limitation, District Board policies, all District sites, including the Project site, are drug and alcohol-free schools. Possession, use, or dale of drugs and alcohol is prohibited at any time in district-owned or leased buildings, on district property, and in district vehicles unless otherwise permitted by law.

I acknowledge that I am aware of the District's policy regarding drug and alcohol-free schools, including the Project site and hereby certify that I will adhere to the requirements of that policy and not permit any of my firm's employees, agents, subcontractors, or my firm's subcontractors' employees or agents, to possess, use or sell:

1. Any substance which may not lawfully be possessed, used, or sold in California.

2. Cannabis or cannabis products (Health and Safety Code, § 11362.3; 21 USC §§ 812, 844).

3. Alcohol beverages, unless approved by the Superintendent or designee for limited purposes specified in Business and Professions Code section 25608.

Date: _____

Proper Name of Developer: _____

Signature: _____

Print Name: _____

Title: _____

END OF DOCUMENT

# DISABLED VETERAN BUSINESS ENTERPRISE PARTICIPATION CERTIFICATION

## GENERAL INSTRUCTIONS

Section 17076.11 of the Education Code requires school districts using, or planning to use, funds allocated pursuant to the State of California School Facility Program ("Program") for the construction and/or modernization of school buildings to have a participation goal for disabled veteran business enterprises ("DVBE") of at least three percent (3%) per year of the overall dollar amount expended each year by the school district on projects that receive state funding. Therefore, lowest responsive responsible bidder awarded the Contract must submit this document to the District after issuance of the Notice of Award After Guaranteed Maximum Price, identifying the steps Developer took to solicit DVBE participation in conjunction with this Contract. Do not submit this form with your bids.

PART I – Method of Compliance with DVBE Participation Goals. Check the appropriate box to indicate your method of committing the contract dollar amount.

| YOUR BUSINESS ENTERPRISE IS: | AND YOU WILL | AND YOU WILL |
|---|---|---|
| ☐ Disabled veteran owned and your forces will perform at least 3% of this Contract | Include a copy of your DVBE letter from Office of Small Business and Disabled Veterans Business Enterprise Services ("OSB")* | Complete Part 1 of this form and the Certification |
| ☐ Disabled veteran owned but is unable to perform 3% of this Contract with your forces | Use DVBE subcontractors /suppliers to bring the Contract participation to at least 3% | Include a copy of each DVBE's letter from OSB (including yours, if applicable), and complete Part 1 of this form and the certification |
| ☐ NOT disabled veteran owned | Use DVBE subcontractors /suppliers for at least 3% of this Contract | |
| ☐ Unable to meet the required participation goals after good faith efforts | Make good faith efforts, including contacts, advertisement and DVBE solicitation | Complete all of this form and the Certification |

* A DVBE letter from OSB is obtained from the participating DVBE.

You must complete the following table to show the dollar amount of DVBE participation:

| | TOTAL CONTRACT PRICE |
|---|---|
| A. Prime Bidder, if DVBE (own participation) | $ |
| DVBE Subcontractor or Supplier | |
| | |
| | |
| | |
| | |
| Subtotal (A & B) | |
| Non-DVBE | |
| Total Bid | |

PART II – Contacts. To identify DVBE subcontractors/suppliers for participation in your contract, you must contact each of the following categories. You should contact several DVBE organizations.

| CATEGORY | TELEPHONE NUMBER | DATE CONTACTED | PERSON CONTACTED |
|---|---|---|---|
| The District, if any | | | * |
| OSB, which publishes a list of DVBE's; Internet Address: http://www.dgs.ca.gov/osbcr | (916) 323-5478<br>(916) 322-5060 | | * |
| DVBE Organization (List) | | | * |
| | | | |
| | | | |
| | | | |

*Write "recorded message" in this column, if applicable.

PART III – Advertisement. You must advertise for DVBE participation in both a trade and focus paper. List the advertisement you place to solicit DVBE participation. Advertisements should be published at least fourteen (14) days prior to bid/proposal opening; if you cannot advertise fourteen (14) days prior, advertisements should be published as soon as possible. Advertisements must include that your firm is seeking DVBE participation, the project name and location, and you firm's name, your contact person, and telephone number. Attach copies of advertisements to this form.

| FOCUS/TRADE PAPER NAME | CHECK ONE | | DATE OF ADVERTISEMENT |
|---|---|---|---|
| | TRADE | FOCUS | |
| | | | |
| | | | |

PART IV – DVBE Solicitations. List DVBE subcontractors/suppliers that were invited to bid. Use the following instructions to complete the remainder of this section (read the three columns as a sentence from left to right). If you need additional space to list DVBE solicitations, please use a separate page and attach to this form.

| **IF THE DVBE…..** | **THEN…..** | **AND…..** |
|---|---|---|
| was selected to participate | Check "yes" in the "SELECTED" column | include a copy of their DVBE letter(s) from OSB |
| was NOT selected to participate | Check "NO" in the "SELECTED" column | state why in the "REASON NOT SELECTED" column |
| did not respond to your solicitation | Check the "NO RESPONSE" column. | |

| DISABLED VETERANS BUSINESS ENTERPRISES CONTACTED | SELECTED | | REASON NOT SELECTED | NO RESPONSE |
|---|---|---|---|---|
| | YES | NO | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |

A copy of this form must be retained by you and may be subject to a future audit.

## CERTIFICATION

I, _____ certify that I am Developer's _____ and that I have made a diligent effort to ascertain the facts with regard to the representations made herein.

Date: _____

Name of Developer: _____

Signature: _____

Print Name: _____

Title: _____

END OF DOCUMENT

# ROOFING PROJECT CERTIFICATION

This form shall be executed by all contractors, materials manufacturers, or vendors involved in a bid or proposal for the repair or replacement of a roof of a public school building where the project is either for repair of more than 25% of the roof or that has a total cost more than $21,000 ("roofing project") and submitted to the District when the award is made.

Certification of: □ Contractor □ Materials Manufacturer
□ Vendor □ Other _____

I, _____, _____, certify that I have not
[Name] [Name of Firm]
offered, given, or agreed to give, received, accepted, or agreed to accept, any gift, contribution, or any financial incentive whatsoever to or from any person in connection with the roofing project contract. As used in this certification, "person" means any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals.

Furthermore, I, _____, _____, certify that
[Name] [Name of Firm]
I do not have, and throughout the duration of the contract, I will not have, any financial relationship in connection with the performance of this contract with any architect, engineer, roofing consultant, materials manufacturer, distributor, or vendor that is not disclosed below.

I, _____, _____, have the following
[Name] [Name of Firm]
financial relationships with an architect, engineer, roofing consultant, materials manufacturer, distributor, or vendor, or other person in connection with the following roofing project contract (provide Name and Address of Building, and Contract Date and Number):

By my signature below, I hereby certify that, to the best of my knowledge, the contents of this disclosure are true, or are believed to be true. I further certify on behalf of the Firm that I am aware of section 3000 et seq. of the California Public Contract Code, and the sections referenced therein regarding the penalties for providing false information or failing to disclose a financial relationship in this disclosure. I further certify that I am authorized to make this certification on behalf of the Firm.

Date: _____

Proper Name of Firm: _____

Signature: _____

Print Name: _____

Title: _____

END OF DOCUMENT

# HAZARDOUS MATERIALS
# PROCEDURES & REQUIREMENTS

## 1. Summary

This document includes information applicable to hazardous materials and hazardous waste abatement.

## 2. Notice of Hazardous Waste or Materials

a. Developer shall give notice in writing to the District, the Construction Manager, and the Architect promptly, before any of the following materials are disturbed, and in no event later than twenty-four (24) hours after first observance, of any:

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

(2) Other material that may present a substantial danger to persons or property exposed thereto in connection with Work at the site.

b. Developer's written notice shall indicate whether the hazardous waste or material was shown or indicated in the Contract Documents to be within the scope of Work, and whether the materials were brought to the site by Developer, its Subcontractors, suppliers, or anyone else for whom Developer is responsible. As used in this section the term "hazardous materials" shall include, without limitation, asbestos, lead, Polychlorinated biphenyl (PCB), petroleum and related hydrocarbons, and radioactive material.

c. In response to Developer's written notice, the District shall investigate the identified conditions.

d. If the District determines that conditions do not involve hazardous materials or that no change in terms of Contract is justified, the District shall so notify Developer in writing, stating reasons. If the District and Developer cannot agree on whether conditions justify an adjustment in Contract Price or Contract Time, or on the extent of any adjustment, Developer shall proceed with the Work as directed by the District.

e. If after receipt of notice from the District, Developer does not agree to resume Work based on a reasonable belief it is unsafe, or does not agree to resume Work under special conditions, then District may order such portion of Work that is in connection with such hazardous condition or such affected area to be deleted from the Work, or performed by others, or District may invoke its rights to terminate the Contract in whole or in part. District will determine entitlement to or the amount or extent of an adjustment, if any, in Contract Price or Contract Time as a result of deleting such portion of Work, or performing the Work by others.

f. If Developer stops Work in connection with any hazardous condition and in any area affected thereby, Developer shall immediately redeploy its workers, equipment, and materials, as necessary, to other portions of the Work to minimize delay and disruption.

3. Additional Warranties and Representations

a. Developer represents and warrants that it, its employees, and its subcontractors and their employees, shall at all times have the required levels of familiarity with the Site and the Work, training, and ability to comply fully with all applicable laws and contractual requirements for safe and expeditious performance of the Work, including whatever training is or may be required regarding the activities to be performed (including, but not limited to, all training required to address adequately the actual or potential dangers of Contract performance).

b. Developer represents and warrants that it, its employees, and its subcontractors and their employees, shall at all times have and maintain in good standing any and all certifications and licenses required by applicable federal, state, and other governmental and quasi-governmental requirements applicable to the Work.

c. Developer represents and warrants that it has studied carefully all requirements of the Specifications regarding procedures for demolition, hazardous waste abatement, or safety practices, specified in the Contract, and prior to submitting its bid, has either (a) verified to its satisfaction that the specified procedures are adequate and sufficient to achieve the results intended by the Contract Documents, or (b) by way of approved "or equal" request or request for clarification and written Addenda, secured changes to the specified procedures sufficient to achieve the results intended by the Contract Documents. Developer accepts the risk that any specified procedure will result in a completed Project in full compliance with the Contract Documents.

4. Monitoring and Testing

a. District reserves the right, in its sole discretion, to conduct air monitoring, earth monitoring, Work monitoring, and any other tests (in addition to testing required under the agreement or applicable law), to monitor Contract requirements of safe and statutorily compliant work methods and (where applicable) safe re-entry level air standards under state and federal law upon completion of the job, and compliance of the work with periodic and final inspection by public and quasi-public entities having jurisdiction.

b. Developer acknowledges that District has the right to perform, or cause to be performed, various activities and tests including, but not limited to, pre-abatement, during abatement, and post-abatement air monitoring, that District shall have no obligation to perform said activities and tests, and that a portion of said activities and tests may take place prior to the completion of the Work by Developer. In the event District elects to perform these activities and tests, Developer shall afford District ample access to the Site and all areas of the Work as may be necessary for the performance of these activities and tests.

Developer will include the potential impact of these activities or tests by District in the Contract Price and the Scheduled Completion Date.

c. Notwithstanding District's rights granted by this paragraph, Developer may retain its own industrial hygiene consultant at Developer's own expense and may collect samples and may perform tests including, but not limited to, pre-abatement, during abatement, and post-abatement personal air monitoring, and District reserves the right to request documentation of all such activities and tests performed by Developer relating to the Work and Developer shall immediately provide that documentation upon request.

5. Compliance with Laws

a. Developer shall perform safe, expeditious, and orderly work in accordance with the best practices and the highest standards in the hazardous waste abatement, removal, and disposal industry, the applicable law, and the Contract Documents, including, but not limited to, all responsibilities relating to the preparation and return of waste shipment records, all requirements of the law, delivering of all requisite notices, and obtaining all necessary governmental and quasi-governmental approvals.

b. Developer represents that it is familiar with and shall comply with all laws applicable to the Work or completed Work including, but not limited to, all federal, state, and local laws, statutes, standards, rules, regulations, and ordinances applicable to the Work relating to:

(1) The protection of the public health, welfare and environment;

(2) Storage, handling, or use of asbestos, PCB, lead, petroleum based products, radioactive material, or other hazardous materials;

(3) The generation, processing, treatment, storage, transport, disposal, destruction, or other management of asbestos, PCB, lead, petroleum, radioactive material, or hazardous waste materials or other waste materials of any kind; and

(4) The protection of environmentally sensitive areas such as wetlands and coastal areas.

6. Disposal

a. Developer has the sole responsibility for determining current waste storage, handling, transportation, and disposal regulations for the job Site and for each waste disposal facility. Developer must comply fully at its sole cost and expense with these regulations and any applicable law. District may, but is not obligated to, require submittals with this information for it to review consistent with the Contract Documents.

b. Developer shall develop and implement a system acceptable to District to track hazardous waste from the Site to disposal, including appropriate "Hazardous Waste Manifests" on the EPA form, so that District may track the volume of waste it put in each landfill and receive from each landfill a certificate of receipt.

c. Developer shall provide District with the name and address of each waste disposal facility prior to any disposal, and District shall have the express right to reject any proposed disposal facility. Developer shall not use any disposal facility to which District has objected. Developer shall document actual disposal or destruction of waste at a designated facility by completing a disposal certificate or certificate of destruction forwarding the original to the District.

7. Permits

a. Before performing any of the Work, and at such other times as may be required by applicable law, Developer shall deliver all requisite notices and obtain the approval of all governmental and quasi-governmental authorities having jurisdiction over the Work. Developer shall submit evidence satisfactory to District that it and any disposal facility:

(1) have obtained all required permits, approvals, and the like in a timely manner both prior to commencement of the Work and thereafter as and when required by applicable law; and

(2) are in compliance with all such permits, approvals and the regulations.

For example, before commencing any work in connection with the Work involving asbestos-containing materials, or PCBs, or other hazardous materials subject to regulation, Developer agrees to provide the required notice of intent to renovate or demolish to the appropriate state or federal agency having jurisdiction, by certified mail, return receipt requested, or by some other method of transmittal for which a return receipt is obtained, and to send a copy of that notice to District. Developer shall not conduct any Work involving asbestos-containing materials or PCBs unless Developer has first confirmed that the appropriate agency having jurisdiction is in receipt of the required notification. All permits, licenses, and bonds that are required by governmental or quasi-governmental authorities, and all fees, deposits, tap fees, offsite easements, and asbestos and PCB disposal facilities expenses necessary for the prosecution of the Work, shall be procured and paid for by Developer. Developer shall give all notices and comply with the all applicable laws bearing on the conduct of the Work as drawn and specified. If Developer observes or reasonably should have observed that Plans and Specifications and other Contract Documents are at variance therewith, it shall be responsible for promptly notifying District in writing of such fact. If Developer performs any Work contrary to applicable laws, it shall bear all costs arising therefrom.

b. In the case of any permits or notices held in District's name or of necessity to be made in District's name, District shall cooperate with Developer in securing the permit or giving the notice, but Developer shall prepare for District review and execution upon approval, all necessary applications, notices, and other materials.

8. Indemnification

To the fullest extent permitted by law, the indemnities and limitations of liability expressed throughout the Contract Documents apply with equal force and effect to any claims or liabilities imposed or existing by virtue of the removal, abatement, and disposal of hazardous waste. This includes, but is not limited to, liabilities connected to the selection and use of a waste disposal facility, a waste transporter, personal injury, property damage, loss of use of property, damage to the environment or natural resources, or "disposal" and "release" of materials associated with the Work (as defined in 42 U.S.C. § 960l *et seq*.).

9. Termination

District shall have an absolute right to terminate for default immediately without notice and without an opportunity to cure should Developer knowingly or recklessly commit a material breach of the terms of the Contract Documents, or any applicable law, on any matter involving the exposure of persons or property to hazardous waste. However, if the breach of contract exposing persons or property to hazardous waste is due solely to an ordinary, unintentional, and non-reckless failure to exercise reasonable care, then the procedures for termination for cause shall apply without modification.

END OF DOCUMENT

# HAZARDOUS MATERIALS CERTIFICATION

1. Developer hereby certifies that no asbestos, or asbestos-containing materials, polychlorinated biphenyl (PCB), or any material listed by the federal or state Environmental Protection Agency or federal or state health agencies as a hazardous material, or any other material defined as being hazardous under federal or state laws, rules, or regulations ("New Hazardous Material"), shall be furnished, installed, or incorporated in any way into the Project or in any tools, devices, clothing, or equipment used to affect any portion of Developer's work on the Project for District.

2. Developer further certifies that it has instructed its employees with respect to the above-mentioned standards, hazards, risks, and liabilities.

3. Asbestos and/or asbestos-containing material shall be defined as all items containing but not limited to chrysotile, crocidolite, amosite, anthophyllite, tremolite, and actinolite. Any or all material containing greater than one-tenth of one percent (0.1%) asbestos shall be defined as asbestos-containing material.

4. Any disputes involving the question of whether or not material is New Hazardous Material shall be settled by electron microscopy or other appropriate and recognized testing procedure, at the District's determination. The costs of any such tests shall be paid by Developer if the material is found to be New Hazardous Material.

5. All Work or materials found to be New Hazardous Material or Work or material installed with equipment containing New Hazardous Material will be immediately rejected and this Work will be removed at Developer's expense at no additional cost to the District.

6. Developer has read and understood the document titled, "Hazardous Materials Procedures & Requirements" and shall comply with all the provisions outlined therein.

7. Developer certifies that it is knowledgeable of, and shall comply with, all laws applicable to the Work including, but not limited to, all federal, state, and local laws, statutes, standards, rules, regulations, and ordinances applicable to the Work.

Date: _____

Proper Name of Developer: _____

Signature: _____

Print Name: _____

Title: _____

END OF DOCUMENT

# LEAD-BASED MATERIALS CERTIFICATION

This certification provides notice to Developer that:

(1) Developer's work may disturb lead-containing building materials.

(2) Developer shall notify the District if any work may result in the disturbance of lead-containing building materials.

(3) Developer shall comply with the Renovation, Repair and Painting Rule, if lead-based paint is disturbed in a six-square-foot or greater area indoors or a 20-square-foot or greater area outdoors.

## 1. Lead as a Health Hazard

Lead poisoning is recognized as a serious environmental health hazard facing children today. Even at low levels of exposure, much lower than previously believed, lead can impair the development of a child's central nervous system, causing learning disabilities, and leading to serious behavioral problems. Lead enters the environment as tiny lead particles and lead dust disburses when paint chips, chalks, peels, wears away over time, or is otherwise disturbed. Ingestion of lead dust is the most common pathway of childhood poisoning; lead dust gets on a child's hands and toys and then into a child's mouth through common hand-to-mouth activity. Exposures may result from construction or remodeling activities that disturb lead paint, from ordinary wear and tear of windows and doors, or from friction on other surfaces.

Ordinary construction and renovation or repainting activities carried out without lead-safe work practices can disturb lead-based paint and create significant hazards. Improper removal practices, such as dry scraping, sanding, or water blasting painted surfaces, are likely to generate high volumes of lead dust.

Because Developer and its employees will be providing services for the District, and because Developer's work may disturb lead-containing building materials, DEVELOPER IS HEREBY NOTIFIED of the potential presence of lead-containing materials located within certain buildings utilized by the District. All school buildings built prior to 1978 are presumed to contain some lead-based paint until sampling proves otherwise.

## 2. Overview of California Law

Education Code section 32240 et seq. is known as the Lead-Safe Schools Protection Act. Under this act, the Department of Health Services is to conduct a sample survey of schools in the State of California for the purpose of developing risk factors to predict lead contamination in public schools. (Ed. Code, § 32241.)

Any school that undertakes any action to abate existing risk factors for lead is required to utilize trained and state-certified contractors, inspectors, and workers. (Ed. Code, § 32243, subd. (b).) Moreover, lead-based paint, lead plumbing, and solders, or other potential sources of lead contamination, shall not be utilized in the construction of any new school facility or the modernization or renovation of any existing school facility. (Ed. Code, § 32244.)

Both the Federal Occupational Safety and Health Administration ("Fed/OSHA") and the California Division of Occupational Safety and Health ("Cal/OSHA") have implemented

safety orders applicable to all construction work where a contractor's employee may be occupationally exposed to lead.

The OSHA Regulations apply to all construction work where a contractor's employee may be occupationally exposed to lead. The OSHA Regulations contain specific and detailed requirements imposed on contractors subject to those regulations. The OSHA Regulations define construction work as work for construction, alteration, and/or repair, including painting and decorating. Regulated work includes, but is not limited to, the following:

a. Demolition or salvage of structures where lead or materials containing lead are present;

b. Removal or encapsulation of materials containing lead;

c. New construction, alteration, repair, or renovation of structures, substrates, or portions thereof, that contain lead, or materials containing lead;

d. Installation of products containing lead;

e. Lead contamination/emergency cleanup;

f. Transportation, disposal, storage, or containment of lead or materials containing lead on the site or location at which construction activities are performed; and

g. Maintenance operations associated with the construction activities described in the subsection.

Because it is assumed by the District that all painted surfaces (interior as well as exterior) within the District contain some level of lead, it is imperative that Developer, its workers and subcontractors fully and adequately comply with all applicable laws, rules and regulations governing lead-based materials (including title 8, California Code of Regulations, section 1532.1).

Developer shall notify the District if any Work may result in the disturbance of lead-containing building materials. Any and all Work that may result in the disturbance of lead-containing building materials shall be coordinated through the District. A signed copy of this Certification shall be on file prior to beginning Work on the Project, along with all current insurance certificates.

3. Renovation, Repair and Painting Rule, Section 402(c)(3) of the Toxic Substances Control Act

The EPA requires lead safe work practices to reduce exposure to lead hazards created by renovation, repair and painting activities that disturb lead-based paint. Pursuant to the Renovation, Repair and Painting Rule (RRP), renovations in homes, childcare facilities, and schools built prior to 1978 must be conducted by certified renovations firms, using renovators with training by a EPA-accredited training provider, and fully and adequately complying with all applicable laws, rules and regulations governing lead-based materials, including those rules and regulations appearing within title 40 of the Code of Federal Regulations as part 745 (40 CFR 745).

The RRP requirements apply to all contractors who disturb lead-based paint in a six-square-foot or greater area indoors or a 20-square-foot or greater area outdoors. If a DPH-certified

inspector or risk assessor determines that a home constructed before 1978 is lead-free, the federal certification is not required for anyone working on that particular building.

4. Developer's Liability

If Developer fails to comply with any applicable laws, rules, or regulations, and that failure results in a site or worker contamination, Developer will be held solely responsible for all costs involved in any required corrective actions, and shall defend, indemnify, and hold harmless the District, pursuant to the indemnification provisions of the Contract, for all damages and other claims arising therefrom.

If lead disturbance is anticipated in the Work, only persons with appropriate accreditation, registrations, licenses, and training shall conduct this Work.

It shall be the responsibility of Developer to properly dispose of any and all waste products, including, but not limited to, paint chips, any collected residue, or any other visual material that may occur from the prepping of any painted surface. It will be the responsibility of Developer to provide the proper disposal of any hazardous waste by a certified hazardous waste hauler. This company shall be registered with the Department of Transportation (DOT) and shall be able to issue a current manifest number upon transporting any hazardous material from any school site within the District.

Developer shall provide the District with any sample results prior to beginning Work, during the Work, and after the completion of the Work. The District may request to examine, prior to the commencement of the Work, the lead training records of each employee of Developer.

DEVELOPER HEREBY ACKNOWLEDGES, UNDER PENALTY OF PERJURY, THAT IT:

1. HAS RECEIVED NOTIFICATION OF POTENTIAL LEAD-BASED MATERIALS ON THE OWNER'S PROPERTY;

2. IS KNOWLEDGEABLE REGARDING AND WILL COMPLY WITH ALL APPLICABLE LAWS, RULES, AND REGULATIONS GOVERNING WORK WITH, AND DISPOSAL, OF LEAD.

THE UNDERSIGNED WARRANTS THAT HE/SHE HAS THE AUTHORITY TO SIGN ON BEHALF OF AND BIND DEVELOPER. THE DISTRICT MAY REQUIRE PROOF OF SUCH AUTHORITY.

Date: _____

Proper Name of Developer: _____

Signature: _____

Print Name: _____

Title: _____

END OF DOCUMENT

# IMPORTED MATERIALS CERTIFICATION

This form shall be executed by all entities that, in any way, provide or deliver and/or supply any soils, aggregate, or related materials ("Fill") to the Project Site and shall be provided to the District at least ten (10) days before delivery. All Fill shall satisfy all requirements of any environmental review of the Project performed pursuant to the statutes and guidelines of the California Environmental Quality Act, section 21000 et seq. of the Public Resources Code ("CEQA"), and all requirements of section 17210 et seq. of the Education Code, including requirements for a Phase I environmental assessment acceptable to the State of California Department of Education and Department of Toxic Substances Control.

Certification of: □ Delivery Firm/Transporter □ Supplier □ Manufacturer
□ Wholesaler □ Broker □ Retailer
□ Distributor □ Other _____

Type of Entity □ Corporation □ General Partnership
□ Limited Partnership □ Limited Liability Company
□ Sole Proprietorship □ Other _____

Name of firm ("Firm"): _____

Mailing address: _____

Addresses of branch office used for this Project: _____

If subsidiary, name and address of parent company: _____

_____

By my signature below, I hereby certify that I am aware of section 25260 of the Health and Safety Code and the sections referenced therein regarding the definition of hazardous material. I further certify on behalf of the Firm that all soils, aggregates, or related materials provided, delivered, and/or supplied or that will be provided, delivered, and/or supplied by this Firm to the Project Site are free of any and all hazardous material as defined in section 25260 of the Health and Safety Code. I further certify that I am authorized to make this certification on behalf of the Firm.

Date: _____

Proper Name of Firm: _____

Signature: _____

Print Name: _____

Title: _____

END OF DOCUMENT

# SKILLED AND TRAINED WORKFORCE CERTIFICATION

The undersigned does hereby certify to the governing board of the District as follows:

That I am a representative of Developer currently performing work on the Project; that I am familiar with the facts herein certified; and that I am authorized and qualified to execute this certificate on behalf of Developer.

That Developer and its subcontractors at every tier will use a Skilled and Trained Workforce to perform all work on the Contract or Project that falls within an apprenticeable occupation in the building and construction trades in accordance with Public Contract Code section 2600 et seq.

"Apprenticeable occupation" means an occupation for which the Chief of the Division of Apprenticeship Standards of the Department of Industrial Relations ("Chief") had approved an apprenticeship program pursuant to Section 3075 of the Labor Code before January 1, 2014.

"Skilled and Trained Workforce" means a workforce that meets all of the following conditions:

1. All of the workers are either skilled journeypersons or apprentices registered in an apprenticeship program approved by the Chief.

2. The percentage of either (A) skilled journeypersons employed by Developer or subcontractor to perform work on the Contract or Project who are graduates of an apprenticeship program for the applicable occupation, or (B) hours of work performed by skilled journeypersons employed by Developer or subcontractor to perform work on the Contract or Project who are graduates of an apprenticeship program for the applicable occupation, is at least equal to the percentages set forth in the following chart for the applicable month:

| REQUIREMENT | EXCLUDED OCCUPATIONS |
|---|---|
| 0% | Teamster |
| At least 30% | Acoustical installer, bricklayer, carpenter, cement mason, drywall installer or lather, marble mason, finisher, or setter, modular furniture or systems installer, operating engineer, pile driver, plasterer, roofer or waterproofer, stone mason, surveyor, terrazzo worker or finisher, and tile layer, setter, or finisher |
| At least 60% | Remaining apprenticeable occupations |

3. For an apprenticeable occupation in which no apprenticeship program has been approved by the Chief before January 1, 1995, up to one-half of the above graduation percentage requirements set forth in the above chart may be satisfied by skilled journeypersons who commenced working in the apprenticeable occupation before the Chief's approval of an apprenticeship program for that occupation in the county in which the Project is located.

4. The contractor or subcontractor need not meet the apprenticeship graduation requirements if:

   a. During a calendar month, Developer or subcontractor employs skilled journeypersons to perform fewer than 10 hours of work on the Contract or Project; or

   b. The subcontractor was not a listed subcontractor under Public Contract Code section 4104 or a substitute for a listed subcontractor and the subcontract does not exceed one-half of 1 percent of the price of the prime contract.

That Developer and its subcontractors will demonstrate its compliance with the Skilled and Trained Workforce requirements by either of the following methods (check what applies):

☐ Using the form attached hereto, provide monthly reports to the District from Developer and its subcontractors demonstrating that they are complying with the requirements of Public Contract Code section 2600 et seq., which shall be a public record under California Public Records Act, Government Code section 6250 et seq.; or

☐ Provide evidence that Developer and its subcontractors have agreed to be bound by: (1) a project labor agreement entered into by the District that binds all contractors and all its subcontractors at every tier performing work on the Project to use a skilled and trained workforce; (2) the extension or renewal of a project labor agreement entered into by the District prior to January 1, 2017; or (3) a project labor agreement that binds all contractors and all its subcontractors at every tier performing work on the Project to use a skilled and trained workforce.

I hereby certify that I am aware of the provisions of section 17407.5 of the Education Code and sections 2600 through 2602 of the Public Contract Code and will comply with such provisions during the performance of the Work of this Contract and will bind all of my subcontractors at every tier, with the exception of the subcontractors identified in Public Contract Code section 2602, to comply with such provisions.

Date: _____

Proper Name of Developer: _____

Signature: _____

Print Name: _____

Title: _____

SKILLED AND TRAINED WORKFORCE

# MONTHLY REPORT

(COVER PAGE)

NAME OF PROJECT: _____

NAME OF CONTRACTOR: _____

FOR THE MONTH OF: _____, 20_____

The undersigned hereby certifies that all the workers employed by the above-referenced contractor performing work in an apprenticeable occupation in the building and construction trades on the Project are either skilled journeypersons or apprentices registered in an apprenticeship program approved by the Chief of the Division of Apprenticeship Standards of the Department of Industrial Relations.

The undersigned further certifies that the percentage of either (A) skilled journeypersons employed by the above-referenced contractor to perform work on the Project who are graduates of an apprenticeship program for the applicable occupation, or (B) hours of work performed by skilled journeypersons employed by the above-referenced contractor to perform work on the Project who are graduates of an apprenticeship program for the applicable occupation, is at least equal to the apprenticeship graduation percentage required by Public Contract Code section 2601 for the particular calendar month.

The undersigned has demonstrated compliance with the apprenticeship graduation percentage by completing the accompanying Worksheet(s). A true and correct Worksheet for each apprenticeable occupation in the building and construction trades utilized by the above-referenced contractor for the particular calendar month is attached hereto, totaling _____ attached page(s).

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

Date: _____

Signature: _____

Print Name: _____

Title: _____

SKILLED AND TRAINED WORKFORCE
MONTHLY REPORT
(WORKSHEET)

NAME OF PROJECT: _____

NAME OF CONTRACTOR: _____

FOR THE MONTH OF: _____20__

Page ___ of ___ (Duplicate as needed. Submit a separate Worksheet for each apprenticeable occupation in the building and construction trades utilized by contractor.)

*Apprenticeable occupation: _____.

A. If above-identified occupation is *acoustical installer, bricklayer, carpenter, cement mason, drywall installer or lather, marble mason, finisher, or setter, modular furniture or systems installer, operating engineer, pile driver, plasterer, roofer or waterproofer, stone mason, surveyor, terrazzo worker or finisher, and tile layer, setter, or finisher*, the apprenticeship graduation percentage requirement is at least 30 percent.

B. If the above-identified occupation is any other apprenticeable occupation, *excluding teamsters and occupations listed in subparagraph A, above*, the apprenticeship graduation percentage requirement is at least at least 30 percent in 2017, 40 percent in 2018, 50 percent in 2019, 60 percent in 2020.

Demonstrate compliance for the above-identified occupation by either Number of Skilled Journeypersons or Number of Hours of Work Performed by Skilled Journeypersons. Check and complete the method of compliance that applies:

☐ Number of Skilled Journeypersons:

1. Number of skilled journeypersons performing work in the apprenticeable occupation: _____
2. Number of skilled journeypersons who are graduates of an apprenticeship program for the applicable occupation: _____

Percentage of skilled journeypersons who are graduates of an apprenticeship program for the applicable occupation (divide line 2 by line 1): _____ %

☐ Number of Hours of Work Performed by Skilled Journeypersons:

1. Number of hours of work performed by skilled journeypersons in the apprenticeable occupation: _____
2. Number of hours of work performed by skilled journeypersons who are graduates of an apprenticeship program for the applicable occupation: _____

Percentage of hours of work performed by skilled journeypersons who are graduates of an apprenticeship program for the applicable occupation (divide line 2 by line 1): _____ %

*This Worksheet incorporates by reference all definitions in Public Contract Code section 2601, including, without limitation, the definitions of "apprenticeable occupation," "graduate of an apprenticeship program," and "skilled journeypersons."

END OF DOCUMENT

# REGISTERED SUBCONTRACTORS LIST
## (Labor Code Section 1771.1)

PROJECT: _____

Date Submitted (for Updates): _____

Developer acknowledges and agrees that it must clearly set forth below the name and Department of Industrial Relations (DIR) registration number of each subcontractor for all tiers who will perform work or labor or render service to Developer or its subcontractors in or about the construction of the Work at least two (2) weeks before the subcontractor is scheduled to perform work. This document is to be updated as all tiers of subcontractors are identified.

Developer acknowledges and agrees that, if Developer fails to list as to any subcontractor of any tier who performs any portion of Work, the Contract is subject is subject to cancellation and Developer will be subjected to penalty under applicable law.

If further space is required for the list of proposed subcontractors, attach additional copies of page 2 showing the required information, as indicated below.

Subcontractor Name: _____

DIR Registration #: _____

Portion of Work: _____

Subcontractor Name: _____

DIR Registration #: _____

Portion of Work: _____

Subcontractor Name: _____

DIR Registration #: _____

Portion of Work: _____

Subcontractor Name: _____

DIR Registration #: _____

Portion of Work: _____

Subcontractor Name: _____

DIR Registration #: _____

Portion of Work: _____

Subcontractor Name: _____

DIR Registration #: _____

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Subcontractor Name: _____

DIR Registration #: _____

Portion of Work: _____

Subcontractor Name: _____

DIR Registration #: _____

Portion of Work: _____

Subcontractor Name: _____

DIR Registration #: _____

Portion of Work: _____

Date: _____

Proper Name of Developer: _____

Signature: _____

Print Name: _____

Title: _____

END OF DOCUMENT

# ESCROW AGREEMENT IN LIEU OF RETENTION
Public Contact Code Section 22300

This Escrow Agreement ("Escrow Agreement") is made and entered into this _____ day of _____, 20___, by and between the Lodi Unified School District ("District"), whose address is 1305 East Vine Street, Lodi, CA 95240, and _____ ("Developer"), whose address is _____, and _____ ("Escrow Agent"), a state or federally chartered bank in the state of California, whose address is _____.

For the consideration hereinafter set forth, District, Developer, and Escrow Agent agree as follows:

1. Pursuant to section 22300 of Public Contract Code of the State of California, which is hereby incorporated by reference, Developer has the following two (2) options:

   ☐ Deposit securities with Escrow Agent as a substitute for retention earnings required to be withheld by District pursuant to the Construction Contract No.___ entered into between District and Developer for the _____ Project, in the amount of _____ Dollars ($_____), dated _____, 20__, (the "Contract"); or

   ☐ On written request of Developer, District shall make payments of the retention earnings for the above referenced Contract directly to Escrow Agent.

   When Developer deposits the securities as a substitute for Contract earnings (first option), Escrow Agent shall notify District within ten (10) calendar days of the deposit. The market value of the securities at the time of substitution and at all times from substitution until the termination of the Escrow Agreement shall be at least equal to the cash amount then required to be withheld as retention under terms of Contract between District and Developer.

   Securities shall be held in name of Lodi Unified School District, and shall designate Developer as beneficial owner.

2. District shall make progress payments to Developer for those funds which otherwise would be withheld from progress payments pursuant to Contract provisions, provided that Escrow Agent holds securities in form and amount specified above.

3. When District makes payment of retention earned directly to Escrow Agent, Escrow Agent shall hold them for the benefit of Developer until the time that the escrow created under this Escrow Agreement is terminated. Developer may direct the investment of the payments into securities. All terms and conditions of this Escrow Agreement and the rights and responsibilities of the Parties shall be equally applicable and binding when District pays Escrow Agent directly.

4. Developer shall be responsible for paying all fees for the expenses incurred by Escrow Agent in administering the Escrow Account, and all expenses of District. The District will charge Developer $_____ for each of District's deposits to the escrow account. These expenses and payment terms shall be determined by District, Developer, and Escrow Agent.

5. Interest earned on securities or money market accounts held in escrow and all interest earned on that interest shall be for sole account of Developer and shall be subject to withdrawal by Developer at any time and from time to time without notice to District.

6. Developer shall have the right to withdraw all or any part of the principal in the Escrow Account only by written notice to Escrow Agent accompanied by written authorization from District to Escrow Agent that District consents to withdrawal of amount sought to be withdrawn by Developer.

7. District shall have the right to draw upon the securities and/or withdraw amounts from the Escrow Account in the event of default by Developer. Upon seven (7) days' written notice to Escrow Agent from District of the default, if applicable, Escrow Agent shall immediately convert the securities to cash and shall distribute the cash as instructed by District.

8. Upon receipt of written notification from District certifying that the Contract is final and complete, and that Developer has complied with all requirements and procedures applicable to the Contract, Escrow Agent shall release to Developer all securities and interest on deposit less escrow fees and charges of the Escrow Account. The escrow shall be closed immediately upon disbursement of all monies and securities on deposit and payments of fees and charges.

9. Escrow Agent shall rely on written notifications from District and Developer pursuant to Paragraphs 5 through 8, inclusive, of this Escrow Agreement and District and Developer shall hold Escrow Agent harmless from Escrow Agent's release and disbursement of securities and interest as set forth above.

[CONTINUED ON FOLLOWING PAGE]

10. Names of persons who are authorized to give written notice or to receive written notice on behalf of District and on behalf of Developer in connection with the foregoing, and exemplars of their respective signatures are as follows:

On behalf of District:

_____
Title

_____
Name

_____
Signature

_____
Address

On behalf of Developer:

_____
Title

_____
Name

_____
Signature

_____
Address

On behalf of Escrow Agent:

_____
Title

_____
Name

_____
Signature

_____
Address

At the time that the Escrow Account is opened, District and Developer shall deliver to Escrow Agent a fully executed copy of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement by their proper officers on the date first set forth above.

On behalf of District:

_____
Title

_____
Name

_____
Signature

_____
Address

On behalf of Developer:

_____
Title

_____
Name

_____
Signature

_____
Address

END OF DOCUMENT

# NOTICE OF AWARD

DATED: _____ 20__

TO: _____ ("Developer")
[ADDRESS]

PROJECT: [Name Of] Project

CONTRACT NO.: _____ between the Lodi Unified School District ("District") and Developer ("Contract").

Developer has been awarded the above-referenced Contract on _____, 20__, by act of the District's Board.

Developer shall execute and submit to District the following documents by no later than 5:00 p.m. on the SEVENTH (7th) calendar day following the date of this Notice of Award.

1.1 Insurance Certificates and Endorsements as required.

1.2 Registered Subcontractors List (Initial List): Include any designated Subcontractors of any tier from Developer's proposal. To be amended/supplemented following Subcontractor bidding.

1.3 Workers' Compensation Certification.

1.4 Prevailing Wage and Related Labor Requirements Certification.

1.5 Criminal Background Investigation/Fingerprinting Certification.

1.6 Drug-Free Workplace Certification.

1.7 Tobacco-Free Environment Certification.

1.8 Roofing Project Certification.

1.9 Hazardous Materials Certification.

1.10 Lead-Based Materials Certification.

1.11 Imported Materials Certification.

1.12 Skilled and Trained Workforce Certification.

1.13 Escrow Agreement in Lieu of Retention (if used).

After Developer's timely compliance with those conditions, District will return a fully signed counterpart of the Contract and may then issue the Notice to Proceed with Preconstruction Services for the Project.

LODI UNIFIED SCHOOL DISTRICT

BY: _____

NAME: _____

TITLE: _____

END OF DOCUMENT

# NOTICE TO PROCEED WITH PRECONSTRUCTION SERVICES

DATED: _____ 20__

TO: _____ ("Developer")
[ADDRESS]

PROJECT: _____

CONTRACT NO.: _____ between the Lodi Unified School District ("District") and Developer ("Contract").

Developer is hereby notified that the Contract Time under the above Contract will commence to run on _____, 20___. By that date, Developer is to start performing its preconstruction services for the Project.

Preconstruction services will conclude upon approval of the Pro-Construction Contract or termination of this Contract by either party per the Contract's terms.

No work for which a contractor is required to be licensed in accordance with the Business and Professions Code and for which Division of the State Architect (DSA) approval is required can be performed before receipt of DSA approval.

Developer shall not commence construction of the Project until the Notice to Proceed with Construction is issued by District following approval of the Amendment to the Facilities Lease by District's Board.

Thank you. We look forward to a very successful Project.

LODI UNIFIED SCHOOL DISTRICT

BY: _____

NAME: _____

TITLE: _____

END OF DOCUMENT

# NOTICE OF AWARD AFTER GUARANTEED MAXIMUM PRICE

DATED: _____ 20__

TO: _____ ("Developer")
[ADDRESS]

PROJECT:

CONTRACT NO.: _____ between the Lodi Unified School District ("District") and Developer ("Contract").

Amendment No. 1 to the Facilities Lease for the above-referenced Contract has been approved on _____, 20__, by act of the District's Board. The Guaranteed Maximum Price ("GMP") for the Project is _____ Dollars ($_____).

Developer shall fully execute the following documents on the forms provided in the Contract Documents as indicated on the forms and submit the same to District by no later than 5:00 p.m. on the SEVENTH (7th) calendar day following the date of this Notice of Amendment.

1.1 Site Lease

1.2 Facilities Lease

1.3 Registered Subcontractors List (Final List).

1.4 Performance Bond (100% of GMP).

1.5 Payment Bond (Contractor's Labor & Material Bond) (100% of GMP).

1.6 Disabled Veterans Business Enterprise Participation Certification.

After Developer's timely compliance with those conditions, District may then issue the Notice to Proceed with Construction for the Project.

LODI UNIFIED SCHOOL DISTRICT

BY: _____

NAME: _____

TITLE: _____

END OF DOCUMENT

# NOTICE TO PROCEED WITH CONSTRUCTION

DATED: _____ 20__

TO: _____ ("Developer")
[ADDRESS]

PROJECT: _____

CONTRACT NO.: _____ between the Lodi Unified School District ("District") and Developer ("Contract").

Developer is hereby notified that the construction phase of the Project will commence on ___ _____, 20___. In accordance with the Contract, Developer shall complete the Work by no later than _____, 20___.

Developer must submit the following documents by 5:00 p.m. on the TENTH (10th) calendar day following the date of this Notice to Proceed with Construction, and in no event later than the FIRST (1st) day on which Developer has workers employed on the construction phase of the Project:

1.1 Developer's preliminary schedule of construction.

1.2 Developer's preliminary schedule of values for all of the Work.

1.3 Developer's preliminary schedule of submittals, including Shop Drawings, Product Data, and Samples.

1.4 Developer's Safety Plan specifically adapted for the Project.

1.5 Registered Subcontractors List: A complete subcontractors list for all tiers, including the name, Department of Industrial Relations registration number, and portion of work.

Thank you. We look forward to a very successful Project.

LODI UNIFIED SCHOOL DISTRICT

BY: _____

NAME: _____

TITLE: _____

END OF DOCUMENT

# APPLICATION AND CERTIFICATE FOR PAYMENT

TO:

PROJECT:

JOB:

FROM:

ARCHITECT:

APPLICATION NO:

INVOICE NO:

PERIOD TO:

PROJECT NO:

DSA FILE NO:

CONTRACT DATE:

Distribution to:

- ☐ OWNER
- ☐ ARCHITECT
- ☐ CONTRACTOR
- ☐ INSPECTOR OF RECORD
- ☐ 3RD PARTY INSPECTOR
- ☐ DISBURSEMENT AGENCY

## DEVELOPER'S APPLICATION FOR PAYMENT

Application is made for Payment as shown below, in connection with the Contract Continuation Sheet, is attached.

1. ORIGINAL CONTRACT SUM $_____
2. Net change by Change Orders $_____
3. CONTRACT SUM TO DATE $_____
4. TOTAL COMPLETED & STORED TO DATE $_____
5. Lease Payment (1/3 of Total Lease Payments for last 3 pay applications) $_____
6. Total TI Payments Earned: (Line 4 less Line 5) $_____
7. Retainage:
   a. 5% of Total TI Payment $_____
8. TOTAL EARNED LESS Lease Payment & Retainage (Line 6 less Line 7) $_____
9. LESS PREVIOUS APPLICATIONS FOR PAYMENT $_____
10. CURRENT PAYMENT DUE $_____
11. Balance to Finish, Plus Lease Pmt & Retainage (Line 3 less Line 8) $_____

| CHANGE ORDER SUMMARY | ADDITIONS | DEDUCTIONS |
|---|---|---|
| Total changes approved in previous months by District | | |
| Total approved this month | | |
| NET CHANGES by Change Orders | | |

The undersigned Developer certifies that to the best of the Developer's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Developer for Work for which previous Certificates for Payment were issued and payments received from the District, and that current payment shown herein is now due. We certify that the Surety for this project has been notified of the amount of this request.

DEVELOPER:

By:_____ Date:_____
[NAME, TITLE]

Notary Public: _____ My Commission Expires: _____
Name: _____

## ARCHITECT'S CERTIFICATE FOR PAYMENT

RECOMMENDED FOR CERTIFICATION

By:_____ Date:_____
NAME: _____

In accordance with the Contract Documents, based on on-site observations and the data comprising the above application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Developer is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED $_____

*(Attach explanation if amount certified differs from the amount applied. Initial all figures on this Application and on the Continuation Sheet that are changed to conform with the amount certified.)*

ARCHITECT:

By:_____ Date:_____

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Developer named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the District or Developer under this Contract.

California All-Purpose Certificate of Acknowledgment

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )
) ss.
COUNTY OF _____ )

On _____, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal.

Signature of Notary Public:_____ (Seal)

# CONTINGENCY EXPENDITURE DIRECTIVE

Project: _____ Date: _____
Bid No.: _____ DSA File No.:_____
PCO No.: _____ DSA Appl. No._____

You are hereby directed to proceed with the following change(s) in this Contract:

| |
|---|
| |

(Contractor documentation supporting proper completion of work must be attached.)

| | |
|---|---|
| Total Contract Contingency Amount: | $ |
| Amount of Previously Approved Contingency Expenditure Directive(s): | $ |
| Amount of this Contingency Expenditure Directive: | $ |

The undersigned Contractor approves the foregoing release of Contingency for completion of each specified item, and agrees to furnish all labor, materials and services and perform all work necessary to complete any additional work specified for the consideration stated therein ("Work"). Submission of sums which have no basis in fact or which Contractor knows are false are at the sole risk of Contractor and may be a violation of the False Claims Act set forth under Government Code section 12650, et seq. This Contingency Expenditure Directive must be signed by an authorized District representative. It is expressly understood that the authorized contingency expenditure granted herein represents a full accord and satisfaction for any and all cost impacts of the items herein, and Contractor waives any and all further compensation based on the items herein. The value of the extra work or changes expressly includes any and all of the Contractor's costs and expenses, and its subcontractors, both direct and indirect. Any costs, expenses, or damages not included are deemed waived.

Signatures:

| | |
|---|---|
| DISTRICT:<br><br>LODI UNIFIED SCHOOL DISTRICT<br><br>Date: _____<br><br>By:_Edith Holbert, Executive Director of Ops. | CONTRACTOR:<br><br>_____<br><br>Date: _____<br><br>By:_____<br>[Print Name and Title here] |
| ARCHITECT:<br><br>_____<br><br>Date: _____<br><br>By:_____<br>[Print Name and Title here] | CM:<br><br>_____<br><br>Date: _____<br><br>By:_____<br>[Print Name and Title here] |

# ALLOWANCE EXPENDITURE DIRECTIVE

Project: _____ Date: _____
Bid No.: _____ DSA File No.:_____
PCO No.: _____ DSA Appl. No._____

You are hereby directed to proceed with the following change(s) in this Contract:

| |
|---|
| |

(Contractor documentation supporting proper completion of work must be attached.)

| | |
|---|---|
| Total Contract Allowance Amount: | $ |
| Amount of Previously Approved Allowance Expenditure Directive(s): | $ |
| Amount of this Allowance Expenditure Directive: | $ |

The undersigned Contractor approves the foregoing release of Allowance for completion of each specified item, and agrees to furnish all labor, materials and services and perform all work necessary to complete any additional work specified for the consideration stated therein ("Work"). Submission of sums which have no basis in fact or which Contractor knows are false are at the sole risk of Contractor and may be a violation of the False Claims Act set forth under Government Code section 12650, et seq. This Allowance Expenditure Directive must be signed by an authorized District representative. It is expressly understood that the authorized allowance expenditure granted herein represents a full accord and satisfaction for any and all cost impacts of the items herein, and Contractor waives any and all further compensation based on the items herein. The value of the extra work or changes expressly includes any and all of the Contractor's costs and expenses, and its subcontractors, both direct and indirect. Any costs, expenses, or damages not included are deemed waived.

Signatures:

| | |
|---|---|
| DISTRICT:<br><br>LODI UNIFIED SCHOOL DISTRICT<br><br>Date: _____<br><br>By:_Edith Holbert, Executive Director of Ops. | CONTRACTOR:<br><br>_____<br><br>Date: _____<br><br>By:_____<br>[Print Name and Title here] |
| ARCHITECT:<br><br>_____<br><br>Date: _____<br><br>By:_____<br>[Print Name and Title here] | CM:<br><br>_____<br><br>Date: _____<br><br>By:_____<br>[Print Name and Title here] |

# DAILY FORCE ACCOUNT REPORT

From: Developer
[Name/Address]

To: Owner
Lodi Unified School District
1305 East Vine Street
Lodi, CA 95240

Project: _____

Developer hereby submits this Daily Force Account Report for Work performed, pursuant to Force Account Directive No. _____, on _____.
[Date of Work]

Developer attests that the material, labor, and equipment itemized herein were used only on the force account work.

A. Material: *Attach all applicable invoices not provided in prior Daily Force Account Reports and complete the information below.*

| Description | Unit Price | Quantity | Cost |
|---|---|---|---|
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |

Daily subtotal (w/out markup): $_____

B. Labor: *Labor must be fully Burdened. Attach timesheets, if applicable, and complete the information below.*

| Name | Craft | Regular Hrs. | Rate | OT Hrs. | Rate |
|---|---|---|---|---|---|
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |

Daily subtotal (w/out markup): $_____

C. Equipment: *Attach all applicable invoices not provided in prior Daily Force Account Reports and complete the information below.*

| Type / Model | Hrs. Operated | Rate |
|---|---|---|
| | | |
| | | |
| | | |
| | | |
| | | |

Daily subtotal (w/out markup): $_____

*Complete based on information reported above.*

| | WORK PERFORMED OTHER THAN BY DEVELOPER | ADD |
|---|---|---|
| (a) | Material | |
| (b) | Add Labor | |
| (c) | Add Equipment | |
| (d) | Subtotal | |
| (e) | Add overhead and profit for any and all tiers of Subcontractor, the total not to exceed ten percent (10%) of Item (d) | |
| (f) | Subtotal | |
| (g) | Add Overhead and Profit for Developer, not to exceed five percent (5%) of Item (f) | |
| (h) | Subtotal | |
| (i) | Add Bond and Insurance, not to exceed two percent (2%) of Item (h) | |
| (j) | TOTAL | |

| | WORK PERFORMED BY DEVELOPER | ADD |
|---|---|---|
| (a) | Material | |
| (b) | Add Labor | |
| (c) | Add Equipment | |
| (d) | Subtotal | |
| (e) | Add Overhead and Profit for Developer, not to exceed fifteen percent (15%) of Item (d) | |
| (f) | Subtotal | |
| (g) | Add Bond and Insurance, not to exceed two percent (2%) of Item (f) | |
| (h) | TOTAL | |

Submission of sums which have no basis in fact or which Developer knows are false are at the sole risk of Developer and may be a violation of the False Claims Act (Gov. Code, § 12650 et seq.).

It is expressly understood that all force account work for the date stated above must be reported herein, and Developer may not claim any labor, equipment, material or any other costs or expenses not reported herein. Developer is not entitled to separately recover amounts for overhead or other indirect costs. Any costs, expenses, or damages, not included are deemed waived.

| SUBMITTED BY: | | REVIEWED BY: | |
|---|---|---|---|
| Developer: | | District: | |
| [Name] | Date | [Name] | Date |

District may require additional information from Developer to review this Daily Force Account Report. Upon District's return of the Daily Force Account Report, Developer may invoice the Work reflected therein. District's review and return of the Daily Force Account Report and/or payment for the force account work does not constitute acceptance of the Work or waiver of any Contract rights or criteria.

END OF DOCUMENT

# PROPOSED CHANGE ORDER FORM

Lodi Unified School District
1305 East Vine Street
Lodi, CA 95240

| PCO NO.: |
| --- |
| |

Project:
Bid No.:
RFI #:

Date:
DSA File No.:
DSA Appl. No.:

Developer hereby submits for District's review and evaluation this Proposed Change Order ("PCO"), submitted in accordance with and subject to the terms of the Contract Documents, including Sections 17.7 and 17.8 of the General Conditions. Any spaces left blank below are deemed no change to cost or time.

Developer understands and acknowledges that documentation supporting Developer's PCO must be attached and included for District review and evaluation. Developer further understands and acknowledges that failure to include documentation sufficient to, in District's discretion, support some or all of the PCO, shall result in a rejected PCO.

| | WORK PERFORMED OTHER THAN BY DEVELOPER | ADD | DEDUCT |
| --- | --- | --- | --- |
| (a) | Material (attach suppliers' invoice or itemized quantity and unit cost plus sales tax) | | |
| (b) | Add Labor (attach itemized hours and rates, fully Burdened, and specify the hourly rate for each additional labor burden, i.e., payroll taxes, fringe benefits, etc.) | | |
| (c) | Add Equipment (attach suppliers' invoice) | | |
| (d) | Subtotal | | |
| (e) | Add overhead and profit for any and all tiers of Subcontractor, the total not to exceed ten percent (10%) of Item (d) | | |
| (f) | Subtotal | | |
| (g) | Add General Conditions (if Time is Compensable) (attach supporting documentation) | | |
| (h) | Subtotal | | |
| (i) | Add Overhead and Profit for Developer, not to exceed _____ percent (___%) of Item (h) | | |
| (j) | Subtotal | | |
| (k) | Add Bond and Insurance, not to exceed _____ percent (___%) of Item (j) | | |
| (l) | TOTAL | | |

*[REMAINDER OF PAGE LEFT BLANK INTENTIONALLY]*

| | WORK PERFORMED BY DEVELOPER | ADD | DEDUCT |
|---|---|---|---|
| (a) | Material (attach itemized quantity and unit cost plus sales tax) | | |
| (b) | Add Labor (attach itemized hours and rates, fully Burdened, and specify the hourly rate for each additional labor burden, i.e., payroll taxes, fringe benefits, etc.) | | |
| (c) | Add Equipment (attach suppliers' invoice) | | |
| (d) | Add General Conditions (if Time is Compensable) (attach supporting documentation) | | |
| (e) | Subtotal | | |
| (f) | Add Overhead and Profit for Developer, not to exceed _____ percent (___%) of Item (e) | | |
| (g) | Subtotal | | |
| (h) | Add Bond and Insurance, not to exceed _____ percent (___%) of Item (g) | | |
| (i) | TOTAL | | |

The undersigned Developer approves the foregoing as to the changes, if any, to the Contract Price specified for each item, and as to the extension of time allowed, if any, for completion of the entire Work as stated herein, and agrees to furnish all labor, materials, and service, and perform all work necessary to complete any additional work specified for the consideration stated herein. Submission of sums which have no basis in fact or which Developer knows are false are at the sole risk of Developer and may be a violation of the False Claims Act set forth under Government Code section 12650 *et seq*. It is understood that the changes herein to the Contract shall only be effective when approved by the governing board of the District.

It is expressly understood that the value of the extra Work or changes expressly includes any and all of Developer's costs and expenses, direct and indirect, resulting from additional time required on the Project or resulting from delay to the Project including, without limitation, cumulative impacts. Developer is not entitled to separately recover amounts for overhead or other indirect costs. Any costs, expenses, damages, or time extensions not included are deemed waived.

SUBMITTED BY:

Developer:

_____ _____
[Name] Date

END OF DOCUMENT

CHANGE ORDER FORM

Lodi Unified School District
1305 East Vine Street
Lodi, CA 95240

| CHANGE ORDER NO.: |
| --- |
| |

# CHANGE ORDER

Project: _____
Bid No.: _____

Date: _____
DSA File No.: _____
DSA Appl. No.:_____

The following parties agree to the terms of this Change Order:

Owner: Lodi Unified School District

Developer: _____
[Name / Address]
_____
_____

Architect: _____
[Name / Address]
_____
_____

Project Inspector: _____
[Name / Address]
_____
_____

| Reference | Description | Cost | Days Ext. |
| --- | --- | --- | --- |
| PCO #<br>Requested by:<br>Performed by:<br>Reason: | [Description of change]<br>[Requester]<br>[Performer]<br>[Reason] | $ | |
| PCO #<br>Requested by:<br>Performed by:<br>Reason: | [Description of change]<br>[Requester]<br>[Performer]<br>[Reason] | $ | |
| PCO #<br>Requested by:<br>Performed by:<br>Reason: | [Description of change]<br>[Requester]<br>[Performer]<br>[Reason] | $ | |

| | | |
| --- | --- | --- |
| Contract time will be adjusted as follows:<br><br>Previous Completion Date: [Date]<br><br>[#] Calendar Days Extension (zero unless otherwise indicated)<br><br>Current Completion Date: [Date] | Original Contract Amount: | $ |
| | Amount of Previously Approved Change Order(s): | $ |
| | Amount of this Change Order: | $ |
| | Contract Amount: | $ |

The undersigned Developer approves the foregoing as to the changes, if any, to the Contract Price specified for each item, and as to the extension of time allowed, if any, for completion of the entire work as stated therein, and agrees to furnish all labor, materials and services

and perform all work necessary to complete any additional work specified for the consideration stated therein. Submission of sums which have no basis in fact or which Developer knows are false are at the sole risk of Developer and may be a violation of the False Claims Act set forth under Government Code section 12650 et seq.

This change order is subject to approval by the governing board of this District and must be signed by the District. Until such time as this change order is approved by the District's governing board and executed by a duly authorized District representative, this change order is not effective and not binding.

It is expressly understood that the compensation and time, if any, granted herein represent a full accord and satisfaction for any and all time and cost impacts of the items herein, and Developer waives any and all further compensation or time extension based on the items herein. The value of the extra work or changes expressly includes any and all of Developer's costs and expenses, and its subcontractors, both direct and indirect, resulting from additional time required on the project or resulting from delay to the project including without limitation, cumulative impacts. Any costs, expenses, damages or time extensions not included are deemed waived.

Signatures:

| District: | | Developer: | |
|---|---|---|---|
| [Name] | Date | [Name] | Date |
| Architect: | | Project Inspector: | |
| [Name] | Date | [Name] | Date |

END OF DOCUMENT

# GUARANTEE FORM

_____ ("Developer") hereby agrees that the _____ ("Work" of Developer) which Developer has installed for the Lodi Unified School District ("District") for the following project:

_____ Project

("Project" or "Contract") has been performed in accordance with the requirements of the Contract Documents and that the Work as installed will fulfill the requirements of the Contract Documents.

The undersigned agrees to repair or replace any or all of such Work that may prove to be defective in workmanship or material together with any other adjacent Work that may be displaced in connection with such replacement within a period of _____ year(s) from the date of completion as defined in Public Contract Code section 7107, subdivision (c), ordinary wear and tear and unusual abuse or neglect excepted. The date of completion is _____, 20___.

In the event of the undersigned's failure to comply with the above-mentioned conditions within a reasonable period of time, as determined by the District, but not later than seven (7) days after being notified in writing by the District, the undersigned authorizes the District to proceed to have said defects repaired and made good at the expense of the undersigned. The undersigned shall pay the costs and charges therefor upon demand.

Date: _____

Name of Developer: _____

Signature: _____

Print Name: _____

Title: _____

Representatives to be contacted for service subject to terms of Contract:

Name: _____

Address: _____

Phone Number: _____

Email: _____

END OF DOCUMENT

# AGREEMENT AND RELEASE OF ANY AND ALL CLAIMS

THIS AGREEMENT AND RELEASE OF CLAIMS ("Agreement and Release") IS MADE AND ENTERED INTO THIS _____ DAY OF _____, 20___ by and between the Lodi Unified School District ("District") and _____ ("Developer"), whose place of business is _____.

## RECITALS

WHEREAS, District and Developer entered into a Facilities Lease and Site Lease for the following project: _____ Project ("Contract" or "Project") in the County of _____, California.

WHEREAS, The Work under the Contract was completed on _____, 20___ and a Notice of Completion was recorded with the County Recorder on _____, 20___.

NOW, THEREFORE, it is mutually agreed between District and Developer as follows:

## AGREEMENT

1. Developer will only be assessed liquidated damages as detailed below:

| | |
|---|---|
| Original Guaranteed Maximum Price | $_____ |
| Modified Guaranteed Maximum Price | $_____ |
| Payment to Date | $_____ |
| Liquidated Damages | $_____ |
| Payment Due Developer | $_____ |

2. Subject to the provisions hereof, District shall forthwith pay to Developer the undisputed sum of _____ Dollars ($_____) under the Contract for Tenant Improvement Payments, less any amounts represented by any notice to withhold funds on file with District as of the date of such payment.

3. Developer acknowledges and hereby agrees that there are no unresolved or outstanding claims in dispute against District arising from the performance of work under the Contract, except for the claims described in Paragraph 4 and continuing obligations described in Paragraph 6. It is the intention of the parties in executing this Agreement and Release that this Agreement and Release shall be effective as a full, final and general release of all claims, demands, actions, causes of action, obligations, costs, expenses, damages, losses and liabilities of Developer against District and all of its respective agents, employees, trustees, inspectors, assignees, consultants and transferees, except for the Lease Payments under the Contract, any Disputed Claim that may be set forth in Paragraph 4 and the continuing obligations described in Paragraph 6 hereof.

4. The following claims are disputed (hereinafter, the "Disputed Claims") and are specifically excluded from the operation of this Agreement and Release:

| Claim No. | Description of Claim | Amount of Claim | Date Claim Submitted |
|---|---|---|---|
| _____ | _____ | $_____ | _____ |
| _____ | _____ | $_____ | _____ |
| _____ | _____ | $_____ | _____ |
| _____ | _____ | $_____ | _____ |

[If further space is required, attach additional sheets showing the required information.]

5. Consistent with California Public Contract Code section 7100, Developer hereby agrees that, in consideration of the payment set forth in Paragraph 2 hereof, Developer hereby releases and forever discharges District, all its agents, employees, inspectors, assignees, and transferees from any and all liability, claims, demands, actions, or causes of action of whatever kind or nature arising out of or in any way concerned with the Work under the Contract, except for the Lease Payments.

6. Guarantees and warranties for the Work, duty to defend, indemnify and hold harmless the District, and any other continuing obligation of Developer, shall remain in full force and effect as specified in the Contract Documents.

7. Except as provided for specifically herein, Developer hereby waives the provisions of California Civil Code section 1542 which provides as follows:

> A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

8. The provisions of this Agreement and Release are contractual in nature and not mere recitals and shall be considered independent and severable. If any such provision or any part thereof shall be at any time held invalid in whole or in part under any federal, state, county, municipal, or other law, ruling, or regulations, then such provision, or part thereof, shall remain in force and effect to the extent permitted by law, and the remaining provisions of this Agreement and Release shall also remain in full force and effect, and shall be enforceable.

9. All rights of District shall survive completion of the Work or termination of Contract, and execution of this Release.

* * * CAUTION: THIS IS A RELEASE - READ BEFORE EXECUTING * * *

LODI UNIFIED SCHOOL DISTRICT:

Signature: _____

Print Name: _____

Title: _____

DEVELOPER:

Signature: _____

Print Name: _____

Title: _____

END OF DOCUMENT

**APPENDIX C-1**

**NON-COLLUSION DECLARATION**
**(Public Contract Code Section 7106)**

The undersigned declares:

I am the _____ of _____, the party making the foregoing
[Title] [Name of Firm]
bid/proposal.

The bid/proposal is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The bid/proposal is genuine and not collusive or sham. The bidder/proposer has not directly or indirectly induced or solicited any other bidder/proposer to put in a false or sham bid. The bidder/proposer has not directly or indirectly colluded, conspired, connived, or agreed with any bidder/proposer or anyone else to put in a sham bid/proposal, or to refrain from bidding/proposing. The bidder/proposer has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid/proposal price of the bidder/proposer or any other bidder/proposer, or to fix any overhead, profit, or cost element of the bid/proposal price, or of that of any other bidder/proposer. All statements contained in the bid/proposal are true. The bidder/proposer has not, directly or indirectly, submitted his or her bid/proposal price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof, to effectuate a collusive or sham bid/proposal, and has not paid, and will not pay, any person or entity for such purpose.

Any person executing this declaration on behalf of a bidder/proposer that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of the bidder/proposer.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on _____,
[Date]
at _____, _____.
[City] [State]

Signature: _____

Print Name: _____

Title: _____

END OF DOCUMENT

## APPENDIX C-2

## IRAN CONTRACTING ACT CERTIFICATION
## (Public Contract Code Sections 2202-2208)

Prior to bidding on or submitting a proposal for a contract for goods or services of $1,000,000 or more, the bidder/proposer must submit this certification pursuant to Public Contract Code section 2204.

The bidder/proposer must complete **ONLY ONE** of the following two options. To complete OPTION 1, check the corresponding box **and** complete the certification below. To complete OPTION 2, check the corresponding box, complete the certification below, and attach documentation demonstrating the exemption approval.

☐ **OPTION 1.** Bidder/Proposer is not on the current list of persons engaged in investment activities in Iran created by the California Department of General Services ("DGS") pursuant to Public Contract Code section 2203(b), and we are not a financial institution extending twenty million dollars ($20,000,000) or more in credit to another person, for 45 days or more, if that other person will use the credit to provide goods or services in the energy sector in Iran and is identified on the current list of persons engaged in investment activities in Iran created by DGS.

☐ **OPTION 2.** Bidder/Proposer has received a written exemption from the certification requirement pursuant to Public Contract Code sections 2203(c) and (d). *A copy of the written documentation demonstrating the exemption approval is included with our bid/proposal.*

**CERTIFICATION:**

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY, that I am duly authorized to legally bind the bidder/proposer to the OPTION selected above. This certification is made under the laws of the State of California.

| *Vendor Name/Financial Institution (Printed)* | *Federal ID Number (or n/a)* |
|---|---|
| *By (Authorized Signature)* | |
| *Printed Name and Title of Person Signing* | *Date Executed* |

END OF DOCUMENT

## APPENDIX C-3

## OFF-ROAD DIESEL-FUELED FLEET CERTIFICATION

Title 13 CCR sections 2449, 2449.1, and 2449.2, in compliance with Government Code sections 11346.2, subdivision (a)(3), and 11346.8, subdivision (c), applies to construction contractors who own or operate within California any vehicles with a diesel-fueled or alternative diesel fueled off-road compression-ignition engine with maximum power (max hp) of 25 horsepower (hp) or greater provided that the vehicle cannot be registered and driven safely on-road or was not designed to be driven on-road, even if it has been modified so that it can be driven safely on-road.

Section 2449(i), in relevant part, provides:

(1) For a project involving the use of vehicles subject to this regulation, the prime contractor must obtain copies of the valid Certificate of Reported Compliance with the Regulation for In-Use Off-Road Diesel-Fueled Fleets for the fleet selected for the contract and their listed subcontractors, if applicable, prior to entering into a new or renewed contract with that fleet.

(2) No prime contractor or public works awarding body, as applicable, shall enter into a contract with a fleet for which it does not have a valid Certificate of Reported Compliance for the fleet and its listed subcontractors, if applicable, prior to entering into a new or renewed contract with that fleet.

(3) The Certificates of Reported Compliance received by the prime contractor for a project must be retained for three (3) years after that project's completion. Upon request by California Air Resources Board ("CARB"), these records must be provided to CARB within five (5) business days of the request.

(4) Situations in which prime contractors or public works awarding bodies, as applicable, are contracting for projects that are considered emergency operations, as defined in section 2449(c)(18), are exempt from the requirements in section 2449(i)(1)-(3), but must still retain records verifying vehicles subject to the regulation that are operating on the emergency operations project are actually being operated on the project for emergency operations only. These records must include a description of the emergency, the address or a description of the specific location of the emergency, the dates on which the emergency operations were performed, and an attestation by the fleet that the vehicles are operated on the project for emergency operations only.

Section 2449(j), in relevant part, also states:

(1) Between March 1 and June 1 of each year, a prime contractor must collect new valid Certificates of Reported Compliance for the current compliance year, as defined in section 2449(n), from all fleets that have an ongoing contract with the prime contractor as of March 1 of that year. Prime contractors must not write contracts to evade this requirement.

(2) Prime contractors shall only allow fleets with valid Certificates of Reported Compliance on the prime contractor's job sites.

(3) If the prime contractor discovers that any fleet intending to operate vehicles subject to this regulation for the prime contractor does not have a valid Certificate of Reported Compliance, as defined in section 2449(n), or if the prime contractor observes any noncompliant vehicles subject to the regulation on the prime contractor's job site, then the prime contractor must report specified information regarding the fleet to CARB within five (5) business days of such discovery.

(4) Upon request by CARB, the prime contractor must immediately disclose to CARB the name and contact information of each responsible party for all vehicles subject to this regulation operating at the job site or for the prime contractor.

(5) The prime contractor shall prominently display signage for any project where vehicles subject to this regulation will operate for eight (8) calendar days or more. The signage must be posted by the eighth calendar day from which the first vehicle operates. The signage will be in lettering larger than size 14-point type and displayed in a conspicuous place where notices to employees are customarily posted at the job site or where there is employee foot traffic. If one of the above locations is also viewable by the public, it should be posted at that location. The signage must include specified information regarding idling regulations for In-Use Off-Road Diesel-Fueled Fleets with directions on how to report observed noncompliance of the provided regulations to CARB.

I am aware of the provisions of Title 13 CCR sections 2449, 2449.1, and 2449.2, which apply to every contractor who owns or operates off-road diesel fleet vehicles in California, and I will comply with such provisions, including providing Certificate(s) of Reported Compliance for In-Use Off-Road Diesel-Fueled Fleets for the fleet selected for the contract and their listed subcontractors, if applicable, with its bid.

Date: _____

Proper Name of Developer: _____

Signature: _____

Print Name: _____

Title: _____

**Bidder must attach valid Certificate(s) Reported Compliance with the Regulation for In-Use Off-Road Diesel-Fueled Fleets provided by CARB for the fleet selected for the contract and their listed subcontractors, if applicable, to this form.**

END OF DOCUMENT

**APPENDIX C-4**

**Allowable General Condition Costs**
**Construction Phase Scope Detail**

| | Project (On Site Jobsite Staff) | Direct Cost of the Work | General Conditions | Overhead and Profit | Paid by District |
|---|---|---|---|---|---|
| 1 | Operations Manager | | X | | |
| 2 | Project Manager | | X | | |
| 3 | Project Superintendent | | X | | |
| 4 | Project Engineer | | X | | |
| 5 | Home Office Engineer | | X | | |
| 6 | Scheduling Engineer | | X | | |
| 7 | Field Engineer | | X | | |
| 8 | Draftsman/Detailer | | X | | |
| 9 | Record Drawings | | X | | |
| 10 | Field Accountant | | X | | |
| 11 | Timekeeper/Checker | | X | | |
| 12 | Secretarial/Clerk Typist | | X | | |
| 13 | Independent Surveyor | X | | | |
| 14 | Safety &. E.E.O. officer | | X | | |
| 15 | Runner/Water Boy | | X | | |
| 16 | Vacation Time/Job Site Staff | | X | | |
| 17 | Sick Leave/Job Site Staff | | X | | |
| 18 | Bonuses/Job Site Staff | | | X | |
| 19 | Quality Control Program | | X | | |
| 20 | Qualified SWPPP Practitioner (QSP) | X | | | |
| 21 | SWPPP Creation, Approval, Notifications | X | | | |

| | Temporary Utilities | Direct Cost of the Work | General Conditions | Overhead and Profit | Paid by District |
|---|---|---|---|---|---|
| 1 | Telephone Installation | | X | | |
| 2 | Telephone Monthly Charges | | X | | |
| 3 | Elect Power Installation | X | | | |
| 4 | Elect Power Distribution - Wiring/Spider boxes/ Lighting for construction | X | | | |
| 5 | Elect Power Monthly Charges | | | | X |
| 6 | Water Service for construction | X | | | |
| 7 | Heating & Cooling Costs for construction | X | | | |
| 8 | Light Bulbs & Misc. Supplies for construction | X | | | |
| 9 | Clean-Up-Periodical | X | | | |
| 10 | Clean-Up-Final | X | | | |
| 11 | Dump Permits and Fees | X | | | |
| 12 | Recycling/Trash Dumpster Removal/Hauling | X | | | |
| 13 | Flagger/Traffic Control | X | | | |
| 14 | Dust Control | X | | | |
| 15 | Temporary Road and Maintenance if | X | | | |
| 16 | Trash Chute & Hopper (if applicable) | X | | | |

| | Direct Job Costs | Direct Cost of the Work | General Conditions | Overhead and Profit | Paid by District |
|---|---|---|---|---|---|
| 1 | Wages of Construction Labor | X | | | |
| 2 | Labor/Fringe Benefits & Burden | X | | | |

| | | | | | |
|---|---|---|---|---|---|
| 3 | Subcontract Costs | X | | | |
| 4 | Material & Equipment/Included | | X | | |
| | a. Contractor Owned Equip, trucks | | X | | |
| | b. Small Tools - Purchase | | X | | |
| | c. Small Tools - Rental | | X | | |
| 5 | Warranty Work & Coordination | | | X | |

| **Temporary Facilities** | | **Direct Cost of the Work** | **General Conditions** | **Overhead and Profit** | **Paid by District** |
|---|---|---|---|---|---|
| 1 | Office Trailer including shared office for IOR & CM (office must include lockable door, 2 desks, 2 chairs, 1 file cabinet, and Wi-Fi connection) | | X | | |
| 2 | Storage Trailer & Tool Shed Rental | | X | | |
| 3 | Office Furniture/Equip/computers | | X | | |
| 4 | Xerox Copies/Misc. Printing | | X | | |
| 5 | Postage/UPS/FedEx | | X | | |
| 6 | Project Photographs | | X | | |
| 7 | Temporary Toilets | | X | | |
| 8 | Project Sign | | X | | |
| 9 | Temporary Fencing/Enclosures | | X | | |
| 10 | Covered Walkways if required | X | | | |
| 11 | Barricades | X | | | |
| 12 | Temporary Stairs | X | | | |
| 13 | Opening Protection | X | | | |
| 14 | Safety Railing & Nets | X | | | |
| 15 | Drinking Water/Cooler/Cup | | X | | |
| 16 | Safety/First Aid Supplies | | X | | |
| 17 | Fire Fighting Equipment | | X | | |
| 18 | Security Guards | | X | | |
| 19 | Watchman Service | | X | | |
| 20 | Phone/fax lines, cell phones, Wi-Fi | | X | | |
| 21 | Temporary "Swing space" portables to house teachers and students as required for phasing | | | | X |
| 22 | Utility connections and civil work needed for temporary "swing space" portables as required for phasing | X | | | |

| Miscellaneous Project Costs | | Direct Cost of the Work | General Conditions | Overhead and Profit | Paid by District |
|---|---|---|---|---|---|
| 1 | Performance and Payment Bonds | | | | |
| 2 | Developer-provided insurance | | | | |
| 3 | Printing - Drwgs & Specs (Max of 15 sets) | | | | X |
| 4 | Initial Soils Investigation | | | | X |
| 5 | Testing and Inspection | | | | X |
| 6 | Maintenance After Occupancy | | | | X |
| 7 | Facility Operator/Training | X | | | |
| 8 | Fees | | | | X |

| Hoisting | | Direct Cost of the Work | General Conditions | Overhead and Profit | Paid by District |
|---|---|---|---|---|---|
| 1 | Hoist & Tower Rental | X | | | |
| 2 | Hoist Landing & Fronts | X | | | |
| 3 | Hoist Operator | X | | | |
| 4 | Hoist Safety Inspections | X | | | |
| 5 | Hoist Material Skips/Hoppers | X | | | |
| 6 | Erect & Dismantle Hoists | X | | | |
| 7 | Crane Rental | X | | | |
| 8 | Crane Operators | X | | | |
| 9 | Crane Safety Inspections | X | | | |
| 10 | Erect & Dismantle Crane | X | | | |
| 11 | Fuel, Repairs, Maintenance | X | | | |
| 12 | Crane Raising/Jumping Costs | X | | | |
| 13 | Safety Inspections | X | | | |
| 14 | Forklift Rental | X | | | |
| 15 | Forklift Operator | X | | | |
| 16 | Forklift Safety Inspections | X | | | |
| 17 | Fuel, Repairs, Maintenance | X | | | |

| Contractor's Main Office Staff | | Direct Cost of the Work | General Conditions | Overhead and Profit | Paid by District |
|---|---|---|---|---|---|
| 1 | Corporate Executives | | | X | |
| 2 | Principal in Charge | | | X | |
| 3 | Estimating Cost Engineering | | | X | |
| 4 | Value Engineering | | | X | |
| 5 | Scheduling | | | X | |
| 6 | Drafting and Detailing | | | X | |
| 7 | Purchasing & Contracts | | | X | |
| 8 | Accounting & Bookkeeping | | | X | |
| 9 | Safety & E.E.O Officer | | | X | |
| 10 | Secretarial | | | X | |
| 11 | Clerk/Typist | | | X | |
| 12 | Computer/Data Processing | | | X | |
| 13 | Legal (General Services/Pertaining to | | | X | |
| 14 | Travel & Subsistence | | | X | |
| 15 | Fringe Benefits & Burden | | | X | |
| 16 | Vacation Time/Main Office | | | X | |
| 17 | Bonuses/Main Office | | | X | |
| **General Conditions Total Cost transfer to Fee Proposal** | | | $ | | |

## APPENDIX C-5

## FEDERAL DEBARMENT CERTIFICATION

1. Bidder certifies to the best of its knowledge and belief, that it and its principals:

a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or Board;

b. Have not within a three-year period preceding this bid been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

d. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

2. Where Bidder is unable to certify to any of the statements in this certification, Bidder shall attach an explanation to this certification.

3. Bidder agrees to include the following certification in all subcontracts, for all lower tiers:

> *"Debarment and Suspension Certification – By submission of its proposal, the contractor (or vendor, or consultant, depending on the transaction) certifies to the best of its knowledge and belief that it and its principals are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency in accordance with 2 CFR 200.213 and 2 CFR 180."*

Date: _____

Name of Developer: _____

Signature: _____

Print Name: _____

Title: _____

**APPENDIX C-6**

**BYRD ANTI-LOBBYING CERTIFICATION**

**Applicable to Grants, Subgrants, Cooperative Agreements, and Contracts Exceeding $100,000 in Federal Funds**

Submission of this certification is a prerequisite for making or entering into this transaction and is imposed by section 1352, Title 31, U.S. Code. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

**The undersigned certifies, to the best of their knowledge and belief, that:**

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents of all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub- recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, United States Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

_____

Contractor

_____

Address

_____

Certified by: (type or print)

_____

Title

_____

Signature

_____

Date

**Disclosure of Lobbying Activities** Approved by OMB 0348-004

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See following page for public burden disclosure)

| 1. Type of Federal Action:<br>☐ contract<br>☐ grant<br>☐ cooperative agreement loan<br>☐ loan guarantee<br>☐ loan insurance | 2. Status of Federal Action:<br>☐ proposal/offer/application<br>☐ initial award<br>☐ post-award | 3. Report Type:<br>☐ initial filing<br>☐ material change<br>For material change only:<br>Year_____quarter _____<br>Date of last report_____ |
|---|---|---|

| 4. Name and Address of Reporting Entity:<br>_____Prime _____Subawardee<br>Tier_____, if Known:<br><br>Congressional District, *if known*: | 5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:<br><br>Congressional District, if known: |
|---|---|
| 6. Federal Department/Agency: | 7. Federal Program Name/Description:<br><br>CFDA Number, *if applicable*: _____ |
| 8. Federal Action Number, *if known:* | 9. Award Amount, *if known:*<br>$ |
| 10a. Name and Address of Lobbying Registrant *(if individual, last name, first name, MI):* | 10b. Individuals Performing Services *(including address if different from No. 10a) (last name, first name, MI):* |
| 11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure. | Signature: _____<br><br>Print Name: _____<br><br>Title: _____<br><br>Telephone No.: _____ Date: ____ |
| Federal Use Only | Authorized for Local Reproduction<br>Standard Form - LLL (Rev. 7-97) |

## INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to Title 31, U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a follow up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitations for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Included prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

(b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

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According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

END OF DOCUMENT