Tracy Unified School District
1875 W. Lowell Ave.
Tracy, California 95376

Request for Fee Proposals and Qualifications For Lease-Leaseback Construction Services

The New Campus Project
At McKinley Elementary School
(Increment 2 Building Package)

Important Dates (see inside for details):

Request for Proposals and Qualifications Issued: Friday, March 13, 2026

Pre-Submittal Conference: Monday, March 23, 2026

Prequalification Applications Due: Tuesday, March 23, 2026

Sealed Proposals Due: Monday, April 6, 2026

Planned Announcement of Best Value Ranking: Monday, April 13, 2026

Planned Award by Governing Board: Tuesday, April 28, 2026

Request for Fee Proposals and Qualifications
For Lease-Leaseback Construction Services

The New Campus Project
At McKinley Elementary School
(Increment 2 Building Package)

The Governing Board (the "Board") of the Tracy Unified School District (the "District" or "Owner") is seeking qualifications and proposals from qualified providers of lease-leaseback construction services ("Contractors") for the construction of the New Campus Project, Increment 2: Building Contract work of improvement (the "Work") which is part of the New Campus Project at McKinley Elementary School ("Project") within the District. The agreement, site lease, and sublease for the Work (the "Contract Documents," or the "Contract") will be awarded by the Board under the provisions of Education Code section 17406.

I. Critical Deadlines

A. Pre-Submittal Conferences:

The pre-proposal conference is mandatory. See the advertised Notice of Request for Proposals and Qualifications for details.

B. Questions/Suggested Edits, and Addenda:

Any question or suggested edit must be submitted by a proposing Contractor by 12:00 p.m. on Tuesday, March 31, 2026. The Owner may only respond to a question or suggested edit by issuing a written addendum by Thursday, April 2, 2026. If the Owner does not timely respond to a question or suggested edit, then the question or suggested edit shall be deemed as having been rejected by the Owner. (See Sections V.B, VII, and VIII.B, below, for additional details.)

C. Prequalification Applications:

A proposing contractor with an A or B license and any MEP contractor (whether a proposing contractor or subcontractor listed in the proposal) must be prequalified pursuant to Education Code section 17406(a)(2)(C) and Public Contract Code section 20111.6(b) through (m) prior to submitting a proposal. (See Sections IV.E and IX.E., below.) An "MEP contractor" is one who will perform work that requires one of the following classes of license: C-4, C-7, C-10, C-16, C-20, C-34, C-36, C-38, C-42, C-43, or C-46.

Prequalification applications are available at https://www.pqbids.com through PQBIDS.

If a contractor is not prequalified to submit a proposal for the Contract at least five (5) business days before the proposal deadline and at the proposal deadline, Owner will not accept the

proposal. Any subcontractors listed in a proposal for Work requiring one of the above "C" licenses must be prequalified at least five (5) business days before the proposal deadline and at the proposal deadline, or Owner will not accept the proposal.

To be prequalified for the Contract, prequalification application packets must be completed and submitted by 2:00 P.M. on Monday, March 23, 2026 via PQBIDS at https://www.pqbids.com:

Contractors are encouraged to submit prequalification packages earlier than the deadline so that they may be notified of prequalification status well in advance of any applicable proposal deadline.

D. Sealed Proposals:

By submitting a proposal in response to this Request for Proposals and Qualifications ("RFPQ"), the proposing Contractor agrees to all terms, conditions, requirements, and content of the RFPQ and the Contract Documents (which are defined by General Conditions section 1.1.1), as they may have been amended by timely addenda. See Sections I.B, above, and VIII.B, below.

An original unbound hard copy + one electronic copy on a flash drive + six (6) bound hard copies of each Contractor's sealed proposal for the Contract shall be delivered to the following address **no later than Monday, April 6, 2026, at 2:00 p.m.** on the clock designated by the District or its representative as the governing clock:

Tracy Unified School District (Main Lobby, Front Desk)
1875 W. Lowell Ave.
Tracy, California 95376
Attention: Eloy Vento, Director of Facilities and Planning

Facsimile (FAX), e-mail, or electronic copies (other than the above) of the proposal will not be accepted. Only hard copies will be accepted. Proposals not received by the deadline or in the proper format will be returned unopened.

E. Award:

The governing Board of the District is planning to award the Contract at its regular Board meeting on April 28, 2026. The Board reserves the right to postpone or cancel the award, or to reject all proposals. The meeting will be held at 7:00 p.m. at the

District Education Center (Board Room) 1875 W. Lowell Avenue Tracy, CA 95376

F. Summary of Deadlines:

Pre-submittal Conference:	March 23, 2026
Prequalification Application Deadline:	March 23, 2026
District Posting of Prequalified Contractors:	March 27, 2026
Submittal of Questions or Suggestions:	March 31, 2026

District Issuance of Addenda:	April 2, 2026
Submittal of Proposals:	April 6, 2026
Announcement of Best Value Ranking (anticipated):	April 13, 2026
Award of Contract by Governing Board (anticipated):	April 28, 2026

II. Project Description, Plans, and Specifications

The District plans to construct the Work, which is a new elementary school campus replacement project, on a District-owned site located at Carlton Way, in Tracy, San Joaquin County, California, and the District is soliciting proposals for the construction of the Work.

The District has retained PBK Architects, Inc. of Berkeley, California, as its architect for the Contract ("Architect"). DSA approval of the plans and specifications for the Contract has not yet been issued, but will be obtained after award of the Lease-Leaseback Agreement. Any preconstruction services in the Lease-Leaseback Agreement may be performed before DSA approval, but the Work may not commence until DSA approval is received by the District, all preconstruction services are complete, the subcontractors are selected, and the Total Sublease Amount is approved by the District's governing board. Current plans and specifications may be obtained from the Architect.

No District project labor agreement applies to this contract.

III. Contract Parameters

A. Financing

The successful Contractor will be financing the construction of the Work through a lease-leaseback arrangement, and the District will be paying Contractor for its construction and financing through equal monthly sublease payments that will extend beyond the Completion of the construction.

No federal funds are being used by Owner for the Contract.

B. Proposed Budget

The District will require an open book policy with the successful Contractor and its construction team on the entire Contract, meaning that all costs included in the Contractor's Total Sublease Amount and each monthly Sublease Payment shall be clearly set forth to the District's satisfaction, including soft costs, site improvements, and the construction of the buildings. The District shall be entitled to have access to subcontractor bids, value engineering back-up, contingency breakdown and tracking, general conditions breakdown and tracking, documentation of Contractor's fees, and all other information necessary to verify construction costs.

The Contract is subject to the payment of prevailing wages under the California Labor Code and applicable regulations, and the Contract will be subject to compliance monitoring and enforcement by the California Department of Industrial Relations.

C. Cost Estimate

The District preliminarily estimates that the Total Sublease Amount for the Contract will be Thirty-four Million and no 0/100 dollars ($ 34,000,000.00). This estimate is based solely on the District's most recent estimate of the total Contract costs and is subject to change.

D. Scope of the Fee Proposal

1. Fee Proposal and Calculation of Total Sublease Amount

All fee proposals shall be in the form of a percentage ("Percentage"; see Proposal Form) which will be applied to the direct construction cost of the Work, as determined after award in accordance with the Contract Documents (including this Request for Proposals and Qualifications ["RFPQ"]) and Education Code section 17406(a)(3). The Contractor shall base its proposed Percentage on the Contract Documents, as defined in Section 1.1.1 of the General Conditions attached as ***Exhibit U***, including but not limited to such General Conditions, this RFPQ, and the Agreement, Site Lease, and Sublease attached as ***Exhibits D, E, and F***. Once the direct construction cost of the Work is determined, the Percentage will be applied to portions of that direct construction cost in the manner described below to determine the additional dollar amount Contractor will be paid as its fee for the Contract ("Contractor Fee"). Contractor will accept the Contractor Fee as total compensation for its profit and all of its costs, expenses, and overhead on the Contract other than the direct construction cost of the Work. Contractor's costs, expenses, and overhead that are intended to be covered by the Contractor Fee, include, but are not limited, to, the following:

1. All costs for Contractor's general conditions Work (also known as general requirements Work, jobsite overhead, or field overhead), including but not limited to temporary facilities, temporary utilities (electricity, internet, water, garbage, etc.), structures, fences, dust control, security, restrooms, scheduling, safety, vehicles, interim and final cleaning, mobilization, demobilization, office expense, communications equipment, scaffolding, SWPPP, management and supervision of subcontractors, management and supervision of any Work self-performed by the Contractor (see Section IV.E., below), management and supervision of suppliers, and any other management responsibilities for the Contract, including but not limited to site superintendents, site foremen, project managers, schedulers, and executive managers. If any of this general conditions Work is included by the Contractor in a subcontract, then the Contractor's Percentage shall not be applied to the subcontract's costs for that general conditions Work when calculating the Contractor's Fee and the Total Sublease Amount
2. Home office overhead and financing costs.
3. Selection and supervision of subcontractors and suppliers and other management responsibilities for the Contract.
4. All bonds and insurance, including but not limited to payment and performance bonds.

5. Preconstruction services during the design phase.
6. All costs incurred by Contractor in performance of its obligations under the Contract *other than* (i) the above five items, (ii) the Contractor's subcontracts to subcontractors and suppliers (see (a) in next paragraph), (iii) any amounts successfully bid by Contractor for self-performed Work (see (b) in next paragraph), and (iv) any general contingency allowance included by Owner (see (c) in next paragraph).

As set forth in the Lease-Leaseback Agreement and Education Code section 17406(a)(3), the Total Sublease Amount for the Work may not be calculated until preconstruction services are complete, all subcontractors have been selected, and all required DSA approvals are received. The selected Contractor shall provide Owner with objectively verifiable information of its costs to perform the Work and a written rationale for the Total Sublease Amount, including documentation sufficient to support the calculation. Contractor's written rationale shall detail the "base construction cost" for the Work, consisting of (a) all subcontracts to be awarded by Contractor to subcontractors for labor, materials, equipment, and supplies (whether more or less than 0.5% of the total; see Section IV.E, below), including any special allowances requested by the District that are within the scope of such subcontracts (see Section III.D.2., below), but excluding any of Contractor's general conditions Work to be performed by a subcontractor (see above); (b) any portions of the Work to be self-performed by the Contractor, including labor, materials, equipment, and supplies for such Work (see Section IV.E., below); (c) any of Contractor's general conditions Work to be performed by a subcontractor; and (d) any general contingency allowance that Owner elects to include in the Total Sublease Amount. The amount of (a), above, when multiplied by the Percentage, shall constitute the "Contractor Fee," which shall be added to (a), (b), (c), and (d) to arrive at the Total Sublease Amount, as must be detailed in Contractor's written rationale. The Percentage may not be applied to the amount of (b), above, since the Contractor's bid(s) for that work would include profit and all costs (including overhead) for such Work (see Section IV.E, below); the Percentage may not be applied to the amount of (c), above, since doing so would lead to payment to Contractor for general conditions Work that it would not be performing; and the Percentage may not be applied to the amount of (d), above, since the calculation of price for an allowance expenditure would include a markup for overhead. The material and equipment supplier costs in (a) and (b), above, may only include objectively verifiable information provided by Contractor to Owner.

To summarize, the Total Sublease Amount shall be calculated as follows:

Cost of Contractor's subcontracts to subcontractors, other than general conditions Work (see (a), above)
+ Contractor Fee (Percentage [see above] × cost of subcontracts other than general conditions Work [see previous line])
+ Any amounts successfully bid by Contractor for self-performed Work (see (b), above)
+ Any general conditions Work to be performed by a subcontractor (see (c) above)
+ Any general contingency allowance included by Owner (see (d), above)
Total Sublease Amount

The Total Sublease Amount and the sublease payment schedule shall be memorialized in an amendment to the Contract (see ***Exhibit W*** for the form) that must be approved by the District's

governing board at a public meeting. The Total Sublease Amount shall constitute the total compensation to Contractor for constructing the Work and performing the preconstruction services. The successful Contractor may not commence construction of the Work until the District's Governing Board has approved the above-mentioned amendment and Contractor has submitted all required documentation.

If the Contractor is entitled under the Contract Documents to be paid additional compensation for extra work, the District reserves its right to make such payment from any contingency, or any applicable allowance, stated in the Contract Documents, rather than by a Board-approved change order. Any such contingency or allowance payment shall be priced pursuant to the Contract Documents' procedures for pricing change orders.

2. Allowances

The District may include the following allowances in the Total Sublease Amount to be finalized by the parties after award of the Contract (see Section 5 of the Agreement [***Exhibit D***]), but the District reserves the right to include none, or just some, of them: **General Owner contingency allowance of $340,000.00.**

IV. <u>Scope of Work</u>

A. Scope

The Scope of Work is the construction of approximately 60,000 square feet of new modular building facilities (Slab-on-grade Foundations Only) on an approximately 8.35-acres District-owned site located at 800 Carlton Way, in Tracy, San Joaquin County, California. The Project will include approximately 60,000 square feet of buildings, including New Classrooms, Administration Building, Library Building, and a new MPR Building. The new classrooms, administration building, and library building must be three-dimensional modular construction, not pre-fab assembly elements or modular components such as walls, roofs, etc. as separate site delivered components. Athletic facilities will include Site Improvements by Others under the Increment 1 contract.

The Contractor whose proposal is determined to offer the best value to the District pursuant to this RFPQ must execute the Lease-Leaseback Agreement, the Site Lease, and the Sublease prior to the Board's award of the Contract to Contractor.

All Work must have DSA approval prior to calculation of the Total Sublease Amount (see Section III.D.1, above).

The modular building(s) that will be installed as part of this project is within the scope of the Contract, and all procedures in the Contract Documents for subcontracting (including but not limited to Section IV.E, below) must be followed.
The Contract will include all work for the modular building work as identified in the following Table:

Tracy USD
McKinley ES
New Campus (Increment 2, Building Package)

Responsibility Matrix

Description	Site Contractor	Modular Contractor	Others	Comments
General				
All work within the perimeter of the modular buildings not specifically identified below.		**X**		
All work outside the perimeter of the modular buildings not specifically identified below.	**X**			
Division 1 - General Requirements:				
Storm Water Polution Prevention Plan	X			If required
Temporary facilities:				
Temporary site fencing	X			Furnish, install, maintain, and remove at occupancy.
Portable toilets	X			
Field office for Inspector and CM	X			See Special Conditions
Temporary power service	X			Modular Contractor may be required to provide portable generators during installation of Modular Buildings
Gas and electrical utility charges for start-up and testing.			X	By District
Temporary water	X			Assemble temp water resource (Min. 2") for construction use central to the work. Remove at project completion.
Temporary fire water			X	Ref. Site plan
Cleanup and Offhaul of debris related to your work.		X		
Division 3 - Concrete				
Building Concrete				
Foundation Staking	X			Modular contractor to confirm corners as staked are correct and conform to layout and building dimensions. Certified building pad by site contractor.
Dig footings and Stockpile Spoils		X		
Off-haul Footing Spoils	X			Modular contractor to coordinate with site contractor.
Footings & Stem Walls		X		
Vent Wells & Grates		X		
Imbeds		X		
Pipes, Conduit, or Sleeves for Utilities	X	X		Modular contractor to coordinate location of all utility stubs with site contractor. Site contractor to provide utilities within 5' of building. Modular contractor to provide final connections.

Description	Site Contractor	Modular Contractor	Others	Comments
Division 5 - Metals				
Misc.				
Handrails	X			See plans
Vent well grates		X		
DI Grates	X			See plans
DF Rails on New Building		X		See plans
DF Rails at site DF's	X			See plans
Division 9 - Painting				
Site Handrails	X			See plans
All Interior building paint		X		
Exterior Building Paint		X		
Misc. Site Items called for Paint	X			
Division 10 - Specialties				
Room Signage		X		
Fire Extinguishers and cabinets		X		
Division 11 - Equipment				
Fume Hoods		X		
Division 13 - Special Construction				
Modular Buildings				
Engineering & DSA Approval		X		Coordinate all planning work through AOR related to DSA Approval
Manufacture Buildings		X		
Set & Connect		X		
Finish		X		
Division 21 - Fire Suppression				
Fire Service (if applicable):				
Fire Sprinkler - Site to Building POC	X			
FS riser and connection at Building POC		X		
Fire sprinklers including calculations for DSA approval.		X		
Fire lines and hydrants outside of building	X			See plans
Division 22 - Plumbing				
Condensate drain:				

Description	Site Contractor	Modular Contractor	Others	Comments
Stub condensate drain 6" outside building face		X		See plans
Extend condensate drain to dry pit	X			See plans
Construct dry pit per plan	X			See plans
Drinking fountains attached to or in Modular Bldg		X		See plans
Drinking fountains not attached to or in modular bldg	X			See plans
HVAC Controls/Energy management system		X		
Conduit and back boxes for HVAC controls.		X		
Site conduits for HVAC controls.	X			
HVAC/EMS controls			X	
HVAC controls and conductors				Not applicable
Provide programmable thermostat		X		
Division 26 - Electrical:				
Power & Distribution:				
Transformers (outside building)	X			See plans
Distribution switch boards (outside building)	X			See plans
Power to Buildings	X			
Building Elec. Panel		X		
Connect to Building Panel including ground rod and ground rod test.	X			
Lighting:				
Site Lighting	X			If applicable.
All Building Lighting		X		Includes any lighting mounted on building including exterior lights.
Division 27 - Communications				
STC mounted at Building		X		
Telephone Systems:				
Bldg. Conduit & Back boxes		X		
Conduit to Building	X			
Conduit from Building to STC Cabinet		X		
Telephone System			X	By Owner
Data:				
Bldg. Conduit & Back boxes		X		
Conduit to Building	X			
Data cabling	X			Including testing, labeling, and final report.
IDF Cabinet	X			See plans

Description	Site Contractor	Modular Contractor	Others	Comments
Power for IDF		X		Provide 1- 120V 20A Ciricuit
Switches, Routers, WAPs, Cameras (outdoor only)			X	
Clock/Bell/Intercom				
Bldg. Conduit & Back boxes		X		See plans
Conduit to Building	X			See plans
Cabling	X			
Equipment			X	By Owner (If applicable)
CATV: (N.I.C.)				
Bldg. Conduit & Back boxes				Not applicable
Conduit to Building				Not applicable
Cabling and Equipment				Not applicable
AV Systems				
Classroom Video Monitor & Mount			X	By Owner
Backing for equipment		X		
Bldg. Conduit & Back boxes		X		
Classroom AV System			X	By Owner
Power for Classroom Video Monitor		X		Provide 1- 120V 20A Ciricuit/ clsrm
Division 28 - Electronic Safety & Security				
Fire Alarm:				
Bldg. Conduit, Back boxes, & supports for devices		X		
Conduit to Building STC Cabinet	X			
All fire alarm control, and annunciator panels	X			
Power for FACP/ FAEP (in modular bldgs.)		X		If applicable
Terminal Cabinets	X			
Devices and Conductors	X			
FS Flow & Tamper Switches at building riser.		X		
FS Alarm Bell		X		
FS flow and tamper switches outside buildings (i.e. @ backflow devices, PIV, etc.)	X			
Conduit & Wire for FS Devices	X			
Connect FS Devices to FA	X			
Security System:				
Bldg. Conduit & Back boxes		X		If applicable
Conduit to Building STC Cabinet	X			If applicable
Security System:			X	By District's Vendor
Division 31 - Earthwork				
Earthwork				
Excavation/backfill	X			

Description	Site Contractor	Modular Contractor	Others	Comments
Rough grading	X			
Finish grading	X			
Finish grade, including slopes to drain (if applicable) within the bldg pad area, and re-grading after the form work is removed.	X			
Division 32 - Exterior Improvements				
Asphalt concrete				
Driveways/parking	X			
Walkways	X			
Striping	X			
Site Concrete				
Mow Strips	X			
Site Flat Work	X			
Curb & Gutter	X			
Division 33 - Utilities				
Domestic Water:				
Water service (w/in 5' of Bldgs)	X			
SOV at Buildings	X			
Connect to Buildings	X			
Chlorination - Site Lines	X			
Chlorination - Building Lines	X			
Sanitary Sewer				
Site to POC (w/in 5' of bldg)	X			
Clean-outs at POC	X			
Connections at Buildings	X			
Storm Drains:				
Site	X			
Under Buildings	X			
Storm Drain to RWL	X			
Connect RWL to SD	X			
Gas Service:				
Gas service to meter (trenching)	X			If applicable
Gas service to meter (Gas line)	X			If applicable
Gas meter	X			If applicable
Gas Line to Buildings/Units	X			If applicable
Housekeeping pad for gas meter (if applicable)	X			If applicable
SOV/ PRV regulator at Building/Units	X			If applicable
Connect Units to SOV	X			If applicable

END OF DOCUMENT

During the Work, the Contractor shall ensure that all Work, including but not limited to Work performed by Subcontractors, is performed in compliance with all applicable legal, contractual, and local government requirements related to the novel coronavirus and COVID-19, including "social distancing," masks, and hygiene as may be ordered by the State or local authorities and as may be directed in the Contract Documents. Each proposing contractor must include in its proposed percentage fee all costs related to these requirements in effect at the time of proposing. If additional COVID-19 requirements are imposed after the proposal and the Contractor believes that it is entitled to additional time or money, it must timely submit proper requests pursuant to the Contract Documents.

B. Project Schedule

The preconstruction services (see Section IV.C, below) are expected to be performed within ____275____ calendar days of the award of the LLB contract so that the design of the Work may be finalized for bidding by subcontractors.

The construction is expected to be performed within the timeline as set forth in Exhibit D Lease-Leaseback Agreement.

C. Preconstruction Services During the Design Phase

As part of the scope of the Lease-Leaseback Agreement, Contractor shall undertake, at no additional cost to the District, the preconstruction services during the design phase that are detailed in the Lease-Leaseback Agreement, which are estimated to require between 450 and 500 hours and which include the following tasks.

1. Site evaluation;
2. Constructability review and value engineering;
3. Design/coordination meetings;
4. Schedule;
5. Estimates; and
6. Construction planning.
7. Document submittal through the Architect of Record to DSA for approval.
8. DSA coordination through the Architect of Record up to and including DSA Approval (Includes a 90 day timeline allowance for DSA Approval).

All preconstruction services must be completed prior to calculation of the Total Sublease Amount (see Section III.D.1, above).

D. Construction and Post-Construction Services

The Contractor shall perform all Work and obligations described in the Contract Documents, including the following construction and post-construction services:

1. Construction of the Work in accordance with the plans and specifications.
2. Coordinate and expedite record drawings and specifications.
3. Compile and deliver to Owner operations and maintenance manuals, warranties/guarantees, and certificates.
4. Prepare final accounting and close-out reports.
5. Other responsibilities necessary for the Completion of the Work of the Project in accordance with the plans and specifications.

E. Subcontractors; Self-Performance by Contractor

All proposals shall identify subcontractors as may be required by the Designation of Subcontractors form attached to this RFPQ. Any such subcontractors who are MEP Subcontractors shall be prequalified (see Sections I.B, above, and IX.E, below).

The Owner shall have the right to supervise, review, and observe Contractor's subcontractor selection process for compliance with the Contract and law. Contractor shall prepare all of the subcontracts' scopes of work, and these scopes must include all of the Work. For any Work that Contractor omits from all of the subcontracts' scopes, Contractor shall be responsible for the cost of the omitted Work.

All subcontractors who were not identified in the Designation of Subcontractors form must be selected prior to calculation of the Total Sublease Amount (see Section III.D.1, above). Of these subcontractors, those who will perform more than 0.5% of the Work must be selected by a competitive bidding process as described in Education Code section 17406(a)(4), this Request for Sealed Proposals and Qualifications, and the attached agreement. Any such subcontractors who are MEP contractors shall be prequalified (see Section IX.E, below). Contractor shall provide public notice of availability of work to be subcontracted in accordance with the District's competitive bidding process (including but not limited to Public Contract Code section 22037), including a fixed date and time on which bids will be due.

All subcontractors who were not identified in the Designation of Subcontractors form and who will perform 0.5% or less of the Work may be selected by the Contractor with or without competitive bidding. Any such subcontractors who are MEP contractors shall be prequalified (see Section IX.E, below). If such a subcontractor is selected without competitive bidding, then the Contractor shall obtain at least three quotes for subcontract's scope for the Owner's review, and if Contractor does not choose the lowest quote, then Contractor must reasonably justify the selection to the Owner.

If Contractor wishes to perform a portion of the Work itself rather than enter a subcontract for it, Contractor may only self-perform that portion if it uses the applicable subcontractor selection process under Education Code section 17406(a)(4), submits a bid for that portion that covers all of its profit and costs for that portion (including labor, materials, equipment, supplies, field overhead [including general conditions costs], and home office overhead), submits that bid prior to receipt of any subcontractor's bid for that portion, and its bid is the lowest responsive and responsible bid for that portion.

After selection of all subcontractors, Contractor shall submit a list of all the subcontracts (including (a) the portion of the work (description and dollar amount), and (b) the name, address, telephone number, California contractor license number, and California public works registration number for each subcontractor), along with its written price rationale (based on the formula in the Contract) being submitted pursuant to Education Code §17406(a)(3)).

All subcontractors shall be afforded the protections of the Subletting and Subcontracting Fair Practices Act (commencing with Public Contract Code section 4100).

V. Format of Proposal

The proposal should be clear, concise, complete, well organized, and demonstrate Contractor's qualifications, ideas, and ability to follow instructions.

An original + six (6) copies of the proposal must be provided, with no more than 75 single-sided pages in total length.

All Contractors submitting a proposal are required to follow the order and format specified below. Failure to follow the specified order and format may result in rejection of a proposal. Please tab each section of the submittal to correspond to the numbers/headers shown below.

A. Proposal Cover

The proposal shall include a cover page, which cover page shall set forth the RFPQ's title and submittal due date, the name, address, fax number, and the telephone number of responding firm (or firms if there is a joint venture or association).

B. Content of Proposal

The following documents, properly prepared and establishing compliance, should be included in the proposal in the order listed (failure to include any of these documents may result in rejection of the proposal based on nonresponsiveness):

1. Verified Responses to Qualifications Questionnaire (see ***Exhibit B***).

2. Proposal Form, including proof of signers' authority (see ***Exhibit G***).

3. Designation of Subcontractors (see ***Exhibit H***) **NOT USED**.

4. Worker's Compensation Certification (see ***Exhibit I***).

5. Iran Contracting Act Certification, if required by law (see ***Exhibit J***).

6. Noncollusion Declaration (see ***Exhibit M***).

7. Sufficient Funds Declaration (see ***Exhibit N***).

8. Roof Project Certification (see ***Exhibit O***).-**NOT USED**

9. Fingerprinting Notice and Acknowledgement (see ***Exhibit P***).

10. Drug-Free Workplace Certification (see ***Exhibit Q***).

11. For all projects over Twenty-Five Thousand Dollars ($25,000), proof of public works contractor registration to perform public work under Labor Code section 1725.5. The proposer may meet this requirement by submitting a printout of the proposer's registration information from the DIR website.

The proposal may not revise the terms of the Contract Documents, including but not limited to this RFPQ, its attachments, and any addenda. Any revisions of the terms of the Contract Documents that are included in a proposal shall render the proposal non-responsive, and shall be grounds for the District's rejection of the proposal on that basis. Any proposed revisions must be submitted prior to proposals being submitted (see Section I.B, above, and Sections VII and VIII.B, below).

Each proposal must use the proposal form (***Exhibit G***) and must give the full business address of the proposing entity and be signed by the proposing entity. Proposals by partnerships must furnish the full name of all partners and must be signed in the partnership name by a general partner with authority to bind the partnership in such matters, followed by the signature and designation of the person signing. The name of the person signing shall also be typed or printed below the signature. Proposals by corporations must be signed with the legal name of the corporation, followed by the name of the state of incorporation and by the signature and designation of the chairman of the board, president or any vice president, and then followed by a second signature by the secretary, assistant secretary, the chief financial officer or assistant treasurer. All persons signing must be authorized to bind the corporation in the matter. The name of each person signing shall also be typed or printed below the signature. Satisfactory evidence of the authority of the officers signing on behalf of a corporation shall be furnished with the proposal.

The signatures on the proposal form and other proposal documents must be either (1) original longhand signatures in permanent blue ink, or (2) electronic signatures (including but not limited to digital signatures). In the event that the proposing entity submits the proposal with an electronic signature, the proposing entity, by submission of the proposal, shall be acknowledging and agreeing that the electronic signature shall have the same legal effect as an original longhand signature, and that District agrees that the electronic signature shall have the same legal effect as an original longhand signature.

VI. <u>Selection Procedures and Guidelines</u>

The purpose of this RFPQ is to enable the District to select the Contractor that submitted the proposal that is the best value to the District for the Contract as required by Education Code section 17406. The term "best value" as used in this RFPQ is defined in Education Code section 17400, and is inclusive of a competitive procurement process whereby the Contractor is selected on the basis of "objective criteria" (Education Code §17400(b)(1)) for evaluating qualifications with the resulting selection representing the best combination of price and qualifications.

The District will use the selection process outlined below, which conforms to Education Code section 17406 and ensures that the best value selection by the District is conducted in a "fair and impartial manner" (Education Code §17406(a)(2)). A review and selection committee composed of key District officials and consultants will review and evaluate all proposals.

Proposals will be opened privately to assure confidentiality and to avoid disclosure of the contents to competing Contractors prior to and during the review and evaluation process. Following determination of the best value points for the proposing contractors pursuant to this RFPQ, proposals may be subject to disclosure in accordance with applicable law.

Selection Process

Qualification Portion

For the qualifications portion of the best value analysis, each Contractor's qualifications will be scored on a one hundred (100) point scale using the District's Qualifications Scoring Sheet (attached as ***Exhibit A***). Each criterion has a point value that corresponds to a weighted percentage, which are listed next to the criterion. Each criterion will be evaluated by the District and the District will award a point value to Contractor for each criterion. The maximum cumulative number of points available to any Contractor is 100 points. For the criteria, their weighted percentages, and their corresponding point values, see ***Exhibit A***.

The District will evaluate each Contractor on the basis of the certified responses provided in the Contractor's completed Qualifications Questionnaire (***Exhibit B***), which was required to be completed and submitted to District as part of Contractor's proposal for the Contract.

After scoring the qualifications, the scores should be entered in Section I of the Ranking of Best Value Scores (see ***Exhibit C***).

Fee Proposal Portion

For the fee proposal portion of the best value analysis, the District will evaluate the amount of Contractor's fee proposal for the entire Contract, which shall be submitted in percentage format to the hundredths of a percent (e.g., "5.32%"). The fee proposal portion of the best value analysis will also be scored on a one hundred (100) point scale using the Ranking of Best Value Scores (see Section II of ***Exhibit C***). District will score Contractors on the basis of the lowest to highest fee proposal submitted. All Contractors submitting a fee proposal will receive points, in increments of ten (10), based on the amount of the fee proposal, with the Contractor with the lowest fee proposal

receiving the most points available and the Contractor with the highest fee proposal receiving the fewest points available. Specifically, the Contractor with the lowest fee proposal will receive 100 points, the Contractor with the second lowest fee proposal will receive 90 points, the Contractor with the third lowest fee proposal will receive 80 points, and so forth until all Contractors have received points. In the event two or more Contractors submit fee proposals with the same fee, the Contractors shall be awarded the same amount of points representing the average of the points to be awarded to their positions in the ranking.

Total Best Value Score

After the District has allocated points to qualifying Contractors for both the qualification and fee proposal portions of the best value analysis, the District will combine the points received by each Contractor based on Contractor's qualifications and fee proposal to create each Contractor's best value score. District will then rank all Contractors based on each Contractor's best value score. (See Sections III and IV of ***Exhibit C***.) The Contractor with the highest best value score (highest combined point total from the qualifications and fee proposal analysis) shall be ranked highest, and all remaining Contractors shall be ranked in descending order based on the Contractor's best value score, such that the Contractor receiving the lowest best value score receives the lowest ranking.

The District expects to complete and announce its best value analysis, and ranking of proposals from highest best value score to lowest best value score, within seven (7) days of the deadline for submittal of the proposals. It will provide its analysis and ranking (***Exhibit C***) to all proposing Contractors at the same time.

VII. Award

The District reserves the right to reject any or all proposals, or waive any irregularities, or any failures to comply with the Contract Documents, in any of the proposals submitted pursuant to this RFPQ. If awarded, the Contract (including all three of the agreements; see ***Exhibits D, E, and F***) shall be awarded to the responsive and responsible Contractor with the highest best value score. In the event of a tie (i.e., two or more responsive and responsive Contractors have the same highest best value score), District may award the Contract to the Contractor of its choice.

Prior to award of the Contract, the Contractor receiving the award shall submit its CARB Compliance Declaration, including all certificates (see ***Exhibit V***). Please note that a supplemental CARB Compliance Declaration must be submitted by Contractor *after* selection of subcontractors but *prior* to the governing board's approval of amendment that sets the Total Sublease Amount and sublease payment schedule (see details in Section IX.U, below).

Prior to award of the Contract, the District shall finalize the three agreements (***Exhibits D, E, and F***) based on Contractor's proposal. The terms of the agreements and the rest of the Contract Documents shall not be subject to negotiation since Contractor agreed to the terms when it submitted its proposal. Award of the Contract, including the three agreements, shall act as the

District's acceptance of Contractor's non-revocable offer (the proposal), thus forming a legally binding contract. (See Sections I.B and V.B, above, and Section VIII.B, below.)

The Board is expected to award the Contract (including all three of the agreements; see ***Exhibits D, E, and F***) at its regular meeting on April 28 2026. The meeting will be held at 7:00 p.m. in the **District Education Center (Board Room)** 1875 W. Lowell Avenue Tracy, CA 95376. The District will issue a statement regarding the basis of the award.

If the Contractor to which the Board awards the Contract has not executed, and refuses to execute, the Lease-Leaseback Agreement, Site Lease, or Sublease (***Exhibits D, E, or F***) or has not submitted proof of required insurance within ten (10) days following the Board's award of the Contract and prior to the commencement of the preconstruction services, the Board may revoke or cancel the award to that Contractor and award to the Contractor that submitted the next highest ranked proposal, and the District may recover its damages from the highest ranked Contractor based on its refusal to execute the Contract Documents or submit the required documents.

VIII. General Information

A. Addenda

The District reserves the right to cancel or revise this RFPQ in part or in its entirety. If the District cancels or revises the RFPQ, all Contractors will be so notified by addenda. The District also reserves the right to extend the date on which responses are due, the date on which it announces the results of its best value analysis, or the date on which the award will be made.

B. Inquiries

Any questions or suggestions concerning the Contract Documents, including but not limited to this RFPQ, must be directed to Eloy Vento, Director of Facilities and Planning, Tracy Unified School District; email: evento@tusd.net, Rich Dunlap and John Caputo, Construction Managers, Pro-K12; emails: rich.dunlap@pro-k12.com, john.caputo@pro-k12.com Responses will be issued by addenda, uploaded to the district's website, and e-mailed to all parties recorded by the District as having received the RFPQ. Only responses provided by formal written addenda will be binding. (See Sections I.B, V.B, and VII, above, for additional details.)

IX. Special Conditions

A. Non-Discrimination

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

B. Costs

Costs of preparing a proposal in response to this RFPQ are solely the responsibility of the responding Contractor.

C. Prevailing Wages

Respondents are advised that this Project is a public work for purposes of the California Labor Code, which requires payment of prevailing per diem wages, as well as wages for legal holidays and overtime. These rates are set forth in a schedule, which may be found on the California Department of Industrial Relations website at www.dir.ca.gov. Any Contractor to which a contract is awarded must pay the prevailing rates, post copies thereof at the job site, provide payroll records when required, and otherwise comply with applicable provisions of state law.

D. State Registration

For all projects over Twenty-Five Thousand Dollars ($25,000), proposing Contractors and any proposed subcontractors shall not be qualified to submit a proposal, or to be listed in a proposal, for the Project, and shall not be qualified to enter into, or engage in the performance of, the Lease-Leaseback Agreement, unless currently registered and qualified under Labor Code section 1725.5 to perform public work as defined by Division 2, Part 7, Chapter 1 (§§1720 et seq.) of the Labor Code.

E. Prequalification for Subcontractors After Award

Any MEP subcontractor to be selected by the Contractor *after* award of the Contract pursuant to Education Code section 17406(a)(4)(B) (see Section IV.E, above) must be prequalified on the date of bidding for that MEP subcontractor's work; and if an MEP subcontractor will not be prequalified on that date as a result of a prequalification from a previous application, then the MEP Subcontractor must (a) submit its prequalification application at least ten (10) business days before the date of bidding for that MEP Subcontractor's work, and (b) be announced by District as prequalified at least five (5) business days prior to such date of bidding, as required by the Contract and Public Contract Code section 20111.6.

F. Limitations

This RFPQ does not commit the District to award a contract, to defray any costs incurred in the preparation of a proposal pursuant to the RFPQ, or to procure or contract for work. The District reserves the right to waive any irregularities in the proposals received pursuant to this RFPQ, or in the process outlined herein for selection of a contractor for the Project.

G. Termination

In any contract entered into between the District and a Contractor, the District shall retain the right to terminate the contract for inadequate performance or as otherwise allowed by the Contract Documents.

H. Disabled Veteran Business Enterprises ("DVBE")

Prior to approval of the Total Sublease Amount, the District will require the Contractor to achieve the minimum goal of 3% DVBE (Disabled Veteran Business Enterprises) established in the contract documents, or to provide acceptable evidence of good faith efforts to do so. The DVBE Certification must be submitted prior to approval of the Total Sublease Amount; and the DVBE Worksheet must be submitted with the DVBE Certification if Box D is checked on the first page of the DVBE Certification. (See ***Exhibits K and L***.)

I. Sole Source Determination

Not used.

J. Payment and Performance Bonds

Pursuant to the Contract Documents, the successful proposing Contractor will be required to furnish a Payment (Labor and Material) Bond in the amount of one hundred percent (100%) of the Total Sublease Amount, and a Faithful Performance Bond in the amount of one hundred percent (100%) of the Total Sublease Amount, said bonds to be secured from Admitted Surety insurers (an insurance organization authorized by the Insurance Commissioner to transact business of insurance in the State of California during this calendar year). These bonds shall be in the form attached to this RFPQ (see ***Exhibits R and S***), and shall be submitted by the Contractor within ten (10) days of the approval of the Total Sublease Amount by the District's governing board and prior to the commencement of the construction Work. The sureties must, unless otherwise agreed to by District in writing, at the time of issuance of the bonds, have a rating not lower than "A-" as rated by A.M. Best Company, Inc. or other independent rating companies. District reserves the right to approve or reject the sureties selected by the successful proposing Contractor and to require the successful proposing Contractor to obtain bonds from sureties satisfactory to the District. The proposing Contractor will be required to furnish insurance as set forth in the Contract Documents.

K. [Not Used]

L. Contractor and Subcontractor Licenses

The District will not consider or accept any proposals from Contractors who are not licensed at the time of the proposal, or who list a subcontractor who is not licensed at the time of the proposal, to do business in the State of California, in accordance with the California Public Contract Code, providing for the licensing of contractors. In accordance with Section 3300 of said Code, the proposing Contractor shall have a Class "___B____" license and shall maintain that license in good standing through Contract Completion and all applicable warranty periods.

The proposing Contractor shall state the California contractor license number on the Designation of Subcontractors form for all subcontractors required by District to be listed in the Designation of Subcontractors form. An inadvertent error in listing a California contractor's license number

in the Designation of Subcontractors form shall not be grounds for filing a protest or for considering the proposal nonresponsive if the proposing Contractor submits the corrected subcontractor's license number to the District within 24 hours after the bid opening, or any continuation thereof, so long as the corrected subcontractor's license number corresponds to the submitted name and location for that subcontractor.

Subcontractors shall maintain their licenses in good standing through Completion of the Work and all applicable warranty periods. District reserves the right to reject any proposal as nonresponsive if the proposing Contractor or any subcontractor is not licensed in good standing from the time the proposal is submitted to District up to award of the Contract, whether or not the proposal listed the subcontractor inadvertently, or if a listed subcontractor's license is suspended or expires prior to award of the Contract. District also reserves the right to reject any proposal as non-responsive if a listed subcontractor's license is not in good standing to perform the work for which it is listed from the time of submission of the proposal to award of the Contract.

M. Withdrawal of Proposal

Proposals may be withdrawn by proposing Contractors prior to the time fixed for the submittal of proposals or any authorized postponement thereof. Unless otherwise required or allowed by law (including but not limited to Public Contract Code section 5100 et seq.), no proposing Contractor may withdraw its proposal for a period of ninety (90) days after the date set for the submittal thereof or any authorized postponement thereof, even if the Contract is awarded to another Contractor. The District specifically reserves the right to terminate for convenience any Contract awarded pursuant to this RFPQ due to an unacceptable price calculation and rationale pursuant to Education Code §17406(a)(3) (see Article 4 of the Agreement [***Exhibit D***]), and the right to subsequently award the Contract to the next highest ranked best value Contractor.

N. Protests

All protests must comply with the following, or they shall be rejected as invalid:

1. The protest shall be in writing with an original signature (a protest submitted by e-mail is insufficient);
2. The written protest shall be filed with, and received by, the District no later than 4:00 p.m. on the fifth working day after the District's announcement of the best value ranking of the proposals;
3. The protest shall set forth in detail all grounds for the protest, including all facts, supporting documentation, legal authorities and arguments in support of the protest;
4. Before the protest deadline, the protesting party shall transmit the complete protest, including all documentation, to all other parties having a potential interest that may be adversely affected by the outcome of the protest, including but not limited to all other proposing entities who may have a reasonable prospect of losing or obtaining an award of the Contract depending on the outcome of the protest; and
5. All factual contentions must be supported by competent, admissible and credible evidence.

The procedures and time limits set forth in this section for protests are strictly construed and are protesting party's sole and exclusive remedy in the event of a protest. Protesting party's failure to strictly comply with these procedures and time limits shall constitute a waiver of any right to further pursue the protest, including but not limited to the presentation of a Government Code claim or legal proceedings. Any matter not set forth in the protest, including any ground for the protest or any evidence supporting a ground for the protest, shall be deemed waived.

A protesting party may not rely on the protest submitted by another protesting party, but must timely pursue its own protest.

District shall review a protest that was not rejected for failing to comply with the above procedures. Any final decision on such a protest shall be made by the Governing Board.

O. Additional Evidence of Responsibility

Upon the request of the District, a proposing Contractor shall submit promptly to the District or its designee satisfactory evidence showing the proposing Contractor's financial resources, its experience in the type of work required by the District, its organization available for the performance of the Contract, and any other required evidence of its, or its subcontractor's, qualifications to perform the proposed Contract. The District may consider such evidence before making its decision awarding the proposed Contract. Failure to submit evidence of the proposing Contractor's, or its subcontractors', responsibility to perform the proposed Contract may result in rejection of the proposal.

P. Further Instructions for Proposals

Proposals not made on the proper form shall be disregarded. Numbers must be stated in words and figures, and the signatures of all individuals must be in longhand.

No proposal will be considered which makes exceptions, changes, or in any manner makes reservations to the terms of the drawings or specifications.

Questions regarding documents, discrepancies, omissions, or doubt as to meanings shall be referred immediately to the Architect who will send written instructions clarifying such questions to each proposer. Oral responses will not be binding on the District.

Each proposal must give the full business address of the proposer and be signed by proposer with proposer's usual signature. Proposals by partnerships must furnish the full name of all partners and must be signed in the partnership name by a general partner with authority to bind the partnership in such matters, followed by the signature and designation of the person signing. The name of the person signing shall also be typed or printed below the signature. Proposals by corporations must be signed with the legal name of the corporation, followed by the name of the state of incorporation and by the signature and designation of the chairman of the board, president or any vice president, and then followed by a second signature by the secretary, assistant secretary, the chief financial officer or assistant treasurer. All persons signing must be authorized to bind the corporation in the matter. The name of each person signing shall also be

typed or printed below the signature. Satisfactory evidence of the authority of the officer signing on behalf of a corporation shall be furnished.

Irrespective of how a proposing Contractor chooses to deliver the proposal and other documents to the District, the proposing Contractor is responsible for ensuring that the proposal and other documents are actually received at the location designated in the Contract Documents for receipt of the proposal and other documents prior to the designated time. Proposals and other documents for any reason not actually received at the designated location prior to the designated time shall not be opened or considered.

Q. Builders Risk Coverage

For the purpose of builders risk coverage (see General Conditions Article 11), the project is not being solely funded by revenue bonds.

R. Student Contact Form

This document (see Attachment B in ***Exhibit P***) must be submitted to the Owner prior to the commencement of the Work (including mobilization).

S. Skilled and Trained Workforce Requirements

The Contractor will have to comply with skilled and trained workforce requirements pursuant to Public Contract Code sections 2600 et seq. and Education Code section 17407.5, unless the contractor submits documentation of compliance with Education Code section 17407.5(b) to the Owner prior to award.

T. Sanctions in Response to Russian Aggression

The Owner is using State of California funds for this Contract, and therefore Contractor must comply with the Governor's March 4, 2022, Executive Order N-6-22 ("Order") relating to any existing sanctions imposed by the United States government and the State of California in response to Russia's actions in Ukraine, including additional requirements for contracts of $5 million or more. Failure to comply may result in the termination of the Contract. The Owner requires Contractor to comply with the Governor's March 4, 2022, Executive Order N-6-22 ("Order") relating to any existing sanctions imposed by the United States government and the State of California in response to Russia's actions in Ukraine, including additional requirements for contracts of $5 million or more. Failure to comply may result in the termination of the Contract.

U. Supplemental CARB Compliance Declaration

In addition to submitting a CARB Compliance Declaration prior to award, the Contractor must submit another CARB Compliance Declaration *after* selection of subcontractors but *prior* to the governing board's approval of the amendment that sets the Total Sublease Amount and the sublease payment schedule. All current CRCs for the Contractor and its subcontractors must be

attached to the additional CARB Compliance Declaration, regardless of whether they were attached to the original CARB Compliance Declaration that accompanied Contractor's proposal.

The following EXHIBITS are attached:

EXHIBIT A - Lease-Leaseback Proposal / Qualifications Scoring Sheet
EXHIBIT B - Qualifications Questionnaire
EXHIBIT C - Ranking of Best Value Scores
EXHIBIT D - Lease-Leaseback Agreement
EXHIBIT E - Site Lease
EXHIBIT F - Sublease
EXHIBIT G - Proposal Form
EXHIBIT H - Designation of Subcontractors **NOT USED**
EXHIBIT I - Workers' Compensation Certification
EXHIBIT J - Iran Contracting Act Certification
EXHIBIT K - DVBE Certification
EXHIBIT L - DVBE Worksheet
EXHIBIT M - Noncollusion Declaration
EXHIBIT N - Sufficient Funds Declaration
EXHIBIT O - Roof Project Certification **NOT USED**
EXHIBIT P - Fingerprinting Notice and Acknowledgement
EXHIBIT Q - Drug-Free Workplace Certification
EXHIBIT R - Payment Bond
EXHIBIT S - Performance Bond
EXHIBIT T - Sole Source Determination **NOT USED**
EXHIBIT U - General Conditions
EXHIBIT V - CARB Compliance Declaration
EXHIBIT W - Form of Amendment to Be Used for Total Sublease Amount

EXHIBIT A

Lease-Leaseback Proposal
Qualifications Scoring Sheet

Firm Name: _____

Contact Person: _____

Address: _____

Phone: _____ Fax: _____ Email:_____

Contractor's License Number(s): _____, _____, _____

Instructions for Scoring

For the qualifications portion of the best value analysis and for the purpose of evaluating Contractors' qualifications, the District will evaluate each Contractor on the basis of the responses provided in the Contractor's completed questionnaire (see ***Exhibit B***).

The District will evaluate the specific criteria listed below and each Contractor's qualifications will be scored on a one hundred (100) point scale. Each criterion has a point value that corresponds to a weighted percentage, which are listed next to the criterion. For example, the weighted percentage for "Bonding Capacity" is 10%, and therefore, the District may award up to 10 points to Contractor for Contractor's qualifications with respect to Bonding Capacity. Each criterion will be evaluated by the District and the District will award a point value to Contractor for each criterion. The maximum cumulative number of points available to any Contractor is 100 points. The criteria, their weighted percentages, and their corresponding point values are as follows:

- Bonding Capacity (weighted percentage: 10%; points possible: 10)
- Percentage of Credit Line Used (weighted percentage: 10%; points possible: 10)
- Number of Audit Exceptions (weighted percentage: 10%; points possible: 10)
- Experience (weighted percentage: 20%; points possible: 20)
- Financial History & Licensing (weighted percentage: 10%; points possible: 10)
- Disputes (weighted percentage: 10%; points possible: 10)
- Insurance and Bonding (weighted percentage: 10%; points possible: 10)
- Compliance with Law, Including Safety (weighted percentage: 10%; points possible: 10)
- Prevailing Wage and Apprenticeship Record (weighted percentage: 10%; points possible: 10)

Scoring

1. Bonding Capacity (10%) 10 points possible

Contractor's current bonding capacity is: $_____ (insert bonding capacity from Contractor's response to Part I, Section C, Question No. 8 of the questionnaire (***Exhibit B***)).

The Cost Estimate for the Project is: $ 34,000,000.

Contractor's current bonding capacity is _____% of the Project Estimate (divide Contractor's current bonding capacity by the Project Estimate to determine percentage).

Best Value Point Allocation for Bonding Capacity:

Current Bonding Capacity %	**Best Value Points Earned (10 points possible)**
200% or greater	10
190% - 199%	9
180% - 189%	8
170% - 179%	7
160% - 169%	6
150% - 159%	5
140% - 149%	4
130% - 139%	3
120% - 129%	2
110% - 119%	1
100% - 109%	0
99% or less	Unable to perform Project

Best Value Points Awarded to Contractor for Bonding Capacity: ____

2. Percentage of Credit Line Use (10%) 10 points possible

Contractor's current maximum credit line is: $_____ (insert maximum credit line as set forth in Contractor's response to Part I, Section D, Question No. 12 of the questionnaire (***Exhibit B***)).

Amount of Contractor's credit line in use is: $_____ (insert the amount of the credit line currently in use as set forth in Contractor's response to Part I, Section D, Question No. 12 of the questionnaire (***Exhibit B***)).

Contractor's percentage of the credit line in use is: _____% (divide the amount of Contractor's credit line in use by Contractor's maximum credit line).

Best Value Point Allocation for Percentage of Credit Line in Use:

Percentage of Credit Line Used	**Best Value Points Earned (10 points possible)**
0% - 10%	10
11% - 20%	9
21% - 30%	8
31% - 40%	7
41% - 50%	6
51% - 60%	5
61% - 70%	4
71% - 80%	3
81% - 90%	2
91% - 100%	1

Best Value Points Awarded to Contractor for Percentage of Credit Line Used: ____

3. Number of Audit Exceptions (10%) 10 points possible

Contractor's number of audit exceptions: ___ (this information should be included in Contractor's audited year-end financial statement, which is required to be submitted with the responses to the questionnaire (see Question No. 10 in Part I of Exhibit B)).

Best Value Point Allocation for Audit Exceptions:

Contractor's Audit Exceptions	**Best Value Points Earned (10 points possible)**
0	10
1	9
2	8
3	7
4	6
5	5
6	4
7	3
8	2
9	1
10 or more	0

Best Value Points Awarded to Contractor for number of Audit Exceptions: ____

4. Firm's Experience (20%) 20 points possible

For scoring of this subsection, use the information provided in Contractor's responses to Part I, Section E, of ***Exhibit B*** regarding (a) California public school K-12 construction projects subject to DSA approval completed in the last three years, ***and*** (b) other California public works projects completed in the last two years – all of which shall be referred to as "Contracts" hereinafter in this Section 4.

a. Large Construction

As a prime contractor, Contractor has completed _____ Contracts which each have an original price of construction exceeding $20,000,000.

Best Value Point Allocation for Contractor's Experience:

Number of Contracts (see above) that had an original price exceeding $20,000,000	**Best Value Points Earned (10 points possible)**
4 or more	10
3	7
2	4
1	2
0	0

Best Value Point Allocation for large projects: _____

b. Multiple Prime Construction

As a prime contractor, Contractor has completed _____ Contracts to install modular buildings as a multiple prime contractor where other contractors performed the site construction work.

Number of Contracts (see above) as multiple prime contractor	**Best Value Points Earned (10 points possible)**
7 or more	10
6	8
5	6
4	4
3	3
2	2
1	1
0	0

Best Value Point Allocation for multiple prime construction: _____

c. Total Points for Experience

Best Value Points Awarded to Contractor for Experience (total of (a) and (b) above): ____

5. Financial History & Licensing (10%) 10 points possible

District will evaluate Contractor's financial history and licensing based on Contractor's responses to Part III, Section A, Question Nos. 1 and 2 of the questionnaire (***Exhibit B***):

- For Question No. 1, a "no" earns 5 points, and a "yes" earns 0 points.
- For Question No. 2, a "no" earns 5 points, and a "yes" earns -5 points (but may be adjusted up to 0 points if the reason for the suspension is not material).

Contractor's Total Score for Part III, Section A is ____ points.

Best Value Point Allocation for Contractor's Financial History & Licensing:

Contractor's Total Score for Part III, Section A	**Best Value Points Earned (10 points possible)**
10	10
5	6
0	2
Less than 0	0

Best Value Points Awarded to Contractor for Financial History and Licensing: ____

6. Disputes (100%) 10 points possible

District will evaluate Contractor's qualifications with regard to disputes based on Contractor's responses to Part III, Section B, Question Nos. 3 through 11 of the questionnaire (***Exhibit B***):

- For Question No. 3, a "no" earns 5 points; 1-2 times earns 3 points; and more than 2 times earns 0 points. For Question No. 4, a "no" earns 5 points; and a "yes" earns 0 points.
- For Question No. 5, a "no" earns 5 points; and a "yes" earns 0 points.
- For Question No. 6, a "no" earns 5 points; 1-2 instances earns 3 points; and more than 2 instances earns 0 points (but may be adjusted upward if contractor prevailed on claim outside settlement).
- For Question No. 7, a "no" earns 5 points; 1 instance earns 3 points; and more than 1 instance earns 0 points (but may be adjusted upward if contractor prevailed on claim outside settlement).

- For Question No. 8, a “no” earns 5 points; a “yes, by consent” earns 0 points; and a “yes, for cause without consent” earns -5 points.
- For Question No. 9, a “no” earns 5 points; 1 instance earns 3 points; and more than 1 instance earns 0 points.
- For Question No. 10, a “no” earns 5 points; and a “yes” earns 0 points.
- For Question No. 11, a “no” earns 5 points; 1 instance earns 3 points; and more than 1 instance earns 0 points.

Contractor’s Total Score for Part III, Section B is ____ points.

Best Value Point Allocation for Disputes:

Total Score for Part III, Section B (see above)	**Best Value Points Earned (10 points possible)**
42-45	10
38-41	9
34-37	8
30-33	7
26-29	6
22-25	5
18-21	4
14-17	3
10-13	2
6-9	1
0-5	0

Best Value Points Awarded to Contractor for Disputes: ____

7. Insurance and Bonding (10%) 10 points possible

District will evaluate Contractor’s insurance and bonding based on Contractor’s responses to Part III, Section C, Question Nos. 12 through 14 of the questionnaire (***Exhibit B***):

- For Question No. 12, a “no” earns 5 points; and a “yes” earns -5 points.
- For Question No. 13, a “no” earns 5 points; more than 1% but equal or less than 1.25% premium earns 4 points; more than 1.25% but equal or less than 1.5% premium earns 3 points; and more than 1.5% premium earns 0 points.
- For Question No. 14, a “no” earns 5 points; and a “yes” earns 0 points.

Contractor’s Total Score for Part III, Section C is ____ points.

Best Value Point Allocation for Insurance and Bonding:

Total Score for	**Best Value Points Earned**

Part III, Section C	(10 points possible)
15	10
14	9
13	8
10	7
9	6
8	5
5	4
4	3
3	2
0	1
Less than 0	0

Best Value Points Awarded to Contractor for Insurance and Bonding: ____

8. Compliance with Law, Including Safety (10%) 10 points possible

District will evaluate Contractor's compliance with law based on Contractor's responses to Part III, Section D, Question Nos. 15 through 20 of the questionnaire (***Exhibit B***):

- For Question No. 15, a "no" earns 5 points; 1 instance earns 4 points; 2 instances earns 3 points; and more than 2 instances earns 0 points.
- For Question No. 16, a "no" earns 5 points; 1 instance earns 4 points; 2 instances earns 3 points; and more than 2 instances earns 0 points.
- For Question No. 17, a "no" earns 5 points; 1 instance earns 4 points; 2 instances earns 3 points; and more than 2 instances earns 0 points.
- For Question No. 18, "weekly " earns 5 points; "monthly" earns 3 points; "quarterly" earns 1 points; and less frequently than quarterly earns 0 points.
- For Question No. 19, an average EMR of 0.95 or less earns 5 points; an average EMR more than 0.95 but less than or equal to 1.00 earns 3 points; and an average EMR more than 1.00 earns 0 points.
- For Question No. 20, a "no" earns 5 points; and a "yes" earns 0 points.

Contractor's Total Score for Part III, Section D is ____ points.

Best Value Point Allocation for Compliance with Law:

Total Score for Part III, Section D	Best Value Points Earned (10 points possible)
30	10
27 – 29	9
24 – 26	8
21 – 23	7
18 – 20	6

15 – 17	5
12 – 14	4
9 – 11	3
6 – 8	2
3 – 5	1
2 or less	0

Best Value Points Awarded to Contractor for Compliance with Law: ____

9. Prevailing Wage and Apprenticeship Compliance Record (10%) 10 points possible

District will evaluate Contractor's prevailing wage and apprenticeship compliance record based upon Contractor's responses to Part III, Section E, Question Nos. 21 through 24 of the questionnaire (***Exhibit B***):

- For Question No. 21, a "no" earns 5 points; 1 instance earns 4 points; 2 instances earns 3 points; and more than 2 instances earns 0 points.
- For Question No. 22, a "no" earns 5 points; 1 instance earns 4 points; 2 instances earns 3 points; and more than 2 instances earns 0 points.
- For Question No. 23, a "no" earns 5 points; 1 instance earns 4 points; 2 instances earns 3 points; and more than 2 instances earns 0 points.
- For Question No. 24, a "no" earns 5 points; 1 instance earns 4 points; 2 instances earns 3 points; and more than 2 instances earns 0 points.

Contractor's Total Score for Part III, Section E is ____ points.

Best Value Point Allocation for Wage and Apprenticeship Compliance Record:

Total Score for Part III, Section E	**Best Value Points Earned (10 points possible)**
20	10
18 – 19	9
16 – 17	8
14 – 15	7
12 – 13	6
10 – 11	5
8 – 9	4
6 – 7	3
4 – 5	2
2 – 3	1
0 – 1	0

Best Value Points Awarded to Contractor for Wage and Apprenticeship Compliance Record: ____

Contractor's Total Score

1. ____ Best Value Points for Bonding Capacity
2. ____ Best Value Points for Percentage of Credit Line Used
3. ____ Best Value Points for Number of Audit Exceptions
4. ____ Best Value Points for Experience
5. ____ Best Value Points for Financial History and Licensing
6. ____ Best Value Points for Disputes
7. ____ Best Value Points for Insurance and Bonding
8. ____ Best Value Points for Compliance with Law
9. ____ Best Value Points for Wage and Apprenticeship Compliance Record

Contractor's Total Best Value Points: _____
(Maximum Best Value Point Total Available is 100)

EXHIBIT B

Qualifications Questionnaire

Part I: Contractor's General/Financial Information Sheet

A. ***General Information.***

Contractor's name as it appears on license:

_____

CIRCLE ONE: Corporation Partnership Sole Proprietorship

Contact Person: _____

Street Address (P.O. Box is not acceptable):

_____

Telephone: (__)_____ Fax:_____

E-mail address: _____

List all California construction license numbers, classifications and expiration dates of the California contractor licenses held by your firm: _____

If any of your firm's license(s) are held in the name of a corporation or partnership, list below the names of the qualifying individual(s) listed on the CSLB records who meet(s) the experience and examination requirements for each license: _____

List your firm's DIR registration number: _____

[*The remainder of this page is intentionally left blank*]

B. ***History and Ownership of Firm.***

1. How many years has your firm been in business in California as a contractor under your present business name and license number? _____ years

2. Has there been any change in ownership of the firm at any time during the last three years?

   NOTE: A corporation whose shares are publicly traded is not required to answer this question; please indicate "N/A – Publicly traded corporation".

   ☐ Yes ☐ No

   If yes, please provide details on a separate signed page.

3. Is the firm a subsidiary, parent, holding company or affiliate of another construction firm?

   NOTE: Include information about other firms if one firm owns 50 percent or more of another.

   ☐ Yes ☐ No

   If yes, please provide details on a separate signed page.

4. Please provide the information appropriate to your firm below.

<u>For Firms That Are Corporations</u>:

Date incorporated: _____

Under the laws of what state: _____

Provide all the following information for each person who is either (a) an officer of the corporation (president, vice president, secretary, treasurer), or (b) the owner of at least ten percent of the corporation's stock.

Name	Position	Years with Company	% Ownership

Identify every construction firm that any person listed above has been associated with (as owner, general partner, limited partner or officer) at any time during the last five years.

NOTE: For this question, "owner" and "partner" refer to ownership of ten percent or more of the business, or 10 percent or more of its stock, if the business is a corporation.

Person's Name	Construction Firm	Dates of Person's Participation with Firm

<u>For Firms That Are Partnerships</u>:

Date of formation: _____

Under the laws of what state: _____

Provide all the following information for each partner who owns 10 percent or more of the firm.

Name	Position	Years with Company	% Ownership

Identify every construction company that any partner has been associated with (as owner, general partner, limited partner or officer) at any time during the last five years.

NOTE: For this question, "owner" and "partner" refer to ownership of ten per cent or more of the business, or ten percent or more of its stock, if the business is a corporation.

Person's Name	Construction Company	Dates of Person's Participation with Company

<u>For Firms That Are Sole Proprietorships</u>:

Date of commencement of business: _____

Social security number of company owner: _____

Identify every construction firm that the business owner has been associated with (as owner, general partner, limited partner or officer) at any time during the last five years.

NOTE: For this question, "owner" and "partner" refer to ownership of ten percent or more of the business, or ten percent or more of its stock, if the business is a corporation.

Person's Name	Construction Company	Dates of Person's Participation with Company

<u>For Firms That Intend to Make a Bid or Submit a Proposal as Part of a Joint Venture</u>:

Date of commencement of joint venture: _____

Provide all of the following information for each firm that is a member of the joint venture that expects to submit a bid or proposal on one or more projects:

Name of firm	% Ownership of Joint Venture

On a separate sheet provide all other pertinent information required in the sections above, for each corporation, partnership or sole-proprietorship that is a part of the joint venture.

5. State your firm's gross revenues for each of the last three fiscal years:

   Current year: _____
   Previous year: _____
   Year prior to previous year: _____

6. State the number of projects your firm has completed in each of the last three fiscal years:

   Current year: _____
   Previous year: _____
   Year prior to previous year: _____

7. Has your firm changed names or license number in the past five years?

   ☐ Yes ☐ No

If yes, explain on a separate signed page, including the reason for the change.

C. *Bonding.*

8. Name of bonding company/surety: _____

Name of surety agent, address and telephone number:

Please attach a notarized statement from an admitted surety insurer (approved by the California Department of Insurance and authorized to issue bonds in the State of California) which states your current bonding capacity.

_____

9. List all other sureties (name and full address) that have written bonds for your firm during the last five years, including the dates during which each wrote the bonds:

_____

_____

_____

_____

D. *Financial Information.*

10. Please attach your most current reviewed or audited year-end financial statement, which must have been prepared by a certified public accountant, within twelve (12) months of submission of this prequalification package. Also, please provide your most current financial statement, which must have been prepared within three (3) months of submission of this prequalification package.

11. Name of accounting firm and primary contact:_____
_____

Address:_____

Telephone:_____

How many years has this accounting firm prepared financial statements for you? _

12. Banking information:

Name of Bank:_____

Account Manager:_____

Address:_____

_____

Telephone:_____

Account No.:_____

Line of Credit:_____

Amount in Use:_____

How Secured:_____

Expiration Date:_____

(attach extra sheets for additional banks/accounts)

E. ***Recent Construction Projects.***

State the dollar amount of the largest public works contract (whether a prime contract or subcontract of any tier) that you have fully performed within the last five years, including all additive and deductive change orders: $_____

In addition, please provide the information requested below about each of the following:

(1) All public works projects for which a contract (whether a prime contract or a subcontract of any tier) was awarded or given to you and you are still performing the work on the contract;

(2) All of your public works contracts (including prime contracts and subcontracts of any tier) that you completed in the last 24 months; **and**

(3) All of your DSA-approved California K-12 school district public works contracts (including prime contracts and subcontracts of any tier) that you completed in the last three years that were not included in your response to (2) above.

Names and references must be current and verifiable.

Use separate sheets of paper that contain all of the following information for each public works contract requested above:

Contract Name: _____

Location: _____

Owner: _____

Owner contact (name and current phone number): _____

Architect or engineering firm: _____

Architect or engineer contact (name and current phone number): _____

Construction manager (name and current phone number): _____

Inspector of record (name and current phone #): _____

Delivery method used (including but not limited design-bid-build, lease-leaseback, design-build, energy services, and public-private partnership): _____

Description of contract and scope of work performed: _____

Total price of contract for construction (including in-project change orders and closeout change orders approved by the governing board): $_____

Date construction commenced: _____

Original contractual deadline for completion (as defined by that contract): _____
_____

Adjusted contractual deadline for completion (as defined by that contract), based on time extensions granted by owner in board-approved change orders: _____

Actual date of completion (as defined by that contract): _____

If you were a subcontractor on this contract, also state the following:

Total price of your subcontract (including change orders): $_____

General contractor's project manager (lead contact in office): _____

General contractor's superintendent (lead contact on project site): _____

Out of all of the projects identified above, state the number of modular building contracts completed as a multiple prime contractor where other contractors performed the site construction work: _____

F. Apprenticeship Program Information

13. Provide the name, address and telephone number of the apprenticeship program sponsor(s) (approved by the California Apprenticeship Council) from whom you intend to request the dispatch of apprentices to your company for use on any public work project for which you are awarded a contract the District.

_____

_____

14. If your firm operates its own State-approved apprenticeship program:

    (a) Identify the craft or crafts in which your firm provided apprenticeship training in the past year.

    (b) State the year in which each such apprenticeship program was approved, and attach evidence of the most recent California Apprenticeship Council approval(s) of your apprenticeship program(s).

    (c) State the number of individuals who were employed by your firm as apprentices at any time during the past three years in each apprenticeship and the number of persons who, during the past three years, completed apprenticeships in each craft while employed by your firm.

    _____

    _____

PART II: Essential Requirements

The answers to Questions 1-6 must be "Yes," otherwise the proposal will be rejected:

1. Do you possess a valid and current California contractor's license for the Project?

   ☐ **Yes** ☐ **No**

2. If you are a general contractor, do you have a liability insurance policy with a policy limit of at least $3,000,000 per occurrence and $5,000,000 aggregate? If you are a mechanical, electrical or plumbing subcontractor, do you have a liability insurance policy with a policy limit of at least $1,000,000 per occurrence and $2,000,000 aggregate?

   ☐ **Yes** ☐ **No**

3. Do you have current workers' compensation insurance policy as required by the Labor Code or are you legally self-insured pursuant to Labor Code section 3700 et seq.?

   ☐ **Yes** ☐ **No**

   ☐ Contractor is exempt from this requirement, because it has no employees.

4. Has your firm completed at least two California public school K-12 construction projects, subject to DSA approval?

   ☐ **Yes** ☐ **No**

5. Is your firm currently registered with the Department of Industrial Relations and qualified to submit a bid or proposal and to otherwise perform work on a public project pursuant to Section 1725.5 of the Labor Code?

   ☐ **Yes** ☐ **No**

6. Do you agree to provide the modular construction as described in Section IV.A, including but not limited to the new classrooms, administration building, and library building being three-dimensional modular construction, not pre-fab assembly elements or modular components such as walls, roofs, etc. as separate site delivered components?

   ☐ **Yes** ☐ **No**

The answers to Questions 7-13 must be "No," otherwise the proposal will be rejected:

7. Has your contractor's license been revoked or suspended at any time in the last five years, even if later reinstated retroactively?

☐ **Yes** ☐ **No**

8. At the time of submitting this prequalification form, is your firm ineligible to bid on or be awarded a public works contract, or perform as a subcontractor on a public works contract, pursuant to either Labor Code section 1777.1 or Labor Code section 1777.7?

☐ **Yes** ☐ **No**

If yes, state the beginning and ending dates of your ineligibility to bid on or be awarded a public works contract, or perform as a subcontractor on a public works contract:

9. Is your firm currently the debtor in a bankruptcy or receivership case?

☐ **Yes** ☐ **No**

If yes, please attach a copy of the bankruptcy petition, showing the case number, and the date on which the petition was filed.

10. Has a surety firm completed a contract on your behalf, or paid for completion of a contract because your firm was terminated by the project owner within the last five (5) years?

☐ **Yes** ☐ **No**

11. Has your firm, or any of its owners, officers, or partners ever been found liable in a civil suit, or found guilty in a criminal action, for making any false claim or material misrepresentation to any public agency or entity?

☐ **Yes** ☐ **No**

If yes, explain on a separate signed page, including identifying who was involved, the name of the public agency, the date of the investigation and the grounds for the finding.

12. Has your firm, or any of its owners, officers or partners ever been convicted of a crime involving any federal, state, or local law related to construction?

☐ **Yes** ☐ **No**

13. Has your firm or any of its owners, officers or partners ever been convicted of a federal or state crime of fraud, theft, or any act of dishonesty?

☐ **Yes** ☐ **No**

If yes, identify on a separate signed page the person or persons convicted, the court (the county if a state court, the district or location of the federal court), the year and the criminal conduct.

Part III: Scored Questions

A. Financial History & Licensing

1. Was your firm in bankruptcy or receivership any time during the last five years?

☐ **Yes** ☐ **No**

If yes, please attach a copy of the bankruptcy petition, showing the case number and the date on which the petition was filed, and a copy of the Bankruptcy Court's discharge order, or of any other document that ended the case, if no discharge order was issued.

2. Has any CSLB license held by your firm or its Responsible Managing Employee (RME) or Responsible Managing Officer (RMO) been suspended within the last five years?

☐ **Yes** ☐ **No**

B. Disputes

3. At any time in the last five years, have liquidated damages been assessed against, levied against, or withheld from payments to, your firm under a construction contract with either a public or private owner?

☐ **Yes** ☐ **No**

If yes, explain on a separate signed page, identifying all such projects by owner, owner's address, the date of completion of the project, amount of liquidated damages assessed, levied, or withheld by the owner, the amount of liquidated damages at issue, and all other information necessary to fully explain the assessment, levy, or withholding of liquidated damages.

4. In the last five years has your firm, or any firm with which any of your company's owners, officers or partners was associated, been debarred, disqualified, removed or otherwise prevented from bidding on, or completing, any government agency or public works project for any reason?

NOTE: "Associated" refers to another construction firm in which an owner, partner or officer of your firm held a similar position, and which is listed in response to question B.4 in Part I of this form.

☐ **Yes** ☐ **No**

If yes, explain on a separate signed page. State whether the firm involved was the firm applying for prequalification here or another firm. Identify by name of the company, the

name of the person within your firm who was associated with that company, the year of the event, the owner of the project, the project and the basis for the action.

5. In the last five years, has your firm been denied an award of a public works contract based on a finding by a public agency that your company was not a responsible bidder?

☐ **Yes** ☐ **No**

If yes, explain on a separate page. Identify the year of the event, the owner, the project and the basis for the finding by the public agency.

NOTE: The following two questions refer only to disputes between your firm and the owner of a project. You need not include information about disputes between your firm and a supplier, another contractor, or subcontractor. You need not include information about "pass-through" disputes in which the actual dispute is between a sub-contractor and a project owner. Also, you may omit reference to all disputes about amounts of less than $50,000.

6. In the past five years, has any claim by a project owner (including a complaint) against your firm concerning your firm's work on a construction project, been filed in court or been the subject of arbitration?

☐ **Yes** ☐ **No**

If yes, on separate signed sheets of paper identify the claim(s) by providing the project name, date of the claim, name of the claimant, a brief description of the nature and amount of the claim (including a breakdown of the major elements of the claim), the court in which the case was filed, and a brief description of the status of the claim (pending or, if resolved, a brief description of the resolution).

7. In the past five years, has your firm filed any claim (including a complaint) in court or arbitration against a project owner concerning work on a project or payment for a contract?

☐ Yes ☐ No

If yes, on separate signed sheets of paper identify the claim by providing the project name, date of the claim, name of the entity (or entities) against whom the claim was filed, a brief description of the nature and amount of the claim (including a breakdown of the major elements of the claim), the court in which the case was filed and a brief description of the status of the claim (pending, or if resolved, a brief description of the resolution).

8. Has your firm had a contract for a public work of improvement in the last five years that

was terminated for cause by a public entity, or terminated in whole or in part with or without your consent? **Note: you need not answer "yes" if the public entity terminated the contract for convenience.**

☐ **Yes** ☐ **No**

If the answer is "Yes," for each such contract attach a separate sheet identifying the owner, your bonding company, the original contract value, the value of the work terminated and a brief explanation of the circumstances leading to the termination.

9. At any time during the past five years, has any surety company made any payments on your firm's behalf to satisfy any claims made against a performance or payment bond issued on your firm's behalf, in connection with a construction project, either public or private?

☐ Yes ☐ No

If "yes," explain on a separate signed page the amount of each such claim, the name and telephone number of the claimant, the date of the claim, the grounds for the claim, the present status of the claim, the date of resolution of such claim if resolved, the method by which such was resolved if resolved, the nature of the resolution and the amount, if any, at which the claim was resolved.

10. In the last three years has your firm held a public works contract on which more than three (3) stop payment notices were served against your firm.

☐ Yes ☐ No

If "yes," explain on a separate signed page.

11. In the last 3 years has there been a claim against your Payment Bond?

☐ Yes ☐ No

If "yes," explain on a separate signed page.

C. Insurance and Bonding

12. In the last five years, has any insurance carrier, for any form of insurance, refused to renew the insurance policy for your firm?

☐ **Yes** ☐ **No**

If yes, how many instances? _____

13. If your firm was required to pay a premium of more than one percent for a performance and payment bond on any project(s) on which your firm worked at any time during the last five years, state the percentage that your firm was required to pay, identify the project, identify the owner, and identify the dates of the project. You may provide an explanation for a percentage rate higher than one percent, if you wish to do so.

_____%

If a contractor states a rate for a project that is more than 1.0% but it was only charged due to the small size of the project, the District retains the discretion to waive this high rate.

14. During the last five years, has your firm ever been denied bond coverage by a surety company, or has there ever been a period of time when your firm had no surety bond in place during a public construction project when one was required?

☐ **Yes** ☐ **No**

If yes, provide details on a separate signed sheet indicating the date when your firm was denied coverage and the name of the company or companies which denied coverage; and the period during which you had no surety bond in place.

D. Compliance with Law

15. Has CAL OSHA cited and assessed penalties against your firm for any "serious," "willful" or "repeat" violations of its safety or health regulations in the past five years?

Note: If you have filed an appeal of a citation and the Occupational Safety and Health Appeals Board has not yet ruled on your appeal, you need not include information about it.

☐ **Yes** ☐ **No**

If yes, attach a separate signed page describing each citation.

16. Has the federal Occupational Safety and Health Administration cited and assessed penalties against your firm in the past five years?

Note: If you have filed an appeal of a citation and the appropriate appeals Board has not yet ruled on your appeal, you need not include information about it.

☐ **Yes** ☐ **No**

If yes, attach a separate signed page describing each citation.

17. Has the EPA or any Air Quality Management District or any Regional Water Quality Control Board cited and assessed penalties against either your firm or the owner of a project on which your firm was the contractor, in the past five years?

NOTE: If you have filed an appeal of a citation and the Appeals Board has not yet ruled on your appeal, or if there is a court appeal pending, you need not include information about the citation.

☐ **Yes** ☐ **No**

If yes, attach a separate signed page describing each citation.

18. How often do you require documented safety meetings to be held for construction employees and field supervisors during the course of a project?

_____

19. List your firm's Experience Modification Rate (EMR) (California workers' compensation insurance) for each of the past three premium years:

NOTE: An Experience Modification Rate is issued to your firm annually by your workers' compensation insurance carrier.

Current year: _____
Previous year: _____
Year prior to previous year: _____

Three-year average: _____

If your EMR for any of these three years is or was 1.00 or higher, you may, if you wish, attach a letter of explanation.

20. Within the last five years, has there ever been a period when your firm had employees but was without workers' compensation insurance or state-approved self-insurance?

☐ **Yes** ☐ **No**

E. Prevailing Wage and Apprenticeship Compliance Record

21. Has there been any occasion during the last five years on which your firm was required to pay either back wages or penalties for your own firm's failure to comply with the **state's** prevailing wage laws?

☐ **Yes** ☐ **No**

NOTE: This question refers only to your own firm's violation of prevailing wage laws, not to violations of the prevailing wage laws by a subcontractor.

If yes, attach a separate signed page or pages, describing the nature of each violation, identifying the name of the project, the date of its completion, the public agency for which it was constructed; the number of employees who were initially underpaid and the amount of back wages and penalties that you were required to pay.

22. During the last five years, has there been any occasion on which your firm has been penalized or required to pay back wages for failure to comply with the **federal** Davis-Bacon prevailing wage requirements?

☐ **Yes** ☐ **No**

If yes, attach a separate signed page or pages describing the nature of the violation, identifying the name of the project, the date of its completion, the public agency for which it was constructed; the number of employees who were initially underpaid, the amount of back wages you were required to pay along with the amount of any penalty paid.

23. Other than as already described in response to any question above, have any other labor or environmental charges or penalties been assessed or levied against, or paid by, your firm or the owner of a project on which your firm was the contractor in the past five years?

☐ **Yes** ☐ **No**

24. At any time during the last five years, has your firm been found to have violated any provision of California apprenticeship laws or regulations, or the laws pertaining to use of apprentices on public works?

☐ **Yes** ☐ **No**

If "yes," provide the date(s) of such findings, and attach copies of the Department's final decision(s).

If yes, attach a separate signed page or pages describing the nature of the violation, identifying the name of the project, the date of its completion, and the public agency for which it was constructed.

PART IV: CERTIFICATION

Questionnaires submitted by corporations must be signed with the legal name of the corporation, followed by the name of the state of incorporation and by the signature and designation of the chairman of the board, president or any vice president, and then followed by a second signature by the secretary, assistant secretary, the chief financial officer or assistant treasurer. All persons signing must be authorized to bind the corporation in the matter. The name of each person signing shall also be typed or printed below the signature. Satisfactory evidence of the authority of each officer signing on behalf of a corporation shall be furnished.

Questionnaires submitted by partnerships must furnish the full name of all partners and must be signed in the partnership name by a general partner with authority to bind the partnership in such matters, followed by the signature and designation of the person signing. The name of the person signing shall also be typed or printed below the signature.

Each person signing below makes the following representations under penalty of perjury:

The submitter of the foregoing answers to the questionnaire has read the same and the matters stated therein are true of his or her own personal knowledge. This information is provided for the purpose of qualifying to bid on, or submit a proposal for, the Project, and any individual, company or other agency named herein is hereby authorized to supply the District with any information necessary to verify the applicant's statements. By signing below, the submitter and the named contractor hereby grant permission to the District to contact any or all of the above listed persons or entities to confirm facts or otherwise investigate the above facts and issues.

The submitter understands that any statement which is proven to be false shall be grounds for immediate disqualification from bidding on the Project. The submitter whose signature appears below represents and warrants that he or she has authority to bind the named contractor.

I, the undersigned, certify and declare that I have read all the foregoing answers to this qualifications questionnaire and know their contents. The matters stated in the questionnaire answers are true of my own knowledge and belief, except as to those matters stated on information and belief, and as to those matters I believe them to be true. I declare under penalty of perjury under the laws of the State of California, that the foregoing is correct.

Executed this _____ day of _____, 20__, at _____.

_____
Signature

_____
Typed Name

_____
Contractor

(Add additional signature pages as necessary to comply with the directions above.)

EXHIBIT C

Ranking of Best Value Scores

SECTION I – CONTRACTOR QUALIFICATIONS

In the following table, enter all proposing Contractors and each one's total points received from the qualifications scoring in Exhibit A (maximum points available per Contractor is 100).

CONTRACTOR	POINTS

SECTION II – FEE PROPOSALS

In the following table, enter all proposing Contractors based on their fee proposals in order from lowest to highest. In the event two Contractors submit fee proposals with the same overall fee, both Contractors shall be awarded the average amount of points for their positions. (For example, if two Contractors submit a fee proposal of exactly 5.32% that ties them for the second lowest fee proposal, each Contractor shall receive 85 points.)

CONTRACTOR	FEE PROPOSAL	POINTS
	__.__%	100
	__.__%	90
	__.__%	80
	__.__%	70
	__.__%	60
	__.__%	50
	__.__%	40
	__.__%	30
	__.__%	20
	__.__%	10

SECTION III – BEST VALUE SCORE

In the following table, enter all proposing Contractors, their scores from the qualifications and fee proposal evaluations, and their total combined score. The total combined score is the Contractor's "best value score."

CONTRACTOR	SECTION I POINT TOTAL	SECTION II POINT TOTAL	SECTION I & SECTION II COMBINED TOTAL

SECTION IV – BEST VALUE RANK

In the following table, enter all proposing Contractors and best value scores in order from the highest best value score to the lowest best value score. The Contractor with the highest best value score shall be ranked No. 1 overall.

CONTRACTOR	BEST VALUE SCORE (highest point total to lowest point total)	RANK
		1
		2
		3
		4
		5
		6
		7
		8
		9
		10

EXHIBIT D

Lease-Leaseback Agreement

LEASE-LEASEBACK AGREEMENT

Dated as of _____, 20__

Between

Tracy Unified School District

and

_____

McKinley Elementary School (Increment 2) Building Package Contract

800 W. Carlton Ave., Tracy, CA 95376

LEASE-LEASEBACK AGREEMENT FOR THE

MCKINLEY ELEMENTARY SCHOOL (INCREMENT 2) BUILDING PACKAGE CONTRACT

THIS LEASE-LEASEBACK AGREEMENT (this "Agreement") is entered into as of _____, 20__, between the Tracy Unified School District, a California public school district (the "Owner"), and _____ *[insert name]*, a _____ *[insert "California corporation and" if so]* licensed general contractor (the "Contractor"). Owner and Contractor are each a "Party" and together are the "Parties" to this Agreement.

The Owner intends to make certain tenant improvements generally described in Section 1, below (the "Work") to its New Campus Facilities on the campus of its McKinley Elementary School, located at 800 W. Carlton Ave., Tracy, CA 95376, such Work being performed pursuant to the Agreement and all incorporated documents (the "Contract" and "Contract Documents"), all of which is part of the Owner's McKinley Elementary School (Increment 2) Building Package **project (the "Project"). This Agreement includes and incorporates all of the Contract Documents identified in Section 1.1.1 of the General Conditions for this Contract.**

This Agreement is entered into by the Parties pursuant to California Education Code section 17406, which permits the governing board of a school district, without advertising for bids, to lease to any person, firm, or corporation any real property owned by the school district if the instrument by which such property is leased requires the lessee to construct on the leased premises, or provides for the construction thereon, of a building for the use of the school district during the term of the lease, and provides that title to that building shall vest in the school district at the expiration of the lease.

In connection with the approval of this Agreement, the Owner will enter into a site lease with Contractor (the "Site Lease"), under which it will lease the Contract site described and depicted in Exhibit A of the Site Lease (the "Site") to Contractor in order for Contractor to finance and construct the Contract as described in the Scope of Work set forth in Section 1, below (the "Scope of Work").

Contractor will lease the Site back to the Owner pursuant to a Sublease Agreement (the "Sublease"), under which the Owner will be required to make sublease payments to Contractor for the use and occupancy of the Site, including the Contract.

Contractor is experienced in the construction of the type of contract and type of work desired by the Owner and is willing to perform said construction Work for the Owner, all as more fully set forth in this Agreement.

The Owner and Contractor therefore agree as follows:

1. Scope of Work. The Contractor agrees to finance construction of the Contract and to furnish all labor, equipment and materials, including tools, implements, and appliances required, and to perform all of the Work, as that term is defined in Article 1.1.3 of the General Conditions, in a good and workmanlike manner, free from any and all liens and claims from mechanics, material suppliers, subcontractors, artisans, machinists, teamsters, freight carriers, and laborers required for the

(INCREMENT 2) BUILDING PACKAGE CONTRACT
AT MCKINLEY ELEMENTARY SCHOOL
SAN JOAQUIN COUNTY, CALIFORNIA,

all in strict compliance with the Contract Documents, including but not limited to the plans, drawings, and specifications ("Plans and Specifications") for the Contract to be prepared by

PBK Architects
2600 Tenth Street, Suite 700
Berkeley, CA 94710
P: 510 450-1999

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

The Scope of Work does not include Contractor's performance of the preconstruction services during the design phase as required by Section 2, below.

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

In accordance with California Public Contract Code section 3300, Contractor has a Class "___B___" license that Contractor shall maintain in good standing for the duration of Contractor's work on the Contract.

During the Work, the Contractor shall ensure that all Work, including but not limited to Work performed by Subcontractors, is performed in compliance with all applicable legal, contractual, and local government requirements related to the novel coronavirus and COVID-19, including "social distancing," masks, and hygiene as may be ordered by the State or local authorities and as may be directed in the Contract Documents.

2. Preconstruction Services During the Design Phase. Contractor shall perform the following preconstruction services during the design of the Work. These preconstruction services shall be completed in 275 days, so that the architect may finalize its Plans and Specifications prior to submission to DSA for approval, and these services are estimated to require between _450_ and _500_ total hours:

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

b. *Constructability Review*. Contractor shall provide at least two (2) constructability reviews of the Plans and Specifications before or at each of the following intervals of preconstruction: (i) One within two (2) weeks of the architect's completion of design development; and (ii) one within

two (2) weeks of the architect's completion of the final Plans and Specifications that will ultimately be submitted to DSA for approval.

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

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

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

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

f. *Construction Planning*. Contractor shall provide assistance to Owner in construction planning, including phasing, staging, site logistics, sequencing, fencing, office locations and means and methods of construction. The Contractor shall (1) provide a preliminary evaluation of the Owner's schedule, cost and design requirements for the Contract; (2) develop an anticipated construction schedule pursuant to Subsection (d) above; (3) develop a preliminary cost estimate for each type of work contemplated by the Contract pursuant to Subsection (e) above; (4) clarify and delineate the Architect's, the Contractor's, and the Owner's respective duties and responsibilities; (5) set forth a plan for the administration and coordination of all Work on the Contract, including pre-construction meetings; and (6) select subcontractors (see Section IV.E of the Request for Proposals and Qualifications ["RFPQ"]). The Architect and Owner shall review the above for acceptance. Contractor will also ensure that all Work complies with the guidelines established by the State of California Office of Public School Construction and any other Federal or State agencies having jurisdiction over the Contract. The objective of this step will be to develop an overall program strategy as relates to timing, budgets, construction materials, means and methods and the program interface during construction.

3. Contract Documents. The Contractor and the Owner agree that this Agreement, and all of the documents listed in Article 1.1.1 of the General Conditions (see attachment to the RFPQ for this Contract) are incorporated into this Agreement and together form the "Contract Documents," which form the "Contract."

4. Time to Complete and Liquidated Damages. Time is of the essence in this Contract. The time for Completion of the Work shall be Four Hundred Fifty-Six (456) calendar days which shall start to run on the date of Owner's approval of the Total Sublease Amount (as set forth in Section 5 of this Agreement), pursuant to California Education Code section 17406(a)(3). The Contractor's deadline for Completion of the Work under the previous sentence shall be the "Date for Completion."

Accordingly, the parties agree that $ 3,000.00 per calendar day of delay shall be the damages which the Owner shall directly incur upon failure of the Contractor to Complete the Work by the Date for Completion, or Complete any specified portion of the Work by a milestone deadline, as described above.

Liquidated damages will accrue for failure to meet milestone deadlines even if the Contractor Completes the Work within the Contract Time.

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

If the Owner accepts any work or makes any payment under this Agreement after a default by reason of delays, the payment or payments shall in no respect constitute a waiver or modification of any Agreement provisions regarding time of completion and liquidated damages.

5. Total Sublease Amount. For satisfactory performance of the Work and any preconstruction services during the design phase of that Work, Owner shall pay Contractor a total amount ("Total Sublease Amount") for that Work which will be calculated after the following occurs: Contractor completes the required preconstruction services set forth above; all subcontractors are selected, in accordance with Education Code section 17406(a)(4) and the RFPQ; and if required, DSA has approved the Plans and Specifications for the Work.

Following the occurrence of all of the events set forth in the paragraph above, Contractor shall provide Owner with objectively verifiable information of its costs to perform the Work and a written rationale and calculation for the proposed Total Sublease Amount, including documentation sufficient to support the calculation. The Total Sublease Amount shall be calculated as described in the RFPQ (including but not limited to Sections III.D.1 and IV.E of the RFPQ) using the Contractor's proposed percentage fee of _____ and _____ hundredths percent (__.___%; the "Percentage"). The Total Sublease Amount shall provide compensation for all costs incurred by Contractor as described in the RFPQ, including the cost of preconstruction services during the design phase. If Contractor's actual costs are less than estimated in the calculation of the Total Sublease Amount, then the Owner shall be entitled to a credit for the reducted costs.

Owner may elect to include a special allowance or general contingency allowance ("Allowance") in the Total Sublease Amount, from which the Owner may, in its sole discretion, elect to pay any additional amounts that are owed to the Contractor under the Contract Documents, rather than pay the Contractor by a change order approved by the Owner's governing board ("Board"). No other allowance or contingency shall be added to the Total Sublease Amount or the Contract; and the Contractor may not demand that another allowance or contingency be added, including but not limited to a "contractor contingency." Any payment from an Allowance is entirely at the discretion, and only with the advanced written approval, of the Owner. To request payment from an Allowance, the Contractor must fully comply with the Contract Documents' requirements related to Notice to Potential Changes, Change Order Requests, and Claims, including but not limited to Articles 4 and 7 of the General Conditions and its provisions regarding waiver of rights for failure to comply. If the Owner approves in writing a payment from an Allowance, no change order approved by Owner's governing body shall be required, but Contractor must sign an Allowance expenditure form, after which future sublease payments shall be adjusted as provided in the Contract Documents. Contractor's acceptance of a sublease payment that includes such payment shall act as a full and complete waiver by Contractor of all rights to recover additional money related to the underlying basis of such payment; and such waiver shall be in addition to any other waiver that applies under the Contract Documents (including Article 4 of the General Conditions). If Contractor requests a time extension or other consideration in connection with or related to a requested payment from an Allowance, Contractor must comply with the Contract Documents' requirements related to Notice to Potential Changes, Change Order Requests, and Claims, including but not limited to Articles 4, 7, and 8 of the General Conditions and their provisions regarding waiver of rights for failure to comply, and no such time extension or other consideration may be issued until a change order is approved by the Owner's governing body pursuant to the Contract Documents. The amount of an Allowance may only be increased by a change order approved by Owner's governing body. Once an Allowance is fully spent, the Contractor must request any additional compensation pursuant to the procedures in the Contract Documents for Notices of Potential Claim, Change Order Requests, and Claims, and payment must be made after a change order approved by the Owner's governing body pursuant to the General Conditions. Upon Completion of the Work, all amounts in an Allowance that remain unspent and unencumbered shall remain the property of the Owner, Contractor shall have no claim

to such funds, the Owner shall be entitled to a credit for such unused amounts against the above contract price, and the Owner may withhold such credit from any sublease payment or release of retention.

Except as otherwise provided in the General Conditions, the Contractor shall assume the risk of all costs in excess of the Total Sublease Amount in the performance of the Work and shall not be entitled to additional payments because of such excess costs.

Contractor shall finance the cost of construction of the Work. Contractor shall pay all subcontractors and suppliers as they perform Work or furnish supplies. The Owner shall pay Contractor sublease payments pursuant to the terms and conditions of the Contract Documents, including but not limited to Section 6 of the Sublease (the "Sublease Payments"). The sum of the Sublease Payments shall not exceed the Total Sublease Amount established pursuant to the Contract Documents. The unspent amount of the Allowances shall be excluded from any calculations of Sublease Payments under the Contract Documents.

The above-calculated Total Sublease Amount and the above-calculated schedule of Sublease Payments shall be stated in an amendment using the form attached to the RFPQ, and Contractor shall sign the amendment prior to presentation to the Board for approval. The amendment may include other terms based on changes during the design phase of the Project. If the Contractor believes that such other terms justify a different Total Sublease Amount than calculated pursuant to the Contract, then it may reserve its rights in the amendment to seek additional compensation based on such other terms, and it may timely submit a Claim pursuant to Section 4.5 of the General Conditions seeking additional money; however, it must still sign the amendment.

If the Contractor refuses to sign the above amendment that complies with the Contract, then the Contractor shall be in material breach of the Contract, at which point the District may elect to terminate (pursuant to General Conditions section 14.2) the Contract, for cause. In the event of such termination, Owner may pursue any available remedies under law or the Contract for the entire Contract.

Once signed by the Contractor, the amendment shall be approved or rejected by the Board at a public meeting before Contractor may proceed with any construction Work under the Contract Documents.

If the Board approves the amendment, then Contractor shall immediately commence the construction Work, and the time for Completion of the Work shall commence to run upon such approval of the amendment by the Board.

If the Board rejects the amendment and the District requests another calculation by Contractor of the Total Sublease Amount and schedule of payments, then Contractor shall submit another calculation that complies with the Contract and the Parties shall prepare another amendment pursuant to the Contract.

If the Board rejects the amendment and the District does not request another calculation by Contractor of the Total Sublease Amount and schedule of payments, then Owner may terminate the Contract for convenience pursuant to General Conditions section 14.3.

For any termination for convenience of the Contract, the District may either (a) award a lease-leaseback contract for the Contract to the next highest best value contractor from the selection process used for the Contract, or (b) award another construction contract for the Contract to a lawfully selected contractor.

6. Changes. Should the Contractor believe that it is entitled to an increase in the Total Sublease Amount or a time extension for the Date of Completion or a Milestone Deadline, it must request such change pursuant to the procedures in the Contract Documents, including but not limited to Section 4.5 of the General Conditions regarding notices of potential change, change order requests, and claims. To be enforceable, any written amendment or change order must be signed by both parties and approved by the Owner's governing body.

7. Term and Termination. The term of the Contract (the "Lease Term") begins on _____, 20__, *[insert effective date of the agreement; see first paragraph of agreement, above]* and automatically ends on the date that the final Sublease Payment is due (as may be adjusted during the Contract) or on the date that the Contract is terminated, all in accordance with the Contract Documents. The Lease Term and the Sublease Payments may be extended as provided in the Sublease. All of the covenants, representations and warranties set forth in the Contract, including indemnification obligations, that are intended to bind the Parties after the Completion of the Work or termination of the Contract will survive such Completion or termination for the periods provided for in the Contract or otherwise allowed by law. The Site Lease and the Sublease each shall automatically end at the same time as this Agreement, with the Parties' respective leasehold interests thereunder automatically ended and released, and title to the Site and Work automatically and fully vested in the Owner.

8. Prequalification of Contractor and Certain Contractors.

Prequalification may be required (see the RFPQ).

9. Selection of Subcontractors; DVBE Goals. All Work shall be let by Contractor to subcontractors, except as otherwise permitted below. For each scope of Work that exceeds 0.5% of the Work, Contractor shall provide public notice of availability of work to be subcontracted in accordance with the District's competitive bidding process (including but not limited to Public Contract Code section 22037, including a fixed date and time on which qualifications statements, bids, or proposals will be due. Contractor shall establish reasonable qualification criteria and standards and shall award each subcontract to the lowest responsive and responsible bidder. All subcontractors shall be afforded the protections of the Subletting and Subcontracting Fair Practices Act (commencing with Public Contract Code section 4100).

If Contractor wishes to self-perform a portion of the Work rather than enter a subcontract for that portion (regardless of whether that portion exceeds 0.5% of the Work), it may only self-perform that Work if it uses the applicable subcontractor selection process under Education Code section 17406(a)(4), timely submits a bid for that portion of the Work that covers all of its profit and costs (including overhead (see RFPQ §IV.E), and its bid is the lowest responsive and responsible bid for that portion of the Work. Contractor's subcontractor selection process shall be subject to review by, and approval of Owner.

Compliance with Disabled Veteran Business Enterprise ("DVBE") contracting goals is required for this Contract. In accordance with Education Code section 17076.11 the Owner has a DVBE participation goal of 3% per year of the overall dollar amount of state funds allocated to the Owner pursuant to the Leroy F. Greene School Facilities Act of 1998, and expended each year by the Owner for this Contract. The Owner is seeking DVBE participation under this Agreement.

The Contractor must make a good faith effort to contact and utilize DVBE subcontractors and suppliers in securing bids, in the manner set forth in this Section for performance of the Contract. Information regarding certified DVBE firms can be obtained from the State's Office of Small Business and DVBE Services (OSDS) at (916) 375-4940 as well as the OSDS website at www.bidsync.com/DPXBisCASB. Verification of DVBE status must be obtained from the OSDS by receiving an approved certification letter and reference number from that office. Contractor is required, as a material condition of this Agreement, to retain documentation of its good faith efforts in utilizing DVBEs for this Contract, for submission to the Owner or to the applicable state agency in the event such documentation is requested.

Good faith efforts are demonstrated by evidence of the following: (a) contact was made with the Owner regarding the identification of DVBEs; (b) contact was made with other state agencies and with local DVBE organizations to identify DVBEs; (c) advertising was published in trade papers and other papers focusing on DVBEs; (d) invitations to bid or proposal solicitations were submitted to potential DVBE contractors; and (e) available DVBEs were considered. Contractor shall certify, under penalty of perjury, that a good faith effort was made to include DVBE subcontractors and suppliers in the Contract.

Prior to, and as a condition precedent for, the final Sublease payment made to Contractor by the Owner pursuant to Section 6 of the Sublease, the Contractor shall provide the Owner with written documentation identifying the amount paid to certified DVBE subcontractors and suppliers in performance of the Contract. The Contractor shall also provide the Owner with a copy of the DVBE Certification Letter issued by OSDS for each DVBE that has participated in the Contract. This documentation will be used by the Owner to evaluate its success in meeting its DVBE participation goal.

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

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

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

As a public work, the Contract is subject to compliance monitoring and enforcement by the Department of Industrial Relations. For all projects over Twenty-Five Thousand Dollars ($25,000), in order to be qualified to submit a bid or to be listed in a bid proposal subject to the requirements of Public Contract Code section 4104, or enter into, or engage in the performance of any contract of public work (as defined by Division 2, Part 7, Chapter 1 (§§1720 *et seq*.) of the Labor Code), a contractor or subcontractor must be currently registered and qualified under Labor Code section 1725.5 to perform public work as defined by Division 2, Part 7, Chapter 1 (§§1720 *et seq*.) of the Labor Code.

11. Working Hours. Under California Labor Code sections 1810 to 1815, the time of service of any worker employed by the Contractor or a Subcontractor doing or contracting to do any part of the Work contemplated by this Agreement is limited and restricted to 8 hours during any one calendar day and 40 hours during any one calendar week, provided, that work may be performed by such employee in excess of said 8 hours per day or 40 hours per week provided that compensation for all hours worked in excess of 8 hours per day, and 40 hours per week, is paid at a rate not less than 1½ times the basic rate of pay. The Contractor and every Subcontractor shall keep an accurate record showing the name of and the actual hours worked each calendar day and each calendar week by each worker employed by them in connection with the Work. The Contractor and every Subcontractor shall keep the records open at all reasonable hours to inspection by representatives of the Owner and the Division of Labor Standards Enforcement. The Contractor shall as a penalty to the Owner forfeit $25.00 for each worker employed in the execution of this Agreement by the Contractor or by any subcontractor for each calendar day during which such worker is required or permitted to work more than 8 hours in any one calendar day, and 40 hours in any one calendar week, except as herein provided.

12. Apprentices. The Contractor shall comply with California Labor Code sections 1777.5 and 1777.6. These sections require that contractors and subcontractors employ apprentices in apprenticeable occupations in a ratio of not less than 1 hour of apprentice's work for each 5 hours of

work performed by a journeyman (unless an exemption is granted in accordance with Labor Code section 1777.5) and that contractors and subcontractors shall not discriminate among otherwise qualified employees as indentured apprentices on any public works solely on the ground of sex, race, religious creed, national origin, ancestry or color. Only apprentices as defined in Labor Code section 3077, who are in training under apprenticeship standards and who have signed written apprentice agreements, will be employed on public works in apprenticeable occupations. The responsibility for compliance with these provisions is fixed with the Contractor for all apprenticeable occupations.

13. Skilled and Trained Workforce. The Contractor and its subcontractors at every tier shall comply with Education Code section 17407.5 and Public Contract Code sections 2600-2603, which require the Contractor and its subcontractors at every tier to employ a skilled and trained workforce, as defined herein, to perform all work on the Contract that falls within an apprenticeable occupation in the building and construction trades.

For the purpose of this Section 13, the following definitions apply:

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

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

C. "Skilled and trained workforce" means that all of the workers are either apprentices registered in an apprenticeship program approved by the DIR, or skilled journeypersons, with at least 30% of the skilled journeypersons employed on the Contract in the following occupations being graduates of an apprenticeship program: Acoustical installer, bricklayer, carpenter, cement mason, drywall installer or lather, marble mason, finisher, or setter, modular furniture or systems installer, operating engineer, pile driver, plasterer, roofer or waterproofer, stone mason, surveyor, teamster, terrazzo worker or finisher, and tile layer, setter, or finisher. For work performed on or after January 1, 2020, at least 60 percent of the skilled journeypersons employed on the Project in all other apprenticeable occupations must be graduates of an apprenticeship program. Pursuant to sections 2600-2602 of the Public Contract Code, the percentage requirement (1) may be partially met in some apprenticeable occupations by skilled journeypersons who commenced working before an apprenticeship program existed, (2) may be met by the hours performed by the skilled journeypersons, (3) need not be met if less than ten (10) hours of work were performed, and (4) need not be met by some subcontractors.

D. "Skilled journeyperson" means any of the following: (i) a person who has graduated from an apprenticeship program for the applicable occupation that was approved by the DIR, (ii) a person who has graduated from an apprenticeship program for the applicable occupation that was located outside of California and approved for federal purposes in accordance with regulations adopted by the federal Secretary of Labor, or (iii) a person

who has at least as many hours of on-the-job experience in the applicable occupation as would be required to graduate from an apprenticeship program approved by the DIR.

For each calendar month during the Work, Contractor shall provide a compliance report to the Owner for each contractor or subcontractor before the fifth day of each month, using the format attached hereto as ***Exhibit A***, or in a substantially similar format, demonstrating compliance with this Section 13, ***except that*** a compliance report is not required for any occupation exempted under Public Contract Code §2601(d)(2)(B)-(D). Such monthly compliance reports shall be subject to the California Public Records Act (commencing with Government Code section 6250), and shall be open to public inspection.

If Contractor fails to comply with this Section 13 then Owner, at its sole discretion, may terminate the Agreement pursuant to Article 14 of the General Conditions, in addition to any other rights or remedies provided to Owner in the Contract Documents. Notwithstanding any other provision of the Agreement or the General Conditions, if Contractor fails to provide any required monthly compliance report pursuant to this Section 13 on or before the fifth day of the following month, or provides an incomplete report, Owner shall withhold further payments to Contractor that would otherwise be due and payable consistent with Public Contract Code section 2602(b).

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

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

15. Indemnification, Insurance, and Bonds. The Contractor will defend, indemnify and hold harmless the Owner, its governing board, officers, agents, trustees, employees and others as provided in the General Conditions.

By this statement the Contractor represents that it has secured the payment of Workers' Compensation in compliance with the provisions of the California Labor Code and during the performance of the work contemplated herein will continue so to comply with said provisions of said Code. The Contractor shall supply the Owner with certificates of insurance evidencing that Workers' Compensation Insurance is in effect and providing that the Owner will receive 30 days' notice of cancellation. reporting

Contractor shall provide the insurance set forth in the General Conditions throughout performance of the Contract. Contractor's comprehensive general and automobile liability insurance shall be written for not less than the following limits of liability:

Comprehensive General Liability

Each Occurrence:
_$5,000,000_____ Each Occurrence

Damage to Rented Premises:
_$5,000,000_ Each Occurrence

Medical Expenses:
_$5,000 to $10,000_ Any One Person

Personal and Advertising Injury:
_$1,000,000_ Each Occurrence

General Aggregate:
_$10,000,000_____ Aggregate

Products – Completed Operations:
_$1,000,000_ Aggregate

Comprehensive Automobile Liability

Combined Single Limit:
_$1,000,000 to $2,000,000_ Each Accident

Property Damage:
_$1,000,000_ Each Accident

Workers' Compensation

Worker's compensation insurance as required by Labor Code section 3200, *et seq*.

Employers' Liability

_$1,000,000_____ Each Accident
_$1,000,000_____ Disease – Each Employee
_$1,000,000_____ Disease – Policy Limit

Contractor shall provide the bonds set forth in the General Conditions, including performance and payments bonds.

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

17. Execution of Other Documents. The Parties to this Agreement shall cooperate fully in the execution of any and all other documents and in the completion of any additional actions that may be necessary or appropriate to give full force and effect to the terms and intent of the Contract.

18. Execution in Counterparts. This Agreement may be executed in counterparts such that the signatures may appear on separate signature pages. A copy, or an original, with all signatures appended together, shall be deemed a fully executed Agreement.

19. Binding Effect. Contractor, by execution of this Agreement, acknowledges that Contractor has read this Agreement and the other Contract Documents, understands them, and agrees to be bound by their terms and conditions. The Contract shall inure to the benefit of and shall be binding upon the Contractor and the Owner and their respective successors and assigns.

20. Severability; Governing Law; Venue. If a court of competent jurisdiction shall hold any provision of the Contract invalid or unenforceable, then such holding shall not invalidate or render unenforceable any other provision hereof. The laws of the State of California, other than its laws regarding choice of law, shall govern the Contract. Any action or proceeding seeking any relief under or with respect to this Agreement shall be brought solely in the Superior Court of the State of California for the County of San Joaquin, subject to transfer of venue under applicable State law, provided that nothing in this Agreement shall constitute a waiver of immunity to suit by Owner.

21. Amendments. The terms of the Contract shall not be waived, altered, modified, supplemented, or amended in any manner whatsoever except by written agreement signed by the Parties and approved or ratified by the Owner's Governing Board.

22. Assignment of Contract. The Contractor shall not assign or transfer by operation of law or otherwise any of its rights, burdens, duties or obligations without the prior written consent of the surety on the payment bond, the surety on the performance bond, and the Owner.

23. Written Notice. Written notice shall be deemed to have been duly served if delivered in person to the individual or member of the firm or to an officer of the corporation for whom it was intended, or if delivered at or sent by registered or certified or overnight mail to the last business address known to the person who gives the notice.

24. Terms Not Defined. Capitalized terms used in this Agreement that are not otherwise defined have the same meaning as in the General Conditions or other Contract Documents.

25. Parties Bound by Agreement. Each person signing this Agreement below warrants and guarantees that he or she is legally authorized to execute this Agreement on behalf of the listed Party and that such execution binds that Party to the terms and conditions of this Agreement.

26. Sanctions in Response to Russian Aggression. The Owner is using State of California funds for this Contract, and therefore Contractor must comply with the Governor's March 4, 2022, Executive Order N-6-22 ("Order") relating to any existing sanctions imposed by the United States government and the State of California in response to Russia's actions in Ukraine, including additional reporting requirements for contracts of $5 million or more. Failure to comply may result in the termination of the Contract. The Owner requires Contractor to comply with the Governor's March 4, 2022, Executive Order N-6-22 ("Order") relating to any existing sanctions imposed by the United States government and the State of California in response to Russia's actions in Ukraine, including additional reporting requirements for contracts of $5 million or more. Failure to comply may result in the termination of the Contract.

* * * * * * * * * * * * * * * * * * * *

CONTRACTOR:

_____,
a California _____

BY: _____
TITLE: President, Vice-President, or Chairperson

BY: _____
TITLE: Secretary, Assistant Secretary,
CFO, or Assistant Treasurer

_____
CALIFORNIA CONTRACTOR'S
LICENSE NO.

_____
LICENSE EXPIRATION DATE

OWNER:

Tracy Unified School District

BY: _____
TITLE: Associate Superintendent of
Business Services

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

MONTHLY SKILLED AND TRAINED WORKFORCE COMPLIANCE REPORT FOR WORK PERFORMED ON OR AFTER JANUARY 1, 2020

(Public Contract Code §§2600-2603)

Owner: Tracy Unified School District

Contract: **McKinley Elementary School (Increment 2) Building Package** Contract
McKinley Elementary School
800 W. Carlton Ave., Tracy, San Joaquin County, California

The undersigned declares:

I am the _____ of _____, the "Contractor" on the Contract identified above. I hereby certify that during the month of _____ , 20__, Contractor and its subcontractors employed a total of _____ workers on the Contract in the apprenticeable occupations designated under Public Contract Code ("PCC") sections 2600 et seq., and these workers performed a total of _____ hours of work within the apprenticeable occupations. I certify that all of these workers in the apprenticeable occupations are either skilled journeypersons (as defined in PCC section 2601(e)) or apprentices registered in an apprenticeship program approved by the Department of Industrial Relations (PCC §2601(d)(1)); and that all of these hours performed in the apprenticeable occupations were performed by such skilled journeypersons and apprentices.

I. CONTRACTOR'S WORKFORCE

[INSTRUCTIONS: If Contractor is not exempt under Section I.A., then for each apprenticeable occupation employed by Contractor, Contractor must separately prepare either Section I.B or I.C. If Contractor is not exempt under Section I.A and cannot meet the requirements of either Section I.B or I.C for each apprenticeable occupation it employs, then Contractor must check the box for, and complete, Section I.D.]

For the workers in each of the apprenticeable occupations employed by Contractor during the aforementioned month, I certify as follows *[check applicable box(es)]*:

☐ **A. Exemption (PCC §2601(d)(5))**

The Contractor's workers in all apprenticeable occupations performed fewer than ten (10) hours of work on the Contract, and thus are exempt from the percentage compliance requirements of PCC section 2601(d)(2).

☐ **B. Percentage Compliance by Number of Workers (PCC §2601(d)(2)(D) and (3))**

[INSTRUCTIONS: If Contractor meets or exceeds the required percentage of skilled journeypersons that are apprenticeship graduates for an apprenticeable occupation, fill out Paragraphs 1.1-1.4 and 2.1-2.4 for that occupation.]

1.0 For each apprenticeable occupation of acoustical installer, bricklayer, carpenter, cement mason, drywall installer or lather, marble mason, finisher, or setter, modular furniture or systems installer, operating engineer, pile driver, plasterer, roofer or waterproofer, stone mason, surveyor, terrazzo worker or finisher, or tile layer, setter, or finisher:

Apprenticeable Occupation: _____

1.1. Number of Contractor's skilled journeypersons in this apprenticeable occupation = _____

1.2. Number of Contractor's skilled journeypersons in this apprenticeable occupation who are graduates of an apprenticeship program for this occupation = _____

1.3 If no apprenticeship program had been approved by the Chief before January 1, 1995, for this apprenticeable occupation, the number of skilled journeypersons who commenced working in this occupation before the Chief's approval of an apprenticeship program for this occupation in the county of this Project = _____ *[may not exceed 15% of 1.1, above]*

1.4. Contractor's apprenticeship graduation percentage for this apprenticeable occupation = _____% *[add the numbers in 1.2 and 1.3, and divide that sum by the number in 1.1; the result must meet or exceed 30%]*

1.5 Attach a list with the full name of each worker relied upon to satisfy the above apprenticeship graduation percentage requirement, and for each worker the list must include the apprenticeship program for that worker, the location of that program, and the graduation date of that worker from that program.

*[**Repeat** Sections 1.1-1.4 above for each apprenticeable occupation described in Section 1.0 that Contractor employed on the Contract and which meets the requirements of Sections 1.1-1.4.]*

2.0 For each apprenticeable occupation other than teamsters and those listed in 1.0 above:

Apprenticeable Occupation: _____

2.1. Number of Contractor's skilled journeypersons in this apprenticeable occupation = _____

2.2. Number of Contractor's skilled journeypersons in this apprenticeable occupation who are graduates of an apprenticeship program for this occupation = _____

2.3 If no apprenticeship program had been approved by the Chief before January 1, 1995, for this apprenticeable occupation, the number of skilled journeypersons who commenced working in this apprenticeable occupation before the Chief's approval of an apprenticeship program for

this occupation in the county of this Project = _____ *[this number may not exceed 30% of 2.1, above]*

2.4. Contractor's apprenticeship graduation percentage for this apprenticeable occupation = _____% *[add the numbers in 2.2 and 2.3, and divide that sum by the number in 2.1; this percentage must be at least 60%]*

2.5 Attach a list with the full name of each worker relied upon to satisfy the above apprenticeship graduation percentage requirement, and for each worker the list must include the apprenticeship program for that worker, the location of that program, and the graduation date of that worker from that program.

*[**Repeat** Sections 2.1-2.4 above for each apprenticeable occupation described in Section 2.0 that Contractor employed on the Contract and which meets the requirements of Sections 2.1-2.4.]*

☐ **C. Percentage Compliance by Number of Hours (PCC §2601(d)(4)(B))**

[INSTRUCTIONS: If Contractor meets or exceeds the required percentage of hours performed by apprenticeship graduates for an apprenticeable occupation, fill out Paragraphs 1.1-1.4 and 2.1-2.4 for that occupation.]

1.0 For each apprenticeable occupation of acoustical installer, bricklayer, carpenter, cement mason, drywall installer or lather, marble mason, finisher, or setter, modular furniture or systems installer, operating engineer, pile driver, plasterer, roofer or waterproofer, stone mason, surveyor, terrazzo worker or finisher, or tile layer, setter, or finisher:

Apprenticeable Occupation: _____

1.1. Number of hours of work performed by Contractor's skilled journeypersons in this apprenticeable occupation = _____

1.2. Number of hours of work performed by Contractor's skilled journeypersons in this apprenticeable occupation who are graduates of an apprenticeship program for this occupation = _____

1.3 If no apprenticeship program had been approved by the Chief before January 1, 1995, for this apprenticeable occupation, the number of hours of work performed by subcontractor's skilled journeypersons who commenced working in this apprenticeable occupation before the Chief's approval of an apprenticeship program for this occupation in the county of this Project = _____ *[may not exceed 15% of 1.1, above]*

1.4. Contractor's apprenticeship graduation percentage for this apprenticeable occupation = _____% *[add 1.2 and 1.3, and divide that sum by 1.1; the result must meet or exceed 30%]*

1.5 Attach a list with the full name of each worker relied upon to satisfy the above apprenticeship graduation percentage requirement, and for each worker the list must include the apprenticeship program for that worker, the location of that program, and the graduation date of that worker from that program.

*[**Repeat** Sections 1.1-1.4 above for each apprenticeable occupation described in Section 1.0 that Contractor employed on the Contract.]*

2.0 For each apprenticeable occupation other than teamsters and those listed in 1.0 above:

Apprenticeable Occupation: _____

2.1. Number of hours of work performed by Contractor's skilled journeypersons in this apprenticeable occupation = _____

2.2. Number of hours of work performed by Contractor's skilled journeypersons in this apprenticeable occupation who are graduates of an apprenticeship program for this occupation = _____

2.3 If no apprenticeship program had been approved by the Chief before January 1, 1995, for this apprenticeable occupation, the number of hours of work performed by subcontractor's skilled journeypersons who commenced working in this apprenticeable occupation before the Chief's approval of an apprenticeship program for this occupation in the county of this Project = _____ *[this number may not exceed 30% of 2.1, above]*

2.4. Contractor's apprenticeship graduation percentage for this apprenticeable occupation = _____% *[add the numbers in 2.2 and 2.3, and divide that sum by the number in 2.1; this percentage must be at least 60%]*

2.5 Attach a list with the full name of each worker relied upon to satisfy the above apprenticeship graduation percentage requirement, and for each worker the list must include the apprenticeship program for that worker, the location of that program, and the graduation date of that worker from that program.

*[**Repeat** Sections 2.1-2.4 above for each apprenticeable occupation described in Section 2.0 that Contractor employed on the Contract.]*

☐ **D. Failure of Contractor to Demonstrate Compliance**

This Skilled and Trained Workforce Compliance Report does not demonstrate compliance with the graduate percentage requirement due to the failure of Contractor to (1) qualify for exemption under I.A, above, or (2) meet the percentage requirements under I.B or I.C, above, for the following apprenticeable occupations: _____.

The total value of the monthly billing for the Contractor is $ _____. I have attached sufficient information to document to value of the monthly billing and understand that the District will withhold 150 percent of the aforementioned amount until a plan to achieve substantial compliance is approved by the District consistent with Public Contract Code section 2602(c).

II. SUBCONTRACTORS' WORKFORCE

[INSTRUCTIONS: Contractor must fill out this form for each subcontractor of every tier. For each subcontractor of every tier that is not exempt under Section II.A., the Contractor must separately prepare either Section II.B or II.C for each apprenticeable occupation employed by that subcontractor. If a subcontractor is not exempt under Section II.A and cannot meet the requirements of either Section II.B or II.C for each apprenticeable occupation it employs, then Contractor must check the box for, and complete, Section II.D.]

I certify that each subcontractor of every tier who performed work during the aforementioned month has provided to Contractor a Skilled and Trained Workforce Compliance Report that is signed under the penalty of perjury, and that provides sufficient detail to allow Contractor to fully and accurately prepare Section II of this form. I certify that Contractor will retain these forms and will provide copies of them to Owner within seven (7) days of Owner's written request. Following review of all of the subcontractors' Skilled and Trained Workforce Compliance Reports, I also certify as follows *[check applicable box(es)]*:

☐ **A. Exemption from Percentage Compliance (PCC §2601(d)(5) and (6))**

The following subcontractors are exempt from the percentage compliance requirements of Public Contract Code section 2601(d)(2) because they employed skilled journeypersons to perform fewer than ten (10) hours of work in the apprenticeable occupations on the Contract: _____ (__ hours), _____ (__ hours), _____ (__ hours), _____ (__ hours), and _____ (__ hours). *[Insert names of the subcontractors on the Contract that are exempt for this reason, and the number of hours performed by skilled journeypersons for each one.]*

The following subcontractors are exempt from the percentage compliance requirements of Public Contract Code section 2601(d)(2) because (1) they were not a listed subcontractor under Public Contract Code section 4104 or a substitute for a listed subcontractor, and (2) the subcontract does not exceed 0.5% of the price of the prime contract: _____, _____, _____, _____, and _____. *[Insert names of the subcontractors on the Contract that are exempt for this reason.]*

☐ **B. Percentage Compliance by Number of Workers (PCC §2601(d)(2)(D) and (3))**

*[INSTRUCTIONS: For **each** subcontractor of every tier that meets or exceeds the required percentage of skilled journeypersons that are apprenticeship graduates for an apprenticeable occupation, fill out Paragraphs 1.1-1.4 and 2.1-2.4 for that subcontractor and occupation.]*

Subcontractor: _____

1.0 For each apprenticeable occupation of acoustical installer, bricklayer, carpenter, cement mason, drywall installer or lather, marble mason, finisher, or setter, modular furniture or systems installer, operating engineer, pile driver, plasterer, roofer or waterproofer, stone mason, surveyor, terrazzo worker or finisher, or tile layer, setter, or finisher:

Apprenticeable Occupation: _____

1.1. Number of subcontractor's skilled journeypersons in this apprenticeable occupation = _____

1.2. Number of subcontractor's skilled journeypersons in this apprenticeable occupation who are graduates of an apprenticeship program for this occupation = _____

1.3 If no apprenticeship program had been approved by the Chief before January 1, 1995, for this apprenticeable occupation, the number of skilled journeypersons who commenced working in this apprenticeable occupation before the Chief's approval of an apprenticeship program for this occupation in the county of this Project = _____ *[may not exceed 15% of 1.1, above]*

1.4. Subcontractor's apprenticeship graduation percentage for this apprenticeable occupation = _____% *[add the numbers in 1.2 and 1.3, and divide that sum by the number in 1.1; the result must meet or exceed 30%]*

1.5 Attach a list with the full name of each worker relied upon to satisfy the above apprenticeship graduation percentage requirement, and for each worker the list must include the apprenticeship program for that worker, the location of that program, and the graduation date of that worker from that program.

*[**Repeat** Sections 1.1-1.4 above for each apprenticeable occupation described in Section 1.0 that subcontractor employed on the Contract and which meets the requirements of Sections 1.1-1.4.]*

2.0 For each apprenticeable occupation other than teamsters and those listed in 1.0 above:

Apprenticeable Occupation: _____

2.1. Number of subcontractor's skilled journeypersons in this apprenticeable occupation = _____

2.2. Number of subcontractor's skilled journeypersons in this apprenticeable occupation who are graduates of an apprenticeship program for this occupation = _____

2.3 If no apprenticeship program had been approved by the Chief before January 1, 1995, for this apprenticeable occupation, the number of skilled journeypersons who commenced working in this apprenticeable occupation before the Chief's approval of an apprenticeship program for this occupation in the county of this Project = _____ *[this number may not exceed 30% of 2.1, above]*

2.4. Subcontractor's apprenticeship graduation percentage for this apprenticeable occupation = _____% *[add the numbers in 2.2 and 2.3, and divide that sum by the number in 2.1; this percentage must be at least 60%]*

2.5 Attach a list with the full name of each worker relied upon to satisfy the above apprenticeship graduation percentage requirement, and for each worker the list must include the apprenticeship program for that worker, the location of that program, and the graduation date of that worker from that program.

*[**Repeat** Sections 2.1-2.4 above for each apprenticeable occupation described in Section 2.0 that subcontractor employed on the Contract and which meets the requirements of Sections 2.1-2.4.]*

☐ **C. Percentage Compliance by Number of Hours (PCC §2601(d)(4)(B))**

*[INSTRUCTIONS: For **each** subcontractor of every tier that meets or exceeds the required percentage of hours performed by apprenticeship graduates for an apprenticeable occupation, fill out Paragraphs 1.1-1.4 and 2.1-2.4 for that subcontractor and occupation.]*

Subcontractor: _____

1.0 For each apprenticeable occupation of acoustical installer, bricklayer, carpenter, cement mason, drywall installer or lather, marble mason, finisher, or setter, modular furniture or systems installer, operating engineer, pile driver, plasterer, roofer or waterproofer, stone mason, surveyor, terrazzo worker or finisher, or tile layer, setter, or finisher:

Apprenticeable Occupation: _____

1.1. Number of hours of work performed by subcontractor's skilled journeypersons in this apprenticeable occupation = _____

1.2. Number of hours of work performed by subcontractor's skilled journeypersons in this apprenticeable occupation who are graduates of an apprenticeship program for this occupation = _____

1.3 If no apprenticeship program had been approved by the Chief before January 1, 1995, for this apprenticeable occupation, the number of hours of work performed by subcontractor's skilled journeypersons who commenced working in this apprenticeable occupation before the Chief's approval of an apprenticeship program for this occupation in the county of this Project = _____ *[may not exceed 15% of 1.1, above]*

1.4. Subcontractor's apprenticeship graduation percentage for this apprenticeable occupation = _____% *[add the numbers in 1.2 and 1.3, and divide that sum by the number in 1.1; the result must meet or exceed 30%]*

1.5 Attach a list with the full name of each worker relied upon to satisfy the above apprenticeship graduation percentage requirement, and for each worker the list must include the apprenticeship program for that worker, the location of that program, and the graduation date of that worker from that program.

*[**Repeat** Sections 1.1-1.4 above for each apprenticeable occupation described in Section 1.0 that subcontractor employed on the Contract and which meets the requirements of Sections 1.1-1.4.]*

2.0 For each apprenticeable occupation other than teamsters and those listed in 1.0 above:

Apprenticeable Occupation: _____

2.1. Number of hours of work performed by subcontractor's skilled journeypersons in this apprenticeable occupation = _____

2.2. Number of hours of work performed by subcontractor's skilled journeypersons in this apprenticeable occupation who are graduates of an apprenticeship program for this occupation = _____

2.3 If no apprenticeship program had been approved by the Chief before January 1, 1995, for this apprenticeable occupation, the number of hours of work performed by subcontractor's skilled journeypersons who commenced working in this apprenticeable occupation before the Chief's approval of an apprenticeship program for this occupation in the county of this Project = _____ *[this number may not exceed 30% of 2.1, above]*

2.4. Subcontractor's apprenticeship graduation percentage for this apprenticeable occupation = _____% *[add the numbers in 2.2 and 2.3, and divide that sum by the number in 2.1; this percentage must be at least 60%]*

2.5 Attach a list with the full name of each worker relied upon to satisfy the above apprenticeship graduation percentage requirement, and for each worker the list must include the apprenticeship program for that worker, the location of that program, and the graduation date of that worker from that program.

*[**Repeat** Sections 2.1-2.4 above for each apprenticeable occupation described in Section 2.0 that subcontractor employed on the Contract and which meets the requirements of Sections 2.1-2.4.]*

☐ **D. Failure of a Subcontractor to Demonstrate Compliance**

This Skilled and Trained Workforce Compliance Report does not demonstrate compliance with the graduate percentage requirement due to the failure of the following subcontractor(s) to (a) qualify for exemption under II.A, above, or (b) meet the percentage requirements under II.B or II.C, above, for the following apprenticeable occupations: _____: _____, _____, _____, _____, and _____. *[Insert names of subcontractors.]*

The total value of the monthly billing for the subcontractor(s) listed in the previous paragraph is $ _____. I have attached sufficient information to document to value of the monthly billing and understand that the District will withhold 150 percent of the aforementioned amount until a plan to achieve substantial compliance is approved by the District consistent with Public Contract Code section 2602(c).

I certify that each subcontractor listed above will be substituted off the Contract pursuant to Public Contract Code section 4100 *et seq*., unless it provides a plan to achieve compliance consistent with Public Contract Code section 2602(c)(1).

_____

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on _____, 20__, at _____ *[city]*, California.

_____
Name

EXHIBIT E

Site Lease

LEASE-LEASEBACK

SITE LEASE AGREEMENT

Dated as of _____, 20__

Between

Tracy Unified School District

and

_____

The McKinley Elementary School (Increment 2) Building Package Contract

at McKinley Elementary School,

800 W. Carlton Ave., Tracy, CA

LEASE-LEASEBACK
SITE LEASE AGREEMENT FOR THE
THE McKinley Elementary School (Increment 2) Building Package CONTRACT

THIS LEASE-LEASEBACK SITE LEASE AGREEMENT ("Site Lease") is entered into as of _____, 20__, between the Tracy Unified School District, a California public school district (the "Owner"), as lessor, and _____ , a California corporation and licensed contractor (the "Contractor"), as lessee. Owner and Contractor are each a "Party" and together are the "Parties" to this Site Lease.

The Owner desires to provide for the construction of certain public improvements (the "Work") more fully described in that certain Lease-Leaseback Agreement, dated _____, 20__, between the Owner and Contractor (the "Contract") and located at McKinley Elementary School, 800 W. Carlton Ave., Tracy, California, (the "Site"), all of which is part of the Owner's McKinley Elementary School New Campus project (the "Project"); and

The Owner's governing body has determined that it is in the best interests of the Owner and for the common benefit of the residents it serves to construct and finance the Contract by leasing the Site on which the Contract is to be constructed to Contractor, and subleasing from Contractor the Site, including the Contract, under that certain Sublease Agreement dated _____, 20__, between Owner and Contractor (the "Sublease"); and

The Owner is authorized under California Education Code section 17406 to lease the Site, and its governing body has authorized the execution and delivery of this Site Lease; and

The purpose of the Site Lease is for Contractor to have necessary access to and use of the Site for the purpose of financing and constructing the Contract; and

Contractor is authorized to lease the Site as lessee and to finance and construct the Contract on the Site, and has authorized the execution and delivery of this Site Lease.

The Parties therefore agree as follows:

1. Site Lease. The Owner leases to Contractor and Contractor leases from the Owner, on the terms and conditions of this Site Lease, the Site more specifically described or depicted in **Exhibit A** attached to this Site Lease, including any real property improvements now or later placed on the Site. References in this Site Lease to the term "Contractor" means Contractor and Contractor's assigns for those rights, interests, and obligations that may be assigned by Contractor. The Site is leased to Contractor on an "as is" basis. Owner shall not be required to make or construct any alterations including structural changes, additions or improvements to the Site. By entering and taking possession of the Site pursuant to this Site Lease, Contractor accepts the Site in "as is" condition. Any agreements, warranties, or representations not expressly contained herein shall in no way bind either Owner or Contractor, and Owner and Contractor expressly waive all claims for damages by reason of any statement, representation, warranty, promise or agreement, if any, not contained in this Site Lease or the Contract Documents.

2. Term. The term of this Site Lease ("Term") shall be coterminous with the term of the Lease-Leaseback Agreement. Upon termination of the Contract, as set forth in the Lease-Leaseback Agreement, the Parties' respective interests under this Site Lease will automatically end and be released, and title to the Site and Work will automatically and fully vest in the Owner. The Work is and shall at all times be and remain the sole property of Contractor until termination of the Contract, and the Owner shall have no right, title, or interest in or to it until termination of the Contract, except as expressly set forth in the Sublease.

3. Representations and Warranties of the Owner. The Owner represents and warrants to Contractor that:

(a) The Owner has good and merchantable fee title to the Site and has authority to enter into and perform its obligations under this Site Lease;

(b) There are no liens on the Site other than permitted encumbrances;

(c) All taxes, assessments, or impositions of any kind with respect to the Site, if applicable, except current taxes, have been paid in full;

(d) The Site is properly zoned for the intended purpose and utilization of it or the Owner intends to render zoning inapplicable pursuant to Government Code section 53094;

(e) The Owner is in compliance with all laws, regulations, ordinances and orders of public authorities applicable to the Site;

(f) There is no litigation of any kind currently pending or threatened regarding the Site or the Owner's use of the Site for the purposes contemplated by this Site Lease, the Sublease, and the Lease-Leaseback Agreement;

(g) To the best of the Owner's knowledge, after actual inquiry: (i) other than those addressed in the Scope of Work, as set forth in the Lease-Leaseback Agreement, no dangerous, toxic or hazardous pollutants, contaminants, chemicals, waste, materials or substances, as defined in or governed by the provisions of any State or Federal Law relating thereto (hereinafter collectively called "Environmental Regulations"), and also including, but not limited to, urea-formaldehyde, polychlorinated biphenyls, asbestos, asbestos containing materials, nuclear fuel or waste, radioactive materials, explosives, carcinogens and petroleum products, or any other waste, material, substance, pollutant or contaminant which would subject the owner of the Site or Contractor or Contractor's subcontractors to any damages, penalties or liabilities under any applicable Environmental Regulation (hereinafter collectively called "Hazardous Substances"), are now or have been stored, located, generated, produced, processed, treated, transported, incorporated, discharged, emitted, released, deposited or disposed of in, upon, under, over or from the Site; (ii) no threat exists of a discharge, release or emission of a Hazardous Substance upon or from the Site into the environment; (iii) the Site has not been used as or for a mine, a landfill, a dump or other disposal facility, industrial or manufacturing facility, or a gasoline service station; (iv) no

underground storage tank is now located in the Site; (v) no violation of any Environmental Regulation now exists relating to the Site, no notice of any such violation or any alleged violation thereof has been issued or given by any governmental entity or agency, and there is not now any investigation or report involving the Site by any governmental entity or agency which in any way relates to Hazardous Substances; (vi) no person, party, or private or governmental agency or entity has given any notice of or asserted any claim, cause of action, penalty, cost or demand for payment or compensation, whether or not involving any injury or threatened injury to human health, the environment or natural resources, resulting or allegedly resulting from any activity or event described in (i) above; (vii) there are not now any actions, suits, proceedings or damage settlements relating in any way to Hazardous Substances, in, upon, under over or from the Site; (viii) the Site is not listed in the United States Environmental Protection Agency's National Priorities List of Hazardous Waste Sites or any other list of Hazardous Substance sites maintained by any federal, state or local governmental agency; and (ix) the Site is not subject to any lien or claim for lien or threat of a lien in favor of any governmental entity or agency as a result of any release or threatened release of any Hazardous Substance.

(h) To the extent permitted by law, the Owner shall not abandon the Site for the use for which it is currently required by the Owner and further, shall not seek to substitute or acquire property to be used as a substitute for the uses for which the Site and Work are to be maintained under the Sublease.

(i) The term "permitted encumbrances" as used herein shall mean, as of any particular time: (i) liens for general ad valorem taxes and assessments, if any, not then delinquent; (ii) this Site Lease, the Sublease, any right or claim of any mechanic, laborer, materialman, supplier, or vendor, if applicable, not filed or perfected in the manner prescribed by law, 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 Site Lease and which will not materially impair the use of the Site; (iii) easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions, or restrictions established following the date of recordation of this Site Lease and to which Contractor and the Owner consent in writing which will not impair or impede the operation of the Site.

4. Representations and Warranties of Contractor. Contractor represents and warrants to the Owner that:

(a) Contractor is duly organized, validly existing and in good standing under the laws of the State of California, with full corporate power and authority to lease and own real and personal property.

(b) Contractor has full power, authority, and legal right to enter into and perform its obligations under this Site Lease, and the execution, delivery, and performance of this Site Lease have been duly authorized by all necessary corporate actions on the part of Contractor and do not require any further approvals or consents.

(c) Execution, delivery, and performance of this Site Lease do not and will not result in any breach of or constitute a default under any indenture, mortgage, contract, agreement, or instrument to which Contractor is a party or by which it or its property is bound.

(d) There is no pending or, to the best knowledge of Contractor, threatened action, or proceeding before any court or administrative agency that will materially adversely affect the ability of Contractor to perform its obligations under this Site Lease.

5. Rental. Contractor shall pay to the Owner as and for advance rental hereunder $1.00 per year per Site, on or before the date of commencement of the term of this Site Lease.

6. Purpose. Contractor shall use the Site solely for the purpose of constructing the Contract on the Site and for subleasing the Site to the Owner. Contractor warrants that it will not engage in any unlawful activities on the Site and that Contractor will not engage in activities on the Site not authorized by the Owner.

7. Termination. Contractor agrees, upon termination of this Site Lease: (i) to quit and surrender the Site in the same good order and condition as it was in at the time of beginning of the term of this Site Lease, reasonable wear and tear excepted; (ii) to release and reconvey to the Owner any liens and encumbrances created or caused by Contractor; and (iii) that any permanent improvements and structures existing upon the Site at the time of the termination of this Site Lease, including but not limited to the Work, shall remain on the Site and title to all such improvements shall vest in the Owner. Notwithstanding the Owner's rights in the event of termination under this Section 7, Contractor shall retain the right to full compensation for all services rendered before the termination in accordance with the Lease-Leaseback Agreement and the Sublease.

8. Quiet Enjoyment. The Owner covenants and agrees that it will not take any action to prevent Contractor's quiet enjoyment of the Site during the term of this Site Lease; and, that in the event the Owner's fee title to the Site is ever challenged so as to interfere with Contractor's right to occupy, use and enjoy the Site, the Owner will use all governmental powers at its disposal, including the power of eminent domain, to obtain unencumbered fee title to the Site and to defend Contractor's right to occupy, use, and enjoy that portion of the Site.

9. No Liens. The Owner shall not mortgage, sell, assign, transfer, or convey the Site or any part thereof to any person during the term of this Site Lease, without the written consent of Contractor. Nothing herein shall preclude the Owner from granting utility easements across the Site to facilitate the use and operation of the Work for which it is intended. Contractor warrants that at all times during this Site Lease, the Site and Work shall remain free and clear of all liens (including mechanic's liens), mortgages, deeds of trust, easements and all other encumbrances, other than liens existing at the time the Work starts, unless the Owner gives Contractor prior written permission to place, or allow to be placed, any liens, mortgages, deeds of trust, easements or other encumbrances on the Site.

10. Right of Entry. The Owner reserves the right for any of its duly authorized representatives to enter upon the Site at any reasonable time to inspect the same or to make any repairs, improvements or changes necessary for the preservation thereof, but in doing so shall not interfere with Contractor's operations on the Contract.

11. Assignment and Subleasing. Contractor will not assign or otherwise dispose of or encumber the Site or this Site Lease without the prior written consent of the Owner.

12. No Waste. Contractor 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 it will not willfully or knowingly use or permit the use of the Site for any illegal act or purpose.

13. Eminent Domain. In the event the whole or any part of the Site or the improvements thereon is taken by eminent domain, the financial interest of Contractor shall be recognized and is hereby determined to be the amount of all Sublease Payments then due or past due and the next succeeding Sublease Payment. The balance of the award, if any, shall be paid to the Owner.

14. Taxes. The Owner covenants and agrees that as between Owner and Contractor, Owner shall pay any and all assessments of any kind or character and also all taxes, including possessory interest - taxes, levied or assessed upon the Site or the improvements thereon.

15. Severability. If a court of competent jurisdiction shall hold any provision of this Site Lease invalid or unenforceable, such holding shall not invalidate or render unenforceable any other provision of this Site Lease, unless elimination of such provision materially alters the rights and obligations embodied in this Site Lease.

16. Binding Effect. This Site Lease shall inure to the benefit of and shall be binding upon the Parties and their respective successors in interest and permitted assigns, if any.

17. Amendments and Modifications. This Site Lease shall not be effectively amended, changed, modified, altered, or terminated without the written agreement of both Parties and approval of the Owner's governing board.

18. Execution in Counterparts. This Site Lease may be simultaneously executed in multiple counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same instrument.

19. Applicable Law. This Site Lease and the rights of the Parties under it shall be governed by and construed in accordance with the laws of California.

20. Headings. 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 of this Site Lease.

21. Time. Time is of the essence in this Site Lease and all of its provisions.

22. Terms Not Defined. Capitalized terms used in this Site Lease that are not defined shall have the same meaning as in the Lease-Leaseback Agreement, General Conditions, and other Contract Documents.

* * * * * * * * * * * * * * * * * * * *

CONTRACTOR

_____

By: _____
Title: President, Vice-President, or Chairperson

By: _____
Title: Secretary, Assistant Secretary, CFO,
or Assistant Treasurer

OWNER

Tracy Unified School District

By: _____
Associate Superintendent of Business Services

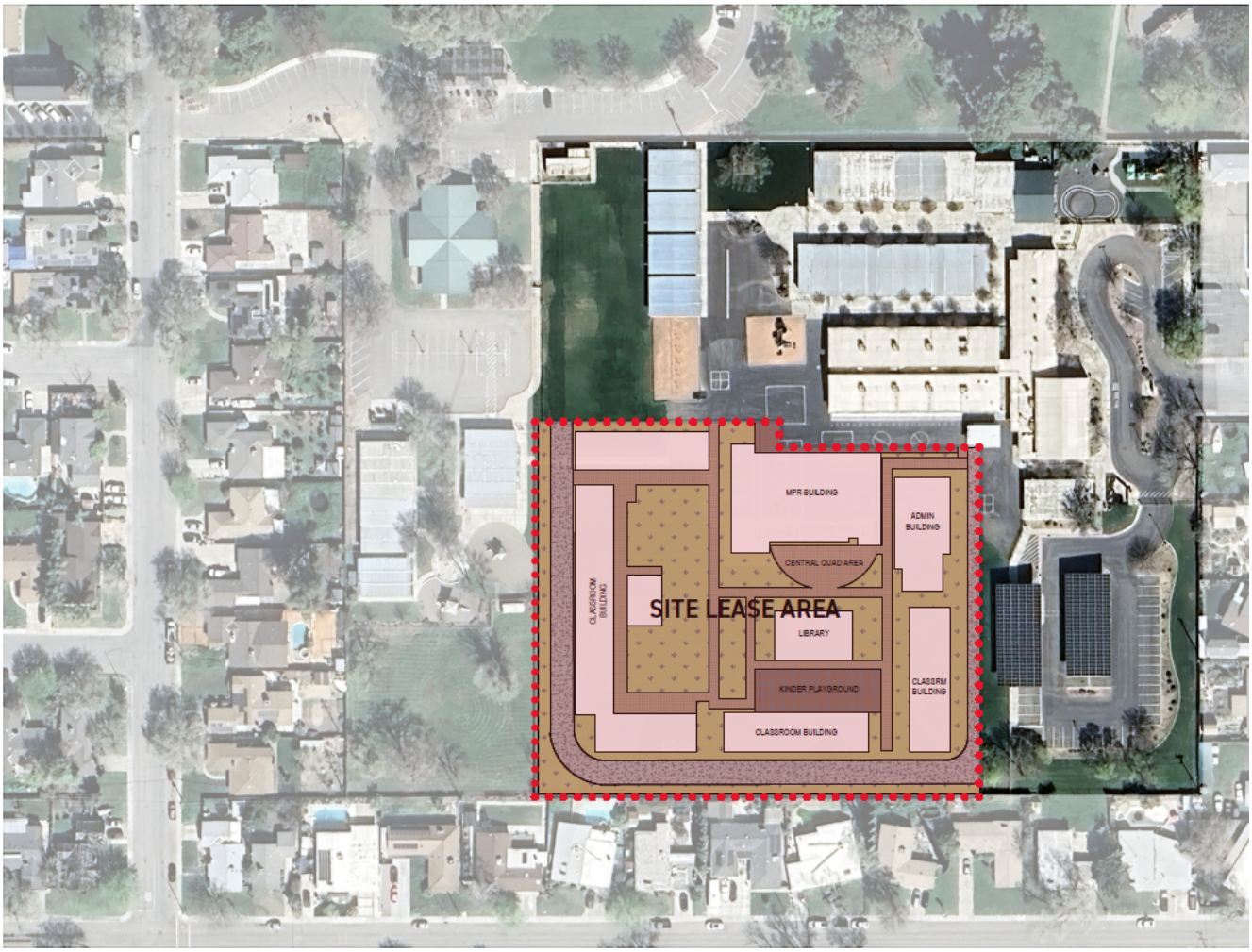
EXHIBIT A

LEASE-LEASEBACK SITE LEASE

DESCRIPTION OR DEPICTION OF SITE

(See attached diagram depicting the Site)

SITE LEASE AREA



MCKINLEY ELEMENTARY SCHOOL MODERNIZATION
TRACY USD

02/25/2026

4900-7711-1182, v. 1

EXHIBIT F

Sublease

LEASE-LEASEBACK

SUBLEASE AGREEMENT

Dated as of _____, 20__

Between

Tracy Unified School District

and

_____

The McKinley Elementary School (Increment 2) Building Package Contract

at McKinley Elementary School,

800 W. Carlton Ave., Tracy, CA

LEASE-LEASEBACK
SUBLEASE AGREEMENT
THE McKinley Elementary School (Increment 2) Building Package CONTRACT

THIS LEASE-LEASEBACK SUBLEASE AGREEMENT ("Sublease") is entered into as of _____, 20__, between _____, a California [corporation] and licensed contractor ("Contractor"), as lessor, and the Tracy Unified School District, a California public school district (the "Owner"), as lessee. Owner and Contractor are each a "Party" and together are the "Parties" to this Sublease.

This Sublease is entered into by the Parties pursuant to California Education Code section 17406 ("Section 17406"), which permits the governing board of school district to lease to any person, firm, or corporation any real property owned by the school district if the instrument by which such property is leased requires the lessee to construct on the leased premises, or provides for the construction thereon, of a building for the use of the school district during the term of the lease, and provides that title to that building shall vest in the school district at the expiration of the lease.

The Owner deems it essential for its own governmental purpose to construct and install certain improvements (the "Work") described in Section 1 of that certain Lease-Leaseback Agreement entered into between the Owner and Contractor and dated _____, 20__, and situated on the Site described or depicted in Exhibit A of that certain Site Lease dated _____, 20__, between the Owner and Contractor (the "Contract"), all of which is part of the Owner's McKinley Elementary School New Campus project (the "Project").

Pursuant to Section 17406, the Owner is leasing the site of the Work (the "Site") to Contractor under the Site Lease in consideration of Contractor subleasing the Site, including the Contract, to the Owner under the terms of this Sublease.

Contractor will finance construction of the Contract. As part of its Sublease Payments (as described in Section 6, below) to Contractor, District will compensate Contractor for the cost of financing construction of the Contract.

The Owner and Contractor therefore agree as follows:

1. Sublease. Contractor subleases to the Owner, and the Owner subleases from Contractor, the Site, including any real property improvements now or later placed on the Site. Reference in this Sublease to the term "Contractor" means Contractor and Contractor's assigns for those rights, interests, and obligations that may be assigned by Contractor. The purpose of this Sublease is (1) for the Owner to have necessary access to and use of the Site at such times and in such a manner as will not impede the construction of the Work; (2) for the Owner to obtain financing for the Work from the Contractor; and (3) during the term of the Sublease, for the Owner to enjoy beneficial use and occupancy of the Site and the completed Work.

During the term of the Sublease, Owner and its agents, employees and invitees may enter into and upon the Site and the Work at all reasonable times necessary for the Owner to conduct its business. During construction of the Work, the Owner shall not unduly disturb, or unreasonably interfere with Contractor's

Work and related improvements to the Site. Following completion of the Work, the Owner shall enjoy full and undisturbed use of the Site during the remainder of the Sublease Term.

2. Term. The term of this Sublease ("Lease Term") shall be coterminous with the term of the Lease-Leaseback Agreement and Contract. Upon the end of the Lease Term, the Parties' respective interests under this Sublease will automatically end and be released, and title to the Site and Work will automatically and fully vest in the Owner. The Work is and shall at all times be and remain the sole property of Contractor until termination of the Contract, and the Owner shall have no right, title, or interest in or to it until termination of the Contract, except as expressly set forth in this Sublease.

3. Representations and Warranties of the Owner. The Owner represents and warrants to Contractor that:

(a) The Owner is a public school district, duly organized and existing under the Constitution and laws of the State of California with authority to enter into and perform all of its obligations under this Sublease.

(b) The Owner's governing body has duly authorized the execution and delivery of this Sublease and further represents and warrants that all requirements have been met and procedures followed to ensure its enforceability.

(c) The execution, delivery, and performance of this Sublease do not and will not result in any breach of or constitute a default under any indenture, mortgage, contract, agreement, or instrument to which the Owner is a party by which it or its property is bound.

(d) There is no pending or, to the knowledge of the Owner, threatened action, or proceeding before any court or administrative agency that will materially adversely affect the ability of the Owner to perform its obligations under this Sublease.

(e) The Work and the Site are essential to the Owner in the performance of its governmental functions and their estimated useful life to the Owner exceeds the term of this Sublease.

(f) The Owner shall take such action as may be necessary to include all Sublease payments in its annual budget and annually to appropriate an amount necessary to make such Sublease payments.

(g) The Owner shall not abandon the Site for the use for which it is currently required by the Owner and, to the extent permitted by law, the Owner shall not seek to substitute or acquire property to be used as a substitute for the use for which the Site is maintained under the Sublease.

(h) Except as may be permitted under federal or state laws, the Owner shall not allow any hazardous materials or substances to be used or stored on, under, or about the Site.

4. Representations and Warranties of Contractor. Contractor represents and warrants to the Owner that:

(a) Contractor is duly organized, validly existing and in good standing as a corporation and licensed contractor under the laws of the State of California, with full corporate power and authority to lease and own real and personal property *[revise paragraph accordingly if not a corporation]* ;

(b) Contractor has full power, authority and legal right to enter into and perform its obligations under this Sublease, and the execution, delivery and performance of this Sublease have been duly authorized by all necessary corporate actions on the part of Contractor and do not require any further approvals or consents;

(c) The execution, delivery, and performance of this Sublease do not and will not result in any breach of or constitute a default under any indenture, mortgage, contract, agreement, or instrument to which Contractor is a party by which it or its property is bound;

(d) There is no pending or, to the knowledge of Contractor, threatened action, or proceeding before any court or administrative agency that will materially adversely affect the ability of Contractor to perform its obligations under this Sublease;

(e) Contractor will not mortgage or encumber the Site or the Sublease or assign this Sublease or its rights to receive Sublease payments, except as permitted under this Sublease.

5. Construction/Acquisition.

(a) The Owner has entered into the Contract with Contractor in order to acquire and construct the Work, while enjoying use of the Site. The cost of the acquisition, construction and installation of the tenant improvements defined as the Work and the Owner's use of the Site under this Sublease is determined by the Total Sublease Amount as set forth in the Lease-Leaseback Agreement and ***Exhibit A*** of this Sublease.

(b) In order to ensure that moneys sufficient to pay all costs will be available for this purpose when required, the Owner shall maintain on deposit in its general or other appropriate fund, and shall annually appropriate funds sufficient to make all Sublease payments which become due to Contractor under this Sublease.

6. Sublease Payments.

(a) Over the Term of this Sublease, the owner will pay to the Contractor the Total Sublease Amount (excluding any allowances or contingencies) in _eighteen_ (18) equal monthly installments (each such installment being a "Sublease Payment"), and a schedule of the Sublease Payments shall be memorialized in an amendment using the form attached as ***Exhibit W*** to the Request for Proposals and Qualifications. The amendment shall include the Total Sublease Amount, and it shall be executed by the Contractor and then approved by the Owner's governing board pursuant to Education Code section 17406(a)(3).

Any schedule of Sublease Payments in the amendment shall throughout reflect equal monthly Sublease Payments, thus indicating contractor financing in a lease structure. Sublease Payments shall be made by the fifth day of each month, pursuant to the General Conditions. The Sublease Payments shall be made in accordance with the Contract Documents, including but not limited to the General

Conditions. The parties expressly agree that the Total Sublease Amount represents the fair market value for the Work and for the Owner's use of the Site during the Sublease Payments.

(b) During the Sublease Payments, the Owner will adjust the Total Sublease Amount to account for any changes in the scope of the Work or use of the Site, including but not limited to (i) spent allowances or contingency, (ii) any change orders, or (iii) Contractor's actual costs being less than its estimated costs. As set forth in the General Conditions, any changes in the Total Sublease Amount shall result in a prorated increase, or decrease, in Sublease Payments made following the adjustment to the Total Sublease Amount.

(c) The obligation of the Owner to pay Sublease Payments shall constitute a current expense of the Owner and shall not in any way be construed to be a debt of the Owner in contravention of any applicable constitutional or statutory limitations or requirements concerning the creation of indebtedness by the Owner, nor shall anything contained in this Sublease constitute a pledge of the general tax revenues, funds, or moneys of the Owner.

7. Extension of Sublease Term.

(a) *Excusable Delay*. If the Date for Completion set forth in the Lease-Leaseback Agreement is extended by change orders that grant time extensions for excusable delay pursuant to the Contract, then for each full month of total time extensions, Owner shall increase the number of remaining monthly Sublease Payments by one, and lower the equal dollar amount of the remaining Sublease Payments.

(b) *Inexcusable Delay*. If the Work will not be completed by the Date for Completion set forth in the Lease-Leaseback Agreement due to delay that is not excusable under the terms of the Contract, including Article 8 of the General Conditions, then for each full month of such delay Owner shall elect to either (i) postpone the remaining Sublease Payments for one month, or (ii) increase the number of remaining monthly Sublease Payments by one, and lower the equal dollar amount of the remaining monthly Sublease Payments.

(c) If the total delay in Completion is only partially entitled to time extensions for excusable delay under the terms of the Contract, then the Sublease Payments shall be extended by one month for each full month of total delay. If the delays entitled to time extensions for excusable delay are less than half of the total delay in Completion, then the Owner shall elect between the procedures in Section 7(b)(i) and (ii) above; and if such delays are equal to or more than half of the total delay in Completion, the Owner shall proceed pursuant to Section 7(b)(ii) above.

8. Fair Rental Value. Sublease Payments shall be paid by the Owner in consideration of the right of possession of, and the continued quiet use and enjoyment of, the Work and the Site during this Sublease. The Parties have agreed and determined that such total rental is not in excess of the fair rental value of the Work and the Site. In making such determination, consideration has been given to the fair market value of the Work and the Site, other obligations of the Parties under this Sublease (including, but not limited to, costs of maintenance, taxes and insurance), the uses and purposes which may be served by the Work and the Site and the benefits from the Work and Site which will accrue to the Owner and the general public, the ability of the Owner to make additions, modifications and improvements to the Work and the Site which are not inconsistent with the Lease-Leaseback Agreement and which do not interfere with Contractor's work on the Contract and Site.

9. Sublease Abatement. Sublease Payments due with respect to the Contract shall be subject to abatement prior to the commencement of the use of the Work or during any period in which, by reason of material damage to or destruction of the Work or the Site, there is substantial interference with the use and right of possession by the Owner of the Work and the Site or any substantial portion the Site. For each potential incident of substantial interference, decisions to be made on: (i) whether or not abatement shall apply; (ii) the date upon which abatement shall commence; (iii) the applicable portion of Sublease Payments to be abated and; (iv) the concluding date of the particular abatement, shall all be subject to determinations by the Owner in concert with its insurance provider. Contractor's right to dispute these decisions is not impaired. The amount of abatement shall be such that the Sublease Payments paid by the Owner during the period of Work restoration do not exceed the fair rental value of the usable portions of the Site. In the event of any damage or destruction to the Work or the Site, this Sublease shall continue in full force and effect.

10. Use of Site and Project. During the Sublease Term, Contractor shall provide the Owner with quiet use and enjoyment of the Site without suit or hindrance from Contractor or its assigns. The Owner will not use, operate, or maintain the Site or Project improperly, carelessly, in violation of any applicable law or in a manner contrary to that contemplated by this Sublease. The Owner shall provide all permits and licenses, if any, necessary for the operation of the Project. In addition, the Owner agrees to comply in all respects (including, without limitation, with respect to the time, maintenance and operation of the Project) with laws of all jurisdictions in which its operations involving the Project may extend and any legislative, executive, administrative, or judicial body exercising any power or jurisdiction over the Site or the Project; provided, however, that the Owner may contest in good faith the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of Contractor, adversely affect the estate of Contractor in and to the Site or the Project or its interest or rights under this Sublease. Upon Completion of the Project, as defined in the General Conditions, Contractor shall provide the Owner with quiet use and enjoyment of the Site without suit or hindrance from Contractor or its assigns, subject to reasonable interference from ongoing construction operations at the Site by Contractor.

11. Contractor's Inspection/Access to the Site. The Owner agrees that Contractor and any Contractor representative shall have the right at all reasonable times to enter upon the Site or any portion thereof to construct and improve the Work and to examine and inspect the Site and the Work. The Owner further agrees that Contractor and any Contractor representative shall have such rights of access to the Site as may be reasonably necessary to cause the proper maintenance of the Site and the Work in the event of failure by the Owner to perform its obligations under this Sublease.

12. Contract Acceptance. The Owner shall perform a final inspection and acknowledge Completion of the Work, as set forth in Article 9.7 of the General Conditions. The Owner's governing body may accept the Work and Contract to the extent provided by the Contract Documents, including Article 9.7 of the General Conditions, but acceptance of the Work as Complete shall not terminate the Lease Term, nor shall recordation of a Notice of Completion after such acceptance. The validity of this Sublease will not be affected by any delay in or failure of Completion of the Contract.

13. Alterations and Attachments. All permanent additions and improvements that are made to, and as part of, the Project shall belong to and become the property of Contractor until termination of the Contract, subject to the provisions of this Sublease. Separately identifiable attachments added to the Project by the Owner shall remain the property of the Owner.

14. Physical Damage; Public Liability Insurance. The Contractor and the Owner shall maintain such damage and public liability insurance policies with respect to the Project and the Site as are required of them by the Lease-Leaseback Agreement.

15. Taxes. The Owner shall keep the Project and the Site free and clear of all levies, liens, and encumbrances and shall pay all license fees, registration fees, assessments, charges, and taxes (municipal, state, and federal) if applicable, which may now or later be imposed upon the ownership, leasing, renting, sale, possession, or use of the Project and the Site, excluding, however, all taxes on or measured by Contractor's income.

16. Non-Waiver. No covenant or condition to be performed by the Owner or Contractor under this Sublease can be waived except by the written consent of the other Party. Forbearance or indulgence by the Owner or Contractor in any regards whatsoever shall not constitute a waiver of the covenant or condition in question. Until complete performance by the Owner or Contractor of a covenant or condition, the other Party shall be entitled to invoke any remedy available to it under this Sublease or by law or in equity despite that forbearance or indulgence.

17. Assignment. Without the prior written consent of Contractor, the Owner shall not (a) assign, transfer, pledge, or hypothecate this Sublease, the Project and the Site, or any part of them, or any interest in them, or (b) sublet or lend the use of the Project or any part of it, except as authorized by the provisions of the California Civic Center Act, Education Code section 38130 *et seq*. Consent to any of the prohibited acts listed applies only in the given instance and is not a consent to any subsequent like act by the Owner or any other person. Contractor shall not assign its obligations under this Sublease with the exception of its obligations to issue default notices and to convey or reconvey its interest in the Project and Site to the Owner upon full satisfaction of the Owner's obligations under this Sublease; however, Contractor may assign its right, title and interest in the Sublease Payments and other amounts due under this Sublease and the Project in whole or in part to one or more assignees or subassignees at any time with the consent of the Owner which shall not be unreasonably withheld. No assignment shall be effective as against the Owner unless the Owner is so notified in writing. The Owner shall pay all Sublease Payments according to the direction of Contractor or the assignee named in the most recent assignment or notice of assignment. During the Sublease Term, the Owner shall keep a complete and accurate record of all such assignments. Subject always to the foregoing, this Sublease inures to the benefit of, and is binding upon, the heirs, legatees, personal representatives, successors, and assigns of the Parties.

18. Release of Liens.

(a) Upon termination of the Contract, Contractor or its assignee and the Owner shall release Contractor's leasehold interest in the Project.

(b) Contractor shall authorize, execute, and deliver to the Owner all documents reasonably requested by the Owner to evidence (i) the release of any and all liens created under this Sublease and the Site Lease, and (ii) any other documents required to terminate the Site Lease and this Sublease.

19. Severability. If a court of competent jurisdiction shall hold any provision of this Sublease invalid or unenforceable, such holding shall not invalidate or render unenforceable any other provision of this

Sublease, unless elimination of such provision materially alters the rights and obligations embodied in this Sublease.

20. Entire Agreement. This Sublease, the Site Lease, the Lease-Leaseback Agreement, and the Contract Documents that make up the "Contract" constitute the entire agreement between the Parties with respect to the Work and the Project, and the Contract shall not be amended, altered, or changed except by a written agreement signed by both Parties and approved by Owner's governing board.

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

22. Time. Time is of the essence in this Sublease and all of its provisions.

23. Sublease Interpretation. This Sublease and the rights of the Parties under it shall be governed by and construed in accordance with the laws of California.

24. Execution in Counterparts. This Sublease may be simultaneously executed in multiple counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same instrument.

25. Terms Not Defined. Capitalized terms used in this Sublease that are not defined shall have the same meaning as in the Lease-Leaseback Agreement, General Conditions, or other Contract Documents.

* * * * * * * * * * * * * * * * * * * *

CONTRACTOR:

_____

BY: _____
TITLE: President, Vice-President, or Chairperson

BY: _____
Title: Secretary, Assistant Secretary, CFO, or Assistant Treasurer

OWNER:

Tracy Unified School District

BY: _____
Associate Superintendent of Business Services

EXHIBIT G

Proposal Form

PROPOSAL FORM

TRACY UNIFIED SCHOOL DISTRICT (Front Desk)
1875 W. Lowell Ave.
Tracy, California 95376
Attention: Eloy Vento, Director of Facilities and Planning

Dear Board Members:

The undersigned doing business under the firm name of:

_____
hereby proposes and agrees to enter into a Lease-Leaseback Contract, with the Tracy Unified School District ("District") to furnish any and all labor, materials, applicable taxes, equipment and services for the completion of Work as described hereinafter and in the Contract Documents as

The McKinley Elementary School (Increment 2) Building Package Contract

at McKinley Elementary School,

800 W. Carlton Ave., Tracy, CA

The Contract Documents were prepared by

PBK A*RCHITECTS*
2600 Tenth Street, Suite 700
Berkeley, CA 94710
p. 510 450-1999

Proposed Fee:

The undersigned proposes and agrees to furnish such labor, materials, applicable taxes, equipment and services for a fee of _____and _____ hundredths percent (___._____%) applied to the costs specified in the Request for Proposals and Qualifications and the Agreement. Such fee shall be paid in addition to the reimbursement of costs described in the Request for Proposals and Qualifications and the Agreement.

Miscellaneous:

The best value proposal shall be determined as described in the Contract Documents.

If written notice of the Award of Contract is mailed, faxed, or delivered to the undersigned, the undersigned shall, within ten (10) days after the date of such mailing, faxing, or delivering of

such notice, execute and deliver an agreement in the form of agreement present in these Contract Documents.

The undersigned declares that it has read and understands the Contract Documents, including but not limited to the Notice to Contractors, the RFPQ, the Agreements, the General Conditions, the Drawings, the Specifications, and any Special Conditions. The undersigned agrees to be bound by the terms of the Contract Documents as issued in the RFPQ and amended by any addenda.

Check one of the following boxes:

- ☐ The undersigned proposer is prequalified with the Owner pursuant to Public Contract Code section 20111.6 to submit a bid in the above amount for this Contract.
- ☐ Prequalification pursuant to Public Contract Code section 20111.6 is not required for this Contract.

The undersigned hereby designates as the office to which such Notice of Award of Contract may be mailed, faxed, or delivered:

_____

_____

Our Public Liability and Property Damage Insurance is placed with:

_____

_____

Our Workers' Compensation Insurance is placed with:

_____

_____

Circular letters, bulletins, addenda, etc., bound with the specifications or issued during the time of proposing are included in the proposal, and, in completing the Contract, they are to become a part thereof.

The receipt of the following addenda to the specifications is acknowledged:

Addendum No. _____ Date _____	Addendum No. _____ Date _____
Addendum No. _____ Date _____	Addendum No. _____ Date _____
Addendum No. _____ Date _____	Addendum No. _____ Date _____
Addendum No. _____ Date _____	Addendum No. _____ Date _____
Addendum No. _____ Date _____	Addendum No. _____ Date _____

This proposal may be withdrawn at any time prior to the scheduled time for the submission of proposals, or any authorized postponement thereof, but otherwise may not be withdrawn.

A proposer shall not submit a proposal unless the proposer’s California contractor's license number appears clearly on the proposal, the license expiration date and class are stated, and the proposal contains a statement that the representations made therein are made under penalty of

perjury. Any proposal submitted by a contractor who is not licensed pursuant to Business and Professions Code section 7028.15 shall be considered nonresponsive and shall be rejected. Any proposal not containing the above information may be considered nonresponsive and may be rejected.

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

The undersigned declares under penalty of perjury under the laws of the State of California that the information and representations in the undersigned's proposal documents (including this Proposal Form and all other documents and information provided with the proposal, such as the responses to the qualifications questionnaire) are true and correct.

Print or Type Name: _____

Title: _____

Name of Company as Licensed in California: _____

Business Address: _____

Telephone Number: _____

California Contractor License No.: _____

Class and Expiration Date: _____

State of Incorporation, if Applicable: _____

INDIVIDUAL:

_____ Dated: _____, 20__

_____ (*Name*)

PARTNERSHIP:

Evidence of authority to bind partnership is attached.

_____ Dated: _____, 20__
_____ (*Name*)
General Partner

CORPORATION:

Evidence of authority to bind corporation is attached.

_____ Dated: _____, 20__
_____ (*Name*)
_____ (Chairman, Pres., or Vice-Pres.)

_____ Dated: _____, 20__
_____ (*Name*)
_____ (Secretary, Asst. Secretary, CFO, or Asst. Treasurer)

EXHIBIT H

Designation of Subcontractors

NOT USED

EXHIBIT I

Workers' Compensation Certification

McKinley Elementary School New Campus (Increment 2) Building Package Project

WORKERS' COMPENSATION CERTIFICATE

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

I am aware of the provisions of the Labor Code Section 3700 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. I shall supply the Owner with certificates of insurance evidencing that Workers' Compensation Insurance is in effect and providing that the Owner will receive thirty (30) days' notice of cancellation.

_____
Name of Contractor

_____
Signature

_____ _____
Print Name Date

(In accordance with Article 5 (commencing at Section 1860], Chapter 1, Part 7, Division 2 of the Labor Code, the above certificate must be signed and filed with the awarding body prior to performing any work under the contract.)

EXHIBIT J

Iran Contracting Act Certification

McKinley Elementary School New Campus (Increment 2) Building Package Project

IRAN CONTRACTING ACT CERTIFICATION
(Public Contract Code sections 2202-2208)
(To be Executed by Proposing Entity and Submitted With Proposal)

As required by Public Contract Code ("PCC") section 2204 for contracts of $1,000,000 or more, please insert proposer's or financial institution's name and Federal ID Number (if available) and complete **one** of the options below. Please note that California law establishes penalties for providing false certifications, including civil penalties equal to the greater of $250,000 or twice the amount of the contract for which the false certification was made; contract termination; and three-year ineligibility to bid on contracts. (PCC §2205.)

OPTION #1 - CERTIFICATION
I, the official named below, certify I am duly authorized to execute this certification on behalf of the proposer/financial institution identified below, and the proposer/financial institution identified below is **not** on the current list of persons engaged in investment activities in Iran created by California Department of General Services ("DGS") and is not a financial institution extending twenty million dollars ($20,000,000) or more in credit to another person/proposer, for 45 days or more, if that other person/proposer 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. (PCC §2204(a).)

Proposer Name/Financial Institution (Printed)	*Federal ID Number (or n/a)*
By (Authorized Signature)	
Printed Name and Title of Person Signing	
Date Executed	*Executed in*

OPTION #2 – EXEMPTION
Pursuant to Public Contract Code sections 2203(c) and (d), a public entity may permit a proposer/financial institution engaged in investment activities in Iran, on a case-by-case basis, to be eligible for, or to submit a proposal for, or enter into or renew, a contract for goods and services. If you have obtained an exemption from the certification requirement under the Iran Contracting Act, please fill out the information below, and attach documentation demonstrating the exemption approval.

Proposer Name/Financial Institution (Printed)	*Federal ID Number (or n/a)*
By (Authorized Signature)	
Printed Name and Title of Person Signing	*Date Executed*

EXHIBIT K

DVBE Certification

McKinley Elementary School New Campus (Increment 2) Building Package Project

PRIME BIDDER CERTIFICATION OF DISABLED VETERAN BUSINESS ENTERPRISE PARTICIPATION

To be completed by the Contractor Submitting a Lease-Leaseback Proposal.

PART I – IDENTIFICATION INFORMATION		
BIDDER'S NAME	BUSINESS ADDRESS	TELEPHONE NUMBER
SCHOOL DISTRICT	COUNTY	APPLICATION NO.

PART II – METHOD OF COMPLIANCE WITH DVBE PARTICIPATION GOALS – Include this form and any other applicable documents listed in this table with your bid/proposal. Read the three columns in the table below as sentences from left to right. Check the appropriate box to indicate your method of committing the contract dollar amount.

NOTE: *Architectural, engineering, environmental, land surveying or construction management firms must indicate their method of compliance by marking the appropriate box A, B, C, or D after selection by the District and before the contract is signed.*

YOUR BUSINESS ENTERPRISE	**AND YOU**	**AND YOU**
A. ☐ *is Disabled Veteran owned and your forces, will perform at least 3 percent of this contract*	*will include a copy of your DVBE letter from the Office of Small Business and Disabled Veteran Business Enterprise Services (OSDS).*	
B. ☐ *is Disabled Veteran owned* ***but is unable*** *to perform the 3 percent of this contract with your forces*	*will use DVBE subcontractors/ suppliers to bring the contract participation to at least 3 percent*	*will include a copy of each DVBE's letter from OSDS (including yours, if applicable).*
C. ☐ *is* ***not*** *Disabled Veteran owned*	*will use DVBE subcontractors/ suppliers for at least 3 percent of this contract*	
D. ☐ *is unable to meet the required participation goals*	*will complete a Good Faith Effort to obtain DVBE participation*	*will include the Prime Bidder's Good Faith Effort Worksheet.*

Note: An Office of Small Business and Disabled Veteran Business Enterprise Services (OSDS) letter must be attached for each DVBE participating in the contract. The DVBE letter is obtained by application through the OSDS and must be provided at the time of bid opening. If the letter is not provided, the bid may be deemed nonresponsive and may be ineligible for award of the contract.

Continued on reverse side

PART III – DVBE DOLLAR PARTICIPATION OF BID/PROPOSAL – *Architectural, engineering, environmental, land surveying or construction management firms complete this part* ***after*** *selection by the district and before the contract is signed.*

Show deductive alternate(s) in parenthesis. For more alternates/base bids, use a separate page to show items.

A. If your business enterprise is a DVBE, list in the appropriate column the total dollar amount of your bid to be performed by your own participation.

B. List all your DVBE subcontractors/suppliers. Enter in the appropriate column the dollar amount for each of your subcontractors/suppliers.

C. Enter the total of Lines A and B for each column.

D. Enter the dollar amount of the bid/proposal to be performed by **non**-DVBE firms. Note: This line is the sum of the prime and subcontractor(s) **non**-DVBE dollar participation.

E. Enter the sum of the column totals from Line C and Line D. Note: Please be aware that the final determination of DVBE compliance is made based on the contract amount resulting from the district's acceptance or rejection of alternates.

	BASE BID/PROPOSAL	**ALTERNATE #1**	**ALTERNATE #2**	**ALTERNATE #3 OR BASE BID B**	**ALTERNATE #4 OR BASE BID C**	**ALTERNATE #5** (Modernization or Reconstruction Only)
A. Prime Bidder, *if DVBE (own participation)*	$	$	$	$	$	$
B. DVBE Subcontractor or Supplier						
1.						
2.						
3.						
4.						
C. Subtotal (A & B)						
D. Non-DVBE						
E. Total Bid						

EXHIBIT L

DVBE Worksheet

McKinley Elementary School (Increment 2) Building Package Project

PRIME BIDDER GOOD FAITH EFFORT WORKSHEET

This worksheet is to be used to assist the Contractor in meeting the 3% DVBE participation goal

BIDDER'S NAME	BUSINESS ADDRESS	CONTACT PERSON
TELEPHONE NUMBER	OWNER	COUNTY

GENERAL INSTRUCTIONS:

This worksheet is to be used to assist you in meeting the 3 percent DVBE participation goal. If specific information is not provided for Parts I through III, you do not meet the test of the "Good Faith Effort" and cannot so certify. If you are qualifying based on a "Good Faith Effort" you must include this form with your bid/proposal to the Owner.

PART I – CONTACTS

To identify DVBE subcontractors/suppliers for participation in your bid/proposal, contact must be made with each of the following categories. It is recommended that you contact several DVBE organizations.

CATEGORY	TELEPHONE NUMBER	DATE CONTACTED	PERSON CONTACTED
1. Owner			
2. Office of Small Business and Disabled Veteran Business Enterprise Services (OSDS). OSDS provides assistance locating DVBEs at https://caleprocure.ca.gov/pages/PublicSearch/supplier-search.aspx.	(916) 375-4940		
3. DVBE Organizations (*List*):			
4. Write "recorded message" in this column, if applicable.			

PART II – ADVERTISEMENTS *In addition to the requirements of Education Code section 17406(a)(4), you must make at least two (2) advertisements, one (1) in a paper that focuses on DVBE and one (1) in a trade paper. Advertisements should be published at least 14 days prior to bid/proposal opening; if you cannot advertise 14 days prior, advertise as soon as possible and provide an explanation. (Advertisements must be published in time to allow for a reasonable response). Advertisements must include that your firm is seeking DVBE participation, the project name and location, your firm's name, your firm's contact person, and phone number.*

Attach copies of advertisements to this form.

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

PART III – 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 the applicable dollar amount in Part III of the Prime Bidder Certification	Include a copy of their DVBE letter from OSDS.
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 *This section must be completed*	NO RESPONSE
	YES	NO		

IMPORTANT NOTE:

Please be aware that certification of the "Good Faith Effort" may only be made if you fully complete Parts I, II, and III on both sides of this form. A copy of this form must be retained by you and may be subject to a future audit.

CERTIFICATION

I, _____ certify that I am the bidder's Chief Executive Officer and that I have made a diligent effort to ascertain the facts with regard to the representations made herein. In making this certification, I am aware of Section 12650 et seq. of the Government Code providing for the imposition of treble damages for making false claims.

SIGNATURE OF CHIEF EXECUTIVE OFFICER	DATE

EXHIBIT M

Noncollusion Declaration

McKinley Elementary School New Campus (Increment 2) Building Package Project

NONCOLLUSION DECLARATION

Owner: Tracy Unified School District
Project: **McKinley Elementary School New Campus(Increment 2) Building Package Project**
Site: McKinley Elementary School

The undersigned declares:

I am the _____of _____, the party making the foregoing bid or proposal ("Bid").

The Bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The Bid is genuine and not collusive or sham. The bidder or proposer ("Bidder") has not directly or indirectly induced or solicited any other Bidder to put in a false or sham bid. The Bidder has not directly or indirectly colluded, conspired, connived, or agreed with any Bidder or anyone else to put in a sham Bid, or to refrain from bidding or proposing ("Bidding"). The Bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the Bid price of the Bidder or any other Bidder, or to fix any overhead, profit, or cost element of the Bid price, or of that of any other Bidder. All statements contained in the Bid are true. The Bidder has not, directly or indirectly, submitted his or her Bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company, association, organization, Bid depository, or to any member or agent thereof to effectuate a collusive or sham Bid, and has not paid, and will not pay, any person or entity for such purpose.

Any person executing this declaration on behalf of a Bidder 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.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on _____, 20__, at _____ [*city*], _____ [*state*].

_____
Signature

_____
Print Name

EXHIBIT N

Sufficient Funds Declaration

McKinley Elementary School New Campus (Increment 2) Building Package Project

SUFFICIENT FUNDS DECLARATION
(Labor Code section 2810)

To Be Executed by Bidder and Submitted with Bid

Owner: Tracy Unified School District
Project: **McKinley Elementary School (Increment 2) Building Package Project**
Site: McKinley Elementary School

I, _____, declare that I am the _____ *[insert title]* of _____, the entity making and submitting the bid for the above Project that accompanies this Declaration, and that such bid includes sufficient funds to permit _____ *[insert name of entity]* to comply with all local, state or federal labor laws or regulations during the Project, including payment of prevailing wage, and that _____ *[insert name of entity]* will comply with the provisions of Labor Code section 2810(d) if awarded the Contract.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and executed on _____, 20__, at _____ *[city]*, _____ *[state]*.

Date: _____ _____

Signature

Print Name: _____

Print Title: _____

EXHIBIT O

Roof Project Certification

NOT USED

EXHIBIT P

Fingerprinting Notice and Acknowledgement

McKinley Elementary School New Campus (Increment 2) Building Package Project

FINGERPRINTING NOTICE AND ACKNOWLEDGMENT FOR CONSTRUCTION CONTRACTS

(Education Code Section 45125.2)

Business entities entering into contracts with the Owner for the construction, reconstruction, rehabilitation or repair of a facility may comply with Education Code section 45125.2, in which case it would not have to comply with Section 45125.1. If such an entity is not compliant with Section 45125.2, then it must comply with Section 45125.1. Such entities are responsible for ensuring full compliance with the law and should therefore review all applicable statutes and regulations. Therefore, the following information is provided simply to assist you with compliance with the law:

1. The Owner has determined that your employee(s), or you as a sole proprietor, will have more than limited contact with students, therefore the law requires that you must use one or more of the following methods to ensure the safety of pupils (Education Code §45125.2(a)):

    a. Install a physical barrier at the worksite to limit contact with pupils.

    b. If you are not a sole proprietorship, have one of your employees, whom the Department of Justice has ascertained has not been convicted of a violent or serious felony (see ***Attachment A*** to this Notice and Acknowledgement), continually monitor and supervise all of your employees. For the Department of Justice to so ascertain, your employee may submit fingerprints to the Department of Justice pursuant to Education Code section 45125.1(a).

    c. Arrange, with Owner's approval, for surveillance of your employees by Owner's personnel.

    Prior to commencing the Work, you shall submit the Independent Contractor Student Contact Form (see ***Attachment B*** to this Notice and Acknowledgement) to the Owner, which will indicate which of the above methods you will use.

2. If you are providing services in an emergency or exceptional situation, you are not required to comply with Education Code section 45125.2, above. An "emergency or exceptional" situation is one in which pupil health or safety is endangered or when repairs are needed to make a facility safe and habitable. Owner shall determine whether an emergency or exceptional situation exists. (Education Code §45125.2(d).)

3. If you use one or more of the three methods in Section 1 (above), you are not required to comply with Education Code section 45125.1. (Education Code §45125.2(b).)

I have read the foregoing and agree to comply with the requirements of this notice and Education Code sections 45125.1 and 45125.2 as applicable.

Dated: _____ _____
Signature

Name: _____ Title: _____

ATTACHMENT A

Violent and Serious Felonies

Under Education Code section 45125.2, no employee of a contractor or subcontractor who has been convicted of or has criminal proceedings pending for a violent or serious felony may come into contact with any student. A violent felony is any felony listed in subdivision (c) of Section 667.5 of the Penal Code. Those felonies are presently defined as:

(1) Murder or voluntary manslaughter.

(2) Mayhem.

(3) Rape as defined in paragraph (2) or (6) of subdivision (a) of Section 261 or paragraph (1) or (4) of subdivision (a) of Section 262.

(4) Sodomy as defined in subdivision (c) or (d) of Section 286.

(5) Oral copulation as defined in subdivision (c) or (d) of Section 288a.

(6) Lewd or lascivious act as defined in subdivision (a) or (b) of Section 288.

(7) Any felony punishable by death or imprisonment in the state prison for life.

(8) Any felony in which the defendant inflicts great bodily injury on any person other than an accomplice which has been charged and proved as provided for in Section 12022.7, 12022.8, or 12022.9 on or after July 1, 1977, or as specified prior to July 1, 1977, in Sections 213, 264, and 461, or any felony in which the defendant uses a firearm which use has been charged and proved as provided in subdivision (a) of Section 12022.3, or Section 12022.5 or 12022.55.

(9) Any robbery.

(10) Arson, in violation of subdivision (a) or (b) of Section 451.

(11) Sexual penetration as defined in subdivision (a) or (j) of Section 289.

(12) Attempted murder.

(13) A violation of Section 18745, 18750, or 18755.

(14) Kidnapping.

(15) Assault with the intent to commit a specified felony, in violation of Section 220.

(16) Continuous sexual abuse of a child, in violation of Section 288.5.

(17) Carjacking, as defined in subdivision (a) of Section 215.

(18) Rape, spousal rape, or sexual penetration, in concert, in violation of Section 264.1.

(19) Extortion, as defined in Section 518, which would constitute a felony violation of Section 186.22 of the Penal Code.

(20) Threats to victims or witnesses, as defined in Section 136.1, which would constitute a felony violation of Section 186.22 of the Penal Code.

(21) Any burglary of the first degree, as defined in subdivision (a) of Section 460, wherein it is charged and proved that another person, other than an accomplice, was present in the residence during the commission of the burglary.

(22) Any violation of Section 12022.53.

(23) A violation of subdivision (b) or (c) of Section 11418.

A serious felony is any felony listed in subdivision (c) Section 1192.7 of the Penal Code. Those felonies are presently defined as:

> (1) Murder or voluntary manslaughter; (2) Mayhem; (3) Rape; (4) Sodomy by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person; (5) Oral copulation by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person; (6) Lewd or lascivious act on a child under the age of 14 years; (7) Any felony punishable by death or imprisonment in the state prison for life; (8) Any felony in which the defendant personally inflicts great bodily injury on any person, other than an accomplice, or any felony in which the defendant personally uses a firearm; (9) Attempted murder; (10) Assault with intent to commit rape, or robbery; (11) Assault with a deadly weapon or instrument on a peace officer; (12) Assault by a life prisoner on a non-inmate; (13) Assault with a deadly weapon by an inmate; (14) Arson; (15) Exploding a destructive device or any explosive with intent to injure; (16) Exploding a destructive device or any explosive causing bodily injury, great bodily injury, or mayhem; (17) Exploding a destructive device or any explosive with intent to murder; (18) Any burglary of the first degree; (19) Robbery or bank robbery; (20) Kidnapping; (21) Holding of a hostage by a person confined in a state prison; (22) Attempt to commit a felony punishable by death or imprisonment in the state prison for life; (23) Any felony in which the defendant

personally used a dangerous or deadly weapon; (24) Selling, furnishing, administering, giving, or offering to sell, furnish, administer, or give to a minor any heroin, cocaine, phencyclidine (PCP), or any methamphetamine-related drug, as described in paragraph (2) of subdivision (d) of Section 11055 of the Health and Safety Code, or any of the precursors of methamphetamines, as described in subparagraph (A) of paragraph (1) of subdivision (f) of Section 11055 or subdivision (a) of Section 11100 of the Health and Safety Code; (25) Any violation of subdivision (a) of Section 289 where the act is accomplished against the victim's will by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person; (26) Grand theft involving a firearm; (27)carjacking; (28) any felony offense, which would also constitute a felony violation of Section 186.22; (29) assault with the intent to commit mayhem, rape, sodomy, or oral copulation, in violation of Section 220; (30) throwing acid or flammable substances, in violation of Section 244; (31) assault with a deadly weapon, firearm, machine gun, assault weapon, or semiautomatic firearm or assault on a peace officer or firefighter, in violation of Section 245; (32) assault with a deadly weapon against a public transit employee, custodial officer, or school employee, in violation of Sections 245.2, 245.3, or 245.5; (33) discharge of a firearm at an inhabited dwelling, vehicle, or aircraft, in violation of Section 246; (34) commission of rape or sexual penetration in concert with another person, in violation of Section 264.1; (35) continuous sexual abuse of a child, in violation of Section 288.5; (36) shooting from a vehicle, in violation of subdivision (c) or (d) of Section 26100; (37) intimidation of victims or witnesses, in violation of Section 136.1; (38) criminal threats, in violation of Section 422; (39) any attempt to commit a crime listed in this subdivision other than an assault; (40) any violation of Section 12022.53; (41) a violation of subdivision (b) or (c) of Section 11418; and (42) any conspiracy to commit an offense described in this subdivision.

ATTACHMENT B

STUDENT CONTACT FORM
FOR CONSTRUCTION CONTRACTS

Note: This form must be submitted by Contractor before it may commence any work.

Contractor Firm Name: _____
Supervisor/Foreman Name: _____
Start Date: _____
Completion Date: _____
Location of Work: _____
Hours of Work: _____
Length of Time on Grounds: _____
Number of Employees on the Job: _____

I am an owner or officer of Contractor authorized to sign this document on behalf of Contractor. Contractor acknowledges that the Owner has determined that Contractor's employees, or that Contractor as a sole proprietor, will have more than limited contact with students. Therefore, in order to comply with Education Code section 45125.2, Contractor will use the following methods to ensure student safety (check at least one):

[ ] A physical barrier will be installed at the worksite to limit contact with pupils.

[ ] Contractor is not a sole proprietorship, and its employees will be continually monitored and supervised by one of its employees who has not been convicted of a violent or serious felony.

Name of Supervising Employee:

_____

Date of Department of Justice verification that supervising employee has not been convicted of a violent or serious felony:

_____

Name of employee who is the custodian of the Department of Justice verification information:

_____

[ ] The Owner has agreed that Contractor's employees, or Contractor as sole proprietor, will be surveilled by Owner's personnel.

If Contractor does not comply with the requirements of Education Code section 45125.2, then Contractor will comply with the requirements of Education Code section 45125.1.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Dated: _____

Signature: _____
Typed Name: _____
Title: _____
Contractor: _____

EXHIBIT Q

Drug-Free Workplace Certification

McKinley Elementary School New Campus (Increment 2) Building Package Project

DRUG-FREE WORKPLACE CERTIFICATION

The Drug-Free Workplace Act of 1990 (Government Code sections 8350 *et seq*.) requires that every person or organization awarded a contract or grant for the procurement of any property or services 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 awarded by a State agency may be subject to suspension of payments or termination of the contract, or both, and the contractor may be subject to debarment from future contracting if the state agency determines that specified acts have occurred.

Pursuant to Government Code Section 8355, every person or organization awarded a contract or grant from a State agency 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 by subdivision (a) and that, as a condition of employment on the contract or grant, the employee agrees to abide by the terms of the statement.

I, 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 or grant 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 Owner 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 or grant awarded herein is subject to suspension of payments, termination, 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 Section 8350 *et seq*.

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.

_____
Name of Contractor

_____
Signature

_____ _____
Print Name Date

EXHIBIT R

Payment Bond

McKinley Elementary School New Campus (Increment 2) Building Package Project

PAYMENT BOND
(Labor and Material)

Bond Number: _____

KNOW ALL MEN BY THESE PRESENTS:

That WHEREAS, the Tracy Unified School District (the "Owner" of the public works contract described below) and _____, hereinafter designated as the "Principal," have entered into a Contract for the furnishing of all materials and labor, services and transportation, necessary, convenient, and proper to construct

the McKinley Elementary School (Increment 2) Building Package Contract, at 800 W. Carlton Ave., Tracy, CA 95376, which consists of a New Campus Project at McKinley Elementary School

which said agreement dated _____, 20__, and all of the Contract Documents are hereby referred to and made a part hereof;

and

WHEREAS, the Principal is required, before entering upon the performance of the work, to file a good and sufficient bond with the body by whom the Contract is awarded to secure the claims arising under said agreement.

NOW, THEREFORE, THESE PRESENTS WITNESSETH:

That the said Principal and the undersigned _____ ("Surety") are held and firmly bound unto all laborers, material men, and other persons, and bound for all amounts due, referred to in Civil Code section 9554, subdivision (b), in the sum of _____ Dollars ($_____) which sum well and truly 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 said Principal or any of its subcontractors, or the heirs, executors, administrators, successors, or assigns of any, all, or either of them, shall fail to pay any of the persons named in Civil Code section 9100, or any of the amounts due, as specified in Civil Code section 9554, subdivision (b), that said Surety will pay the same in an amount not exceeding the amount hereinabove set forth, and also in case suit is brought upon this bond, will pay costs and reasonable attorney's fees 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 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 effect.

And the said Surety, for value received, thereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of said 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, this instrument has been duly executed by the Principal and Surety this _____ day of _____, 20__.

(To be signed by)
(Principal and Surety,)
(and acknowledged and)
(Notarial Seal attached)

_____
Principal

_____

_____
Surety

_____

By:_____
Attorney-in-Fact

_____

The above bond is accepted and approved this ____ day of _____.

EXHIBIT S

Performance Bond

McKinley Elementary School New Campus (Increment 2) Building Package Project

PERFORMANCE BOND

Bond Number: _____

KNOW ALL MEN BY THESE PRESENTS that we, _____, as Principal, and _____, as Surety, are held and firmly bound unto the Tracy Unified School District, in the County of San Joaquin, State of California, hereinafter called the "Owner," in the sum of _____ Dollars ($_____) for the payment of which sum well and truly made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, to the Owner for the full performance of a certain contract with the Owner, the terms of which are incorporated herein by reference, dated _____, 20___, for construction of

the McKinley Elementary School (Increment 2) Building Package Contract, at 800 W. Carlton Ave., Tracy, CA 95376, which consists of a New Campus Project at McKinley Elementary School (the "Contract").

The condition of this obligation is such that, if the Principal shall well and truly perform and fulfill all the undertakings, covenants, terms, conditions, and agreements of said Contract during the original term of said Contract and any extensions thereof that may be granted by the Owner, with or without notice to the Surety, during the period of time specified in the Contract after completion for correction of faulty or improper materials and workmanship, and during the life of any guaranty or warranty required under the Contract, and also shall well and truly perform and fulfill all the undertakings, covenants, terms, conditions and agreement of any and all duly authorized modifications of said Contract that may hereafter be made, then this obligation is to be void, otherwise to remain in full force and virtue.

And the said 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.

No further agreement between Surety and Owner shall be required as a prerequisite to the Surety performing its obligations under this bond. In the event that the Surety elects to complete the Work of the Contract after termination of the Contract by Owner, the Surety may not hire Principal, or any of Principal's owners, employees, or subcontractors, to perform the Work without the written consent of Owner, and the Owner may grant or withhold such consent within its sole discretion.

IN WITNESS WHEREOF, the above-bounden parties have executed this instrument under their several seals this _____ day of _____, 20__, hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

(To be signed by)
(Principal and Surety,)
(and acknowledged and)
(Notarial Seal attached)

(Affix Corporate Seal)

_____
(Individual Principal)

_____
(Business Address)

(Affix Corporate Seal)

_____
(Corporate Principal)

_____
(Business Address)

(Affix Corporate Seal)

_____
(Corporate Surety)

_____
(Business Address)

_____

By:_____

_____

The rate of premium on this bond is _____ per thousand.

The total amount of premium charged is _____.

The above must be filled in by Corporate Surety.

EXHIBIT T

Sole Source Determination

NOT USED

EXHIBIT U

General Conditions

GENERAL CONDITIONS

under

LEASE-LEASEBACK AGREEMENT

FOR THE MCKINLEY ELEMENTARY SCHOOL NEW CAMPUS (INCREMENT 2)
BUILDING PACKAGE CONTRACT

TRACY UNIFIED SCHOOL DISTRICT

MARCH, 2026

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ARTICLE 1
GENERAL CONDITIONS

1.1 BASIC DEFINITIONS

1.1.1 THE CONTRACT DOCUMENTS

The "Contract Documents" consist of the Lease-Leaseback Agreement between Owner and Contractor (the "Agreement"), the Request for Proposals and Qualifications ("RFPQ"), the Notice of Request for Proposals and Qualifications, the Contractor's proposal, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, addenda, Payment Bond, Performance Bond, the Site Lease, the Sublease, required insurance certificates, additional insured endorsement and declarations page, list of proposed subcontractors, Non-collusion Declaration, Roof Project Certification (where applicable), Sufficient Funds Declaration (Labor Code section 2810), the Fingerprinting Notice and Acknowledgment and Independent Contractor Student Contact Form, other documents referred to in the Agreement, and Modifications issued after execution of the Agreement. A Modification is a written amendment to the Contract signed by both parties, a Change Order, a Construction Change Directive, or a written order for a minor change in the Work issued by the Owner. The Contract Documents are complementary, and each obligation of the Contractor, Subcontractors, and material or equipment suppliers in any one shall be binding as if specified in all.

1.1.2 THE CONTRACT

The Contract Documents form the Contract. The "Contract" represents the entire and integrated agreement between the parties and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a written Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind between the Architect and Contractor, between the Owner and any Subcontractor or Sub-subcontractor, or between any persons or entities other than the Owner and the Contractor. The terms of the Contract shall not be waived, altered, modified, supplemented or amended in any manner whatsoever except by written agreement signed by the parties and approved or ratified by the Owner's governing board.

1.1.3 THE WORK

The "Work" shall include all labor, materials, services and equipment necessary for the Contractor to fulfill all of its obligations pursuant to the Contract Documents, including, but not limited to, punch list items and submission of documents. It may include preconstruction services, as allowed by law. It shall include the initial obligation of any Contractor or Subcontractor, who performs any portion of the Work, to visit the Site of the proposed Work with Owner's representatives, a continuing obligation after the commencement of the Work to fully acquaint and familiarize itself with the conditions as they exist and the character of the operations to be carried on under the Contract Documents, and make such investigation as it may see fit so that it shall fully understand the facilities, physical conditions, and restrictions attending the Work under the Contract Documents. Each such Contractor or Subcontractor shall also thoroughly examine and become

familiar with the Drawings, Specifications, and associated bid documents. The "Site" refers to the grounds of the Project as defined in the Contract Documents and such adjacent lands as may be directly affected by the performance of the Work.

1.1.4 THE PROJECT

The "Project" is the total construction of the work of improvement, and includes the Work performed in accordance with the Contract Documents. The Project may include construction by the Owner or by separate contractors of improvements related to, but not included in, the Work, and the Project may include preconstruction services. The Project shall constitute a "work of improvement" under Civil Code section 8050.

1.1.5 THE DRAWINGS

The "Drawings" are graphic and pictorial portions of the Contract Documents prepared for the Project and approved changes thereto, wherever located and whenever issued, showing the design, location, and scope of the Work, generally including plans, elevations, sections, details, schedules, and diagrams as drawn or approved by the Architect.

1.1.6 THE SPECIFICATIONS

The "Specifications" are that portion of the Contract Documents consisting of the written requirements for material, equipment, construction systems, instructions, quality assurance standards, workmanship, and performance of related services.

1.1.7 THE PROJECT MANUAL

The "Project Manual" is the volume usually assembled for the Work which may include, without limitation, the bidding requirements, sample forms, Agreement, Conditions of the Contract, and Specifications.

1.1.8 OR

"Or" shall include "and/or."

1.1.9 COMPLETION AND COMPLETE

Statutory definitions of "Completion" and "Complete" shall apply for those statutory purposes. For all other purposes, including accrual of liquidated damages, Claims, and warranties, "Completion" and "Complete" mean the point where (1) Contractor has fully and correctly performed all Work in all parts and requirements, including corrective and punch list work, and (2) Owner's representatives have conducted a final inspection that confirmed this performance. Substantial, or any other form of partial or non-compliant, performance shall not constitute "Completion" or "Complete" under the Contract Documents, except to the extent that substantial completion is required for a milestone deadline.

1.2 EXECUTION, CORRELATION AND INTENT

1.2.1 CORRELATION AND INTENT

1.2.1.1 ***Documents Complementary and Inclusive.*** The Contract Documents are complementary and are intended to include all items required for the proper execution and Completion of the Work. Any item of work mentioned in the Specifications and not shown on the Drawings, or shown on the Drawings and not mentioned in the Specifications, shall be provided by Contractor as if shown or mentioned in both.

1.2.1.2 ***Coverage of the Drawings and Specifications.*** The Drawings and Specifications generally describe the work to be performed by Contractor. Generally, the Specifications describe work which cannot be readily indicated on the Drawings and indicate types, qualities, and methods of installation of the various materials and equipment required for the Work. It is not intended to mention every item of Work in the Specifications, which can be adequately shown on the Drawings, or to show on the Drawings all items of Work described or required by the Specifications even if they are of such nature that they could have been shown. All materials or labor for Work, which is shown on the Drawings or the Specifications (or is reasonably inferable therefrom as being necessary to Complete the Work), shall be provided by the Contractor whether or not the Work is expressly covered in the Drawings or the Specifications. It is intended that the Work be of sound, quality construction, and the Contractor shall be responsible for the inclusion of adequate amounts to cover installation of all items indicated, described, or implied in the portion of the Work to be performed by Contractor.

1.2.1.3 ***Conflicts.*** Without limiting Contractor's obligation to identify conflicts for resolution by the Owner, in the event of a conflict between provisions of the Contract Documents, it is intended that the more stringent, higher quality, and greater quantity of Work shall apply; except that in the event of a conflict between a Division 01 specification and a provision in a Division 00 Contract Document (such as the agreement, general conditions, notice to bidders, instructions to bidders, bid form, etc.), the Division 00 provision shall control.

1.2.1.4 ***Conformance with Laws.*** Each and every provision of law required by law to be inserted in this Contract shall be deemed to be inserted herein, and the Contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon request of either party the Contract shall be amended in writing to make such insertion or correction.

Before commencing any portion of the Work, Contractor shall check and review the Drawings and Specifications for such portion for conformance and compliance with all laws, ordinances, codes, rules and regulations of all governmental authorities and public utilities affecting the construction and operation of the physical plant of the Project, all quasi-governmental and other regulations affecting the construction and operation of the physical plant of the Project, and other special requirements, if any, designated in the Contract Documents. If Contractor observes any violation of any law, ordinance, code, rule or regulation, or inconsistency with any such restrictions or special requirements of the Contract Documents, then Contractor shall promptly notify Architect and Owner in writing of same and shall ensure that any such violation

or inconsistency shall be corrected in the manner provided hereunder prior to the construction of that portion of the Work. Where requirements of the Contract Documents exceed those of the applicable building codes and ordinances, the Contract Documents shall govern. Contractor shall comply with all applicable Federal, State and local laws.

If, as, and to the extent that Public Contract Code section 1104 is deemed to apply after the execution or award of the Contract, then Contractor shall not be required to assume responsibility for the completeness and accuracy of architectural or engineering plans and specifications, notwithstanding any other provision in the Contract Documents, except to the extent that Contractor discovered or should have discovered and reported any errors and omissions to the Owner, including, but not limited to, as the result of any review of the plans and specifications by Contractor required by the Instructions to Bidders or other Contract Documents, whether or not actually performed by Contractor.

1.2.1.5 ***Ambiguity.*** Before commencing any portion of the Work, Contractor shall carefully examine all Drawings and Specifications and other information given to Contractor as to materials and methods of construction and other Project requirements. Contractor shall immediately notify Architect and Owner in writing of any perceived or alleged error, inconsistency, ambiguity, or lack of detail or explanation in the Drawings and Specifications in the manner provided herein. If the Contractor or its Subcontractors, material or equipment suppliers, or any of their officers, agents, and employees performs, permits, or causes the performance of any Work under the Contract Documents, which it knows or should have known to be in error, inconsistent, or ambiguous, or not sufficiently detailed or explained, then Contractor shall bear any and all costs arising therefrom including, without limitation, the cost of correction thereof without increase or adjustment to the Total Sublease Amount or the time for performance. If Contractor performs, permits, or causes the performance of any Work under the Contract Documents prepared by or on behalf of Contractor which is in error, inconsistent or ambiguous, or not sufficiently detailed or explained, then Contractor shall bear any and all resulting costs, including, without limitation, the cost of correction, without increase to or adjustment in the Total Sublease Amount or the time for performance. In no case shall any Subcontractor proceed with the Work if uncertain without the Contractor's written direction and/or approval.

1.2.1.6 ***Execution.*** Execution of the Agreement Between Owner and Contractor by the Contractor is a representation that the Contractor has visited the site, become familiar with the local conditions under which the Work is to be performed and has correlated personal observations with the requirements of the Contract Documents.

1.2.2 ADDENDA AND DEFERRED APPROVALS

1.2.2.1 ***Addenda.*** Subsequent addenda issued shall govern over prior addenda only to the extent specified. In accordance with Title 24, California Code of Regulations, addenda shall be approved by the Division of the State Architect ("DSA").

1.2.2.2 ***Deferred Approvals.*** The requirements approved by the DSA on any item submitted as a deferred approval in accordance with Title 24, California Code of Regulations, shall take precedence over any previously issued addenda, drawing or specification.

1.2.3 **SPECIFICATION INTERPRETATION**

1.2.3.1 ***Titles.*** The Specifications are separated into titled sections for convenience only and not to dictate or determine the trade or craft involved. Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of work to be performed by any trade.

1.2.3.2 ***As Shown, Etc.*** Where "as shown," "as indicated," "as detailed," or words of similar import are used, reference is made to the Drawings accompanying the Specifications unless otherwise stated. Where "as directed," "as required," "as permitted," "as authorized," "as accepted," "as selected," or words of similar import are used, the direction, requirement, permission, authorization, approval, acceptance, or selection by Architect is intended unless otherwise stated.

1.2.3.3 ***Provide.*** "Provide" means "provided complete in place," that is, furnished, installed, tested, and ready for operation and use.

1.2.3.4 ***General Conditions.*** The General Conditions and any supplementary general conditions are a part of each and every section of the Specifications.

1.2.3.5 ***Abbreviations.*** In the interest of brevity, the Specifications are written in an abbreviated form and may not include complete sentences. Omission of words or phrases such as "Contractor shall," "shall be," etc., are intentional. Nevertheless, the requirements of the Specifications are mandatory. Omitted words or phrases shall be supplied by inference in the same manner as they are when a "note" occurs on the Drawings.

1.2.3.6 ***Plural.*** Words in the singular shall include the plural whenever applicable or the context so indicates.

1.2.3.7 ***Metric.*** The Specifications may indicate metric units of measurement as a supplement to U.S. customary units. When indicated thus: 1" (25 mm), the U. S. customary unit is specific, and the metric unit is nonspecific. When not shown with parentheses, the unit is specific. The metric units correspond to the "International System of Units" (SI) and generally follow ASTM E 380, "Standard for Metric Practice."

1.2.3.8 ***Standard Specifications.*** Any reference to standard specifications of any society, institute, association, or governmental authority is a reference to the organization's standard specifications, which are in effect as of the date the Notice to Bidders is first published. If applicable specifications are revised prior to Completion of any part of the Work, then the Contractor may, if acceptable to Owner and Architect, perform such Work in accordance with the revised specifications. The standard specifications, except as modified in the Specifications for the Project, shall have full force and effect as though printed in the Specifications. Architect will furnish, upon request, information as to how copies of the standard specifications referred to may be obtained.

1.2.3.9 ***Absence of Modifiers.*** In the interest of brevity, the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

1.3 OWNERSHIP AND USE OF ARCHITECT'S DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS

The Drawings, Specifications, and other documents prepared on behalf of the Owner are instruments of the services of the Architect and its consultants and are the property of the Owner. The Contractor may retain one contract record set. Neither the Contractor nor any Subcontractor, Sub-subcontractor, or material or equipment supplier shall own or claim a copyright in the Drawings, Specifications, and other documents prepared by the Architect, and unless otherwise indicated the Architect shall be deemed the author of them. All copies of them, except the Contractor's record set, shall be returned or suitably accounted for to the Owner, upon request upon Completion of the Work. The Drawings, Specifications, and other documents prepared by the Architect, and copies thereof furnished to the Contractor, are for use solely with respect to this Contract. They are not to be used by the Contractor or any Subcontractor, Sub-subcontractor, or material or equipment supplier on other Contractsor for additions to this Contracts outside the scope of the Work without the specific written consent of the Owner and the Architect. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers are granted a limited license to use and reproduce applicable portions of the Drawings, Specifications, and other documents prepared by the Architect appropriate to and for use in the execution of their Work under the Contract Documents. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Owner's property interest or other reserved right. All copies made under this license shall bear appropriate attribution and the statutory copyright notice, if any, shown on the Drawings, Specifications and other documents prepared by the Architect.

ARTICLE 2
OWNER

2.1 DEFINITION

The term "Owner" means the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Owner" means the Owner and/or the Owner's authorized representatives, including, but not limited to, architects and construction managers. To the extent the Contract Documents indicate that Owner has assigned duties to particular representatives of the Owner (such as the Architect, or any Construction Manager), Owner reserves the right at all times to reassign such duties to different Owner representatives.

2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

2.2.1 INTENTIONALLY LEFT BLANK

2.2.2 SITE SURVEY

When required by the scope of the Project, the Owner will furnish, at its expense, a legal description or a land survey of the Site, giving, as applicable, grades and lines of streets, alleys, pavements, adjoining property, rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries, and contours of the Site. Surveys to determine locations of construction, grading, and site work shall be provided by the Contractor.

2.2.3 SOILS

2.2.3.1 ***Owner Furnished Services.*** When required by the scope of the Project, the Owner will furnish, at its expense, the services of geotechnical engineers or consultants when reasonably required or as required by local or state codes. Such services with reports and appropriate professional recommendations shall include test boring, test pits, soil bearing values, percolation tests, air and water pollution tests, and ground corrosion and resistivity tests, including necessary operations for determining subsoil, air, and water conditions.

2.2.3.2 ***Contractor Reliance.*** Test borings and soils reports for the Project have been made for the Owner to indicate the subsurface materials that might be encountered at particular locations on the Project. The Owner has made these documents available to the Contractor and the Contractor has studied the results of such test borings and information that it has as to the subsurface conditions and Site geology as set forth in the test borings and soils reports. The Owner does not assume any responsibility whatsoever with respect to the sufficiency or accuracy of the borings made, or of the logs of the test borings, or of other investigations, or of the soils reports furnished pursuant hereto, or of the interpretations to be made beyond the location or depth of the borings. There is no warranty or guarantee, either express or implied that the conditions indicated by such investigations, borings, logs, soil reports or other information are representative of those existing throughout the site of the Project, or any part thereof, or that unforeseen developments may not occur. At the Owner's request, the Contractor shall make available to the Owner the results of any Site investigation, test borings, analyses, studies or other tests conducted by or in the possession of the Contractor of any of its agents. Nothing herein contained shall be deemed a waiver by the Contractor to pursue any available legal right or remedy it may have at any time against any third party who may have prepared any report and/or test relied upon by the Contractor.

2.2.4 UTILITY SURVEY

When required by the scope of the Project, the Owner will furnish, at its expense, all information regarding known existing utilities on or adjacent to the Site, including location, size, inverts, and depths.

2.2.5 INFORMATION

Upon the request of the Contractor, Owner will make available such existing information regarding utility services and Site features, including existing construction, related to the Project as is available from Owner's records. The Contractor may not rely upon, the accuracy of any such information, other than that provided under Sections 2.2.2 and 2.2.4 (except that the Contractor may not rely upon and must question in writing to the Owner and the Architect, any information which appears incorrect based upon Contractor's Site inspection, knowledge of the Work, and prior experience with similar projects), unless specifically stated in writing that the Contractor may rely upon the designated information.

2.2.6 EXISTING UTILITY LINES; REMOVAL, RELOCATION

2.2.6.1 ***Removal, Relocation.*** Pursuant to Government Code section 4215, the Owner assumes the responsibility for removal, relocation, and protection of utilities located on the Site at the time of commencement of construction under this Contract with respect to any such utility facilities which are not identified in the drawings and specifications made part of the invitation to bid. The Contractor shall not be assessed for liquidated damages for delay in Completion of the Work caused by failure of the Owner to provide for removal or relocation of such utility facilities. Owner shall compensate the Contractor for the costs of locating, repairing damage not due to the failure of the Contractor to exercise reasonable care, removing or relocating such utility facilities, and for equipment necessarily idle during such work.

2.2.6.2 ***Assessment.*** These subparagraphs shall not be construed to preclude assessment against the Contractor for any other delays in Completion of the Work. Nothing in these subparagraphs shall be deemed to require the Owner to indicate the presence of existing service laterals or appurtenances whenever the presence of such utilities on the Site can be inferred from the presence of other visible facilities, such as buildings, or meter junction boxes on or adjacent to the Site.

2.2.6.3 ***Notification.*** If the Contractor, while performing work under this Contract, discovers utility facilities not identified by the Owner in the Contract plans or specifications, then Contractor shall immediately notify the Owner and the utility in writing.

2.2.6.4 ***Underground Utility Clearance.*** It shall be Contractor's sole responsibility to timely notify all public and private utilities serving the Site prior to commencing work. The Contractor shall notify and receive clearance from any cooperative agency, such as Underground Service Alert, in accordance with Government Code section 4216, et seq. Contractor shall promptly provide a copy of all such notifications to the Owner.

2.2.7 EASEMENTS

Owner shall secure and pay for easements for permanent structures or permanent changes in existing facilities, if any, unless otherwise specified in the Contract or Contract Documents.

2.2.8 REASONABLE PROMPTNESS

Information or services under Owner's control will be furnished by the Owner with reasonable promptness.

2.2.9 COPIES FURNISHED

The Contractor will be furnished such copies of Drawings and Project Manuals as are stated in the Contract Documents.

2.2.10 DUTIES CUMULATIVE

The foregoing are in addition to other duties and responsibilities of the Owner enumerated herein, and especially those in Article 6 (Construction by Owner or by Separate Contractors), Article 9 (Payments and Completion), and Article 11 (Insurance and Bonds).

2.3 OWNER'S RIGHT TO STOP THE WORK

If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents, or persistently fails to carry out Work in accordance with the Contract Documents, then the Owner may order the Contractor to stop the Work or any portion thereof, until the Contractor corrects the deficiencies. Contractor shall not be entitled to a time extension for any delays caused by such order. The right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Article 6.

2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Contractor fails or refuses to carry out the Work in accordance with the Contract Documents, then Owner may correct such deficiencies by whatever reasonable method the Owner may deem expedient without prejudice to other remedies the Owner may have, including, but not limited to, having another contractor perform some or all of the Work without terminating the Contract with Contractor. Owner may exercise this right at any time during the Contractor's Work.

Owner shall first provide written notice to Contractor of Contractor's failure or refusal to perform. The notice will provide the time period within which Contractor must begin correction of the failure or refusal to perform. If the Contractor fails to begin correction within the stated time, or fails to continue correction, then the Owner may proceed to correct the deficiencies. If the Owner bids the work, then Contractor shall not be eligible for the award of the contract. The Contractor may be invoiced the cost to Owner of the work, including compensation for additional professional and internally generated services and expenses made necessary by Contractor's failure or refusal to perform. Owner may withhold that amount from the sublease payments due the Contractor, pursuant to Section 9.5. If payments withheld then or thereafter due the Contractor are not sufficient to cover that amount, then the Contractor shall pay the difference to the Owner.

ARTICLE 3
THE CONTRACTOR

3.1 DEFINITION

The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Contractor" means the Contractor or the Contractor's authorized representative. To the extent that any portion of the Work is provided with the Contractor's own forces, any reference to Subcontractors shall be equally applicable to the Contractor.

3.2 SUPERVISION AND CONSTRUCTION PROCEDURES

3.2.1 CONTRACTOR

The Contractor shall supervise and direct the Work using the Contractor's best skill and attention, which shall meet or exceed the standards in the industry. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, procedures, and coordinating all portions of the Work under the Contract, unless Contract Documents give other specific instructions concerning these matters. The Contractor shall perform the Work in a workmanlike manner, in compliance with the Contract Documents, and in compliance with all applicable local, state, and federal codes, regulations, and other law.

If any of the Project is performed by other contractors retained directly by the Owner, then Owner shall schedule and coordinate the activities of Contractor with the other contractors and Owner. Contractor agrees to accept the Owner's construction schedules, schedule updates, overall sequence and coordination of construction for the Project.

Contractor realizes that work by other contractors or Owner may occur simultaneously with Contractor's Work in any given area. Contractor is responsible for its own sequences that may occur within a given activity or set of activities. Contractor shall not commit or permit any act which will adversely affect the work of any other contractor or Owner. Contractor shall provide layout of its Work at the request of any other contractor or Owner.

Specific duties of the Contractor shall be in accordance with Title 24 of the California Code of Regulations. Contractor shall fully comply with any and all reporting requirements of Education Code sections 17309 and 81141 in the manner prescribed by Title 24.

3.2.2 CONTRACTOR RESPONSIBILITY

The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors, material and equipment suppliers, and their agents, employees, invitees, and other persons performing portions of the Work under direct or indirect contract with the Contractor or any of its Subcontractors.

3.2.3 OBLIGATIONS NOT CHANGED BY OTHERS' ACTIONS

The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents by the activities or duties of the Owner's representatives, including, but not limited to, any construction manager and the Architect, or the Inspector of Record; or by tests, inspections, or approvals required or performed by persons other than the Contractor.

3.2.4 CONTRACTOR RESPONSIBILITY FOR READINESS FOR WORK

The Contractor shall be responsible for inspection of Work already performed under the Contract Documents to determine that such portions are in proper condition to receive subsequent work.

3.2.5 PROJECT MEETINGS

During its Work, Contractor shall attend Owner's Project meetings as scheduled by the Contract Documents, or as otherwise instructed by Owner, to discuss the current status of the Work and the Project, and the future progress of the Work and the Project. Contractor shall have five (5) days after receipt of Owner's Project meeting minutes to provide written objections and suggested corrections. Either party may audio record any meeting related to the Contract.

3.3 SUPERINTENDENT

3.3.1 FULL TIME SUPERINTENDENT

The Contractor shall provide a competent superintendent and assistants as necessary, all of whom shall be reasonably proficient in speaking, reading and writing English and, who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

3.3.2 STAFF

The Contractor and each Subcontractor shall: furnish a competent and adequate staff as necessary for the proper administration, coordination, supervision, and superintendence of its portion of the Work; organize the procurement of all materials and equipment so that the materials and equipment will be available at the time they are needed for the Work; and keep an adequate force of skilled workers on the job to Complete the Work in accordance with all requirements of the Contract Documents.

3.3.3 RIGHT TO REMOVE

Owner shall have the right, but not the obligation, to require the removal from the Project of any superintendent, staff member, agent, or employee of any Contractor, Subcontractor, material or equipment supplier, etc., for cause.

3.4 LABOR AND MATERIALS

3.4.1 CONTRACTOR TO PROVIDE

Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, material, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and Completion of the Work whether temporary or permanent, and such facilities, labor, equipment, material, and services are included in the Work. For a lease-leaseback lump sum contract, Owner shall not be liable for, and Contractor shall bear the burden of, any post-proposal escalation in the cost of materials; and for a lease-leaseback percentage fee contract, Owner shall not be liable for, and Contractor shall bear the burden of, any escalation in the cost of materials after approval of the contract price by the Owner's governing board; but in either case Contractor will retain the benefit of any material cost decreases. Owner shall have no responsibility for security of, or repair or replacement costs of, such facilities, labor, equipment, material, and services provided by Contractor pursuant to this subsection.

3.4.2 QUALITY

Unless otherwise specified, all materials and equipment to be permanently installed in the Project shall be new and shall be of such quality as required to satisfy the standards of the Contract Documents. The Contractor shall, if requested, promptly furnish satisfactory evidence as to kind and quality of all materials and equipment. All labor shall be performed by workers skilled in their respective trades, and the quality of their work shall meet whichever is the higher standard for their work: the standard in the industry or the standard in the Contract Documents.

3.4.3 REPLACEMENT

Any work, materials, or equipment, which does not conform to these standards may be disapproved and rejected by the Owner, in which case, they shall be removed and replaced by the Contractor at no cost to Owner.

3.4.4 DISCIPLINE

The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Contract in accordance with paragraph 5.5.1 including, but not limited to, Subcontractors, and material or equipment suppliers retained for the Project.

3.5 WARRANTY

For the period of one (1) year after Completion of the Work (see Sections 9.7.1, 12.2.5, and 12.2.6), the Contractor warrants to the Owner that material and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform with the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Contractor's warranty does not cover damage or defect caused by abuse,

modifications not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. If required by the Owner, the contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

3.6 TAXES

Contractor will pay all applicable Federal, State, and local taxes on all materials, labor, or services furnished by it, and all taxes arising out of its operations under the Contract Documents. Owner is exempt from Federal Excise Tax, and a Certificate of Exemption shall be provided upon request.

3.7 PERMITS, FEES AND NOTICES

3.7.1 PAYMENT

The Contractor shall secure and pay for all permits and governmental fees, licenses, and inspections necessary for proper execution and Completion of the Work which are customarily secured, or required by the Contract or law to be secured, after execution of the Contract, and which are legally required from any authority having jurisdiction over the Project, except those required from the Division of the State Architect (DSA). Owner shall be responsible for all testing and inspection as required by the DSA on-Site or within the distance limitations set forth in paragraph 13.5.2, unless a different mileage range is specified in the Contract Documents.

3.7.2 COMPLIANCE

The Contractor shall comply with and give notices required by any law, ordinance, rule, regulation, and lawful order of public authorities bearing on performance of the Work.

3.7.3 CONTRACT DOCUMENTS

It is not the Contractor's responsibility to ascertain that the Contract Documents are in accordance with any applicable law, statute, ordinance, building codes, rule, or regulation. However, if the Contractor knew, or should have known, or observes that portions of the Contract Document are at variance therewith, the Contractor shall promptly notify the Architect, any construction manager, and Owner in writing, and necessary changes shall be accomplished by appropriate modification.

3.7.4 RESPONSIBILITY

If the Contractor performs Work that it knows, or should have known, is contrary to any law, statute, ordinance, building code, rule or regulation, then the Contractor shall assume full responsibility for such Work, and shall bear the attributable cost of correction and delay to the Work, other contractors' work, and the Project.

3.8 ALLOWANCES

3.8.1 CONTRACT

The Contractor shall include in the Total Sublease Amount all allowances, including any general contingency allowance, stated in the Contract Documents. Items covered by specific allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities against whom the Contractor makes reasonable and timely objection.

3.8.2 SCOPE

3.8.2.1 ***Prompt Selection.*** Materials and equipment under an allowance shall be selected promptly by the Owner to avoid delay to the Work.

3.8.2.2 ***Cost.*** Allowances shall cover the cost to the Contractor of materials and equipment delivered at the Site and all required taxes, less applicable trade discounts, etc., as delineated in paragraph 7.7.4.

3.8.2.3 ***Cost Included in Total Sublease Amount.*** Contractor's costs for unloading and handling at the Site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Total Sublease Amount and not in the allowances.

3.8.2.4 ***Total Sublease Amount Adjustment.*** Whenever Contractor seeks payment from an allowance and the requested costs are approved by Owner as compliant with the Contract Documents (including Sections 3.8.2.2 and 3.8.2.3, above), Owner may elect to pay the approved costs from the allowance, or pay the costs via Change Order. Any such allowance payment shall conform to the requirements of the Agreement and other Contract Documents.

3.9 CONTRACTOR'S CONSTRUCTION SCHEDULES

3.9.1 REQUIREMENTS

The Contractor shall prepare and submit for the Owner's, and any construction manager's, information the baseline construction schedule for the Work ("Baseline Schedule"), which shall conform to the Contract Documents' requirements. For a Lease-Leaseback Lump Sum contract, the Baseline Schedule shall be submitted within two (2) weeks of the award of the contract and prior to the commencement of the Work. For a Lease-Leaseback Percentage Fee contract (which includes preconstruction services), the Baseline Schedule shall be submitted after approval by the Owner's governing board of the Total Sublease Amount and prior to the commencement of the construction Work.

Contractor shall submit an updated schedule for the Work by the first day of every month, and whenever else requested by the Owner ("Schedule Update"). Each Schedule Update must include accurate as-built dates and the current as-planned schedule, both of which shall conform to the

Contract Documents' requirements. Contractor shall submit its daily logs for the prior month with each schedule update. The Schedule Update shall be submitted regardless of whether other Schedule Updates have previously been submitted. Submission of a short-term schedule (such as a "three week look ahead" schedule) is not a valid substitute for submitting a Schedule Update.

The Baseline Schedule and all Schedule Updates shall conform, at a minimum, to industry standards for (a) critical path scheduling, and (b) facilitation of Owner's Project management and evaluation of Contractor Claims for additional money or time.

The Baseline Schedule and all Schedule Updates shall not exceed time limits (including milestone deadlines) under the Contract Documents and shall comply with the Contract Documents scheduling requirements and with any scheduling requirements the Owner provides to the Contractor at the beginning of the Work. The Baseline Schedule and all Schedule Updates shall accurately reflect Work performed to date; reasonable dates for future Work; all construction activities (including procurement); the critical path for Completion of the remainder of the Work; the logic, sequencing, and relationship between the construction activities, including each activity's predecessor and successor activities; and the percentage of the Work completed.

The Baseline Schedule and all Schedule Updates shall include a reasonable number of days for weather that is usual or common for each month, as time extensions are not available for such days (see Sections 4.5.5.3.2 and 8.4.1, below); and any failure by Contractor to include a reasonable number of such days, or by Owner to require Contractor to include a reasonable number of such days, shall not affect the reasonable number of such days to be used when determining time extensions under Sections 4.5.5.3.2 and 8.4.1, below.

The Baseline Schedule and all Schedule Updates shall include a reasonable number of days for usual or common delays by utility companies, and for usual or common delays by other government agencies.

The Baseline Schedule and all Schedule Updates shall be in the form of either a tabulation, chart, or graph, and shall be in sufficient detail to show the chronological relationship of all activities of the Project including, but not limited to, estimated starting and Completion dates of various activities, (including early and late dates and reasonable float for each activity), procurement of materials, the critical path, and scheduling of equipment. Float suppression techniques such as preferential sequencing, special lead/lag logic restraints, extended activity durations, or imposed dates shall be apportioned for the benefit of the Project.

Whenever in the Contract Documents Contractor is required to provide a Baseline Schedule and/or a Schedule Updates, the Contractor shall provide it in native electronic format as well as hard copy.

Contractor shall be solely responsible for the accuracy, utility and reasonableness of the Baseline Schedule and all Schedule Updates. Owner's acceptance, approval or non-rejection of Contractor's schedules shall not affect Contractor's responsibility for its schedules.

The Contractor and Owner shall use any float on a "first come, first served" basis. The Baseline Schedule and all Schedule Updates shall reflect Contractor's and Owner's use of float. Float is

not for the exclusive use or benefit of either Owner or Contractor, but it is a jointly owned expiring Project resource available to both parties as needed to meet schedule milestones. For the Baseline Schedule and all Schedule Updates, Contractor shall use a critical path network format with the critical paths clearly indicated. Contractor shall use an MS Project, Primavera, or an equivalent or better program. Contractor shall include reports that sort and list the activities in order of increasing float and by early and late start dates. Contractor shall endeavor to label ten to thirty percent (10-30%) of the tasks as critical, but shall not label less than five (5%) or more than fifty (50%) as critical. Contractor shall use calendar days.

If any change in Contractor's method of operations will cause a change in the Baseline Schedule or most recent Schedule Update, Contractor shall submit to Owner, Architect, and any construction manager, another Schedule Update within seven (7) days of the change.

If, in the Owner's opinion, the Contractor is not prosecuting the Work at a rate sufficient to meet the Baseline Schedule, a Schedule Update, or a contractual milestone, or sufficient to Complete the Work by the Date for Completion as adjusted by change orders, or if in the Owner's option the Contractor's actual progress falls behind the Baseline Schedule or a Schedule Update, Contractor will not meet a contractual milestone, or Contractor will not Complete the Work by the Date for Completion as adjusted by change orders, then the Owner may require that the Contractor prepare and submit a recovery plan (including but not limited to any necessary acceleration). Contractor must submit a recovery plan within seven (7) days of a demand for the recovery plan. At a minimum, the recovery plan must include a proposed schedule that shows Completion of the Work by the contractual milestones and by the Date for Completion, as adjusted by change orders, or Completion by other dates Owner specifies in the demand for a recovery plan. The recovery plan shall state the corrective actions Contractor will undertake to implement it. The recovery plan shall also list any additional money that Contractor believes it should receive if Owner orders Contractor to fully or partially implement the recovery plan. If the Owner specifically orders Contractor in writing to implement the recovery plan (including but not limited to acceleration), Contractor shall do so, but the order shall not act constitute an admission by Owner that Contractor is entitled to additional money for implementing the recovery plan. To recover additional money for implementing the recovery plan, Contractor must comply with Section 4.5 and Articles 7 and 8 below. If Contractor elects to implement a recovery plan or otherwise accelerate the Work without a specific written order from the Owner to do so, then Contractor waives all rights to recover additional money for implementing that recovery plan or accelerating.

The Baseline Schedule and all Schedule Updates shall be certified by Contractor as true and correct, as follows:

> I, _____ [name of declarant], declare the following:
>
> _____ [Contractor company name] has contracted with _____ [public entity name] for the _____ [name of project] Project. _____ [Contractor company name] authorized me to prepare schedules for _____ [public entity name] for this Project, and I prepared the attached schedule. I am the most knowledgeable person at

_____ [contractor company name] regarding the scheduling of this Project.

The attached schedule complies with the Contract Documents (including but not limited to General Conditions section 3.9.1), and is submitted in compliance with all laws applicable to submission of a Claim, including, but not limited to, California Penal Code section 72 (Fraudulent Claims), Government Code sections 12650 et seq. (False Claims Act; for example, Government Code section 12651(a)(7)), and Business and Professions Code sections 17200 et seq. (Unfair Business Practices Act). I am aware that submission or certification of false claims, or other Claims that violate law or the Contract, may lead to fines, imprisonment, and/or other serious legal consequences for myself and/or _____ *[Contractor company name]*.

While preparing this declaration and schedule I consulted with others (including attorneys, consultants, or others who work for _____ *[Contractor company name]*) when necessary to ensure that the statements were true and correct.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed _____, 20__, at _____, California.

_____ *[signature]*
_____ *[name of declarant]*

3.9.2 DSA OVERSIGHT PROCESS

In connection with the DSA Construction Oversight Process, which includes the use of inspection cards and review of changes to the DSA-approved construction documents, the Contractor must (a) include specific tasks in its baseline schedule to take into account these procedures since they are critical path issues; and (b) include a reasonable amount of float in the baseline schedule to accommodate the additional time required by these DSA procedures.

3.9.3 FAILURE TO MEET REQUIREMENTS

Failure of the Contractor to provide proper schedules may, at the sole discretion of Owner, constitute either grounds to withhold, in whole or in part, sublease payments to the Contractor, or a breach of contract allowing Owner to terminate the Contract.

3.10 DOCUMENTS AND SAMPLES AT THE SITE

The Contractor shall maintain at the Site for the Owner one applicable copy of Titles 19 and 24 and record copy of the Drawings, Specifications, Addenda, Change Orders, and other Modifications, in good order and marked currently to record changes and selections made during construction. In addition, the Contractor shall maintain at the Site approved Shop Drawings, Product Data, Samples, and similar required submittals. These documents shall be available to the

Owner and shall be delivered to the Owner, or the Architect for delivery to the Owner upon Completion of the Work.

3.11 SHOP DRAWINGS, PRODUCT DATA, AND SAMPLES

3.11.1 SUBMITTALS DEFINED

3.11.1.1 ***Shop Drawings.*** The term "shop drawings" as used herein means drawings, diagrams, schedules, and other data, which are prepared by Contractor, Subcontractors, manufacturers, suppliers, or distributors illustrating some portion of the Work, and includes: illustrations; fabrication, erection, layout and setting drawings; manufacturer's standard drawings; schedules; descriptive literature, instructions, catalogs, and brochures; performance and test data including charts; wiring and control diagrams; and all other drawings and descriptive data pertaining to materials, equipment, piping, duct and conduit systems, and methods of construction as may be required to show that the materials, equipment, or systems and their position conform to the requirements of the Contract Documents. The Contractor shall obtain and submit with the shop drawings all seismic and other calculations and all product data from equipment manufacturers. "Product data" as used herein are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate a material, product, or system for some portion of the Work. As used herein, the term "manufactured" applies to standard units usually mass-produced, and "fabricated" means items specifically assembled or made out of selected materials to meet individual design requirements. Shop drawings shall: establish the actual detail of all manufactured or fabricated items, indicate proper relation to adjoining work, amplify design details of mechanical and electrical systems and equipment in proper relation to physical spaces in the structure, and incorporate minor changes of design or construction to suit actual conditions.

3.11.1.2 ***Samples.*** The term "samples" as used herein are physical examples furnished by Contractor to illustrate materials, equipment, or quality and includes natural materials, fabricated items, equipment, devices, appliances, or parts thereof as called for in the Specifications, and any other samples as may be required by the Owner to determine whether the kind, quality, construction, finish, color, and other characteristics of the materials, etc., proposed by the Contractor conform to the required characteristics of the various parts of the Work. All Work shall be in accordance with the approved samples.

3.11.1.3 ***Contractor's Responsibility.*** Contractor shall obtain and shall submit to Architect all required shop drawings and samples in accordance with Contractor's "Schedule for Submission of Shop Drawings and Samples" provisions in Division 1 of the Specifications and in accordance with the Contractor's original and updated schedules, and with such promptness as to cause no delay in its own Work or in that of any other contractor, Owner or subcontractor but in no event later than ninety (90) days after the execution of the Agreement. Contractor may be assessed $100 a day for each day it is late in submitting a shop drawing or sample. No extensions of time will be granted to Contractor or any Subcontractor because of its failure to have shop drawings and samples submitted in accordance with the Schedule. Each Subcontractor shall submit all shop drawings, samples, and manufacturer's descriptive data for the review of the Owner, the Contractor, and the Architect through the Contractor. By submitting shop drawings, product data, an

d samples, the Contractor or submitting party (if other than Contractor) represents that it has determined and verified all materials, field measurements, field conditions, catalog numbers, related field construction criteria, and other relevant data in connection with each such submission, and that it has checked, verified, and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents. At the time of submission, any deviation in the shop drawings, product data, or samples from the requirements of the Contract Documents shall be narratively described in a transmittal accompanying the submittal. However, submittals shall not be used as a means of requesting a substitution, the procedure for which is defined in paragraph 3.11.4, "Substitutions." Review by Owner and Architect shall not relieve the Contractor or any Subcontractor from its responsibility in preparing and submitting proper shop drawings in accordance with the Contract Documents. Contractor shall stamp, sign, and date each submittal indicating its representation that the submittal meets all of the requirements of the Contract Documents. Any submission, which in Owner's or Architect's opinion is incomplete, contains numerous errors, or has been checked only superficially by Contractor, will be returned unreviewed for resubmission by the Contractor.

3.11.1.4 ***Extent of Review.*** In reviewing shop drawings, the Owner will not verify dimensions and field conditions. The Architect will review and approve shop drawings, product data, and samples for aesthetics and for conformance with the design concept of the Work and the information given in the Contract Documents. The Architect's review shall neither be construed as a complete check nor relieve the Contractor, Subcontractor, manufacturer, fabricator, or supplier from responsibility for any deficiency that may exist or from any departures or deviations from the requirements of the Contract Documents unless the Contractor has, in writing, called the Architect's attention to the deviations at the time of submission and the Architect has given specific written approval. The Architect's review shall not relieve the Contractor or Subcontractors from responsibility for errors of any sort in shop drawings or schedules, for proper fitting of the Work, or from the necessity of furnishing any Work required by the Contract Documents, which may not be indicated on shop drawings when reviewed. Contractor and Subcontractors shall be solely responsible for determining any quantities, whether or not shown on the shop drawings.

3.11.2 **DRAWING SUBMISSION PROCEDURE**

3.11.2.1 ***Transmittal Letter and Other Requirements.*** All shop drawings must be properly identified with the name of the Contract and dated, and each lot submitted must be accompanied by a letter of transmittal referring to the name of the Contract and to the Specification section number for identification of each item clearly stating in narrative form, as well as "clouding" on the submissions, all qualifications, departures, or deviations from the Contract Documents, if any. Shop drawings, for each section of the Work, shall be numbered consecutively, and the numbering system shall be retained throughout all revisions. All Subcontractor submissions shall be made through the Contractor. Each drawing shall have a clear space for the stamps of Architect and Contractor. Only shop drawings required to be submitted by the Contract Documents shall be reviewed.

3.11.2.2 ***Copies Required.*** Each submittal shall include one (1) legible, reproducible sepia and five (5) legible prints of each drawing, including fabrication, erection, layout and setting drawings, and such other drawings as required under the various sections of the Specifications un

til final acceptance thereof is obtained. Subcontractor shall submit copies, in an amount as requested by the Contractor, of: manufacturers' descriptive data for materials, equipment, and fixtures, including catalog sheets showing dimensions, performance, characteristics, and capacities; wiring diagrams and controls; schedules; all seismic calculations and other calculations; and other pertinent information as required.

3.11.2.3 ***Corrections.*** The Contractor shall make any corrections required by Architect and shall resubmit as required by Architect the required number of corrected copies of shop drawings or new samples until approved. Contractor shall direct specific attention in writing or on resubmitted shop drawings to revisions other than the corrections required by the Architect on previous submissions. Professional services required for more than one (1) re-review of required submittals of shop drawings, product data, or samples are subject to charge to the Contractor pursuant to paragraph 4.4.

3.11.2.4 ***Approval Prior to Commencement of Work.*** No portion of the Work requiring a shop drawing or sample submission shall be commenced until the submission has been reviewed by Owner and approved by Architect unless specifically directed in writing by the Owner. All such portions of the Work shall be in accordance with approved shop drawings and samples.

3.11.3 **SAMPLE SUBMISSIONS PROCEDURE**

3.11.3.1 ***Samples Required.*** In case a considerable range of color, graining, texture, or other characteristics may be anticipated in finished products, a sufficient number of samples of the specified materials shall be furnished by the Contractor to indicate the full range of characteristics, which will be present in the finished products; and products delivered or erected without submittal and approval of full range samples shall be subject to rejection. Except for range samples, and unless otherwise called for in the various sections of the Specifications, samples shall be submitted in duplicate. All samples shall be marked, tagged, or otherwise properly identified with the name of the submitting party, the name of the Contract, the purpose for which the samples are submitted, and the date and shall be accompanied by a letter of transmittal containing similar information, together with the Specification section number for identification of each item. Each tag or sticker shall have clear space for the review stamps of Contractor and Architect.

3.11.3.2 ***Labels and Instructions.*** Samples of materials, which are generally furnished in containers bearing the manufacturers' descriptive labels and printed application instructions, shall, if not submitted in standard containers, be supplied with such labels and application instructions.

3.11.3.3 ***Architect's Review.*** The Architect will review and, if appropriate, approve submissions and will return them to the Contractor with the Architect's stamp and signature applied thereto, indicating the appropriate action in compliance with the Architect's standard procedures.

3.11.3.4 ***Record Drawings and Annotated Specifications.*** The Contractor will prepare and maintain on a current basis an accurate and complete set of Record Drawings showing clearly all changes, revisions, and substitutions during construction, including, without limitation, field changes and the final location of all mechanical equipment, utility lines, ducts, outlets, structural members, walls, partitions, and other significant features, and Annotated Specifications showing cl

early all changes, revisions, and substitutions during construction. A copy of such Record Drawings and Annotated Specifications will be delivered to Owner in accordance with the schedule prepared by Contractor. If there is a specification that allows Contractor to elect one of several brands, makes, or types of material or equipment, then the annotations shall show which of the allowable items the Contractor has furnished. The Contractor will update the Record Drawings and Annotated Specifications as often as necessary to keep them current but no less often than weekly. The Record Drawings and Annotated Specifications shall be kept at the Site and available for inspection by the Owner, Inspector of Record and the Architect. On Completion of the Contractor's Work and prior to the Final Sublease Payment, the Contractor will provide one complete set of Record Drawings and Annotated Specifications to the Owner, certifying them to be a complete and accurate reflection of the actual construction conditions of the Work.

3.11.3.5 ***Equipment Manuals.*** Contractor shall obtain and furnish to the Owner three (3) complete sets of manuals containing the manufacturers' instructions for maintenance and operation of each item of equipment and apparatus furnished under the Contract Documents and any additional data specifically requested under the various sections of the Specifications for each division of the Work. The manuals shall be arranged in proper order, indexed, and placed in three-ring binders. At the Completion of its Work, the Contractor shall certify, by endorsement thereon, that each of the manuals is complete, accurate, and covers all of its Work. Prior to the final Sublease Payment, and as a further condition to its approval by the Architect, each Subcontractor shall deliver the manuals, arranged in proper order, indexed, endorsed, and placed in three-ring binders, to the Contractor, who shall assemble these manuals for all divisions of the Work, review them for completeness, and submit them to the Owner through the Architect.

3.11.3.6 ***Owner's Property.*** All shop drawings and samples submitted shall become the Owner's property.

3.11.4 **SUBSTITUTIONS**

3.11.4.1 ***One Product Specified.*** Unless the Specifications state that no substitution is permitted, whenever in the Contract Documents any specific article, device, equipment, product, material, fixture, patented process, form, method, or type of construction is indicated or specified by name, make, trade name, or catalog number, with or without the words "or equal," such specification shall be deemed to be used for the purpose of facilitating description of material, process, or article desired and shall be deemed to be followed by the words "or equal." Contractor may, unless otherwise stated, offer any material, process, or article, which shall be substantially equal or better in every respect to that so indicated or specified and will completely accomplish the purpose of the Contract Documents.

3.11.4.2 ***Two or More Products Specified.*** When two or more acceptable products are specified for an item of the Work, the choice will be up to the Contractor. Contractor shall utilize the same product throughout the Project. If a timely substitution request as set forth in Section 3.11.4.3 is not provided and an "or equal" substitution is requested, then the Owner may consider the substitution if the product specified is no longer commercially available. If the Owner allows the substitution to be proposed pursuant to such an untimely request, then the Contractor will be re

sponsible for the professional fees incurred by the Architect or Architect's consultants in reviewing the proposed substitution, which fees may be withheld from sublease payments.

3.11.4.3 ***Substitution Request Form.*** Requests for substitutions of products, materials, or processes other than those specified must be made on the Substitution Request form available from the Owner. Any Requests submitted after the deadline specified in the Requests for Proposals will not be considered, except as noted in paragraph 3.11.4.2. A Substitution Request must be accompanied by evidence as to whether or not the proposed substitution: is equal in quality and serviceability to the specified item; will entail no changes in detail and construction of related work; will be acceptable in consideration of the required design and artistic effect; will provide no cost disadvantage to Owner; and will require no excessive or more expensive maintenance, including adequacy and availability of replacement parts. The burden of proof of these facts shall be upon the Contractor. The Contractor shall furnish with its request sufficient information to determine whether the proposed substitution is equivalent including, but not limited to, all drawings, specifications, samples, performance data, calculations, and other information as may be required to assist the Architect and the Owner in determining whether the proposed substitution is acceptable. The final decision shall be the Owner's. The written approval of the Owner, consistent with the procedure for Change Orders, shall be required for the use of a proposed substitute material. Owner may condition its approval of the substitution upon delivery to Owner of an extended warranty or other assurances of adequate performance of the substitution. All risks of delay due to the Division of the State Architect's approval, or the approval of any other governmental agency having jurisdiction, of a requested substitution shall be on the requesting party.

3.11.4.4 ***List of Manufacturers and Products Required.*** The Subcontractor shall prepare and submit to the Contractor within thirty (30) days of execution of the Subcontract comprehensive lists, in quadruplicate, of the manufacturers and products proposed for the Project, including information on materials, equipment, and fixtures required by the Contract Documents, as may be required for Contractor's or Architect's preliminary approval. Approval of such lists of products shall not be construed as a substitute for the shop drawings, manufacturer's descriptive data, and samples, which are required by the Contract Documents, but rather as a base from which more detailed submittals shall be developed for the final review of the Contractor and the Architect.

3.11.5 DEFERRED APPROVALS

Deferred approvals shall be submitted and processed pursuant to the requirements of Division 1 of the Specifications. All risks of delay due to the Division of the State Architect's, or any other governmental agency having jurisdiction, approval of a deferred approval shall be on the requesting party.

3.12 CUTTING AND PATCHING

3.12.1 SCOPE

The Contractor shall be responsible for cutting, fitting, or patching required to Complete the Work or to make its parts fit together properly.

3.12.2 CONSENT

The Contractor shall not damage or endanger a portion of the Work or fully or partially Completed construction of the Owner or separate contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work. All cutting shall be done promptly, and all repairs shall be made as necessary.

3.12.3 STRUCTURAL MEMBERS

New or existing structural members and elements, including reinforcing bars and seismic bracing, shall not be cut, bored, or drilled except by written authority of the Architect. Work done contrary to such authority is at the Contractor's risk, subject to replacement at its own expense and without reimbursement under the Contract. Agency approvals shall be obtained by the Architect, not by the Contractor.

3.12.4 SUBSEQUENT REMOVAL

Permission to patch any areas or items of the Work shall not constitute a waiver of the Owner's or the Architect's right to require complete removal and replacement of the areas of items of the Work if, in the opinion of the Architect or the Owner, the patching does not satisfactorily restore quality and appearance of the Work or does not otherwise conform to the Contract Documents. Any costs caused by defective or ill-timed cutting or patching shall be borne by the person or entity responsible.

3.13 CLEANING UP

3.13.1 CONTRACTOR'S RESPONSIBILITY

The Contractor shall keep the Site and surrounding area free from accumulation of waste material or rubbish caused by operations under the Contract. The Site shall be maintained in a neat and orderly condition. All crates, cartons, paper, and other flammable waste materials shall be removed from Work areas and properly disposed of at the end of each day. The Contractor shall continuously remove from and about the Site the waste materials, rubbish, tools, construction equipment, machinery, and materials no longer required for the Work.

3.13.2 FAILURE TO CLEANUP

If the Contractor fails to clean up as provided in the Contract Documents, then the Owner may do so, without prior notice to the Contractor and the cost thereof shall be invoiced to the Contractor and withheld from sublease payments. Each Subcontractor shall have the

responsibility for the cleanup of its own Work. If the Subcontractor fails to clean up, then the Contractor must do so.

3.13.3 CONSTRUCTION BUILDINGS

When directed by the Owner or the Architect, Contractor and Subcontractor shall dismantle temporary structures, if any, and remove from the Site all construction and installation equipment, fences, scaffolding, surplus materials, rubbish, and supplies belonging to Contractor or Subcontractor. If the Contractor does not remove the tools, equipment, machinery, and materials within fifteen (15) days after Completion of its Work, then they shall be deemed abandoned, and the Owner can dispose of them for its own benefit in whatever way it deems appropriate. Contractor shall pay for any costs to dispose of the items.

3.14 ACCESS TO WORK

The Contractor shall provide the Owner, the Architect, and the Inspector of Record, access to the Work in preparation and progress wherever located.

3.15 ROYALTIES AND PATENTS

3.15.1 PAYMENT AND INDEMNITY

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims of infringement of patent rights and shall hold the Owner and the Architect harmless and indemnify them, from loss on account thereof, to the extent not caused by the Owner's active negligence, sole negligence or willful misconduct, and shall not be responsible for such defense or loss when a particular design, process, or product of a particular manufacturer is required by the Contract Documents. However, if the Contractor has reason to believe the required design, process, or product is an infringement of a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Owner and Architect.

3.15.2 REVIEW

The review by the Owner or Architect of any method of construction, invention, appliance, process, article, device, or material of any kind shall be for its adequacy for the Work and shall not be an approval for the use by the Contractor in violation of any patent or other rights of any person or entity.

3.16 INDEMNIFICATION

3.16.1 SCOPE: CONTRACTOR

To the fullest extent permitted by law, the Contractor shall defend, indemnify, and hold harmless the Owner, the Construction Manager, Architect, Architect's consultants, the Inspector of Record, the State of California, and their respective agents, employees, officers, volunteers, Boards of Trustees, members of the Boards of Trustees, and directors ("Indemnitees"), from and against

claims, actions, damages, liabilities, losses (including, but not limited to, injury or death of persons, property damage, and compensation owed to other parties), and expenses (including, but not limited to, attorneys' fees and costs including fees of consultants) alleged by third parties against Indemnitees arising out of or resulting from the following: Contractor's, its Subcontractors', or its suppliers' performance of the Work, including, but not limited to, the Contractor's or its Subcontractors' use of the Site in accordance with the Site Lease; the Contractor's or its Subcontractors' construction of the Project, or failure to construct the Project, or any portion thereof; the use, misuse, erection, maintenance, operation, or failure of any machinery or equipment including, but not limited to, scaffolds, derricks, ladders, hoists, and rigging supports, whether or not such machinery or equipment was furnished, rented, or loaned by any of the Indemnitees; or any act, omission, negligence, or willful misconduct of the Contractor or its Subcontractors or their respective agents, employees, material or equipment suppliers, invitees, or licensees but only to the extent caused in whole or in part by the acts or omissions of the Contractor, its Subcontractors, its suppliers, anyone directly or indirectly employed by any of them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity, which would otherwise exist as to a party, person, or entity described in this paragraph. The obligation to defend, indemnify and hold harmless includes any claims or actions by third parties arising out of or resulting from Labor Code section 2810. Contractor shall have no obligation to defend or indemnify the Indemnitees against claims, actions, damages, liabilities, losses, and expenses caused by the active negligence, sole negligence or willful misconduct of Indemnitees. This indemnification shall apply to all liability, as provided for above, regardless of whether any insurance policies are applicable, and insurance policy limits do not act as a limitation upon the amount of the indemnification to be provided by the Contractor.

3.16.2 **SCOPE: SUBCONTRACTORS**

3.16.2.1 ***Indemnity.*** The Subcontractors shall defend, indemnify, and hold harmless the Indemnitees from and against claims, actions, damages, liabilities, and losses (including, but not limited to, injury or death of persons, property damage, and compensation owed to other parties), and expenses (including, but not limited to, attorneys' fees and costs including fees of consultants) alleged by third parties against Indemnitees arising out of or resulting from the following: Subcontractors' performance of the Work, including, but not limited to, the Subcontractors' use of the Site; the Subcontractors' construction of the Project or failure to construct the Project or any portion thereof; the use, misuse, erection, maintenance, operation, or failure of any machinery or equipment, including, but not limited to, scaffolds, derricks, ladders, hoists, and rigging supports, whether or not such machinery or equipment was furnished, rented, or loaned by any of the Indemnitees; or any act, omission, negligence, or willful misconduct of the Subcontractors or their respective agents, employees, material or equipment suppliers, invitees, or licensees but only to the extent caused in whole or in part by the acts or omissions of the Subcontractors, anyone directly or indirectly employed by any of them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity, which would otherwise exist as to a party, person, or entity described in this paragraph. This obligation to defend, indemnify and hold harmless includes any claims or ac

tions by third parties arising out of or resulting from Labor Code section 2810. Subcontractors shall have no obligation to defend or indemnify the Indemnitees against claims, actions, damages, liabilities, losses, and expenses caused by the active negligence, sole negligence or willful misconduct of Indemnitees. This indemnification shall apply to all liability, as provided for above, regardless of whether any insurance policies are applicable, and insurance policy limits do not act as a limitation upon the amount of the indemnification to be provided by the Subcontractors.

3.16.2.2 ***Joint and Several Liability.*** If more than one Subcontractor is connected with an accident or occurrence covered by this indemnification, then all such Subcontractors shall be jointly and severally responsible to each of the Indemnitees for indemnification, and the ultimate responsibility among such indemnifying Subcontractors for the loss and expense of any such indemnification shall be resolved without jeopardy to any Indemnitee. The provisions of the indemnity provided for herein shall not be construed to indemnify any Indemnitee for its own negligence if not permitted by law or to eliminate or reduce any other indemnification or right which any Indemnitee has by law or equity.

3.16.3 NO LIMITATION

The Contractor's and the Subcontractor's obligation to indemnify and defend the Indemnitees hereunder shall include, without limitation, any and all claims, damages, and costs: for injury to persons and property (including loss of use), and sickness, disease or death of any person; for breach of any warranty, express or implied; for failure of the Contractor or the Subcontractor to comply with any applicable governmental law, rule, regulation, or other requirement; and for products installed in or used in connection with the Work.

3.17 OWNER AS INTENDED BENEFICIARY

The Owner is an intended beneficiary of any architectural or engineering work secured by, or performed by, the Contractor to fulfill its obligations under the Contract. Contractor shall state in its contracts with architectural or engineering consultants that their work is for the intended benefit of the Owner.

3.18 NOTICE OF EXCUSE FOR NONPERFORMANCE

If Contractor believes that acts or omissions of Owner (including, but not limited to, Owner caused delay) have prevented Contractor from performing the Work as required by the Contract Documents and Contractor intends to rely on Owner's acts or omissions and Civil Code section 1511(1) as reasons to excuse Contractor's nonperformance or to support, among other things, Contractor's requests for time extensions under Section 4.5, below, then Contractor shall provide written notice of the excuse within five (5) days of the Owner's acts or omissions. If Contractor fails to timely submit the written notice, then Contractor shall have waived any right to later rely on the acts or omissions as a defense to Contractor's nonperformance or as the basis for a time extension, regardless of the merits of the defense or time extension, as Contractor will not have satisfied a condition precedent or exhausted administrative remedies. Contractor acknowledges that these written notices are of critical importance to the Owner's management of the Work and Project and the mitigation of costs and delays to the Work and Project.

3.19 RECOVERY OF COSTS, DAMAGES, OR TIME EXTENSIONS FROM OWNER

Notwithstanding any other provisions of the Contract Documents, Contractor expressly waives its right to recover any special, consequential, or indirect damages from Owner in relation to this Contract or the Project. Contractor may only recover general (also known as direct) damages from Owner to the extent allowed by the Contract Documents.

A Notice of Potential Change, Change Order Request and, if necessary, a Claim (see Sections 4.5, 7.2, and 7.6, below) are the exclusive means for Contractor to preserve its rights to recover any costs, damages, or time extensions related to the Contract or the Project from Owner, including but not limited to alleged breaches of contract based on extra work, delay, wrongful withholding, or wrongful termination. Contractor's failure to comply with the Contract Documents' procedures for a COR, CO, and Claim (including but not limited to Sections 4.5, 7.2, 7.6, and 7.7, below) may completely waive Contractor's rights to recovery any such costs or damages.

3.20 USE OF FEDERAL FUNDS

If federal funds are being used either in whole or in part for this Project (see the Instructions to Bidders), then the Project is subject to, and Contractor must comply with, all applicable federal laws including but not limited to the federal regulations set forth in CFR Title 2, Part 200. Accordingly, Contractor agrees to comply with all such federal requirements, including but not limited to the following:

A. EQUAL EMPLOYMENT OPPORTUNITY. Contractor agrees to comply with and be bound by Title 14, CFR, Section 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," the terms of which are incorporated by reference as though set forth in full herein.

B. DAVIS-BACON ACT. If the Contract Price exceeds $2,000, Contractor agrees to comply with and be bound by, and assist Owner in ensuring compliance with, the Davis-Bacon Act, as applicable and comply with the requirements and wage determinations. (40 U.S.C. §§ 3141-3144; 3146-3148 as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction").) Contractor is required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. Additionally, Contractor is required to pay wages not less than once a week. Furthermore, pursuant to the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"), Contractor is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

Any contract in excess of $2,000 is subject to the following:

(1) *Minimum Wages*

a. ***Wage rates and fringe benefits.*** All laborers and mechanics employed or working upon the site of the work (or otherwise working in construction or development of the project under a development statute), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of basic hourly wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. As provided in paragraphs (d) and (e) of this section, the appropriate wage determinations are effective by operation of law even if they have not been attached to the contract. Contributions made or costs reasonably anticipated for bona fide fringe benefits under the Davis-Bacon Act (40 U.S.C. 3141(2)(B)) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(v) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics must be paid the appropriate wage rate and fringe benefits on the wage determination for the classification(s) of work actually performed, without regard to skill, except as provided in paragraph (a)(4) of this section. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided,* That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (a)(1)(iii) of this section) and the Davis-Bacon poster (WH–1321) must be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b. ***Frequently reoccurring classifications.***

i. In addition to wage and fringe benefit rates that have been determined to be prevailing under the procedures set forth in 29 CFR part 1, a wage determination may contain, pursuant to § 1.3(f), wage and fringe benefit rates for classifications of laborers and mechanics for which conformance requests are regularly submitted pursuant to paragraph (a)(1)(iii) of this section, provided that:

1. The work performed by the classification is not performed by a classification in the wage determination for which a prevailing wage rate has been determined;

2. The classification is used in the area by the construction industry; and
3. The wage rate for the classification bears a reasonable relationship to the prevailing wage rates contained in the wage determination.

ii. The Administrator will establish wage rates for such classifications in accordance with paragraph (a)(1)(iii)(A)(*3*) of this section. Work performed in such a classification must be paid at no less than the wage and fringe benefit rate listed on the wage determination for such classification.

c. **Conformance.**

i. The contracting officer must require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract be classified in conformance with the wage determination. Conformance of an additional classification and wage rate and fringe benefits is appropriate only when the following criteria have been met:

1. The work to be performed by the classification requested is not performed by a classification in the wage determination; and
2. The classification is used in the area by the construction industry; and
3. The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

ii. The conformance process may not be used to split, subdivide, or otherwise avoid application of classifications listed in the wage determination.

iii. If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken will be sent by the contracting officer by email to *DBAconformance@dol.gov*. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30–day period that additional time is necessary.

iv. In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer will, by email to *DBAconformance@dol.gov,* refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30–day period that additional time is necessary.

v. The contracting officer must promptly notify the contractor of the action taken by the Wage and Hour Division under paragraphs (a)(1)(iii)(C) and (D) of this section. The contractor must furnish a written copy of such deteparagraph (a)(1)(iii)(C) or (D) of this section must be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

d. **Fringe benefits not expressed as an hourly rate.** Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor may either pay the benefit as stated in the wage determination or may pay another bona fide fringe benefit or an hourly cash equivalent thereof.

e. ***Unfunded plans.*** If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided,* That the Secretary of Labor has found, upon the written request of the contractor, in accordance with the criteria set forth in § 5.28, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

f. ***Interest.*** In the event of a failure to pay all or part of the wages required by the contract, the contractor will be required to pay interest on any underpayment of wages.

(2) *Withholding*

a. ***Withholding requirements.*** Owner may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for the full amount of wages and monetary relief, including interest, required by the clauses set forth in paragraph (a) of this section for violations of this contract, or to satisfy any such liabilities required by any other Federal contract, or federally assisted contract subject to Davis-Bacon labor standards, that is held by the same prime contractor (as defined in § 5.2). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to Davis-Bacon labor standards requirements and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld. In the event of a contractor's failure to pay any laborer or mechanic, including any apprentice or helper working on the site of the work (or otherwise working in construction or development of the project under a development statute) all or part of the wages required by the contract, or upon the contractor's failure to submit the required records as discussed in paragraph (a)(3)(iv) of this section, Owner may on its own initiative and after written notice to the contractor take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

b. ***Priority to withheld funds.*** The Department has priority to funds withheld or to be withheld in accordance with paragraph (a)(2)(i) or (b)(3)(i) of this section, or both, over claims to those funds by:

i. A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;

ii. A contracting agency for its reprocurement costs;

iii. A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;

iv. A contractor's assignee(s);

v. A contractor's successor(s); or

vi. A claim asserted under the Prompt Payment Act, 31 U.S.C. 3901–3907.

(3) *Records and certified payrolls*

a. **Basic record requirements**

i. *Length of record retention.* All regular payrolls and other basic records must be maintained by the contractor and any subcontractor during the course of the work and preserved for all laborers and mechanics working at the site of the work (or otherwise working in construction or development of the project under a development statute) for a period of at least 3 years after all the work on the prime contract is completed.

ii. *Information required.* Such records must contain the name; Social Security number; last known address, telephone number, and email address of each such worker; each worker's correct classification(s) of work actually performed; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in 40 U.S.C. 3141(2)(B) of the Davis-Bacon Act); daily and weekly number of hours actually worked in total and on each covered contract; deductions made; and actual wages paid.

iii. *Additional records relating to fringe benefits.* Whenever the Secretary of Labor has found under paragraph (a)(1)(v) of this section that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in 40 U.S.C. 3141(2)(B) of the Davis-Bacon Act, the contractor must maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits.

iv. *Additional records relating to apprenticeship.* Contractors with apprentices working under approved programs must maintain written evidence of the registration of apprenticeship programs, the registration of the apprentices, and the ratios and wage rates prescribed in the applicable programs.

v. *Additional records relating to apprenticeship.* Contractors with apprentices working under approved programs must maintain written evidence of the registration of apprenticeship programs, the registration of the apprentices, and the ratios and wage rates prescribed in the applicable programs.

b. **Certified payroll requirements**

i. *Frequency and method of submission.* The contractor or subcontractor must submit weekly, for each week in which any DBA- or Related Acts-covered work is performed, certified payrolls to the appropriate Federal agency if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the certified payrolls to Owner, or other entity, as the case may be, that maintains such records, for transmission to the appropriate agency. The prime contractor is responsible for the submission of all certified payrolls by all subcontractors. A contracting agency or prime contractor may permit or require contractors to submit certified payrolls through an electronic system, as long as the electronic system requires a legally valid electronic signature; the system allows the contractor, the contracting agency, and the Department of Labor to access the certified payrolls upon request for at least 3 years after the work on the prime contract has been completed; and the contracting agency or prime contractor permits other methods of submission in situations where the contractor is unable or limited in its ability to use or access the electronic system.

ii. *Information required.* The certified payrolls submitted must set out accurately and completely all of the information required to be maintained under paragraph (a)(3)(i)(B) of this section, except that full Social Security numbers and last known addresses, telephone numbers, and email addresses must not be included on weekly transmittals. Instead, the certified payrolls need only include an individually identifying number for each worker (*e.g.,* the last four digits of the worker's Social Security number). The required weekly certified payroll information may be submitted using Optional Form WH–347 or in any other format desired. Optional Form WH–347 is available for this purpose from the Wage and Hour Division website at *https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/wh347/.pdf* or its successor website. It is not a violation of this section for a prime contractor to require a subcontractor to provide full Social Security numbers and last known addresses, telephone numbers, and email addresses to the prime contractor for its own records, without weekly submission by the subcontractor to Owner, or other entity, as the case may be, that maintains such records).

iii. *Statement of Compliance.* Each certified payroll submitted must be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor, or the contractor's or subcontractor's agent who pays or supervises the payment of the persons working on the contract, and must certify the following:

1. That the certified payroll for the payroll period contains the information required to be provided under paragraph (a)(3)(ii) of this section, the appropriate information and basic records are being maintained under paragraph (a)(3)(i) of this section, and such information and records are correct and complete;
2. That each laborer or mechanic (including each helper and apprentice) working on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either

directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR part 3; and

3. That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification(s) of work actually performed, as specified in the applicable wage determination incorporated into the contract.

iv. *Use of Optional Form WH–347.* The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH–347 will satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(C) of this section.

v. *Signature.* The signature by the contractor, subcontractor, or the contractor's or subcontractor's agent must be an original handwritten signature or a legally valid electronic signature.

vi. *Falsification.* The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 3729.

vii. *Length of certified payroll retention. The contractor or subcontractor must preserve all certified payrolls during the course of the work and for a period of 3 years after all the work on the prime contract is completed.*

viii. *Contracts, subcontracts, and related documents.* The contractor or subcontractor must maintain this contract or subcontract and related documents including, without limitation, bids, proposals, amendments, modifications, and extensions. The contractor or subcontractor must preserve these contracts, subcontracts, and related documents during the course of the work and for a period of 3 years after all the work on the prime contract is completed.

c. **Required disclosures and access**

i. *Required record disclosures and access to workers.* The contractor or subcontractor must make the records required under paragraphs (a)(3)(i) through (iii) of this section, and any other documents that the Owner or the Department of Labor deems necessary to determine compliance with the labor standards provisions of any of the applicable statutes referenced by § 5.1, available for inspection, copying, or transcription by Owner's authorized representatives or the Department of Labor, and must permit such representatives to interview workers during working hours on the job.

ii. *Sanctions for non-compliance with records and worker access requirements.* If the contractor or subcontractor fails to submit the required records or to make them available, or refuses to permit worker interviews during working hours on the job, the Federal agency may, after written notice to the contractor, Owner, or other entity, as the case may be, that maintains such records or that employs such workers, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available, or to permit worker interviews during working hours on the job, may be grounds for debarment

action pursuant to § 5.12. In addition, any contractor or other person that fails to submit the required records or make those records available to WHD within the time WHD requests that the records be produced will be precluded from introducing as evidence in an administrative proceeding under 29 CFR part 6 any of the required records that were not provided or made available to WHD. WHD will take into consideration a reasonable request from the contractor or person for an extension of the time for submission of records. WHD will determine the reasonableness of the request and may consider, among other things, the location of the records and the volume of production.

iii. *Required information disclosures.* Contractors and subcontractors must maintain the full Social Security number and last known address, telephone number, and email address of each covered worker, and must provide them upon request to the appropriate Federal agency if the agency is a party to the contract, or to the Wage and Hour Division of the Department of Labor. If the Federal agency is not such a party to the contract, the contractor, subcontractor, or both, must, upon request, provide the full Social Security number and last known address, telephone number, and email address of each covered worker to Owner, or other entity, as the case may be, that maintains such records, for transmission to the appropriate agency, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or other compliance action.

(4) *Apprentices and equal employment opportunity*

a. **Apprentices**

i. *Rate of pay.* Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship (OA), or with a State Apprenticeship Agency recognized by the OA. A person who is not individually registered in the program, but who has been certified by the OA or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice, will be permitted to work at less than the predetermined rate for the work they perform in the first 90 days of probationary employment as an apprentice in such a program. In the event the OA or a State Apprenticeship Agency recognized by the OA withdraws approval of an apprenticeship program, the contractor will no longer be permitted to use apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

ii. *Fringe benefits.* Apprentices must be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringe benefits must be paid in accordance with that determination.

iii. *Apprenticeship ratio.* The allowable ratio of apprentices to journeyworkers on the job site in any craft classification must not be greater than the ratio permitted to the contractor as to the entire work force under the registered program or the ratio applicable to the locality of the project pursuant to paragraph (a)(4)(i)(D) of this section. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in paragraph (a)(4)(i)(A) of this section, must be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under this section must be paid not less than the applicable wage rate on the wage determination for the work actually performed.

iv. *Reciprocity of ratios and wage rates.* Where a contractor is performing construction on a project in a locality other than the locality in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyworker's hourly rate) applicable within the locality in which the construction is being performed must be observed. If there is no applicable ratio or wage rate for the locality of the project, the ratio and wage rate specified in the contractor's registered program must be observed.

b. ***Equal employment opportunity.*** The use of apprentices and journeyworkers under this part must be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) *Compliance with Copeland Act requirements.* The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) *Subcontracts.* The contractor or subcontractor must insert in any subcontracts the clauses contained in paragraphs (a)(1) through (11) of this section, along with the applicable wage determination(s) and such other clauses or contract modifications as the appropriate agency and/or Owner may by appropriate instructions require, and a clause requiring the subcontractors to include these clauses and wage determination(s) in any lower tier subcontracts. The prime contractor is responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this section. In the event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and may be subject to debarment, as appropriate.

(7) *Contract termination: debarment.* A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) *Compliance with Davis-Bacon and Related Act requirements.* All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) *Disputes concerning labor standards.* Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disput

es between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) *Certification of eligibility.*

a. By entering into this contract, the contractor certifies that neither it nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of 40 U.S.C. 3144(b) or § 5.12(a).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of 40 U.S.C. 3144(b) or § 5.12(a).

c. The penalty for making false statements is prescribed in the U.S. Code, Title 18 Crimes and Criminal Procedure, 18 U.S.C. 1001.

(11) ***Anti-retaliation.*** It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

a. Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the DBA, Related Acts, this part, or 29 CFR part 1 or 3;

b. Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under the DBA, Related Acts, this part, or 29 CFR part 1 or 3;

c. Cooperating in any investigation or other compliance action, or testifying in any proceeding under the DBA, Related Acts, this part, or 29 CFR part 1 or 3; or

d. Informing any other person about their rights under the DBA, Related Acts, this part, or 29 CFR part 1 or 3.

(12) *Copies of Wage Determinations.* Copies of applicable wage determinations are included in the bid package for this contract, and are incorporated by reference as Contract Documents.

C. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT. If the Contract Price exceeds $100,000 that involve the employment of mechanics or laborers, Contractor agrees to comply with and be bound by, and assist Owner in ensuring compliance with, the Contract Work Hours and Safety Standards Act, as applicable. (40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5).) Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

In addition to the above, any contract in excess of $100,000 is subject to the following:

(1) *Overtime requirements.* No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall

require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages and interest from the date of the underpayment. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchpersons and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of $31 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1).

(3) Withholding for unpaid wages and liquidated damages

a. ***Withholding process.*** Owner may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for any unpaid wages; monetary relief, including interest; and liquidated damages required by the clauses set forth in this paragraph (b) on this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract subject to the Contract Work Hours and Safety Standards Act that is held by the same prime contractor (as defined in § 5.2). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to the Contract Work Hours and Safety Standards Act and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld.

b. ***Priority to withheld funds.*** The Department has priority to funds withheld or to be withheld in accordance with paragraph (a)(2)(i) or (b)(3)(i) of this section, or both, over claims to those funds by:

   i. A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;
   ii. A contracting agency for its reprocurement costs;
   iii. A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;
   iv. A contractor's assignee(s);
   v. A contractor's successor(s); or
   vi. A claim asserted under the Prompt Payment Act, 31 U.S.C. 3901–3907.

c. ***Subcontracts.*** The contractor or subcontractor must insert in any subcontracts the clauses set forth in paragraphs (b)(1) through (5) of this section and a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor is responsible for compliance by any subcontractor or lower tier

subcontractor with the clauses set forth in paragraphs (b)(1) through (5). In the event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and associated liquidated damages and may be subject to debarment, as appropriate.

d. ***Anti-retaliation.*** It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

   i. Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the Contract Work Hours and Safety Standards Act (CWHSSA) or its implementing regulations in this part;
   ii. Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under CWHSSA or this part;
   iii. Cooperating in any investigation or other compliance action, or testifying in any proceeding under CWHSSA or this part; or
   iv. Informing any other person about their rights under CWHSSA or this part.

D. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT AGREEMENT. For all contracts that meet the definition of "funding agreement" under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," Contractor agrees to comply with and be bound by, and assist Owner in ensuring compliance with, 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," the provisions of which are incorporated herein by this reference, and any implementing regulations issued by the awarding agency, as applicable.

E. CLEAN AIR AND FEDERAL WATER POLLUTION ACT CONTROL. If the Contract Price exceeds $150,000, Contractor agrees to comply with and be bound by, and assist Owner in ensuring compliance with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Any violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

F. DEBARMENT AND SUSPENSION. Contractor represents and warrants that it is not listed on the government-wide exclusions in the System for Award Management (SAM), and Contractor agrees to comply with and be bound by, and assist Owner in ensuring compliance with, the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

G. BYRD ANTI-LOBBYING AMENDMENT. If the Contract Price exceeds $100,000, Contractor agrees to comply with and be bound by, and assist Owner in ensuring compliance with, the Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352). Contractor shall file the declaration and certification required by 31 U.S.C. § 1352(b).

H. PROCUREMENT OF RECOVERED MATERIALS. Contractor agrees to comply with, and be bound by, and assist Owner in ensuring compliance with, 2 CFR Section 200.323, as applicable.

I. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT. Contractor agrees to comply with, and be bound by, and assist Owner in ensuring compliance with, 2 CFR Section 200.216, as applicable.

J. DOMESTIC PREFERENCES FOR PROCUREMENT. Contractor agrees to comply with, and be bound by, and assist Owner in ensuring compliance with, 2 CFR Section 200.322, as applicable. 2 CFR Section 200.322 requires Contractor to provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products), to the greatest extent practicable.

K. CONTRACTING WITH SMALL AND MINORITY BUSINESSES, WOMEN'S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS. Contractor agrees to comply with, and be bound by, and assist Owner in ensuring compliance with, 2 CFR Section 200.321, as applicable. 2 CFR Section 200.321 requires Contractor to take the affirmative steps listed in 2 CFR Section 200.321 paragraphs (b)(1) through (5) to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

L. SAFETY AND HEALTH STANDARDS. As required by 34 CFR 75.609, Contractor agrees to comply with and be bound by, and assist Owner in ensuring compliance with, the standards under the Federal Occupational Safety and Health Act of 1970 (29 U.S.C.A., Section 651 et seq.) and State and local codes to the extent that they are more stringent.

M. ENERGY CONSERVATION. As required by 34 CFR 75.616, Contractor agrees to construct facilities to maximize the efficient use of energy and to comply with and be bound by, and assist OWNER in ensuring compliance with, the following standards of the American Society of Heating, Refrigerating, and Air Conditioning Engineers (ASHRAE) set forth in 34 CFR 75.616. Contractor shall also comply with and be bound by, and assist Owner in ensuring compliance with, the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plans issued in compliance with the Energy Policy and Conservation Act (Pub. L 94-163, 89 Stat. 871).

N. If any provision is required by federal law, or by the federal grant program funding such project, to be included in the Contract Documents, such provisions shall be deemed by the parties to have been included.

ARTICLE 4
ADMINISTRATION OF THE CONTRACT

4.1 ARCHITECT

4.1.1 DEFINITION

The Architect is the person lawfully licensed to practice architecture or an entity lawfully practicing architecture identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Architect" means the Architect or the Architect's authorized representative, and shall also refer to all consultants under the Architect's direction and control.

4.1.2 MODIFICATION

To the extent the Contract Documents indicate that Owner has assigned duties or responsibilities to the Architect, Owner reserves the right at all times to reassign such duties or responsibilities to different Owner representatives.

4.1.3 TERMINATION

In the case of the termination of the Architect, the Owner may appoint an architect or another construction professional or may perform such functions with its own licensed professional personnel. The status of the replacement Architect under the Contract Documents shall be that of the former architect.

4.2 ARCHITECT'S ADMINISTRATION OF THE CONTRACT

4.2.1 STATUS

The Architect will provide administration of the Contract and may be one of several of Owner's representatives during construction, through the Lease Term, and during the one (1) year period following the commencement of any warranties. The Architect will advise and consult with the Owner. The Architect will have authority to act on behalf of the Owner only to the extent set forth in the Owner/Architect agreement. The Architect will have all responsibilities and power established by law, including California Code of Regulations, Title 24, to the extent set forth in the Owner/Architect agreement.

4.2.2 SITE VISITS

The Architect will visit the Site at intervals necessary in the judgment of the Architect or as otherwise agreed by the Owner and the Architect in writing to become generally familiar with the progress and quality of the Completed Work and to determine in general if the Work is being performed in a manner indicating that the Work, when completed, will be in accordance with the Contract Documents.

4.2.3 LIMITATIONS OF CONSTRUCTION RESPONSIBILITY

The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract Documents, or by tests, inspections, or approvals required or performed by persons other than the Contractor.

4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

The Owner and the Contractor shall communicate through the Architect, unless there is a construction manager for the Project or the Owner directs otherwise. Communications between Owner and Subcontractors or material or equipment suppliers shall be through the Contractor.

4.2.5 [Not Used]

4.2.6 REJECTION OF WORK

The Architect, Inspector of Record, any construction manager and others may recommend to the Owner that the Owner reject Work which does not conform to the Contract Documents or that the Owner require additional inspection or testing of the Work in accordance with paragraph 13.5.5, whether or not the Work is fabricated, installed, or completed. However, no recommendation shall create a duty or responsibility to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons performing portions of the Work.

4.2.7 CHANGE ORDERS

The Architect may prepare change orders and construction change directives and may authorize minor changes in the Work.

4.2.8 WARRANTIES UPON COMPLETION

The Architect in conjunction with the Inspector of Record, or as otherwise directed by Owner, will conduct field reviews of the Work to determine the date of Completion, shall receive and forward to the Owner for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor. The handling by the Architect of such warranties, maintenance manuals, or similar documents shall not diminish or transfer to the Architect any responsibilities or liabilities required by the Contract Documents of the Contractor or other entities, parties, or persons performing or supplying the Work.

Except as may be otherwise directed by Owner, the Architect will conduct a field review of the Contractor's work pursuant to Section 9.7.1, below, for development of a punch list and one (1) follow-up field review if required. The cost incurred by the Owner for further field reviews or the preparation of further punch lists by the Architect shall be invoiced to the Contractor and withheld from sublease payments.

4.2.9 INTERPRETATION

The Architect, Inspector of Record, any construction manager, the Owner or any independent consultant of Owner, as Owner deems appropriate, will interpret and decide matters concerning performance under and requirements of the Contract Documents on written request of the Contractor. The Owner's response to such requests will be made with reasonable promptness, while allowing sufficient time to permit adequate review and evaluation of the request.

4.2.10 ADDITIONAL INSTRUCTIONS

4.2.10.1 ***Architect's Interpretations and Decisions.*** Interpretations and decisions of the Architect will be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings. When making such interpretations of and decisions regarding the Contract Documents, the Architect will endeavor to secure faithful performance under the Contract Documents by both the Owner and the Contractor and will not show partiality to either. The Work shall be executed in conformity with, and the Contractor shall do no work without, approved drawings, Architect's clarifying instructions, and/or submittals.

4.2.10.2 ***Typical Parts and Sections.*** Whenever typical parts or sections of the Work are completely detailed on the Drawings, and other parts or sections which are essentially of the same construction are shown in outline only, the complete details shall apply to the Work which is shown in outline.

4.2.10.3 ***Dimensions.*** Dimensions of Work shall not be determined by scale or rule. Figured dimensions shall be followed at all times. If figured dimensions are lacking on Drawings, then Architect shall supply them on request. The Owner's decisions on matters relating to aesthetic effect will be final if consistent with the Contract Documents.

4.3 INSPECTOR OF RECORD

4.3.1 GENERAL

One or more Project inspectors ("Inspector of Record") employed by the Owner and approved by the Division of the State Architect will be assigned to the Work in accordance with the requirements of Title 24 of the California Code of Regulations. The Inspector of Record's duties will be as specifically defined in Title 24.

4.3.2 INSPECTOR OF RECORD'S DUTIES

All Work shall be under the observation of or with the knowledge of the Inspector of Record. The Inspector of Record shall have free access to any or all parts of the Work at any time. The Contractor shall furnish the Inspector of Record such information as may be necessary to keep the Inspector of Record fully informed regarding progress and manner of work and character of materials. Such observations shall not, in any way, relieve the Contractor from responsibility for full compliance with all terms and conditions of the Contract, or be construed to lessen to any degree the Contractor's responsibility for providing efficient and capable superintendence. The Inspector of Record is not authorized to make changes in the drawings or specifications nor shall

the Inspector of Record's approval of the Work and methods relieve the Contractor of responsibility for the correction of subsequently discovered defects, or from its obligation to comply with the Contract Documents.

4.3.3 INSPECTOR OF RECORD'S AUTHORITY TO REJECT OR STOP WORK

The Inspector of Record shall have the authority to reject work that does not comply with the provisions of the Contract Documents. In addition, the Inspector of Record may stop any work which poses a probable risk of harm to persons or property. The Contractor shall instruct its employees, Subcontractors, material and equipment suppliers, etc., accordingly. The absence of any Stop Work order or rejection of any portion of the Work shall not relieve the Contractor from any of its obligations pursuant to the Contract Documents.

4.3.4 INSPECTOR OF RECORD'S FACILITIES

Within seven (7) days after notice to proceed, the Contractor shall provide the Inspector of Record with temporary facilities.

4.4 RESPONSIBILITY FOR ADDITIONAL CHARGES INCURRED BY THE OWNER FOR PROFESSIONAL SERVICES

If at any time prior to the Completion of the requirements under the Contract Documents, through no fault of its own, the Owner is required to provide or secure additional professional services for any reason by any act or omission of the Contractor, then the Contractor shall be invoiced by the Owner for any actual costs incurred for any such additional services, which costs may, among other remedies, be withheld from the sublease payments. Such invoicing shall be independent from any other Owner remedies, including but not limited to liquidated damages; ***except that*** to the extent that such additional services constitute Owner's delay damages under Public Contract Code section 7203, Owner may not recover them or invoice Contractor for them. If sublease payments then or thereafter due to the Contractor are not sufficient to cover such amounts, then the Contractor shall pay the difference to the Owner. Additional services shall include, but shall not be limited to, the following:

A. Services made necessary by the default of the Contractor.

B. Services made necessary due to the defects or deficiencies in the Work of the Contractor.

C. Services required by failure of the Contractor to perform according to any provision of the Contract Documents.

D. Services in connection with evaluating substitutions of products, materials, equipment, Subcontractors proposed by the Contractor, and making subsequent revisions to drawings, specifications, and providing other documentation required (except for the situation where the specified item is no longer manufactured or available).

E. Services for evaluating and processing Claims submitted by the Contractor in connection with the Work outside the established Change Order process.

F. Services required by the failure of the Contractor to prosecute the Work in a timely manner in compliance within the specified time for Completion.

G. Services in conjunction with the testing, adjusting, balancing and start-up of equipment other than the normal amount customarily associated for the type of Work involved.

H. Services in conjunction with more than one (1) re-review of required submittals of shop drawings, product data, and samples.

4.5 NOTICES OF POTENTIAL CHANGE, CHANGE ORDER REQUESTS, AND CLAIMS

If the Contractor identifies the potential for extra work, delay in the critical path schedule, or the need for additional money or time, or if the Contractor requests additional money or time on any grounds (including but not limited to an alleged breach of an implied warranty of the correctness of the plans and specifications [*Souza & McCue Construction Co. v. Superior Court* (1962) 57 Cal.2d 508]), or if the Contractor believes that Owner has failed to pay amounts due or otherwise breached the Contract, or otherwise believes that it is entitled to a modification of the Contract terms and conditions, then Contractor shall follow the procedures in this Section 4.5 and Article 7, otherwise Contractor shall have waived its rights to pursue those issues and any later attempts to recover money or obtain a modification shall be barred. Contractor specifically acknowledges the Owner's and public's interest in, and need to know of, potential changes and disputes as early as possible so Owner can investigate, mitigate and resolve adverse cost and time impacts, if any. It is Contractor's obligation to know and comply with the requirements of the Contract Documents, including but not limited to Section 4.5 and Articles 7 and 8, and Owner has no obligation to notify Contractor of any failure to comply with those requirements.

4.5.1 NOTICE OF POTENTIAL CHANGE

Contractor shall submit a written Notice of Potential Change to the Owner for extra work (including acceleration or disruption), critical path delay, or additional money or time, including any money or time based on a request submitted to Contractor by one of Contractor's Subcontractors or suppliers (see Section 4.5.5.4, below). Contractor shall submit such Notices of Potential Change to Owner within five (5) days of the earlier of (a) Contractor becoming aware of the issue creating a potential change, or (b) the date by which Contractor should have become aware of the issue creating a potential change; unless the issues are, or may soon be, adversely affecting the costs or critical path of the Work, in which case the Contractor must submit the written notice without delay so the Owner may take immediate action to mitigate cost and schedule impacts of the change, if any. The written notice shall explain the nature of the potential change so the Owner may take action to mitigate costs and schedule impacts, if necessary.

When submitting a written Notice of Potential Change based on extra work (including acceleration or disruption), Contractor shall not perform the extra work until directed in writing to do so by Owner. When submitting a written Notice of Potential Change for an issue of critical path delay, Contractor shall proactively mitigate the effects of the alleged delay as much as reasonably possible so as to minimize any impact to the schedule, until otherwise directed by Owner. If Contractor intends to rely on Owner's acts or omissions in support of a request for a time extension, then Contractor must also provide the notice set forth in Section 3.18, above.

If Contractor wants to accelerate its work to minimize or avoid delay, Contractor must submit a Notice of Potential Change for the delay, any delay damages, the need for any time extensions, and the cost impact of the desired acceleration. If Contractor's Work is disrupted and thus creates extra work or delay, Contractor must submit a Notice of Potential Change for the delay, any delay damages, the need for any time extensions, and the cost impact of the disruption.

Failure to timely submit a written Notice of Potential Change shall constitute a complete waiver by Contractor of any right to later submit a change order request or pursue a Claim on that issue, or to later pursue any additional money or time extensions in any manner related to that issue, regardless of the merits, as Contractor will not have satisfied a condition precedent or exhausted administrative remedies. Contractor acknowledges that these written notices are of critical importance to the Owner's Work and Project management and the mitigation of Work and Project costs and delays.

4.5.2 CHANGE ORDERS REQUESTS

If, after submitting a written Notice of Potential Change pursuant to Section 4.5.1, Contractor continues to believe that it is entitled to additional money or time (including, but not limited to, grant of a time extension) based on an issue (including but not limited to money or time based on a request by a Subcontractor or supplier; see Section 4.5.5.4, below), then Contractor shall submit a Change Order Request ("COR"; see Section 7.6.1) to Owner within twenty (20) days of the earlier of (i) Contractor becoming aware of the issue creating a potential change, or (ii) the date by which Contractor should have become aware of the issue creating a potential change. A rejection at any time, or a lack of a rejection, by Owner of a Notice of Potential Change does not affect the timeline for submitting a COR.

Failure to timely submit a COR related to an issue, or failure to include any information in a timely COR for that issue as specifically required by the Contract, shall constitute a complete waiver by Contractor of any right to later submit a COR or Claim on that issue, or to later pursue any additional money or time in any manner related to that issue, regardless of the merits, as Contractor will not have satisfied a condition precedent or exhausted administrative remedies.

The COR shall state the grounds for the additional money or time requested and the amount of money or time requested, and Contractor shall include all information and documentation supporting the COR, including but not limited to calculations and analysis that demonstrate that the requested money or time is allowed by the applicable contract provisions and law. For any money or time other than the money and time specifically requested in the COR, Contractor will have completely waived its rights to recover such additional money or time (Contractor will not

have satisfied a condition precedent or exhausted administrative remedies). If the COR requests money, then the COR must explain how the requested amounts were calculated. If the COR requests time, then the COR must identify the number of days of time being requested, establish that the days of delay are excusable (see Section 8.4.1), and include some critical path schedule analysis to support the number of days requested. Contractor may not reserve its rights, whether in a COR or other document, to submit a COR at a later time or in a manner other than as required by the Contract Documents. Any inclusion of a reservation of rights in a COR shall be grounds for rejection of the COR.

In the event that costs or delay are continuing to accrue at the time that a COR is required to be submitted, Contractor must still timely submit the COR with all available information and documentation supporting the COR as described above, and Contractor shall identify the costs or delay that are continuing. For continuing costs, the COR must include an estimate of when the extra work is expected to conclude and the total costs that will be incurred by the time that the extra work is expected to conclude. For continuing delay, the COR must include a schedule and delay analysis of when Contractor estimates that the delay will cease, what the final time extension request is estimated to be, and an estimate of the total of delay damages, if any, that will be requested. When the continuing cost or delay ends, within ten (10) days Contractor shall submit an updated COR that states the final dollar amount and/or time extension requested and that includes all required information and documentation. Failure to submit such final COR shall act as a waiver as described above.

Contractor shall certify each COR that it submits, including the initial COR and final COR for a continuing cost or delay, using the form set forth in Section 4.5.5.1, except that every reference to "Claim" shall be changed to "COR." If a COR is submitted without certification, a certification can still be submitted within the timelines set forth in the first paragraph of Section 4.5.2. If the COR is not timely certified, Contractor will have completely waived its rights to any money or time for that issue. Contractor will not have satisfied a condition precedent or exhausted administrative remedies. A certification of an initial COR for a continuing cost or delay shall include a statement that "Any estimates in the attached initial COR for a continuing cost or delay are based on true and correct facts and reasonable assumptions, as explained in the initial COR."

The Owner may accept the entire COR, accept part of the COR and reject the remainder, reject the entire COR, or request additional information. If the Owner does not respond within thirty (30) days of submission of the COR by accepting the entire COR, accepting part of the COR and rejecting the remainder, or requesting additional information, the entire COR shall be deemed rejected as of the thirtieth (30th) day. In the case of continuing costs or delay, the 30-day deadline in the previous sentence shall not apply to the initial COR; it will only apply to the final COR (see above). If the Owner requests additional information within thirty (30) days of submission, then the Contractor shall submit the information within fifteen (15) days of the date of the request and the Owner shall have fifteen (15) days after the receipt of the additional information to accept or reject (in whole or in part) the COR. If the Contractor fails to submit the information within fifteen (15) days, then the COR shall be deemed rejected. If the Owner fails to respond within fifteen (15) days after the submission of additional information, the entire COR shall be deemed rejected as of the fifteenth (15th) day.

4.5.3 DEFINITION OF CLAIM

A "Claim" is a separate demand by the Contractor sent by registered mail or certified mail for (a) a time extension, including, without limitation, a request for relief from damages or penalties for delay assessed by Owner under the Contract Documents, (b) payment by Owner of money or damages arising from work done by, or on behalf of, the Contractor pursuant to the Contract Documents, and payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled to (including but not limited to a claim for damages based on misleading or incomplete plans or specifications), or (c) an amount the payment of which is disputed by the Owner. A claim includes any claim within the scope of Public Contract Code sections 9204 or 20104 et seq., and any alleged violation of a prompt payment statute. A Claim includes any dispute Contractor may have with the Owner, including one which does not require a Notice of Potential Change or COR under Sections 4.5.1 and 4.5.2, and including any alleged breach of contract or violation of law by the Owner (such as wrongful withholding of a payment by the Owner or wrongful termination by the Owner). A Claim under this Article 4.5 shall also constitute a claim for purposes of the California False Claims Act. However, resubmittal of a COR which was previously rejected under Section 4.5.2 (whether rejected expressly [in whole or in part] or deemed rejected by Owner inaction), including but not limited to a request for reconsideration, does not constitute a Claim. If there is a conflict between a Claims provision in Division 1 of the Specifications and Section 4.5, then Section 4.5 shall take precedence.

The Notice of Potential Change and COR procedures above are less formal procedures which precede the more formal Claim. A Notice of Potential Change does not constitute a Claim. A COR does not constitute a Claim; **except that** if insufficient time remains before the Claim deadline (see Article 4.5.4) for Contractor to submit a COR and for Owner to process and reject the COR under Article 4.5.2, then either (1) Contractor may submit a COR which Owner shall treat as a Claim, but only if the COR complies with all requirements in this Article 4.5 and Article 7 for COR's and Claims, or (2) a COR is not required so long as a Claim complying with this Article 4.5 is timely submitted.

"Claim" does not include vouchers, invoices, sublease payment submissions, or other routine or authorized forms of requests for sublease payments on the Contract; however, those documents remain "claims" for purposes of the California False Claims Act. "Claim" does not include a Government Code Claim. ("Government Code Claim" means a claim under Government Code sections 900 et seq. and 910 et seq.)

4.5.4 TIME FOR SUBMITTING CLAIM; WAIVER

Contractor shall submit a Claim to the Owner's construction manager (or in the absence of a construction manager, to Architect) and Owner within the earlier of (a) fifteen (15) days after Owner's rejection of a COR in whole or in part, or (b) fifteen (15) days after a COR being deemed rejected, pursuant to Section 4.5.2 above. If the Claim is not based on an issue for which a COR would be required (such as wrongful withholding by the Owner), then Contractor shall submit the Claim within fifteen (15) days after the date on which Contractor knew, or should have known, about the issue on which the Claim is based. If a Claim has not been submitted as of the date that

the Contractor Completes the Work and submittal of the Claim was not yet required under the Contract Documents, then the Claim shall be submitted within seven (7) days of Completion of the Work; and such Claim shall not be barred due to lack of a Notice of Potential Change or COR if the deadline for the Notice of Potential Change or COR was after Completion of the Work.

In addition, within seven (7) days of Completion of the Work, Contractor shall submit to Owner, in writing, a list and summary of all Claims for money or time extensions under or arising out of this Contract which were timely filed, which were fully compliant with the Contract's requirements for Claims, and which the Contractor wishes to pursue in whole or in part. This Claim summary requirement shall not extend the time for submitting a Claim.

Failure to timely submit a Claim or Claim summary, failure to include a Claim in the Claim summary, or failure to include any information in a timely Claim as specifically required by the Contract, including but not limited to this Article 4, will act as a complete waiver of Contractor's rights to (a) recover money or time on the issues for which a Claim was required, (b) submit a Government Code Claim for the money or time (see Section 4.5.6), and (c) initiate any action, proceeding or litigation for the money or time, regardless of the merits, as Contractor will not have satisfied a condition precedent or exhausted administrative remedies. Owner does not have an obligation to reject the Claim for a failure to comply with any of the Claim requirements in the Contract, including the lack of certification, and any failure by Owner to reject, or any delay in rejecting, a Claim on that basis does not waive the Owner's right to reject the Claim on that basis at a later time. In no event may the Contractor reserve its rights to assert a Claim for a time extension or additional money beyond the timelines set forth in this provision unless the Owner agrees in writing to allow the reservation.

4.5.5 CONTENT OF CLAIM

4.5.5.1 ***Claim Format; Waiver.*** Every Claim shall be in writing. All money or time extensions sought must be stated and itemized in the Claim at the time submitted. The responsibility to substantiate Claims shall rest with the Contractor, and the Contractor shall furnish reasonable documentation to support each Claim.

In addition, the Contractor shall include a certification with each and every Claim at the time of submission, as follows:

> I, _____ [name of declarant], declare the following:
>
> _____ [Contractor company name] has contracted with _____ [public entity name] for the _____ [name of project] Project. _____ [Contractor company name]) authorized me to prepare the attached Claim for money and/or time extension) for _____ [public entity name] regarding this Project (dated _____, 20__, entitled _____, and requesting $_____ and/or ___ additional days), and I prepared the attached Claim. I am the most knowledgeable person at _____ [contractor company name] regarding this Claim.

The attached Claim complies with all laws applicable to submission of a Claim, including, but not limited to, California Penal Code section 72, Government Code sections 12650 et seq. (False Claims Act), and Business and Professions Code sections 17200 et seq. (Unfair Business Practices Act). I am aware that submission or certification of false claims, or other claims that violate law or the Contract, may lead to fines, imprisonment, and/or other serious legal consequences for myself or [contractor company name].

The attached Claim does not breach the Contract between _____ [contractor company name] and _____ [public entity name] for this Project, is not a false claim, does not violate any applicable law, satisfies all provisions of the Contract applicable to submission of the Claim, only contains truthful and accurate supporting data, and only requests money and/or time extensions that accurately reflect the adjustments to money and time for which I believe that _____ [public entity name] is responsible under its Contract with _____ [contractor company name].

While preparing this declaration and Claim I consulted with others (including attorneys, consultants, or others who work for _____ [Contractor company name]) when necessary to ensure that the statements were true and correct.

Contractor understands and agrees that any Claim submitted without this certification does not meet the terms of the Contract Documents; that Owner, or Owner's representatives, may reject the Claim on that basis; and that unless Contractor properly and timely files the Claim with the certification, Contractor cannot further pursue the Claim in any forum and all rights to additional money or time for the issues covered by the Claim are waived due to a condition precedent not having been satisfied.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed _____, 2___, at _____, California.

_____
_____ [name of declarant]

Contractor's failure to timely submit a certification will constitute a complete waiver of Contractor's rights to (a) recover money or time on the issues for which a Claim was required, (b) submit a Government Code Claim (see Section 4.5.6.4) for the money or time, and (c) initiate any action, proceeding or litigation for the money or time, as Contractor will not have satisfied a condition precedent or exhausted administrative remedies.

4.5.5.2 ***Claims for Additional Money.*** Each Claim for additional money (including but not limited to those described in (b) and (c) of the first paragraph of Section 4.5.3) must include all facts supporting the Claim, including but not limited to all supporting documentation plus a written analysis as to (a) why the claimed cost was incurred, (b) why Contractor could not mitigate its costs, (c) why the claimed cost is the responsibility of the Owner, and (d) why the claimed cost is a reasonable amount. In no event will the Contractor be allowed to reserve its rights, whether in

a Claim or other document, to assert a Claim for money at a later time or in a manner other than as required by the Contract Documents. Any inclusion of a reservation of rights in a Claim shall be grounds for rejection of the Claim. Any costs, direct or indirect, not timely asserted in a certified Claim shall be waived. A Claim may not include any costs incurred in preparation of the Claim or in preparation of any underlying COR, including but not limited to costs of delay analysis.

4.5.5.3 ***Claims for Additional Time.***

4.5.5.3.1 ***Notice of Extent of Claim.*** If the Contractor wishes to make a Claim for an extension of the Date for Completion (including but not limited to Section 4.5.3(a)), the Claim shall include, but not be limited to, all facts supporting the Claim, all documentation of such facts, all information required by the Contract Documents, all information establishing entitlement to a time extension pursuant to Section 8.4.1 below, a current and certified schedule (see Section 3.9.1, above), and a delay analysis explaining (a) the nature of the delay, (b) the Owner's responsibility for the claimed delay, (c) the claimed delay's impact on the critical path, (d) the claimed delay's impact on the date of Completion (including an analysis of any float still remaining and whether the alleged delay in work exceeds such remaining float), and (e) why Contractor could not mitigate the delay impacts. Failure to include an updated and certified schedule, or a delay analysis, in a Claim seeking a time extension will act as a complete waiver of Contractor's rights to (i) recover money or time based on the issues addressed by the Claim, (ii) submit a Government Code Claim for the requested money or time (see Section 4.5.6.4), and (iii) initiate any action, proceeding or litigation for the requested money or time, regardless of the merits; Contractor will not have satisfied a condition precedent or exhausted administrative remedies.

In no event will the Contractor be allowed to reserve its rights, whether in a Claim or other document, to assert a Claim for a time extension at a later time or in a manner other than as required by the Contract Documents. Any inclusion of a reservation of rights in a Claim shall be grounds for rejection of the Claim. Any time extension not timely asserted in a certified Claim shall be waived.

4.5.5.3.2 ***Unusual and Uncommon Weather Claims.*** If unusual and uncommon weather is the basis for a Claim for additional time, Contractor's delay analysis (see Section 4.5.5.3.1, above) must also provide Owner data and facts showing that the weather conditions were unusual and uncommon for the period of time, could not have been reasonably anticipated or mitigated, had an adverse effect on the critical path of the scheduled construction, and meet all other Contract requirements for a time extension (including but not limited to Section 8.4.1, below).

4.5.5.4 ***Subcontractor Requests for Money or Time*** A Subcontractor or supplier to Contractor may not submit a request for additional time or money directly to the Owner due to its lack of contractual privity with Owner. If a Subcontractor or supplier submits to Contractor a request for additional money or time based on an alleged breach of the subcontract or supplier contract by Contractor, then the Subcontractor or supplier must comply with the same procedures that would apply to any Contractor request to Owner for additional money or time.

For any Contractor request to Owner for additional money or time based on a Subcontractor's or

supplier's request to Contractor for additional money or time (see previous paragraph), Contractor must comply with the requirements and prerequisites in the Contract Documents for requests to the Owner for additional money or time (including but not limited to this Section 4.5 of the General Conditions) and with Public Contract Code section 9204(d)(5).

Any Claim by Contractor pursuant to the previous paragraph must include Contractor's certification (see General Conditions §4.5.5.1), a complete copy of the Subcontractor's or supplier's request for money or time (including all documents submitted by the Subcontractor or supplier), and any other necessary supporting documentation. Any such Claim by Contractor must include (a) Contractor's detailed analysis of the merit of Subcontractor's or supplier's request to the Contractor, including (i) detailed analysis of Contractor's alleged breaches of the subcontract or supplier contract that allegedly caused the Subcontractor or supplier to incur damages or delay, and (ii) detailed analysis of all of Contractor's defenses to the request for money or time by the Subcontractor or supplier; and (b) detailed analysis of the Owner's liability to Contractor for any money or time that Contractor owes, or may later be determined to owe, to Subcontractor or supplier (including but not limited to how Owner's alleged breaches of the Contract Documents caused Contractor to breach the subcontract or supplier contract). In any such Claim, Contractor may deny that it is liable to the Subcontractor or supplier for some or all of the requested money or time, or it may assert that it is merely submitting the Claim to Owner on behalf of the Subcontractor or supplier; but doing one or the other would not excuse Contractor from complying with the above requirements for its request to the Owner.

Any failure by Contractor to timely comply with this Section 4.5.5.4 (including a failure to timely submit a Notice of Potential Change, COR, Claim, certification, or detailed analysis) shall act as a complete waiver of Contractor's rights to (a) recover money or time from Owner based on any money or time that Contractor owes, or may later be determined to owe, to the Subcontractor or supplier, (b) submit a Government Code Claim to Owner for the money or time requested by the Subcontractor or supplier (see Section 4.5.6.3), and (c) initiate any action, proceeding or litigation against Owner for any money or time that Contractor owes, or may later be determined to owe, to the Subcontractor or supplier. Contractor will not have satisfied a condition precedent or exhausted administrative remedies.

4.5.6 PROCEDURES FOR CLAIMS (PUBLIC CONTRACT CODE SECTIONS 9204 AND 20104 ET SEQ.)

Claims are subject to this section 4.5.6, the separate procedures and substantive provisions of Sections 4.5.1 through 4.5.5, all other applicable provisions in the Contract Documents, and Public Contract Code section 9204. For claims that are $375,000 or less, the provisions of Public Contract Code section 20104 et seq. also apply, to the extent they do not conflict with Public Contract Code section 9204.

4.5.6.1 ***Claims.*** Owner shall conduct a reasonable review of the Claim and shall respond in writing to any written Claim within 45 days of receipt of the Claim. During that 45 day period, plus any extension, Owner may request in writing additional documentation supporting the Claim or relating to defenses to the Claim the Owner may have against the Contractor. Owner shall

review any additional documentation Contractor supplies in response to that request within the 45 day period plus any extension timeline.

After receipt of a Claim the 45-day period may be extended by Owner and Contractor. The written response shall identify which portion of the Claim is disputed and what portion is undisputed. If Owner needs approval from its governing board to provide the written response, and the governing board does not meet within the 45 days or any extended period of time, then the Owner shall have up to three days after the next publicly noticed meeting of the governing board to provide the written response. Any payment due on an undisputed portion of the Claim shall be processed and made within sixty (60) days after the Owner issues the written response. Owner's failure to respond to a Claim within the above time periods or to otherwise meet the above time requirements shall result in the Claim being deemed rejected in its entirety.

4.5.6.2 ***Meet and Confer.*** If the Contractor disputes the Owner's written response, or the Owner fails to respond within the time prescribed, then the Contractor may so notify the Owner, in writing, either within 15 days of receipt of the Owner's response or within 15 days of the Owner's failure to respond within the time prescribed, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon a written demand received through registered mail or certified mail, the Owner shall schedule an informal conference for settlement of the dispute, which shall take place within 30 days of the demand. Upon written agreement of the Owner and Contractor, the informal conference may take place during regularly scheduled Project meetings. The informal conference is not a mediation since there is no neutral person facilitating communication to assist the parties to reach agreement; therefore, the provisions of Evidence Code sections 1115-1128 shall not apply to any portion of the informal conference (including but not limited to any documents provided or shown, or statements of fact or opinion made, by a party) unless the parties expressly agree in writing to their application. Any offer of compromise at an informal conference shall not be admissible to prove liability, as provided in Evidence Code section 1152, but this statute's prohibition of admissibility shall not apply to other statements before or at the informal conference, or in any document prepared for or exchanged at the informal conference.

If Contractor fails to timely demand an informal conference pursuant to the previous paragraph, then Contractor will have waived all rights to (a) recover money or time on the issues for which a Claim was required, (b) submit a Government Code Claim (see Section 4.5.6.3) for such money or time, and (c) initiate any action, proceeding or litigation for such money or time, as Contractor will not have satisfied a condition precedent or exhausted administrative remedies.

Within ten (10) business days after the conclusion of the informal conference, the Owner shall give a written statement to the Contractor identifying the portion of the Claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the Claim shall processed and made within sixty (60) days after the Owner issues the written statement. Any disputed portion of the Claim shall be submitted to non-binding mediation (which may consist of any nonbinding process, including but not limited to neutral evaluation or a dispute review board), with the Owner and Contractor sharing the costs equally. The Owner and Contractor shall agree to a mediator within ten (10) business days after the written statement; and if they cannot agree upon a mediator, then each shall select a mediator and those two mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the Claim (each party shall

bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator). The parties may mutually waive the requirement for mediation in writing. If the Contractor fails to timely notify the Owner in writing that it wishes to mediate pursuant to this paragraph, then the Contractor will have waived all right to further pursue the Claim pursuant to section 4.5.4. The Contractor and Owner shall reasonably cooperate to schedule and attend a mediation as soon as reasonably possible; or they may agree to postpone mediation until the Work is Complete. Failure by the Owner to respond to a Claim within the above time periods or to otherwise meet the above time requirements shall result in the Claim being deemed rejected in its entirety.

4.5.6.3 ***Government Code Claim.*** If a Claim or any portion of it remains in dispute after the mediation and Contractor wishes to pursue it, then the Contractor **must** file a timely and proper Government Code Claim. The filing of a Government Code Claim is specifically required in addition to all contractual procedures described in Sections 4.5 through 4.5.6.2. The above contractual procedures do not act as a substitute for the Government Code Claim process, and the two sets of procedures shall be sequential with the contractual procedures occurring first.

Failure to timely file a Government Code Claim shall act as complete waiver of Contractor's rights to (a) recover money or time on the issues for which a Government Code Claim was required, and (b) initiate any action, proceeding or litigation for such money or time, as Contractor will not have satisfied a condition precedent or exhausted administrative remedies.

Owner and Contractor shall proceed with the Government Code Claim according to Government Code, Section 900 et seq., and as otherwise permitted by law. For purposes of the applicable Government Code provisions, and as provided in Public Contract Code section 20104.2(e), the running of the time period within which a Contractor must file a Government Code Claim shall commence upon accrual of a cause of action, and shall be tolled from the time the Contractor submits a written Claim under Section 4.5 until the time that the Claim is denied, in whole or in part, as a result of the meet and confer process in Section 4.5.6.2, including any period of time utilized by the meet and confer process. For these purposes, a cause of action based on a Contractor request for additional compensation or a time extension shall accrue when the Change Order Request is rejected, or deemed rejected, by the Owner (see Section 4.5.2, above); and all other causes of action shall accrue when the alleged wrongful conduct (e.g., wrongful withholding, or wrongful termination) occurred. Owner's rejection of a Claim under Sections 4.5.3-4.5.6.2, above, would not give rise to a cause of action against Owner since the Claim addressed causes of action that already had accrued before the submission of the Claim.

4.5.7 CONTINUING CONTRACT PERFORMANCE

Despite Contractor's submission of, or Owner's rejection of, a Notice of Potential Change, COR, Claim, or Government Code Claim based on alleged breaches of the Contract by Owner, the Contractor shall proceed diligently and expeditiously with performance of the Contract as directed by Owner, and the Owner shall continue to make any undisputed payments in accordance with the Contract. Contractor acknowledges that Completion of the Work is a high priority for both Owner and Contractor as failure to Complete the Work would most likely cause each of them to incur much greater costs and damages than would be incurred if the Work were

Completed. If Contractor believes that Owner has breached the Contract and that such breach is preventing or delaying Contractor's performance as directed by Owner, then Contractor must submit notice as required by Section 3.18, above.

4.5.8. **CLAIMS FOR CONCEALED OR UNKNOWN CONDITIONS**

4.5.8.1 ***Trenches or Excavations Less Than Four Feet Below the Surface.*** If Contractor encounters conditions at the Site which are subsurface or otherwise concealed physical conditions, which differ materially from those indicated in the Contract Documents, or unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then the Contractor shall give notice to the Owner promptly before conditions are disturbed and in no event later than ten (10) days after first observance of the conditions. If Contractor believes that such conditions differ materially and will cause an increase in the Contractor's cost of, time required for, or performance of any part of the Work, then Contractor must comply with the Contract provisions for Notice of Potential Change, Change Order Request, and Claims (including but not limited to Section 4.5 of these General Conditions).

4.5.8.2 ***Trenches or Excavations Greater Than Four Feet Below the Surface.*** Pursuant to Public Contract Code section 7104, when any excavation or trenching extends greater than four feet below the surface:

4.5.8.2.1 The Contractor shall promptly, and before the following conditions are disturbed, notify the Owner, in writing, of any:

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

(2) Subsurface or latent physical conditions at the site differing from those indicated by information about the site made available to bidders prior to the deadline for submitting bids.

(3) Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract.

4.5.8.2.2 The Owner shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in the Contractor's cost of, or the time required for, performance of any part of the Work, then the Owner shall issue a change order under the procedures described in the Contract.

4.5.8.2.3 If a dispute arises between the Owner and the Contractor as to whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Contractor's cost of, or time required for, performance of any part of the Work, then the Contractor shall not be excused from any deadline for Completion provided for by the Contract, but shall

proceed with all Work to be performed under the Contract. The Contractor shall retain any and all rights provided either by Contract or by law which pertain to the resolution of disputes and protests between the contracting parties.

4.5.9 INJURY OR DAMAGE TO PERSON OR PROPERTY

If either party to the Contract suffers injury or damage to person or property because of an act or omission of the other party, any of the other party's employees or agents, or others for whose acts such party is legally liable, then written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding ten (10) days after first observance. The notice shall provide sufficient detail to enable the other party to investigate the matter. For a Notice of Potential Change, COR and Claim for additional cost or time related to this injury or damage, Contractor shall follow Section 4.5.

ARTICLE 5
SUBCONTRACTORS

5.1 DEFINITIONS

5.1.1 SUBCONTRACTOR

A Subcontractor is a person or entity, who has a contract with the Contractor to perform a portion of the Work at the Site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor. To the extent that the term Trade Contractor is utilized in the Contract Documents, it shall have the same meaning as the term "Subcontractor."

5.1.2 SUB-SUBCONTRACTOR

A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the Site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

5.1.3 SPECIALTY CONTRACTORS

If a Subcontractor is designated as a "Specialty Contractor" as defined in section 7058 of the Business and Professions Code, then all of the Work outside of that Subcontractor's specialty shall be performed in compliance with the Subletting and Subcontracting Fair Practices Act, Public Contract Code sections 4100, et seq.

5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

5.2.1 ASSIGNMENT OR SUBSTITUTION - CONSENT OF OWNER

In accordance with Public Contract Code sections 4107 and 4107.5, no Contractor whose bid is accepted shall, without the written consent of the Owner: substitute any person or entity as a Subcontractor in place of the Subcontractor designated in the original bid; permit any such Subcontract to be assigned or transferred, or allow it to be performed by any person or entity other than the original Subcontractor listed in the original bid; sublet or subcontract any portion of the Work in excess of one-half of one percent (0.5%) of the Contractor's total bid as to which its original bid did not designate a Subcontractor. Any assignment or substitution made without the prior written consent of the Owner shall be void, and the assignees shall acquire no rights in the Contract. Any consent, if given, shall not relieve Contractor or its Subcontractors from their obligations under the terms of the Contract Documents.

5.2.2 GROUNDS FOR SUBSTITUTION

Pursuant to Public Contract Code section 4107 and the procedure set forth therein, no Contractor whose bid is accepted may request to substitute any person or entity as a Subcontractor in place of a Subcontractor listed in the original bid except in the following instances:

A. When the Subcontractor listed in the bid after having a reasonable opportunity to do so, fails or refuses to execute a written contract for the scope of work specified in the subcontractor's bid and at the price specified in the subcontractor's bid, when that written contract, based upon the general terms, conditions, plans and specifications for the Project involved or the terms of that Subcontractor's written bid, is presented to the Subcontractor by the Contractor;

B. When the listed Subcontractor becomes insolvent or the subject of an order for relief in bankruptcy;

C. When the listed Subcontractor fails or refuses to perform his or her Subcontract;

D. When the listed Subcontractor fails or refuses to meet the bond requirements of the prime contractor set forth in Public Contract Code section 4108.

E. When the Contractor demonstrates to the Owner, or its duly authorized officer, subject to the further provisions of Public Contract Code section 4107.5, that the name of the Subcontractor was listed as the result of inadvertent clerical error;

F. When the listed Subcontractor is not licensed pursuant to the Contractors License Law; or

G. When the Owner, or its duly authorized officer, determines that the Work being performed by the listed Subcontractor is substantially unsatisfactory and not in

substantial accordance with the plans and specifications, or the Subcontractor is substantially delaying or disrupting the progress of the Work.

H. When the listed Subcontractor is ineligible to work on a public works project pursuant to Section 1777.1 of the Labor Code.

I. When the Owner determines that a listed Subcontractor is not a responsible contractor.

5.2.2.1 ***No Change in Contract.*** Any substitutions of Subcontractors shall not result in any increase in the Total Sublease Amount or result in the granting of any extension of time for a Milestone Deadline or the Completion of the Work.

5.2.2.2 ***Substitution Due to Clerical Error.*** The Contractor, as a condition of asserting a claim of inadvertent clerical error in the listing of a Subcontractor, shall, pursuant to Public Contract Code section 4107.5, within two (2) working days after the time of the prime bid opening by the Owner, give written notice to the Owner and copies of such notice to both the Subcontractor it claims to have listed in error, and the intended Subcontractor who had bid to the Contractor prior to bid opening. Any listed Subcontractor who has been notified by the Contractor in accordance with the provisions of this section as to an inadvertent clerical error, shall be allowed six (6) working days from the time of the prime bid opening within which to submit to the Owner and to the Contractor written objection to the Contractor's claim of inadvertent clerical error.

In all other cases, the Contractor must make a request in writing to the Owner for the substitution of a subcontractor, giving reasons therefore. The Owner shall mail a written notice to the listed Subcontractor giving reasons for the proposed substitution. The listed Subcontractor shall have five (5) working days from the date of such notice within which to file with the Owner written objections to the substitution.

Failure to file written objections pursuant to the provisions of this section within the times specified herein shall constitute a complete waiver of objection to the substitution by the listed Subcontractor and, where the ground for substitution is an inadvertent clerical error, an agreement by the listed Subcontractor that an inadvertent clerical error was made.

If written objections are filed, then the Owner shall give five (5) days notice to the Contractor and to the listed Subcontractor of a hearing by the Owner on the Contractor's request for substitution as provided in Public Contract Code section 4107. The determination by the Owner shall be final.

5.3 SUBCONTRACTUAL RELATIONS

By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all obligations and responsibilities, which the Contractor, by the Contract Documents, assumes toward the Owner. Each subcontract agreement shall preserve and protect the rights of the Owner under the Contract Documents with respect to the Work to be performed by the Subcontractor so that

subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound. Upon written request of the Subcontractor, the Contractor shall identify to the Subcontractor the terms and conditions of the proposed subcontract agreement, which may be at variance with the Contract Documents. Subcontractors shall similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner provided that:

A. Assignment is effective only after termination of the Contract with the Contractor by the Owner for cause pursuant to Article 14 and only for those subcontract agreements which the Owner accepts by notifying the Subcontractor in writing; and

B. Assignment is subject to the prior rights of the surety, if any, obligated under any bond relating to the Contract.

5.5 SUBCONTRACTOR'S RESPONSIBILITIES

Every Subcontractor is bound to the following provisions, unless specifically noted to the contrary in the Subcontractor's contract subject to the limitations of section 5.3.

5.5.1 SUPERVISION BY SUBCONTRACTORS

Subcontractors shall efficiently supervise their Work, using their best skill and attention. Each of them shall carefully study and compare all Drawings, Specifications, and other instructions, shall at once report to Contractor any error or omission which any of them may discover, and shall subsequently proceed with the Work in accordance with instructions from the Contractor concerning such error or omission. Each Subcontractor shall be fully responsible for and shall bear the full risk of loss of all of its property.

5.5.2 DISCIPLINE AND ORDER

Each Subcontractor shall at all times enforce strict discipline and good order among its Subcontractors, material or equipment suppliers, or their agents, employees, and invitees, and shall establish and maintain surveillance over the activities of each of the foregoing to minimize any disturbance, damage, pollution, or unsightly conditions relative to property areas adjacent to or in the vicinity of the Site. The Contractor shall have the right to remove from the Work any employee of a Subcontractor for any reason including, without limitation, incompetence or carelessness.

5.5.3 DEFECTS DISCOVERED

Should the proper and accurate performance of the Work depend upon the proper and accurate performance of other work not included in its Contract, each Subcontractor shall use all necessary means to discover any defect in such other work and shall allow the Contractor, the Owner and Architect, or other Subcontractors as Contractor elects, a reasonable amount of time to remedy such defects. If the Subcontractor should proceed with its Work, then it shall be considered to have accepted such other work, unless the Subcontractor shall have proceeded pursuant to instructions in writing by the Contractor over its written objection.

5.5.4 SUBCONTRACTOR INFORMATION

Each Subcontractor shall submit to the Owner, the Contractor, or the Architect, as the case may be, promptly when requested by any of the foregoing, information with respect to the names, responsibilities, and titles of the principal members of its staff, the adequacy of the Subcontractor's equipment and the availability of necessary materials and supplies. Subcontractor shall fully cooperate with Contractor in its periodic review of the adequacy of Subcontractor's supervision, personnel, and equipment, and the availability of necessary materials and supplies and shall promptly comply with the requirements of the Contractor with respect thereto.

5.5.5 TEMPORARY STRUCTURES

Each Subcontractor shall furnish at its expense its own temporary facilities and storage except those specifically agreed to be furnished to it by the Contractor in the Subcontract Agreement. Subcontractor's material storage rooms and field offices, etc., will be placed in locations designated by the Contractor. When it becomes necessary due to the progress of the Work for the Subcontractor to relocate its field operations, it will do so in an expeditious manner and at no additional cost to Contractor or Owner. The construction of material storage rooms and field offices, etc., will be of fire resistive material only, such as concrete or gypsum block, rated drywall, or sheet metal.

5.5.6 CHARGES TO SUBCONTRACTOR

Each Subcontractor may be subject to the Contractor's reasonable charges for hoisting, repair to other work caused by the fault or negligence of Subcontractor, removal of Subcontractor's rubbish, and clean-up occasioned by Subcontractor.

5.5.7 FINES IMPOSED

Subcontractor shall comply with and pay any fines or penalties imposed for violation of any applicable law, ordinance, rule, regulation, Environmental Impact Report mitigation requirement, and lawful order of any public authority, including, without limitation, all OSHA and California OSHA requirements and those of other authorities having jurisdiction of the safety of persons or property.

5.5.8 PROJECT SIGNS

Each Subcontractor shall not display on or about the Project any sign, trademark, or other advertisement. The Owner will permit a single Project sign, which shall be subject to the Owner's prior and sole discretion and approval, as to all matters including, without limitation, size, location, material, colors, style and size of printing, logos and trademarks (if any), text, and selection of names to be displayed.

5.5.9 REMEDIES FOR FAILURE TO PERFORM

Without limitation of any other right or remedy available to Contractor under the Contract Documents or at law, should: the Subcontractor fail to perform its portion of the Work in a skilled and expeditious manner in accordance with the terms of the Contract Documents with sufficient labor, materials, equipment, and facilities; delays the progress of the job or otherwise fail in any of its obligations; or either a receiver is appointed for the Subcontractor or the Subcontractor is declared to be bankrupt or insolvent, and such appointment, bankruptcy, or insolvency proceedings or declaration is not set aside within thirty (30) days, then the Contractor, upon three (3) days notice to the Subcontractor (subject to the requirements of Pub. Contracts Code, § 4107), may provide such labor, materials, or perform such work and recover the cost plus profit and overhead from monies due or to become due thereafter to the Subcontractor. The Contractor may terminate the employment of the Subcontractor, taking possession of its tools, materials, and equipment related to the Work and cause the entire portion of the Subcontractor's Work to be finished either by another Subcontractor or through the Contractor's own forces.

5.5.10 DISPUTES NOT TO AFFECT WORK

If there is any dispute as to whether or not any portion of the Work is within the scope of the Work to be performed by a Subcontractor, or any dispute as to whether or not the Subcontractor is entitled to a Change Order for any Work requested of it or entitled to payment, then the Subcontractor shall continue to proceed diligently with the performance of the Work. Regardless of the size or nature of the dispute, the Subcontractor shall not under any circumstances cease or delay performance of its portion of the Work during the existence of the dispute. The Contractor shall continue to pay the undisputed amounts called for under the Subcontract Agreement during the existence of the dispute. Any party stopping or delaying the progress of the Work because of a dispute shall be responsible in damages to the Owner, the Architect, and the Contractor for any losses suffered as a result of the delay.

5.5.11 INVOICE FOR PAYMENT

Contractor agrees to advise the Subcontractor if any documentation in connection with the Subcontractor's invoice for payment has not been accepted or is in any way unsatisfactory.

5.5.12 COMPLIANCE WITH PROCEDURES

Each Subcontractor shall comply with all procedures established by the Contractor for coordination among the Owner, the Owner's consultants, Architect, Contractor, and the various

Subcontractors for coordination of the Work with all local municipal authorities, government agencies, utility companies, and any other agencies with jurisdiction over all or any portion of the Work. The Subcontractor shall cooperate fully with all of the foregoing parties and authorities.

5.5.13 ON-SITE RECORD KEEPING

Subcontractor shall comply with all on-Site record keeping systems established by the Contractor and shall, upon the request of the Contractor, provide the Contractor with such information and reports as the Contractor may deem appropriate. Without limitation of the foregoing, the Subcontractor shall assemble all required permits and certificates so that they are readily accessible at the Site.

5.5.14 NON-EXCLUSIVE OBLIGATIONS

The specific requirements of Article 5 are not intended to exclude the obligation of the Subcontractor to comply with any of the other provisions of the General Conditions and the other Contract Documents which are relevant to the proper performance of its portion of the Work.

ARTICLE 6
CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

6.1.1 OWNER'S RIGHTS

In accordance with its rights under the Sublease, the Owner has the right to perform Project work related to the Work with the Owner's own forces, or to award separate contracts in connection with such other Work or other construction or operations on the Site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance. Upon the election to perform such work with its own forces or by separate contracts, the Owner shall notify the Contractor. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, then the Contractor shall proceed pursuant to Section 4.5 in the Contract Documents.

6.1.2 DESIGNATION AS CONTRACTOR

When separate contracts are awarded for different portions of the Project or other construction or operations on the Site, the term "Contractor" in the Contract Documents in each of those contracts shall mean the contractor who executes each separate Owner/Contractor Agreement.

6.1.3 CONTRACTOR DUTIES

Although the Owner shall have overall responsibility for coordination and scheduling of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, Contractor shall cooperate with Owner. The Contractor shall participate with other

separate contractors and the Owner in reviewing their construction schedules when directed to do so. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor until subsequently revised.

6.1.4 OWNER OBLIGATIONS

Unless otherwise provided in the Contract Documents, when the Owner performs work related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations, and to have the same rights, which apply to the Contractor under the General Conditions, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10 and 12.

6.2 MUTUAL RESPONSIBILITY

6.2.1 DELIVERY AND STORAGE

The Contractor shall afford the Owner and separate contractors reasonable opportunity for delivery and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the separate contractors' construction and operations with theirs as required by the Contract Documents.

6.2.2 NOTICE BY CONTRACTOR

If part of the Contractor's Work depends upon proper execution or results from work by the Owner or a separate contractor, then the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Owner patent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor to so report shall constitute an acknowledgment that the Owner's or separate contractors' completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

6.2.3 COSTS INCURRED

Costs, expenses, and damages caused by delays, improperly timed activities, defective construction, or damages to another's work/Work shall be borne by the party responsible. Should Contractor cause damage to the work/Work or property of any other contractor on the Project, or to the Project or property of a third party, or cause any delay to any such contractor or third party, the Contractor shall defend, indemnify and hold Owner harmless for such damage or delay under Section 3.16, below, and the Contractor shall be liable to Owner for any damages suffered by Owner, including liquidated damages for delay. Owner may withhold from sublease payments the cost of delay or damage to another contractor's work or damage to another contractor's property, and Owner's damages caused by Contractor.

6.2.4 CORRECTION OF DAMAGE

The Contractor shall promptly remedy damage wrongfully caused by the Contractor to completed or partially completed construction or to property of the Owner or separate contractors.

6.3 OWNER'S RIGHT TO CLEAN UP

If a dispute arises among the Contractor, separate contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish as described in Section 3.13, then the Owner may clean up and allocate the cost among those responsible as the Owner determines to be just.

ARTICLE 7
CHANGES IN THE WORK

7.1 CHANGES

7.1.1 NO CHANGES WITHOUT AUTHORIZATION

The Owner reserves the right to change the Work by making such alterations, deviations, additions to, or deletions from the plans and specifications, as may be deemed by the Owner to be necessary or advisable for the proper Completion or construction of the Work contemplated, and Owner reserves the right to require Contractor to perform such work. No adjustment will be made in the Contract unit price of any Contract item regardless of the quantity ultimately required.

Owner shall compensate Contractor with additional money or additional time, or both, as warranted under the Contract Documents for any extra work ordered by the Owner to be performed by Contractor; but such "extra work" shall not include any work or expense (a) that was known by, should have been known by, or was reasonably foreseeable to Contractor at the time it submitted its lease-leaseback proposal or, in the case of a lease-leaseback percentage fee contract, a bid to self-perform any scope of work, or (b) for which Contractor is responsible under the Contract Documents. Contractor shall follow the provisions of the Contract Documents, including General Conditions sections 4.5, 7.6, 7.7, and 8.4, when requesting additional money or additional time for such extra work. Contractor shall diligently and expeditiously perform all extra work upon direction, even if no agreement has been reached on extra time or money. For all such changes resulting in a credit to Owner, Contractor shall follow Sections 7.5 and 7.7 in providing the credit to Owner. Contractor shall bring all potential credits to the Owner's attention.

There shall be no change whatsoever in the drawings, specifications, or in the Work under the Contract Documents without an executed Change Order, Construction Change Directive, or order by the Owner pursuant to Section 7.1.2. Owner shall not be liable for the cost or time of any extra work or any substitutions, changes, additions, omissions, or deviations from the Drawings and Specifications unless the same shall have been properly requested under the Contract Documents.

Owner shall not be liable for, and Contractor shall bear the burden of, any post-proposal escalation in the costs of construction, whether foreseeable or not; but Contractor will retain the benefit of any post-proposal cost decreases, whether foreseeable or not, and retain the right to request additional compensation for cost increases incurred due to Owner delay.

The provisions of the Contract Documents shall apply to all such changes, additions, and omissions with the same effect as if originally embodied in the Drawings and Specifications.

7.1.2 AUTHORITY TO ORDER MINOR CHANGES

The Owner has authority to order minor changes in the Work not involving any adjustment in the Total Sublease Amount, an extension of the Date for Completion, or a Milestone Deadline, or a change which is inconsistent with the intent of the Contract Documents. Such changes shall be effected by written Construction Change Directive and shall be binding on the Contractor. The Contractor shall carry out such written orders promptly.

7.2 CHANGE ORDERS ("CO")

A CO is a written instrument signed by the Owner and the Contractor, stamped (or sealed) and signed by Architect, and approved by the Owner's Governing Board and DSA, stating the agreement of Owner and Contractor upon all of the following:

A. A change in the Work;

B. The amount of the adjustment in the Total Sublease Amount, if any; and

C. The extent of the adjustment of the Date for Completion, or a Milestone Deadline, if any.

Unless expressly stated otherwise in the CO, any CO executed by Owner and Contractor constitutes and includes full and complete money and time (including, but not limited to, adjustments to money and time) for all costs and effects caused by any of the changes described within it. Unless expressly stated otherwise in the CO, in consideration for the money received for the changes described in the CO, Contractor waives all Claims for all costs and effects caused by any of the changes, including, but not limited to, labor, equipment, materials, delay, extra work, overhead (home and field), profit, direct costs, indirect costs, acceleration, disruption, impaired productivity, time extensions, and any the costs and effects on Subcontractors and suppliers of any tier. However, if award of the Agreement was based on a proposed percentage fee, any requests by Contractor for additional compensation based on increased subcontractor costs, or increased material or equipment supplier costs, for which the Owner is responsible under the Contract Documents shall be solely based on the additional reasonable cost plus a markup using that percentage fee.

7.3 CONSTRUCTION CHANGE DIRECTIVES ("CCD")

7.3.1 DEFINITION

A CCD is a written unilateral order to Contractor signed by the Owner and directing performance of the Work or directing a change in the Work. Any adjustment of the Total Sublease Amount, Date for Completion, or a Milestone Deadline stated in the CCD is not binding on the Owner

without a valid CO or an executed approval of allowance expenditure. The Owner may by CCD, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions pursuant to Section 7.1.1.

7.3.2 USE TO DIRECT CHANGE

A CCD may be used in the absence of agreement on the terms of a CO. If Contractor disagrees with the terms of a CCD, it shall nevertheless perform the work directed by the CCD; and if Contractor believes it is entitled to changes in the Total Sublease Amount, Date for Completion, or a Milestone Deadline, it must comply with the Notice of Potential Change, COR and Claim procedures of Section 4.5.

7.4 REQUEST FOR INFORMATION ("RFI")

7.4.1 DEFINITION

An RFI is a written request prepared by the Contractor asking the Owner to provide additional information necessary to clarify an item which the Contractor feels is not clearly shown or called for in the drawings or specifications, or to address problems which have arisen under field conditions.

7.4.2 SCOPE

The RFI shall reference all the applicable Contract Documents including specification section, detail, page numbers, drawing numbers, and sheet numbers, etc. The Contractor shall make suggestions and/or interpretations of the issue raised by the RFI. An RFI cannot modify the Total Sublease Amount, Date for Completion, a Milestone Deadline, Lease Term, or the Contract Documents.

7.4.3 RESPONSE TIME

Unless Owner expressly directs otherwise in writing, Contractor shall submit RFIs directly to the Architect, with copies forwarded to the Owner. Contractor shall submit a revised and updated priority schedule with each RFI. The Architect shall endeavor to follow the Contractor's requested order of priorities. The Owner and Contractor agree that an adequate time period for the Architect (or other designated recipient of the RFI) to respond to an RFI is generally fourteen (14) calendar days after the Architect's receipt of an RFI, unless the Owner and Contractor agree otherwise in writing. However, in all cases, the Architect shall take such time, whether more or less than 14 days, as is necessary in the Architect's professional judgment to permit adequate review and evaluation of the RFI. If Contractor informs the Architect that it needs a response to an RFI expedited to avoid delay to the critical path, then the Architect shall provide a response as quickly as reasonably possible. The total time required for the Architect to respond is subject to the complexity of the RFI, the number of RFI's submitted concurrently and the reprioritization of pending RFI's submitted by the Contractor, among other things. If Contractor believes that the Architect's response results in a change in the Work that warrants additional money or time, or that Architect's response was unreasonably delayed and caused delay to the Work's critical path, then

Contractor shall follow the procedures for additional money or time under Section 4.5. No presumption shall arise as to the timeliness of the response if the response is more than fourteen (14) days after the Architect's receipt of the RFI. Contractor shall review the Contract Documents before submitting an RFI to ensure that the information is not already in the Contract Documents. To compensate the Owner for time and costs incurred for each time the information was already in the Contract Documents, Owner may withhold $100 from sublease payments in addition to any other remedies which Owner may have the right to pursue.

7.4.4 COSTS INCURRED

The Contractor shall be invoiced by the Owner for any costs incurred for professional services, which shall be withheld from sublease payments, if an RFI requests an interpretation or decision of a matter where the information sought is equally available to the party making such request.

7.5 REQUEST FOR PROPOSAL ("RFP")

7.5.1 DEFINITION

An RFP is Owner's written request asking the Contractor to submit to the Owner an estimate of the effect, including credits, of a proposed change on the Total Sublease Amount and the Date for Completion or a Milestone Deadline.

7.5.2 SCOPE

An RFP shall contain adequate information, including any necessary drawings and specifications, to enable Contractor to provide the cost breakdowns required by section 7.7. The Contractor shall not be entitled to any additional money for preparing a response to an RFP, whether ultimately accepted or not.

7.6 CHANGE ORDER REQUEST ("COR")

7.6.1 DEFINITION

A COR (including but not limited to a "proposed change order" or "PCO") is any written request submitted by the Contractor asking the Owner for a change in the Contract Documents, including a request for additional money or time. However, a Claim (see Sections 4.5.3-4.5.6) is not a COR. See Section 4.5.2 for additional COR requirements. The COR shall include all information necessary to establish the Contractor's entitlement to the requested change.

7.6.2 CHANGES IN PRICE

Where a COR requests a change in the Total Sublease Amount, the COR shall also include all information required by the Contract Documents, including but not limited to Sections 4.5.5.2 and 7.7 of these General Conditions. A COR shall include breakdowns per Section 7.7 to validate any proposed change in Total Sublease Amount.

7.6.3 CHANGES IN TIME

Where a CORD requests a time extension in order to change a Milestone Deadline or the date of Completion, the COR shall also include delay analysis to validate any proposed change to the Date for Completion or Milestone Deadline, and shall meet all requirements in the Contract Documents, including but not limited to Sections 4.5.5.3 and 8.4 of these General Conditions. Any additional time requested shall not be based on the number of days to perform changed Work, but must be based on the impact to the Work schedule as defined in Sections 3.9 and 8.4.1.

7.7 PRICE OF CHANGE ORDERS

7.7.1 SCOPE

Any COR shall provide in writing to the Owner, the Architect and any construction manager, the effect of the proposed CO upon the Total Sublease Amount and the actual cost of construction, which shall include a complete itemized cost breakdown of all labor and material showing actual quantities, hours, unit prices, wage rates, required for the change, and the effect upon the Date for Completion or Milestone Deadlines of such CO.

7.7.2 DETERMINATION OF COST

The amount of the increase or decrease in the Total Sublease Amount resulting from a CO, if any, shall be determined in one or more of the following ways as applicable to a specific situation:

A. Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;

B. Unit prices stated in the Contractor's original bid, the Contract Documents, or subsequently agreed upon between the Owner and the Contractor;

C. Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; ***however***, if award of the Agreement was based on a proposed percentage fee, any requests by Contractor for additional compensation based on increased subcontractor costs, or increased material or equipment supplier costs, for which the Owner is responsible under the Contract Documents shall be solely based on the additional reasonable cost plus a markup using that percentage fee; or

D. By cost of material and labor and percentage of overhead and profit. If the value is determined by this method, then the following requirements shall apply:

1. **Daily Reports by Contractor**.

a) General: At the close of each working day, the Contractor shall submit a daily report to the Inspector of Record and any construction manager, on forms approved by the Owner, together with applicable delivery tickets, listing all

labor, materials, and equipment involved for that day, the location of the work, and for other services and expenditures when authorized concerning extra work items. An attempt shall be made to reconcile the report daily, and it shall be signed by the Inspector of Record and the Contractor. If there is disagreement, then pertinent notes shall be entered by each party to explain points which cannot be resolved immediately. Each party shall retain a signed copy of the report. Reports by Subcontractors or others shall be submitted through the Contractor.

b) Labor: Show names of workers, classifications, and hours worked.

c) Materials: Describe and list quantities of materials used.

d) Equipment: Show type of equipment, size, identification number, and hours of operation, including, if applicable, loading and transportation.

e) Other Services and Expenditures: Describe in such detail as the Owner may require.

2. **Basis for Establishing Costs**.

a) Labor will be the actual cost for wages prevailing locally for each craft or type of workers at the time the extra work is done, plus employer payments of payroll taxes and insurance, health and welfare, pension, vacation, apprenticeship funds, and other direct costs resulting from Federal, State, or local laws, as well as assessments or benefits required by lawful collective bargaining agreements. The use of a labor classification, which would increase the extra work cost, will not be permitted unless the Contractor establishes the necessity for such additional costs. Labor costs for equipment operators and helpers shall be reported only when such costs are not included in the invoice for equipment rental.

b) Materials shall be at invoice or lowest current price at which such materials are locally available and delivered to the Site in the quantities involved, plus sales tax, freight, and delivery.

The Owner reserves the right to approve materials and sources of supply or to supply materials to the Contractor if necessary for the progress of the Work. No markup shall be applied to any material provided by the Owner.

c) Tool and Equipment Rental. No payment will be made for the use of tools which have a replacement value of $100 or less.

Regardless of ownership, the rates to be used in determining equipment rental costs shall not exceed listed rates prevailing locally at equipment rental agencies or distributors at the time the work is performed.

The rental rates paid shall include the cost of fuel, oil, lubrication, supplies, small tools, necessary attachments, repairs and maintenance of any kind, depreciation, storage, insurance, and all incidentals.

Necessary loading and transportation costs for equipment used on the extra work shall be included. If equipment is used intermittently and, when not in use, could be returned to its rental source at less expense to the Owner than holding it at the work Site, then it shall be returned unless the Contractor elects to keep it at the work Site at no expense to the Owner.

All equipment shall be acceptable to the Inspector of Record, in good working condition, and suitable for the purpose for which it is to be used. Manufacturer's ratings and modifications shall be used to classify equipment, and equipment shall be powered by a unit of at least the minimum rating recommended by the manufacturer.

d) Other Items. The Owner may authorize other items which may be required on the extra work. Such items include labor, services, material, and equipment which are different in their nature from those required by the Work, and which are of a type not ordinarily available from the Contractor or any of the Subcontractors. Invoices covering all such items in detail shall be submitted.

e) Invoices. Vendors' invoices for material, equipment rental, and other expenditures shall be submitted with the COR. If the costs are not substantiated by invoices or other documentation, then the Owner may establish the cost of the item involved at the lowest price which was current at the time of the Daily Report.

f) Overhead and profit. For overhead, including direct and indirect costs, submit documentation with the COR for all such costs. Overhead costs include, but are not limited to, job site or field overhead costs (including job site or field office), home office overhead costs, insurance costs, administrative costs, Site superintendent costs, general foreman costs, vehicle costs, cleaning costs, off-Site supervision, COR and CO preparation, negotiation, and research costs for Owner-initiated changes, delay costs, project interference and disruption costs, additional guaranty and warranty duration costs, additional temporary protection costs, additional temporary utilities costs, additional material handling costs, additional safety equipment costs, and any other costs for supplies, equipment, facilities or services not physically incorporated into the extra work or Work to be performed but necessary for completion of the extra work or Work. For extra work performed by the Contractor, the maximum markup for overhead and profit is 15% of the total of its materials, labor, and equipment costs (see above). For extra work performed by a subcontractor, that subcontractor's maximum markup for overhead and profit is 15% of the total of its materials, labor, and equipment costs (see above); and the maximum markup for overhead and profit that may be applied by the Contractor (or applied by any subcontractor in a tier

higher than the subcontractor that performed the extra work) is 5% of the total submitted to the Contractor (or the total submitted to any higher tier subcontractor).

7.7.3 FORMAT FOR PROPOSED COST CHANGE

The following format shall be used as applicable by the Owner and the Contractor to communicate proposed additions and deductions to the Contract.

	EXTRA	CREDIT
A. Material (attach itemized quantity and unit cost plus sales tax, invoices, receipts, truck tags, etc., for force account work)	_____	_____
B. Labor (attach itemized hours and rates, daily logs, certified payroll, etc.)	_____	_____
C. Equipment (attach any invoices)	_____	_____
D. Subtotal	_____	_____
E. If Subcontractor performed Work, then add Subcontractor's overhead and profit to portions performed by Subcontractor, not to exceed fifteen percent (15%) of Subcontractor's portions.	_____	_____
F. Worker's Compensation Insurance, Social Security, and Unemployment Taxes, not to exceed twenty-five percent (25%) of Item B.	_____	_____
G. Subtotal	_____	_____
H. General Contractor's Overhead and Profit for the portion of the Work in Item G performed by subcontractors, not to exceed five percent (5%).	_____	_____
I. General Contractor's Overhead and Profit for the portion of the Work in Item G performed by Contractor, not to exceed fifteen percent (15%).	_____	_____

J. Subtotal	_____	_____
K. Bond premium increase (not to exceed one percent (1%) of Item J).	_____	_____
L. TOTAL	_____	_____

For any claimed overhead costs (whether field overhead (i.e., general conditions costs) or home office overhead) pursuant to Section 8.4.2 below, Contractor may not recover any mark ups for overhead or profit.

It is expressly understood that the value of such extra work or changes, as determined by any of the aforementioned methods, expressly includes (1) any and all of the Contractor's costs and expenses, both direct and indirect, resulting from additional time required on the project or resulting from delay to the project, and (2) any costs of preparing a COR, including, but not limited to, delay analysis. Any costs or expenses not included are deemed waived.

7.7.4 DISCOUNTS, REBATES, AND REFUNDS

For purposes of determining the cost, if any, of any change, addition, or omission to the Work hereunder, all trade discounts, rebates, refunds, and all returns from the sale of surplus materials and equipment shall accrue and be credited to the Contractor, and the Contractor shall make provisions so that such discounts, rebates, refunds, and returns may be secured, and the amount thereof shall be allowed as a reduction of the Contractor's cost in determining the actual cost of construction for purposes of any change, addition, or omissions in the Work as provided herein.

7.7.5 ACCOUNTING RECORDS

With respect to portions of the Work performed by COs and CCDs on a time-and-materials, unit-cost, or similar basis, the Contractor shall keep and maintain cost-accounting records satisfactory to the Owner, which shall be available to the Owner on the same terms as any other books and records the Contractor is required to maintain under the Contract Documents.

7.7.6 NOTICE REQUIRED

Contractor shall submit a written Notice of Potential Change for additional money or time pursuant to section 4.5.1.

7.7.7 APPLICABILITY TO SUBCONTRACTORS

Any requirements under this Article 7 shall be equally applicable to COs or CCDs issued to Subcontractors by the Contractor to the same extent required of the Contractor.

7.8 WAIVER OF RIGHT TO CLAIM MONEY OR TIME

Failure to demand money based on costs, or time extensions, as part of a COR constitutes a complete waiver of Contractor's right to claim the omitted money or time. All money or time for an issue must be included in the COR at the time submitted.

ARTICLE 8
TIME

8.1 DEFINITIONS

8.1.1 DATE FOR COMPLETION AND MILESTONE DEADLINES

Unless otherwise provided, the Date for Completion is the last day of the period of time, including authorized adjustments, allotted in the Contract Documents for Completion of the Work; and a Milestone Deadline is the last day of the period of time, including authorized adjustments, allotted in the Contract Documents for completion of a specified portion of the Work, as may be described in the Agreement.

8.1.2 NOTICE TO PROCEED

Contractor shall not commence the Work until it receives a Notice to Proceed from Owner. The date of commencement of the Work is the date established in the Notice to Proceed. The date of commencement shall not be postponed by the failure to act of the Contractor or of persons or entities for which the Contractor is responsible.

8.1.3 DAYS

The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

8.2 HOURS OF WORK

8.2.1 SUFFICIENT FORCES

Contractors and Subcontractors shall furnish sufficient forces to ensure the expeditious prosecution of the Work in accordance with the Baseline Schedule, including Work directed pursuant to a CCD (see Section 7.3, above).

8.2.2 PERFORMANCE DURING WORKING HOURS

Work shall be performed during regular working hours, except that if there is an emergency or when required to complete the Work in accordance with job progress, then work may be performed outside of regular working hours with the advance written consent of the Owner.

8.2.3 LABOR CODE APPLICATION

As provided in Article 3 (commencing at § 1810), Chapter 1, Part 7, Division 2 of the Labor Code, eight (8) hours of labor shall constitute a legal day's work. The time of service of any worker employed at any time by the Contractor or by any Subcontractor on any subcontract under this Contract, upon the work or upon any part of the work contemplated by this Contract, is limited and restricted to eight (8) hours during any one calendar day and forty (40) hours during any one calendar week, except as hereinafter provided. Notwithstanding the provision hereinabove set forth, work performed by employees of Contractors in excess of eight (8) hours per day and forty (40) hours during any one week shall be permitted upon this public work with compensation provided for all hours worked in excess of eight (8) hours per day at not less than one and one-half (1-1/2) times the basic rate of pay.

Contractor or subcontractor shall pay to the Owner a penalty of Twenty-five Dollars ($25.00) for each worker employed in the execution of this Contract by the Contractor, or by any Subcontractor, for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any calendar day and forty (40) hours in any one (1) calendar week, in violation of the provisions of Article 3 (commencing at § 1810), Chapter 1, Part 7, Division 2 of the Labor Code, unless compensation for the workers so employed by Contractor is not less than one and one-half (1-1/2) times the basic rate of pay for all hours worked in excess of eight (8) hours per day.

8.2.4 COSTS FOR AFTER HOURS INSPECTIONS

If the work done after hours is required by the Contract Documents to be done outside the Contractor's or the Inspector of Record's regular working hours, then the costs of any inspections, if required to be done outside normal working hours, shall be borne by the Owner.

If the Owner allows the Contractor to do work outside regular working hours for the Contractor's own convenience, then the costs of any inspections required outside regular working hours, among other remedies, shall be invoiced to the Contractor by the Owner and withheld from sublease payments. Contractor shall give Owner at least 48 hours notice prior to working outside regular working hours.

If the Contractor elects to perform work outside the Inspector of Record's regular working hours, then costs of any inspections required outside regular working hours, among other remedies, may be invoiced to the Contractor by the Owner and withheld from sublease payments.

8.2.5 TIME FOR COMMENCEMENT BY SUBCONTRACTORS

Unless otherwise provided in the Contract Documents, all Subcontractors shall commence their Work within two (2) consecutive business days after notice to them by the Contractor and shall prosecute their Work in accordance with the progress of the Work.

8.3 PROGRESS AND COMPLETION

8.3.1 TIME OF THE ESSENCE

Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Work can reasonably be completed by the Date for Completion and Milestone Deadlines.

8.3.2 NO COMMENCEMENT WITHOUT INSURANCE

The Contractor shall not knowingly, except by agreement or instruction of the Owner, in writing, commence operations on the Site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor. The date of commencement of the Work shall not be changed by the effective date of such insurance.

8.3.3 EXPEDITIOUS COMPLETION

The Contractor shall perform the Work diligently and expeditiously, including Work directed pursuant to a CCD (see Section 7.3, above), with adequate forces, labor, materials, equipment, services and management, and shall achieve Completion by the Date for Completion and the Milestone Deadlines.

8.4 EXTENSIONS OF TIME - LIQUIDATED DAMAGES

Contractor waives all rights and remedies as to any delay experienced during the Work (including any right to rescind the Contract and any right to refuse to perform the Contract) except for the rights and remedies expressly allowed by the Contract (including but not limited to time extensions and delay damages pursuant to this Section 8.4.1 and Section 8.4.2 below, and termination pursuant to Section 14.1 below).

8.4.1 CONDITIONS ALLOWING FOR EXTENSIONS OF TIME TO COMPLETE THE WORK, ONLY (EXCUSABLE DELAY)

The Contractor shall be granted a reasonable time extension under the Contract Documents, including but not limited to Sections 3.18 and 4.5 and Article 7, for excusable delays, which are those delays that meet each and every of the following conditions:

(a) The delay was beyond the control of Contractor and its subcontractors and material suppliers;

(b) The delay was caused by events that were not reasonably foreseeable to Contractor at the time of its proposal;

(c) All float in the schedule had been used, and the delay impacted and delayed the controlling items of Work (i.e., the as-built critical path, as determined from a comparison of the Baseline Schedule and the actual progress of the Work), thus delaying the achievement of a Milestone Deadline or the Completion of the whole Work by the Date for Completion;

(d) The delay was not caused by Contractor or its subcontractors or suppliers, including but not limited to their breaches of contract or the standard of care;

(e) The delay was not associated with loss of time resulting from untimely submittals to Owner for approval, and was not associated with surveys, measurements, inspections, or testing caused by Contractor's acts or omissions.

(f) The delay was not caused by usual or common weather for the time of year, including usual or common severe weather; and

(g) The delay could not have been prevented or mitigated by the exercise of care, prudence, foresight, and diligence by Contractor.

Excusable delays may include acts of God, acts of public enemy, acts of the Owner or anyone employed by it, acts of another contractor in performance of a contract (other than this Contract) with the Owner, fires, floods, epidemics, quarantine restrictions, labor disputes, unusual and uncommon weather for the time of year, unusual and uncommon delays by utility companies, unusual and uncommon delays by other government agencies, unforeseen site conditions, or delays of subcontractors due to such causes. Owner shall take into consideration other relevant factors such as concurrent delays. Contractor has the burden of proving that any delay was excusable.

Information or services under Owner's control will be furnished by the Owner with reasonable promptness. The Owner shall not be liable for any time extensions caused by factors that Contractor knew, or reasonably should have known, at the time of proposing (such as usual or common weather, usual or common delays by utility companies, or usual or common delays by other government agencies, which Contractor should have included in its Baseline Schedule, see Section 3.9.1, above).

8.4.2 COMPENSABLE DELAY (TIME AND MONEY)

Compensable delays are those excusable delays (see above) for which Contractor is also entitled to monetary compensation. To be compensable, an excusable delay must be one for which the Owner is responsible, where the delay was unreasonable under the circumstances involved, and where the delay was not within the contemplation of the parties; ***however***, Contractor shall not be entitled to monetary compensation when (a) Contractor could have reasonably anticipated the delay and avoided or minimized the cost impacts of it, (b) there was a concurrent delay which does not qualify for monetary compensation under this paragraph, (c) the cause of the delay was reasonably unforeseen by the Owner, including but not limited to differing site conditions that were not known to Owner at the time of bidding, (d) the delay was caused by factors beyond the control of the Owner, including but not limited to a delay caused by a utility company's failure to perform despite Owner's reasonable arrangements for such performance, or a delay caused by another government agency; or (e) any other defense available to Owner under law or equity applies. Contractor has the burden of proving that any delay was excusable and compensable, including an analysis that establishes non-concurrency. Compensation shall be limited to field overhead (i.e., general conditions) and home office overhead, as may be allowed by law.

8.4.3 NOTICE BY CONTRACTOR REQUIRED; PROCEDURES FOR DEMANDING ADDITIONAL TIME OR MONEY

For notice and other procedures related to requests by Contractor for additional time or money related to delay, Contractor shall comply with the Contract Documents, including but not limited to Sections 3.18 and 4.5, and Article 7.

8.4.4 EARLY COMPLETION

Regardless of the cause therefore, the Contractor may not maintain any Claim or cause of action against the Owner for damages incurred as a result of its failure or inability to Complete its Work on the Project in a shorter period than established in the Contract Documents, the parties stipulating that the periods set forth in the Contract Documents are reasonable time periods within which to perform the Work on the Project.

8.4.5 LIQUIDATED DAMAGES

Failure to Complete the Work within the time and in the manner provided for by the Contract Documents shall subject the Contractor to liquidated damages as described in Article 3 of the Agreement. For purposes of liquidated damages, the concept of "substantial completion" shall not constitute Completion and is not part of the Contract. The actual occurrence of damages and the actual amount of the damages which the Owner would suffer if the Work were not Completed within the specified times set forth are dependent upon many circumstances and conditions which could prevail in various combinations and, from the nature of the case, it is impracticable and extremely difficult to fix the actual damages. Damages which the Owner would suffer if there is delay include, but are not limited to, loss of the use of the Work, disruption of activities, costs of administration, supervision, and the incalculable inconvenience and loss suffered by the public.

Accordingly, the parties agree that the amount set forth in the Agreement shall be presumed to be the amount of damages which the Owner shall directly incur as a result of each calendar day by which Completion of the Work is delayed beyond the Date for Completion or a Milestone Deadline as adjusted by Change Orders.

If the Contractor fails to complete the Work by the Date for Completion or a Milestone Deadline as adjusted by Change Orders and liquidated damages therefore accrue, then the Owner, in addition to all other remedies provided by law, shall have the right to assess liquidated damages at any time, and to withhold liquidated damages (and any interest thereon) at any time from any and all Sublease Payments, which would otherwise be or become due the Contractor. In addition, if it is reasonably apparent to the Owner before the Date for Completion or a Milestone Deadline (as adjusted by Change Orders) that the Contractor cannot or will not complete the Work before those deadlines, then the Owner may assess and withhold, from Sublease Payments, the estimated amount of liquidated damages that will accrue in the future. If the withheld sublease payments are not sufficient to discharge all liabilities of the Contractor incurred under this Article, then the Contractor and its sureties shall continue to remain liable to the Owner until all such liabilities are satisfied in full.

If the Owner accepts any Work or makes any payment under this Agreement after a default by reason of delays, then the payment or payments shall in no respect constitute a waiver or modification of any Agreement provisions regarding periods of time for Completion and liquidated damages.

8.5 GOVERNMENT APPROVALS

Owner shall not be liable for any damages or time extenskionsrelated to the time required to obtain government approvals, except as may be allowed above.

ARTICLE 9
PAYMENTS AND COMPLETION

9.1 TOTAL SUBLEASE AMOUNT

If the Contract was awarded based on lump sum price proposals, the Total Sublease Amount is stated in the Agreement, and if the Contract was awarded based on fee proposals, the Total Sublease Amount will be calculated after entering the Agreement (see Section 5 of the Agreement). In either case, the Total Sublease Amount may be later adjusted by Change Orders and Construction Change Directives, and it is the total amount payable by the Owner to the Contractor under the Contract Documents, and represents the fair market value for the Work and for use of the Site during the term of the Sublease.

9.2 COST BREAKDOWN

9.2.1 REQUIRED INFORMATION

On forms approved by the Owner, within ten (10) days of the mailing, faxing or delivering of the Notice of Award of Contract based on lump sum price proposals (or in the case of a Contract based on fee proposals, within ten (10) days of the Board approval of the Total Sublease Amount) the Contractor shall furnish the following:

A. A detailed breakdown of the Total Sublease Amount (Schedule of Values) for the Work. Each item in the schedule of values shall include its proper share of the overhead and profit.

B. The name, address, telephone number, fax number, license number and classification, and (for all projects over Twenty-Five Thousand Dollars ($25,000)) the public works contractor registration number of all of its Subcontractors and of all other parties furnishing labor, material, or equipment for its Contract, along with the amount of each such subcontract or the price of such labor, material, and equipment needed for its entire portion of the Work.

9.3 PROCEDURES FOR SUBLEASE PAYMENT

9.3.1 PROCEDURE

On or before the fifth (5th) day of each calendar month during the Lease Term for the number of consecutive months indicated in the Sublease and any exhibits thereto, Owner will make a Sublease Payment to Contractor, as may be adjusted by the terms of the Contract Documents based on delay or extra work. As a prerequisite and condition of each such Sublease Payment, Contractor shall submit to the Owner the following information and documentation by the first

(1st) day of that calendar month:

A. A certification that the Record Drawings and Annotated Specifications are current;

B. Material invoices, evidence of equipment purchases, rentals, and other support and details of cost as the Owner may require from time to time;

C. For all months of Work prior to the Sublease Payment, Contractor's Schedule Updates (native electronic format and hard copy, see Section 3.9.1 above), daily reports, and monthly reports that Contractor has not already submitted.

D. For all months of Work prior to the Sublease Payment, Contractor's required monthly reports under Education Code section 17407.5 and Public Contract Code section 2602.

E. For post-Completion Sublease payments, all DVBE documentation required by the Agreement.

9.3.2 [Not Used]

9.3.3 **WARRANTY OF TITLE**

The Contractor warrants that title to all work covered by a Sublease Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of the information and documents required by Section 9.3.1, above, all work performed by Contractor to date shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances in favor of the Contractor, Subcontractors, material and equipment suppliers, or other persons or entities making a claim by reason of having provided labor, materials, and equipment relating to the Work. Transfer of title to Work does not constitute a waiver by Owner of any defects in the Work.

9.4 REVIEW OF SUBLEASE PAYMENT

9.4.1 **OWNER ACCEPTANCE**

If Contractor timely submits the required information and documents pursuant to Section 9.3.1, above, the Owner will, by the fifth (5th) day of the month, determine the amount of the Sublease Payment due to Contractor pursuant to the Contract Documents and make such payment.

9.4.2 **OWNER'S REVIEW**

The review of the Contractor's required information and documents will be based, at least in part, on the Owner's observations at the Site and the data in the submissions. The review is also subject to an evaluation of the Work for conformance with the Contract Documents, to results of subsequent tests and inspections, to minor deviations from the Contract Documents correctable

prior to Completion, and to specific qualifications expressed by the Owner. The Owner may reject the submissions, or elect to withhold or not make a Sublease Payment, if the submissions are not complete under Section 9.3 or if the Lease Term has been extended due to inexcusable delay (as set forth in the Sublease). The issuance of a Sublease Payment will be subject to any withholdings under Section 9.5.1 or any specific qualifications from Owner. Contractor's entitlement to payment may be affected by subsequent evaluations of the Work for conformance with the Contract Documents, test and inspections and discovery of minor deviations from the Contract Documents correctable prior to Completion. The issuance of a Sublease Payment will not be a waiver by the Owner of any defects in the Work performed to date, nor will it be a representation that the Owner has:

A. Made exhaustive or continuous on-Site inspections to check the quality or quantity of the Work;

B. Reviewed construction means, methods, techniques, sequences, or procedures;

C. Reviewed copies of requisitions received from Subcontractors, material and equipment suppliers, and other data requested by the Owner; or

D. Made an examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Total Sublease Amount.

9.5 DECISIONS TO WITHHOLD PAYMENT

9.5.1 REASONS TO WITHHOLD PAYMENT

The Owner may withhold from a Sublease Payment, in whole or in part, to such extent as may be necessary to protect the Owner due to any of the following:

A. Defective or incomplete Work not yet remedied, including but not limited to Punch List corrective work pursuant to Section 9.7.1 below and warranty corrective work pursuant to Section 12.2.5 below;

B. Stop Payment Notices. For any stop payment notice, the Owner shall withhold the amount stated in the stop payment notice, the stop payment notice claimant's anticipated interest and court costs, and an amount to provide for the Owner's reasonable cost of any litigation pursuant to the stop payment notice. For any stop payment notice action the parties resolve before judgment is entered, Owner has the right to permanently withhold for any reasonable cost of litigation for that stop payment notice, even if it exceeds the amount originally withheld by Owner for the estimated reasonable cost of litigation. However, if (1) the Contractor at its sole expense provides a bond or other security satisfactory to the Owner in the amount of at least one hundred twenty-five percent (125%) of the claim, in a form satisfactory to the Owner, which protects the Owner against such claim, and (2) the Owner chooses to accept the bond, then Owner would release the withheld stop payment notice funds to the Contractor, except that Owner may permanently

withhold for any reasonable cost of litigation. Any stop payment notice release bond shall be executed by a California admitted, fiscally solvent surety, completely unaffiliated with and separate from the surety on the payment and performance bonds, that does not have any assets pooled with the payment and performance bond sureties.

C. Liquidated damages against the Contractor, whether already accrued or estimated to accrue in the future;

D. Reasonable doubt that the Work can be Completed for the unpaid balance of any Total Sublease Amount or by the Date for Completion or a Milestone Deadline;

E. Damage to the property or work of the Owner, another contractor, or subcontractor;

F. Unsatisfactory prosecution of the Work by the Contractor;

G. Failure to store and properly secure materials;

H. Failure of the Contractor to submit on a timely basis, proper and sufficient documentation required by the Contract Documents, including, without limitation, the Baseline Schedule, monthly Schedule Updates, daily reports, monthly reports (including those required by Education Code section 17407.5(c)), shop drawings, submittal schedules, schedule of values, product data and samples, proposed product lists, executed change orders, and verified reports;

I. Failure of the Contractor to maintain record drawings;

J. Erroneous estimates by the Contractor of the value of the Work performed, or other false statements, whether in a request for Contract adjustment, in connection with a Contract adjustment, or in connection with Contractor's submissions to Owner prior to any Sublease Payment or Contract adjustment;

K. Unauthorized deviations from the Contract Documents;

L. Failure of the Contractor to prosecute the Work in a timely manner in compliance with established progress schedules and Completion deadlines;

M. Subsequently discovered evidence or observations nullifying the whole or part of a previously issued Sublease Payment;

N. Failure by Contractor to pay Subcontractors or material suppliers as required by Contract or law, which includes but is not limited to Contractor's failure to pay prevailing wage and any assessment of statutory penalties;

O. Overpayment to Contractor on a previous payment;

P. Credits owed to Owner for reduced scope of work or work that Contractor will not perform, including credits for any unspent allowance or deductive change orders;

Q. The estimated cost of performing work pursuant to Section 2.4;

R. Actual damages related to false claims by Contractor;

S. Breach of any provision of the Contract Documents;

T. Owner's potential or actual loss, liability or damages caused by the Contractor, including defense costs and attorneys' fees incurred due to Contractor's failure to defend an action pursuant to the indemnity provisions in the Contract Documents; and

U. As permitted by other provisions in the Contract or as otherwise allowed by law, including statutory penalties that Owner or other entities assessed against Contractor (see, e.g., Labor Code section 1813 (working hours) or Public Contract Code section 4110 (subcontractor listings and substitutions)).

For any withheld amount above that is based on an estimate, Owner may withhold from a Sublease Payment up to 150% of the estimated amount to protect Owner in the event that the estimate is less than the actual amount.

Owner may, but is not required to, provide to Contractor written notice of the items for which Owner is withholding amounts from a Sublease Payment.

If Contractor claims a breach of contract or violation of law based on wrongful withholding by the Owner from a Sublease Payment or based on a late Sublease Payment, or if Contractor otherwise disputes any Sublease Payment or lack thereof, then within fifteen (15) days of the alleged breach of contract, violation of law, or late or disputed Sublease Payment Contractor shall submit a Claim pursuant and subject to Sections 4.5.3-4.5.6. The Contractor need not submit a Notice of Potential Change or a Change Order Request.

For any withhold amount based on an estimate where the actual amount later becomes known and certain, no later than the final accounting for the Contract the Owner will release any amount withheld over that certain and known amount. If the certain and known amount exceeds the amount previously withheld, Owner may withhold additional amounts from Contractor to cover the excess amount. If available funds are not sufficient, Contractor shall pay Owner the difference.

Despite any withholding from a Sublease Payment, or any other dispute about a Sublease Payment, Contractor shall continue to expeditiously perform the Work pursuant to the Contract Documents, including but not limited to General Conditions sections 4.5.7, 7.1.1, 8.3.1, and 8.3.3.

9.5.2 PAYMENT AFTER CURE

When Contractor removes or cures the grounds for withholding amounts, payment shall be made for amounts withheld because of them. No interest shall be paid on any amounts withheld due to the failure of the Contractor to perform in accordance with the terms and conditions of the Contract Documents.

9.5.3 OVERPAYMENT AND/OR FAILURE TO WITHHOLD

Neither Owner's overpayment to Contractor, nor Owner's failure to withhold an amount from payment that Owner had the right to withhold, shall constitute a waiver by Owner of its rights to withhold those amounts from future payments to Contractor or to otherwise pursue recovery of those amounts from Contractor.

9.6 SUBLEASE PAYMENTS

9.6.1 PAYMENTS TO CONTRACTOR

Each Sublease Payment shall be made by Owner pursuant to the Contract Documents, including but not limited to Sections 9.3-9.5 above and Sections 6 and 7 of the Sublease. Sublease Payments shall be based on the original amount and schedule of Sublease Payments (for a lump sum lease-leaseback contract, see the Sublease; for a fee-based lease-leaseback contract with preconstruction services, see the Board-approved Total Sublease Amount amendment to the Sublease).

However, the actual amount of each Sublease Payment shall be adjusted pursuant to the Contract Documents (especially Sections 9.3-9.5 above and Sections 6 and 7 of the Sublease) depending on delay, change orders, allowance expenditures, withholdings, or other valid factors. If allowed or required by the Contract Documents, the Owner may skip a monthly payment.

Owner shall calculate each monthly payment (due on the 5th of the month; see Section 9.4.1, above) based on information and documents available as of the 14th of the preceding month. Any information or documents received by the District after the 14th of the preceding month shall be used when calculating the next monthly payment.

The Contractor shall not be entitled to have any payment made so long as Contractor fails or refuses to submit the documents required by Section 9.3.1, above. In addition, the Contractor shall not be entitled to have any payment made so long as Contractor fails or refuses to comply with any direction given by the Owner pursuant to the Contract concerning the Work, or any portion thereof; payment by Owner of a Sublease Payment shall not be a waiver of any such direction.

9.6.2 PAYMENTS TO SUBCONTRACTORS

No later than ten (10) days after receipt of payment from Owner, pursuant to Business and Professions Code section 7108.5, the Contractor shall pay to each Subcontractor, out of the amount paid to the Contractor, the amount to which said Subcontractor is entitled. The

Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

9.6.3 PAYMENT INFORMATION

The Owner will, on request, furnish to Contractor or a Subcontractor, if practicable, information regarding calculation of a Sublease Payment.

9.6.4 NO OBLIGATION OF OWNER FOR SUBCONTRACTOR PAYMENT

The Owner shall have no obligation to pay, or to see to the payment of, money to a Subcontractor except as may otherwise be required by law.

9.6.5 PAYMENT TO SUPPLIERS

Payment to material or equipment suppliers shall be treated in a manner similar to that provided in paragraphs 9.6.2, 9.6.3 and 9.6.4.

9.6.6 PAYMENT NOT CONSTITUTING APPROVAL OR ACCEPTANCE

The making of a Sublease Payment, or partial or entire use or occupancy of the Project, by the Owner shall not constitute acceptance or approval of any portion of the Work, especially any Work not in accordance with the Contract Documents.

9.6.7 JOINT CHECKS

Owner shall have the right, if necessary for the protection of the Owner, to issue joint checks made payable to the Contractor and Subcontractors and/or material or equipment suppliers. The joint check payees shall be responsible for the allocation and disbursement of funds included as part of any such joint payment. However, Owner has no duty to issue joint checks. In no event shall any joint check payment be construed to create any contract between the Owner and a Subcontractor of any tier, any obligation from the Owner to such Subcontractor, or rights in such Subcontractor against the Owner.

9.7 COMPLETION OF THE WORK

9.7.1 CLOSE-OUT PROCEDURES

As part of the Work, the Contractor shall:

A. Deliver to the Owner (i) reproducible final Record Drawings and Annotated Specifications showing the Contractor's Work "as built," with the Contractor's certification of the accuracy of the Record Drawings and Annotated Specifications, (ii) all warranties and guarantees, (iii) operation and maintenance instructions, manuals and materials for equipment and apparatus, and (iv) all other documents required by the Contract Documents; and

B. Provide extensive assistance in the utilization of any equipment or system such as initial start-up or testing, adjusting and balancing, preparation of operation and maintenance manuals and training personnel for operation and maintenance.

When the Contractor considers that the Work is Complete and submits a written notice to Owner requesting an inspection of the Work, the Owner shall review the Work and prepare and submit to the Contractor one or more comprehensive lists of items to be Completed or corrected (the "Punch List"). The Punch List shall include all outstanding obligations of Contractor, including training, start-up, testing, and submission to Owner of all required documentation (e.g., written guarantees, warranties, invoices, as-built drawings, manuals, bonds, and the documents described in paragraph 9.3).

The Contractor and/or its Subcontractors shall proceed promptly to Complete and correct items on the Punch List. Failure to include an item on the Punch List does not alter the responsibility of the Contractor to Complete all Work (including the omitted item) in accordance with the Contract Documents, and to Complete or correct the Work so long as the statute of limitations (or repose) has not run.

When the Contractor believes the Punch List Work is Complete and in accordance with the Contract Documents, it shall then submit a request for an additional inspection by the Owner to determine Completion. Owner shall again inspect the Work and inform the Contractor of any items that are not Complete or are not correct. Contractor shall promptly Complete or correct items until no items remain.

After the Work, including all Punch List Work, is inspected and informally deemed by the Owner to be Complete, the Owner shall notify the Contractor, and the Owner's governing body may formally accept the Work as Complete at a meeting of the governing body. Warranties required by the Contract Documents shall commence on the date of Contractor's Completion of the Work (see Sections 3.5, 12.2.5, and 12.2.6). Owner may record a Notice of Completion as allowed by Civil Code section 9200 *et seq*. However, no acceptance of the Work as Complete by the Owner's governing body, and no recordation of a Notice of Completion by the Owner, will terminate or otherwise shorten the Lease Term, which may only be terminated as described in the Lease-Leaseback Agreement for this Contract.

9.7.2 COSTS OF MULTIPLE INSPECTIONS

More than two (2) requests by Contractor to make inspections to confirm completion as required under paragraph 9.7.1 shall be considered an additional service of Owner, and all subsequent costs will be invoiced to Contractor and withheld from remaining Sublease Payments.

9.8 PARTIAL OCCUPANCY OR USE

The Owner may occupy or use any Completed, or partially Completed, portion of the Work at any stage prior to acceptance, or prior to Completion if there is no formal acceptance. Occupancy or use of any portion of the Work, or the whole Work, shall not constitute approval or acceptance of

it, nor shall such occupancy or use relieve Contractor of any of its obligations under the Contract Documents regarding that portion of, or the whole, Work.

For such partial occupancy, the Owner and the Contractor shall agree in writing to the responsibilities assigned to each of them for payments, security, maintenance, heat, utilities, damage to the Work, insurance, and the period for correction of the Work under the Contract Documents. If the Owner and Contractor cannot reach agreement in writing, then the Owner may take partial occupancy and direct Contractor to perform Work as the Owner deems necessary; and if the Contractor believes that any of the directed Work requires additional compensation or time, then Contractor may seek an adjustment of compensation or time pursuant to Section 4.5, above.

When the Contractor considers a portion complete, the Contractor may request an inspection of that portion and preparation of a Punch List by the Owner for that portion, as set forth for the entire Work under paragraph 9.7.1; however, such inspection and Punch List shall not act as any form of approval or acceptance of that portion of the Work, or of any Work not complying with the requirements of the Contract, and that portion shall be subject to subsequent inspections and Punch Lists.

Immediately prior to such partial occupancy or use, the Owner and the Contractor shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

9.9 FINAL SUBLEASE PAYMENT

On or before the due date of the final Sublease Payment, as provided by the Contract Documents, Owner shall issue a Final Sublease Payment. If required to do so under Labor Code section 1773.3(d), Owner shall withhold the Final Sublease Payment.

ARTICLE 10
PROTECTION OF PERSONS AND PROPERTY

10.1 SAFETY PRECAUTIONS AND PROGRAMS

10.1.1 CONTRACTOR RESPONSIBILITY

The Contractor shall have responsibility for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract. Each Contractor shall designate a responsible member of its organization whose duties shall include loss and accident prevention, and who shall have the responsibility and full authority to enforce the program. This person shall attend meetings with the representatives of the various Subcontractors employed to ensure that all employees understand and comply with the programs. Contractor will ensure that his employees and Subcontractors cooperate and coordinate safety matters with any other contractors on the Project to form a joint safety effort.

10.1.2 SUBCONTRACTOR RESPONSIBILITY

Subcontractors have the responsibility for participating in, and enforcing, the safety and loss prevention programs established by the Contractor for the Project, which will cover all Work performed by the Contractor and its Subcontractors. Each Subcontractor shall designate a responsible member of its organization whose duties shall include loss and accident prevention, and who shall have the responsibility and full authority to enforce the program. This person shall attend meetings with the representatives of the various Subcontractors employed to ensure that all employees understand and comply with the programs.

10.1.3 COOPERATION

All Subcontractors and material or equipment suppliers, shall cooperate fully with Contractor, the Owner, and all insurance carriers and loss prevention engineers.

10.1.4 ACCIDENT REPORTS

Subcontractors shall promptly report in writing to the Contractor all accidents whatsoever arising out of, or in connection with, the performance of the Work, whether on or off the Site, which caused death, personal injury, or property damage, giving full details and statements of witnesses. In addition, if death or serious injuries or serious damages are caused, then the accident shall be reported immediately by telephone or messenger. Contractor shall thereafter promptly report the facts in writing to the Owner giving full details of the accident.

10.1.5 FIRST-AID SUPPLIES AT SITE

The Contractor will provide and maintain at the Site first-aid supplies for minor injuries.

10.2 SAFETY OF PERSONS AND PROPERTY

10.2.1 THE CONTRACTOR

The Contractor shall take reasonable precautions for the safety of, and shall provide reasonable protection to prevent damage, injury, or loss to:

A. Employees on the Work and other persons who may be affected thereby;

B. The Work, material, equipment, tools, construction equipment, and machinery to be incorporated therein or necessary for the proper execution and Completion of the Work, whether in storage on or off the Site, under the care, custody, or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and

C. Other property at the Site or adjacent thereto such as trees, shrubs, lawns, walks, pavement, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

10.2.2 CONTRACTOR NOTICES

The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations, and lawful orders of public authorities bearing on the safety of persons or property or their protection from damage, injury, or loss.

10.2.3 SAFETY BARRIERS AND SAFEGUARDS

The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notifying owners and users of adjacent sites and utilities.

10.2.4 USE OR STORAGE OF HAZARDOUS MATERIAL

When use or storage of explosives, other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel. The Contractor shall notify the Owner any time that explosives or hazardous materials are expected to be stored on Site. Location of storage shall be coordinated with the Owner and local fire authorities.

10.2.5 FINGERPRINTING

At its own expense, Contractor shall comply with all fingerprinting requirements under law and Contract, including, but not limited to, the requirements of Education Code section 45125.2 and the Independent Contractor Student Contact Form which is a part of the Contract. Contractor shall hold harmless, defend and indemnify the Owner under section 3.16, for any costs, including attorneys' fees, Owner incurs from Contractor's failure to comply.

10.3 PROTECTION OF WORK AND PROPERTY

10.3.1 PROTECTION OF WORK

The Contractor and Subcontractors shall continuously protect the Work, the Owner's property, and the property of others, from damage, injury, or loss until the earlier of formal acceptance of the Work or 30 days after Completion of the Work. The Contractor and Subcontractors shall make good any such damage, injury, or loss, except such as may be solely due to, or caused by, agents or employees of the Owner; except that for projects not solely funded through revenue bonds, (a) Contractor shall not be responsible for damages caused by a tidal wave to the extent that the damages exceed 5% of the Total Sublease Amount, and (b) Contractor shall not be responsible for damages caused by an earthquake above 3.5 on the Richter Scale in magnitude to the extent that the damages exceed 5% of the Total Sublease Amount, per Public Contract Code §7105(a).

10.3.2 PROTECTION FOR ELEMENTS

The Contractor will remove all mud, water, or other elements as may be required for the proper protection and prosecution of its Work. The Contractor shall at all times provide labor, services, equipment, materials, heat, coverings, enclosures, and other services and materials necessary to

maintain adequate protection against weather (including unusual or uncommon weather) so as to preserve the Work, materials, equipment, apparatus, and fixtures free from injury or damage.

10.3.3 SHORING AND STRUCTURAL LOADING

The Contractor shall not impose structural loading upon any part of the Work under construction or upon existing construction on or adjacent to the Site in excess of safe limits, or loading such as to result in damage to the structural, architectural, mechanical, electrical, or other components of the Work. The design of all temporary construction equipment and appliances used in construction of the Work and not a permanent part thereof, including, without limitation, hoisting equipment, cribbing, shoring, and temporary bracing of structural steel, is the sole responsibility of the Contractor. All such items shall conform to the requirements of governing codes and all laws, ordinances, rules, regulations, and orders of all authorities having jurisdiction. The Contractor shall take special precautions, such as shoring of masonry walls and temporary tie bracing of structural steel work, to prevent possible wind damage during construction of the Work. The installation of such bracing or shoring shall not damage or cause damage to the Work in place or the Work installed by others. Any damage which does occur shall be promptly repaired by the Contractor at no cost to the Owner.

10.3.4 CONFORMANCE WITHIN ESTABLISHED LIMITS

The Contractor and Subcontractors shall confine their construction equipment, the storage of materials, and the operations of workers to the limits indicated by laws, ordinances, permits, and the limits established by the Owner, and shall not unreasonably encumber the premises with construction equipment or materials.

10.3.5 SUBCONTRACTOR ENFORCEMENT OF RULES

Subcontractors shall enforce the Owner's and the Contractor's instructions, laws, and regulations regarding signs, advertisements, fires, smoking, the presence of liquor, and the presence of firearms by any person at the Site.

10.3.6 SITE ACCESS

The Contractor and the Subcontractors shall use only those ingress and egress routes designated by the Owner, observe the boundaries of the Site designated by the Owner, park only in those areas designated by the Owner, which areas may be on or off the Site, and comply with any parking control program established by the Owner such as furnishing license plate information and placing identifying stickers on vehicles.

10.3.7 PROTECTION OF MATERIALS

The Contractor and the Subcontractors shall receive, count, inspect for damage, record, store, and protect construction materials for the Work and Subcontractors shall promptly send to the Contractor evidence of receipt of such materials, indicating thereon any shortage, change, or

damage (failure to so note shall constitute acceptance by the Subcontractor of financial responsibility for any shortage).

10.4 EMERGENCIES

10.4.1 EMERGENCY ACTION

In an emergency affecting the safety of persons or property, the Contractor shall take any action necessary, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional money or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Section 4.5 and Article 7.

10.4.2 ACCIDENT REPORTS

The Contractor shall promptly report in writing to the Owner all accidents arising out of or in connection with the Work, which caused death, personal injury, or property damage, giving full details and statements of any witnesses. In addition, if death, serious personal injuries, or serious property damages are caused, then the accident shall be reported immediately by telephone or messenger to the Owner.

10.5 HAZARDOUS MATERIALS

10.5.1 DISCOVERY OF HAZARDOUS MATERIALS

If the Contractor encounters or suspects the presence on the Site of material reasonably believed to be asbestos, polychlorinated biphenyl (PCB), or any other material defined as being hazardous by section 25249.5 of the California Health and Safety Code, which (a) has not been rendered harmless, and (b) the handling or removal of which is not within the scope of the Work, then the Contractor shall immediately stop Work in the area affected and report the condition to the Owner and the Architect in writing, whether such material was generated by the Contractor, another contractor, or the Owner. The Work in the affected area shall not thereafter be resumed, except by written agreement of the Owner and the Contractor, if in fact the material is asbestos, polychlorinated biphenyl (PCB), or other hazardous material, and has not been rendered harmless. The Work in the affected area shall be resumed only in the absence of asbestos, polychlorinated biphenyl (PCB), or other hazardous material, or when it has been rendered harmless by written agreement of the Owner and the Contractor.

10.5.2 HAZARDOUS MATERIAL WORK LIMITATIONS

If the presence of hazardous materials is suspected or discovered on the Site, then the Owner shall retain an independent testing laboratory to determine the nature of the material encountered and whether corrective measures or remedial action is required. The Contractor shall not be required pursuant to Article 7 to perform without consent any Work in the affected area of the Site relating to asbestos, polychlorinated biphenyl (PCB), or other hazardous material, until any known or suspected hazardous material has been removed, or rendered harmless, or determined to be

harmless by Owner, as certified by an independent testing laboratory and/or approved by the appropriate government agency.

10.5.3 INDEMNIFICATION BY OWNER FOR HAZARDOUS MATERIAL NOT CAUSED BY CONTRACTOR

If the presence of hazardous materials on the Site is not caused by the Contractor, then Owner shall pay for all costs of testing and remediation, if any, and shall compensate Contractor for any delay or additional costs incurred in accordance with the applicable provisions of Articles 7 & 8 herein. Owner shall defend, indemnify and hold harmless the Contractor and its agents, officers, directors and employees from and against any and all claims, damages, losses, costs and expenses incurred in connection with or arising out of, or relating to, the performance of the Work in the area affected by the hazardous material, except to the extent the claims, damages, losses, costs, or expenses were caused by Contractor's active negligence, sole negligence or willful misconduct. By providing this indemnification, District does not waive any immunities.

10.5.4 NATURALLY OCCURRING ASBESTOS

If the Site is found to contain naturally occurring asbestos (asbestos naturally contained in rocks which can become airborne when released "NOA"), in addition to complying with applicable provisions in sections 10.5.1-10.5.3 above, Contractor shall comply with, and be solely responsible for, all applicable NOA requirements of the California Air Resources Board (CARB), California Department of Industrial Relations, California Division of Occupational Safety and Health (Cal/OSHA), any local air quality management district with jurisdiction over the Site, the County, and all other applicable federal, State and local governmental entities. This compliance and responsibility includes, but is not limited to, dust control mitigation measures and a monitoring plan.

10.5.5 INDEMNIFICATION BY CONTRACTOR FOR HAZARDOUS MATERIAL CAUSED BY CONTRACTOR

If the presence of hazardous materials on the Site is caused by Contractor, Subcontractors, materialmen or suppliers, then the Contractor shall pay for all costs of testing and remediation, if any, and shall compensate the Owner for any additional costs incurred as a result of the generation of hazardous material on the Project Site. In addition, the Contractor shall defend, indemnify and hold harmless Owner and its agents, officers, and employees from and against any and all claims, damages, losses, costs and expenses incurred in connection with, arising out of, or relating to, the presence of hazardous material on the Site, except to the extent the claims, damages, losses, costs, or expenses were caused by Owner's active negligence, sole negligence or willful misconduct.

10.5.6 TERMS OF HAZARDOUS MATERIAL PROVISION

The terms of this Hazardous Material provision shall survive the Completion of the Work and/or any termination of this Contract.

10.5.7 ARCHEOLOGICAL MATERIALS

If the Contractor encounters or reasonably suspects the presence on the Site of archeological materials, then the Contractor shall immediately stop Work in the area affected and report the condition to the Owner and the Architect in writing. The Work in the affected area shall not thereafter be resumed, except after Contractor's receipt of written notice from the Owner.

ARTICLE 11
INSURANCE AND BONDS

11.1. CONTRACTOR'S LIABILITY INSURANCE

11.1.1 LIABILITY INSURANCE REQUIREMENTS

11.1.1 Before commencement of the Work and within limits acceptable to the Owner, the Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in California as admitted carriers with a financial rating of at least A+, Class XII status as rated in the most recent edition of Best's Insurance Reports such commercial general liability insurance per occurrence for bodily injury, personal injury and property damage as set forth in the Agreement and automobile liability insurance per accident for bodily injury and property damage combined single limit as set forth in the Agreement as will protect the Contractor from claims set forth below, which may arise out of or result from the Contractor's operations under the Contract and for which the Contractor may be legally liable, whether such operations are by the Contractor, by a Subcontractor, by Sub-subcontractor, by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

11.1.1.1 claims for damages because of bodily injury (including emotional distress), sickness, disease, or death of any person other than the Contractor's employees. This coverage shall be provided in a form at least as broad as Insurance Services Office (ISO) Form CG 0001 11188;

11.1.1.2 claims for damages arising from personal or advertising injury in a form at least as broad as ISO Form CG 0001 11188;

11.1.1.3 claims for damages because of injury or destruction of tangible property, including loss of use resulting therefrom, arising from operations under the Contract Documents; and

11.1.1.4 claims for damages because of bodily injury, death of a person, or property damage arising out of the ownership, maintenance, or use of a motor vehicle, all mobile equipment, and vehicles moving under their own power and engaged in the Work; and

11.1.1.5 claims involving blanket contractual liability applicable to the Contractor's obligations under the Contract Documents, including liability assumed by and

the indemnity and defense obligations of the Contractor and the Subcontractors; and

11.1.1.6 claims involving Completed Operations, Independent Contractors' coverage, and Broad Form property damage, without any exclusions for collapse, explosion, demolition, underground coverage, and excavating. (XCU)

If commercial general liability insurance or another insurance form with a general aggregate limit is used, then either the general aggregate limit shall apply separately to the project location (with the ISO CG 2501 or insurer's equivalent endorsement provided to the Owner) or the general aggregate limit shall be twice the required occurrence limit.

Any deductible or self-insured retention must be declared to and approved by the Owner. At the option of the Owner, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Owner, its Board of Trustees, members of its Board of Trustees, officers, employees, agents and volunteers; or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

11.1.2 SUBCONTRACTOR INSURANCE REQUIREMENTS

The Contractor shall require its Subcontractors and any Sub-subcontractors to take out and maintain similar public liability insurance and property damage insurance, in a company or companies lawfully authorized to do business in California as admitted carriers with a financial rating of at least A+, Class XII status as rated in the most recent edition of Best's Insurance Reports, in like amounts and scope of coverage.

11.1.3 OWNER'S INSURANCE

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance. Optionally, the Owner may purchase and maintain other insurance for self-protection against claims which may arise from operations under the Contract. The Contractor shall not be responsible for purchasing and maintaining this optional Owner's liability insurance unless specifically required by the Contract Documents.

11.1.4 ADDITIONAL INSURED ENDORSEMENT REQUIREMENTS

The Contractor shall name, on any policy of insurance (except worker's compensation or professional liability policies), the Owner (including its authorized representatives; see Section 2.1, above) as additional insureds. Subcontractors shall name the Contractor and the Owner as additional insureds. The Additional Insured Endorsement included on all such insurance policies shall state that coverage is afforded the additional insured with respect to claims arising out of operations performed by or on behalf of the insured. If the additional insureds have other insurance which is applicable to the loss, then such other insurance shall be excess to any policy of insurance required herein. The amount of the insurer's liability shall not be reduced by the existence of such other insurance.

11.1.5 WORKERS' COMPENSATION INSURANCE

During the term of this Contract, the Contractor shall provide workers' compensation insurance for all of the Contractor's employees engaged in Work under this Contract on or at the Site of the Project and, in case any of the Contractor's work is sublet, the Contractor shall require the Subcontractor to provide workers' compensation insurance for all the Subcontractor's employees engaged in Work under the subcontract. Any class of employee or employees not covered by a Subcontractor's insurance shall be covered by the Contractor's insurance. In case any class of employees engaged in Work under this Contract on or at the Site of the Project is not protected under the Workers' Compensation laws, the Contractor shall provide or cause a Subcontractor to provide adequate insurance coverage for the protection of those employees not otherwise protected. The Contractor shall file with the Owner certificates of insurance as required under this Article and in compliance with Labor Code section 3700.

If the contractor fails to maintain such insurance, then the Owner may take out compensation insurance which the Owner might be liable to pay under the provisions of the Act by reason of an employee of the Contractor being injured or killed, and withhold from Sublease Payments the amount of the premium for such insurance.

11.1.6 BUILDER'S RISK/"ALL RISK" INSURANCE

11.1.6.1 COURSE-OF-CONSTRUCTION INSURANCE REQUIREMENTS

Unless provided by Owner at Owner's sole discretion, Contractor, during the progress of the Work and until final acceptance of the Work by Owner upon Completion of the entire Contract, shall maintain Builder's Risk/Course-of-Construction insurance satisfactory to the Owner, issued on a completed value basis on all insurable Work included under the Contract Documents. This insurance shall insure against all risks, including, but not limited to, the following perils: Vandalism, theft, malicious mischief, fire, sprinkler leakage, civil authority, sonic boom, explosion, collapse, flood including tidal wave (however, for projects not solely funded through revenue bonds, Contractor is only required to provide insurance for damages caused by a tidal wave up to 5% of the Total Sublease Amount [except as provided in Section 11.1.6.2, below; see Public Contract Code §7105(a)]), earthquake (however, for projects not solely funded through revenue bonds, Contractor is only required to provide insurance for damages caused by a large earthquake [i.e., one above 3.5 magnitude on the Richter Scale] up to 5% of the Total Sublease Amount [except as provided in Section 11.1.6.3, below; see Public Contract Code §7105(a)]), wind, hail, lightning, smoke, riot or civil commotion, debris removal (including demolition) and reasonable compensation for the Architect's services and expenses required as a result of such insured loss. This insurance shall provide coverage in an amount not less than the full cost to repair, replace or reconstruct the Work. Such insurance shall include the Owner, the Architect, and any other person or entity with an insurable interest in the Work as an additional named insured.

The Contractor shall submit to the Owner for its approval all items deemed to be uninsurable under the Builder's Risk/Course-of Construction insurance. The risk of the damage to the Work due to the perils covered by the Builder's Risk/Course-of-Construction insurance, as well as any other

hazard which might result in damage to the Work, is that of the Contractor and the surety, and no claims for such loss or damage shall be recognized by the Owner, nor will such loss or damage excuse the Complete and satisfactory performance of the Contract by the Contractor.

11.1.6.2 TIDAL WAVE INSURANCE

If the Contract is not solely funded through revenue bonds and Owner accepts and awards an alternate bid by Contractor for insurance coverage for a tidal wave, Contractor shall maintain, in effect during the Work and until final acceptance of the Work by Owner upon Completion of the entire Contract, insurance providing coverage for loss, destruction or damage arising out of or caused by tidal wave and other similar acts of God. This insurance shall provide coverage in an amount not less than the full cost to repair, replace or reconstruct the Work.

11.1.6.3 EARTHQUAKE INSURANCE

If the Contract is not solely funded through revenue bonds and Owner accepts and awards an alternate bid by Contractor for insurance coverage for an earthquake over 3.5 on the Richter Scale, Contractor shall maintain, in effect during the Work and until final acceptance of the Work by Owner upon Completion of the entire Contract, insurance providing coverage for loss, destruction or damage arising out of or caused by earthquake and/or other earth movement, whether seismic or volcanic in origin, over 3.5 on the Richter Scale in magnitude. This insurance shall provide coverage in an amount not less than the full cost to repair, replace or reconstruct the Work**.**

11.1.7 **CONSENT OF INSURER FOR PARTIAL OCCUPANCY OR USE**

Partial occupancy or use in accordance with the Contract Documents shall not commence until the insurance company providing property insurance has consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company and shall, without mutual consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of the insurance.

11.1.8 **FIRE INSURANCE**

Before the commencement of the Work, the Contractor shall procure, maintain, and cause to be maintained at the Contractor's expense, fire insurance on all Work included under the Contract Documents, insuring the full replacement value of such Work as well as the cost of any removal and demolition necessary to replace or repair all Work damaged by fire. The amount of fire insurance shall be subject to approval by the Owner and shall be sufficient to protect the Work against loss or damage in full until the Work is accepted by the Owner. Should the Work being constructed be damaged by fire or other causes during construction, it shall be replaced in accordance with the requirements of the drawings and specifications without additional expense to the Owner.

11.1.9 **OTHER INSURANCE**

The Contractor shall provide all other insurance required to be maintained under applicable laws, ordinances, rules, and regulations.

11.1.10 PROOF OF CARRIAGE OF INSURANCE

The Contractor shall not commence Work nor shall it allow any Subcontractor to commence Work under this Contract until all required insurance, certificates, and an Additional Insured Endorsement and Declarations Page have been obtained and delivered in duplicate to the Owner for approval subject to the following requirements:

(a) Certificates and insurance policies shall include the following clause:

> This policy shall not be non-renewed, canceled, or reduced in required limits of liability or amounts of insurance until notice has been mailed to the Owner. Date of cancellation or reduction may not be less than thirty (30) days after the date of mailing notice.

(b) Certificates of insurance shall state in particular those insured, the extent of insurance, location and operation to which the insurance applies, the expiration date, and cancellation and reduction notices.

(c) Certificates of insurance shall clearly state that the Owner and the Architect are named as additional insureds under the policy described and that such insurance policy shall be primary to any insurance or self-insurance maintained by Owner and any other insurance carried by the Owner with respect to the matters covered by such policy shall be excess and non-contributing.

(d) The Contractor and its Subcontractors shall produce a certified copy of any insurance policy required under this Section upon written request of the Owner.

11.1.11 COMPLIANCE

If any contractor fails to furnish and maintain any insurance required by this Article, then the Contractor shall be in default under the Contract. Compliance by Contractor with the requirement to carry insurance and furnish certificates, policies, Additional Insured Endorsement and Declarations Page evidencing the same shall not relieve the Contractor from liability assumed under any provision of the Contract Documents, including, without limitation, the obligation to defend and indemnify the Owner and the Architect.

11.2 PERFORMANCE AND PAYMENT BONDS

11.2.1 BOND REQUIREMENTS

Unless otherwise specified in the Contract Documents, prior to commencing any portion of the Work, the Contractor shall apply for and furnish Owner separate payment and performance bonds

for its portion of the Work which shall cover 100% faithful performance of and payment of all obligations arising under the Contract Documents and/or guaranteeing the payment in full of all claims for labor performed and materials supplied for the Work. All bonds shall be provided by a corporate surety authorized and admitted to transact business in California. All bonds shall be submitted on the Owner's approved form.

To the extent, if any, that the Total Sublease Amount is increased in accordance with the Contract Documents, the Contractor shall cause the amount of the bonds to be increased accordingly and shall promptly deliver satisfactory evidence of such increase to the Owner. To the extent available, the bonds shall further provide that no change or alteration of the Contract Documents (including, without limitation, an increase in the Total Sublease Amount, as referred to above), extensions of time, or modifications of the time, terms, or conditions of payment to the Contractor will release the surety. If the Contractor fails to furnish the required bond, then the Owner may terminate the Contract for cause.

11.2.2 SURETY QUALIFICATION

Only bonds executed by admitted Surety insurers as defined in Code of Civil Procedure section 995.120 shall be accepted. The surety insurers must, unless otherwise agreed to by Owner in writing, at the time of issuance of the bonds, have a rating not lower than "A-" as rated by A.M. Best Company, Inc. or other independent rating companies. Owner reserves the right to approve or reject the surety insurers selected by Contractor and to require Contractor to obtain bonds from surety insurers satisfactory to the Owner.

ARTICLE 12
UNCOVERING AND CORRECTION OF WORK

12.1 UNCOVERING OF WORK

12.1.1 UNCOVERING WORK FOR REQUIRED INSPECTIONS

If a portion of the Work is covered contrary to the Owner's request or to requirements specifically expressed in the Contract Documents, then Contractor must, if so required in writing by the Owner, uncover it for the Owner's observation and replace the removed work at the Contractor's expense without change in the Total Sublease Amount , Date for Completion, or a Milestone Deadline.

12.1.2 COSTS FOR INSPECTIONS NOT REQUIRED

If a portion of the Work has been covered which the Owner has not specifically requested to observe prior to its being covered, then the Owner may request to see such Work, and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, then costs of uncover and replacement shall, by appropriate Change Order, be paid by the Owner. If such Work is not in accordance with Contract Documents, then the Contractor shall pay such costs, unless the condition was caused by the Owner or a separate contractor, in which event the Owner shall be responsible for payment of such costs to the Contractor.

12.2 CORRECTION OF WORK; WARRANTY

12.2.1 CORRECTION OF REJECTED WORK

The Contractor shall promptly correct Work rejected by the Owner prior to Completion for failure to conform to the requirements of the Contract Documents. The Contractor shall bear costs of correcting the rejected work, including additional testing, inspections, and compensation for the Owner's expenses and costs incurred.

12.2.2 REMOVAL OF NONCONFORMING WORK

The Contractor shall remove from the Site portions of the Work which are not in accordance with the requirements of the Contract Documents and are not corrected by the Contractor or accepted or approved by the Owner.

12.2.3 OWNER'S RIGHTS IF CONTRACTOR FAILS TO CORRECT

If the Contractor fails to correct nonconforming Work within a reasonable time, then Owner may correct it in accordance with Section 2.4. As part of Owner's correction of the Work, the Owner may remove any portion of the nonconforming Work and store any salvageable materials or equipment at the Contractor's expense. If the Contractor does not pay costs of such removal and storage within ten (10) days after written notice, then Owner may upon ten (10) additional days written notice sell such material or equipment at auction or at private sale and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Contractor, including compensation for the Architect's and other professionals and representatives' services and expenses, made necessary thereby. If such proceeds of sale do not cover costs which the Contractor should have borne, then Contractor shall be invoiced for the deficiency or Owner may withhold such costs from payment pursuant to Section 9.5. If Sublease Payments then or thereafter due the Contractor are not sufficient to cover such amount, then Contractor shall pay the difference to the Owner.

12.2.4 COST OF CORRECTING THE WORK

The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or separate contractors, whether Completed or partially Completed, caused by the Contractor's correction or removal of the nonconforming Work.

12.2.5 WARRANTY CORRECTIONS (INCLUDES REPLACEMENT)

Pursuant to the warranty in Sections 3.5 and 9.7.1, if within one (1) year after the Completion of the Work (or within a longer time period for an applicable special warranty or guarantee required by the Contract Documents) any of the Work does not comply with the Contract Documents, the Contractor shall correct it after receipt of Owner's written notice to do so. Contractor shall correct the Work promptly, and passage of the applicable warranty period shall not release Contractor from its obligation to correct the Work if Owner provided the written notice within the applicable warranty period. Contractor's obligation to correct the warranty item continues until the correction

is made. After the correction is made to Owner's satisfaction, a new warranty period of the same length as the original warranty period shall run on the corrected work. The obligations under this paragraph 12.2.5 shall survive acceptance of the Work under the Contract and termination of the Contract.

12.2.6 NO TIME LIMITATION

Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations which the Contractor might have under the Contract Documents. Establishment of the time period of one (1) year as described in Sections 3.5, 9.7.1, and 12.2.5 relates only to the specific warranty obligation of the Contractor to correct the Work after the date of commencement of warranties, and has, for example, no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, or to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations under the Contract Documents (including but not limited to a patent or latent deficiency).

12.3 NONCONFORMING WORK AND WITHHOLDING THE VALUE OF IT

If it is found at any time before Completion of the Work that the Contractor has varied from the Contract Documents in materials, quality, form, finish, or in the amount or value of the materials or labor used, then the Owner may, in addition to other remedies in the Contract Documents or under law and as allowed by law, accept the improper Work. The Owner may withhold from any amount due or to become due Contractor that sum of money equivalent to the difference in value between the Work performed and that called for by the Drawings and Specifications. The Owner shall determine such difference in value. No structural related Work shall be accepted that is not in conformance with the Contract Documents.

ARTICLE 13
MISCELLANEOUS PROVISIONS

13.1 GOVERNING LAW

The Contract shall be governed by the law of the place where the Project is located.

13.2 SUCCESSORS AND ASSIGNS

The Owner and the Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to the other party hereto and to partners, successors, assigns, and legal representatives of such other party in respect to covenants, agreements, and obligations contained in the Contract Documents. Neither party to the Contract shall assign the Contract as a whole or in part without written consent of the other. If either party attempts to make such an assignment without such consent, then that party shall nevertheless remain legally responsible for all obligations under the Contract.

13.3 WRITTEN NOTICE

In the absence of specific notice requirements in the Contract Documents, any written notice required by the Contract Documents shall be deemed to have been duly served if delivered in person to the individual, member of the firm or entity, or to an officer of the corporation for which it was intended, or if delivered at or sent by registered or certified or overnight mail to the last business address known to the party giving notice. Owner shall, at Contractor's cost, timely notify Contractor of Owner's receipt of any third party claims relating to the Contract pursuant to Public Contract Code section 9201.

13.4 RIGHTS AND REMEDIES

13.4.1 DUTIES AND OBLIGATIONS CUMULATIVE

Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

13.4.2 NO WAIVER

No action or failure to act by the Owner, Inspector of Record, Architect or any construction manager shall constitute a waiver of a right or duty afforded them under the Contract Documents, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed to in a written amendment to the Contract.

13.5 TESTS AND INSPECTIONS

13.5.1 COMPLIANCE

Tests, inspections, and approvals of portions of the Work required by the Contract Documents will comply with Title 24, and with all other laws, ordinances, rules, regulations, or orders of public authorities having jurisdiction.

13.5.2 INDEPENDENT TESTING LABORATORY

The Owner will select and pay an independent testing laboratory to conduct all tests and inspections, including shipping or transportation costs or expenses (mileage and hours). Selection of the materials required to be tested shall be made by the laboratory and not by the Contractor. However, if Contractor requests that the Owner use a different testing laboratory and Owner chooses to approve such request, then Contractor shall reimburse the Owner for any additional shipping or transportation costs or expenses (mileage and hours). Owner may invoice such costs or expenses to the Contractor or withhold such costs or expenses from Sublease Payments.

13.5.3 ADVANCE NOTICE TO INSPECTOR OF RECORD

The Contractor shall notify the Inspector of Record a sufficient time in advance of its readiness for required observation or inspection so that the Inspector of Record may arrange for same. The

Contractor shall notify the Inspector of Record a sufficient time in advance of the manufacture of material to be supplied under the Contract Documents which must, by terms of the Contract Documents, be tested in order that the Inspector of Record may arrange for the testing of the material at the source of supply.

13.5.4 TESTING OFF-SITE

Any material shipped by the Contractor from the source of supply, prior to having satisfactorily passed such testing and inspection or prior to the receipt of notice from said Inspector of Record that such testing and inspection will not be required, shall not be incorporated in the Work.

13.5.5 ADDITIONAL TESTING OR INSPECTION

If the Inspector of Record, the Architect, the Owner, or public authority having jurisdiction determines that portions of the Work require additional testing, inspection, or approval not included under section 13.5.1, then the Inspector of Record will, upon written authorization from the Owner, make arrangements for such additional testing, inspection, or approval. The Owner shall bear such costs except as provided in section 13.5.6.

13.5.6 COSTS FOR RETESTING

If such procedures for testing, inspection, or approval under sections 13.5.1, 13.5.2 and 13.5.5 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, then the Contractor shall bear all costs arising from such failure, including those of re-testing, re-inspection, or re-approval, including, but not limited to, compensation for the Architect's services and expenses. Any such costs shall be paid by the Owner, invoiced to the Contractor, and, among other remedies, can be withheld from Sublease Payments.

13.5.7 COSTS FOR PREMATURE TEST

If the Contractor requests any test or inspection for the Project and is not completely ready for the inspection, then the Contractor shall be invoiced by the Owner for all costs and expenses resulting from that testing or inspection, including, but not limited to, the Architect's fees and expenses, and the amount of the invoice can among other remedies, be withheld from Sublease Payments.

13.5.8 TESTS OR INSPECTIONS NOT TO DELAY WORK

Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

13.6 INTENTIONALLY LEFT BLANK

13.7 TRENCH EXCAVATION

13.7.1 TRENCHES GREATER THAN FIVE FEET

Pursuant to Labor Code section 6705, if the Total Sublease Amount exceeds $25,000 and involves the excavation of any trench or trenches five (5) feet or more in depth, then the Contractor shall, in advance of excavation, submit to the Owner or a registered civil or structural engineer employed by the Owner a detailed plan showing the design of shoring for protection from the hazard of caving ground during the excavation of such trench or trenches.

13.7.2 EXCAVATION SAFETY

If such plan varies from the Shoring System Standards established by the Construction Safety Orders, then the plan shall be prepared by a registered civil or structural engineer, but in no case shall such plan be less effective than that required by the Construction Safety Orders. No excavation of such trench or trenches shall be commenced until said plan has been accepted by the Owner or by the person to whom authority to accept has been delegated by the Owner.

13.7.3 NO TORT LIABILITY OF OWNER

Pursuant to Labor Code section 6705, nothing in this Article shall impose tort liability upon the Owner or any of its employees.

13.7.4 NO EXCAVATION WITHOUT PERMITS

The Contractor shall not commence any excavation work until it has secured all necessary permits including the required CAL OSHA excavation/shoring permit. Any permits shall be prominently displayed on the Site prior to the commencement of any excavation.

13.8 WAGE RATES

13.8.1 WAGE RATES

Pursuant to the provisions of Article 2 (commencing at § 1770), Chapter 1, Part 7, Division 2, of the Labor Code, the governing board of the Owner has obtained the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality in which this public work is to be performed for each craft, classification, or type of worker needed for this Project from the Director of Industrial Relations ("Director"). These rates are on file with the Clerk of the Owner's governing board, and copies will be made available to any interested party on request.

13.8.2 HOLIDAY AND OVERTIME PAY

Holiday and overtime work, when permitted by law, shall be paid for at a rate of at least one and one-half (1½) times the above specified rate of per diem wages, unless otherwise specified. Holidays shall be defined in the Collective Bargaining Agreement applicable to each particular craft, classification, or type of worker employed.

13.8.3 WAGE RATES NOT AFFECTED BY SUBCONTRACTS

The Contractor shall pay and shall cause to be paid each worker engaged in the Work not less than the general prevailing rate of per diem wages determined by the Director, regardless of any contractual relationship which may be alleged to exist between the Contractor or any Subcontractor and such workers.

13.8.4 CHANGE IN PREVAILING WAGE DURING BID OR CONSTRUCTION

If during the period this bid is required to remain open, the Director of Industrial Relations determines that there has been a change in any prevailing rate of per diem wages in the locality in which this public work is to be performed, then such change shall not alter the wage rates discussed in the Notice to Bidders or the Contract subsequently awarded.

13.8.5 FORFEITURE AND PAYMENTS

Pursuant to Labor Code section 1775, the Contractor and any subcontractor under the Contractor shall as a penalty to the Owner, forfeit not more than two hundred dollars ($200.00) for each calendar day, or portion thereof, for each worker paid less than the prevailing rate of per diem wages, determined by the Director, for such craft or classification in which such worker is employed for any public work done under the Agreement by the Contractor or by any Subcontractor under it. Minimum penalties shall apply, as also provided in Civil Code section 1775. The amount of the penalty shall be determined by the Labor Commissioner and shall be based on both of the following: (1) whether the failure of the contractor or subcontractor to pay the correct rate of per diem wages was a good faith mistake and, if so, the error was promptly and voluntarily corrected upon being brought to the attention of the contractor or subcontractor; and (2) whether the contractor or subcontractor has a prior record of failing to meet its prevailing wage obligations. The difference between such prevailing rate of per diem wage and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing rate of per diem wage shall be paid to each work by the Contractor or subcontractor. Labor Code section 1777.1 shall also apply.

13.8.6 MINIMUM WAGE RATES

Any worker employed to perform Work, which Work is not covered by any craft or classification listed in the general prevailing rate of per diem wages determined by the Director, shall be paid not less than the minimum rate of wages specified therein for the craft or classification which most nearly corresponds to the Work to be performed by them, and such minimum wage rate shall be retroactive to time of initial employment of such person in such craft or classification.

13.8.7 PER DIEM WAGES

Pursuant to Labor Code section 1773.1, per diem wages includes employer payments for health and welfare, pension, and vacation pay.

13.8.8 POSTING OF WAGE RATES

The Contractor shall post at appropriate conspicuous points on the Site, a schedule showing all determined minimum wage rates and all authorized deductions, if any, from unpaid wages actually earned and all other required job site notices as prescribed by regulation.

13.9 RECORD OF WAGES PAID; INSPECTION

13.9.1 APPLICATION OF LABOR CODE

Pursuant to section 1776 of the Labor Code:

(a) Each Contractor and subcontractor shall keep accurate payroll records, showing the name, address, social security number, work classification, and straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work. Each payroll record shall contain or be verified by a written declaration that is made under penalty of perjury, stating both of the following:

(1) The information contained in the payroll record is true and correct.

(2) The employer has complied with the requirements of sections 1771, 1811 and 1815 for any work performed by his or her employees on the public works project.

(b) The payroll records enumerated under subdivision (a) shall be certified and shall be available for inspection at all reasonable hours at the principal office of the Contractor on the following basis:

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

(2) A certified copy of all payroll records enumerated in subdivision (a) shall be made available for inspection or furnished upon request to a representative of the body awarding the contract and as may be required by the Labor Commissioner under Labor Code section 1771.4. The Contractor and each subcontractor shall furnish a certified copy of all payroll records directly to the Labor Commissioner monthly or more frequently, if so specified in the Agreement and in a format the Labor Commissioner prescribes.

(3) A certified copy of all payroll records enumerated in subdivision (a) shall be made available upon request by the public for inspection or for copies thereof. However, a request by the public shall be made through either the Owner or the Division of Labor Standards Enforcement of the Department of Industrial Relations ("DIR"). If the requested payroll records have not been provided pursuant to paragraph (2), the requesting party shall, prior to being provided the records, reimburse the costs of the preparation by the contractor, subcontractors, and the entity through which the request

was made. The public may not be given access to such records at the principal office of the Contractor.

(c) Unless required as of January 1, 2015, to be furnished directly to the Labor Commissioner under Labor Code section 1771.4(a)(3), the certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement of the DIR or shall contain the same information as the forms provided by the division. The payroll records may consist of printouts of payroll data that are maintained as computer records, if the printouts contain the same information as the forms provided by the division and the printouts are verified in the manner specified in (a) above.

(d) A Contractor or subcontractor shall file a certified copy of the records enumerated in subdivision (a) with the entity that requested such records within 10 days after receipt of a written request.

(e) Except as provided in subdivision (f), any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the awarding body or the Division of Labor Standards Enforcement of the DIR shall be marked or obliterated to prevent disclosure of an individual's name, address and social security number. The name and address of the Contractor awarded the Contract or the subcontractor performing the Contract shall not be marked or obliterated. Any copy of records made available for inspection by, or furnished to, a multiemployer Taft-Hartley trust fund (29 U.S.C. Sec. 186(c)(5) that requests the records for the purposes of allocating contributions to participants shall be marked or obliterated only to prevent disclosure of an individual's full social security number, but shall provide the last four digits of the social security number. Any copy of records made available for inspection by, or furnished to, a joint labor-management committee established pursuant to the federal Labor Management Cooperation Act of 1978 (29 U.S.C. Sec. 175a) shall be marked or obliterated only to prevent disclosure of an individual's social security number.

(f) Notwithstanding any other provision of law, agencies that are included in the Joint Enforcement Strike Force on the Underground Economy established pursuant to Section 329 of the Unemployment Insurance Code and other law enforcement agencies investigating violations of law shall, upon request, be provided non-redacted copies of certified payroll records. Any copies of records or certified payroll made available for inspection and furnished upon request to the public by an agency included in the Joint Enforcement Strike Force on the Underground Economy or to a law enforcement agency investigating a violation of law shall be marked or redacted to prevent disclosure of an individual's name, address, and social security number. An employer shall not be liable for damages in a civil action for any reasonable act or omission taken in good faith in compliance with this subsection.

(g) The contractor shall inform the Owner of the location of the records enumerated under subdivision (a), including the street address, city and county, and shall, within five working days, provide a notice of a change of location and address.

(h) The contractor or subcontractor has 10 days in which to comply subsequent to receipt of written notice requesting the records enumerated in subdivision (a). If the Contractor or subcontractor fails to comply within the 10-day period, he or she shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit one hundred dollars ($100.00) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Labor Standards Enforcement of the DIR, these penalties shall be withheld from progress payments then due. A contractor is not subject to a penalty assessment pursuant to this section due to the failure of the subcontractor to comply with this section.

13.10 APPRENTICES

13.10.1 APPRENTICE WAGES AND DEFINITIONS

All apprentices employed by the Contractor to perform services under the Contract shall be paid the standard wage paid to apprentices under the regulations of the craft or trade at which he or she is employed, and shall be employed only at the work of the craft or trade to which he or she is registered. Only apprentices, as defined in section 3077 of the Labor Code, who are in training under apprenticeship standards and written apprenticeship agreements under Chapter 4 (commencing with § 3070) of Division 3, are eligible to be employed under this Contract. The employment and training of each apprentice shall be in accordance with the apprenticeship standards and apprentice agreements under which he or she is training. Contractor shall pay apprentices for any pre-employment activities, as set forth in Labor Code section 1777.5.

13.10.2 APPRENTICE LABOR POOL

When the Contractor to whom the Contract is awarded by the Owner, or any Subcontractor under him or her, in performing any of the Work under the Contract or subcontract, employs workers in any apprenticeable craft or trade, the Contractor and Subcontractor shall apply to the joint apprenticeship committee administering the apprenticeship standards of the craft or trade in the area of the Site of the Project, for a certificate approving the Contractor or Subcontractor under the apprenticeship standards for the employment and training of apprentices in the area or industry affected. However, approval as established by the joint apprenticeship committee or committees shall be subject to the approval of the Administrator of Apprenticeship. The joint apprenticeship committee or committees, subsequent to approving the subject Contractor or Subcontractor, shall arrange for the dispatch of apprentices to the Contractor or Subcontractor in order to comply with this section. Every Contractor and Subcontractor shall submit the contract award information to the applicable joint apprenticeship committee which shall include an estimate of journeyman hours to be performed under the Contract, the number of apprentices to be employed, and the approximate dates the apprentices will be employed. There shall be an affirmative duty upon the joint apprenticeship committee or committees administering the apprenticeship standards of the crafts or trade in the area of the Site of the public work, to ensure equal employment and affirmative action and apprenticeship for women and minorities. Contractors or Subcontractors shall not be required to submit individual applications for approval to local joint apprenticeship committees provided they are already covered by the local apprenticeship standards. The ratio of work

performed by apprentices to journeymen, who shall be employed in the craft or trade on the Project, may be the ratio stipulated in the apprenticeship standards under which the joint apprenticeship committee operates, but, except as otherwise provided in this section, in no case shall the ratio be less than one (1) hour of apprentice work for every five (5) hours of labor performed by a journeyman. However, the minimum ratio for the land surveyor classification shall not be less than one (1) apprentice for each five (5) journeymen.

13.10.3 **JOURNEYMAN/APPRENTICE RATIO; COMPUTATION OF HOURS**

Any ratio shall apply during any day or portion of a day when any journeyman, or the higher standard stipulated by the joint apprenticeship committee, is employed at the job Site and shall be computed on the basis of the hours worked during the day by journeymen so employed, except for the land surveyor classification. The Contractor shall employ apprentices for the number of hours computed as above before the end of the Contract. However, the Contractor shall endeavor, to the greatest extent possible, to employ apprentices during the same time period that the journeymen in the same craft or trade are employed at the job Site. Where an hourly apprenticeship ratio is not feasible for a particular craft or trade, the Division of Apprenticeship Standards, upon application of a joint apprenticeship committee, may order a minimum ratio of not less than one (1) apprentice for each five (5) journeymen in a craft or trade classification.

13.10.4 **JOURNEYMAN/APPRENTICE RATIO**

The Contractor or Subcontractor, if he or she is covered by this section upon the issuance of the approval certificate, or if he or she has been previously approved in the craft or trade, then shall employ the number of apprentices or the ratio of apprentices to journeymen stipulated in the apprenticeship standards. Upon proper showing by the Contractor that he or she employs apprentices in the craft or trade in the state on all of his or her contracts on an annual average of not less than one (1) hour of apprentice work for every five (5) hours of labor performed by a journeyman, or in the land surveyor classification, one (1) apprentice for each five (5) journeymen, the Division of Apprenticeship Standards may grant a certificate exempting the Contractor from the 1-to-5 hourly ratio as set forth in this section. This section shall not apply to contracts of general contractors or to contracts of specialty contractors not bidding for work through a general or prime contractor, when the contracts of general contractors or those specialty contractors involve less than Thirty Thousand Dollars ($30,000) or twenty (20) working days. Any work performed by a journeyman in excess of eight (8) hours per day or forty (40) hours per week, shall not be used to calculate the hourly ratio required by this section.

13.10.4.1 ***Apprenticeable Craft or Trade.*** "Apprenticeable craft or trade" as used in this Article means a craft or trade determined as an apprenticeable occupation in accordance with the rules and regulations prescribed by the California Apprenticeship Council. The joint apprenticeship committee shall have the discretion to grant a certificate, which shall be subject to the approval of the Administrator of Apprenticeship, exempting a Contractor from the 1-to-5 ratio set forth in this Article when it finds that any one of the following conditions is met:

A. Unemployment for the previous three-month period in the area exceeds an average of fifteen percent (15%).

B. The number of apprentices in training in such area exceeds a ratio of 1-to-5.

C. There is a showing that the apprenticeable craft or trade is replacing at least one-thirtieth (1/30) of its journeymen annually through the apprenticeship training, either on a statewide basis or on a local basis.

D. Assignment of an apprentice to any work performed under this contract would create a condition which would jeopardize his or her life or the life, safety, or property of fellow employees or the public at large or if the specific task to which the apprentice is to be assigned is of such a nature that training cannot be provided by a journeyman.

13.10.5 RATIO EXEMPTION

When exemptions are granted to an organization which represents Contractors in a specific trade from the 1-to-5 ratio on a local or statewide basis, the member Contractors will not be required to submit individual applications for approval to local joint apprenticeship committees, if they are already covered by the local apprenticeship standards.

13.10.6 APPRENTICE FUND

A Contractor to whom the Contract is awarded or any Subcontractor under him or her, who, in performing any of the work under the Contract, employs journeymen or apprentices in any apprenticeable craft or trade and who is not contributing to a fund or funds to administer and conduct the apprenticeship program in any such craft or trade in the area of the Site of the Project, to which fund or funds other contractors in the area of the Site of the Project are contributing, shall contribute to the fund or funds in each craft or trade in which he or she employs journeymen or apprentices on the Project in the same amount or upon the same basis and in the same manner as the other contractors do, but where the trust fund administrators are unable to accept the funds, contractors not signatory to the trust agreement shall pay a like amount to the California Apprenticeship Council. The Contractor or Subcontractor may add the amount of the contributions in computing his or her bid for the contract. The Division of Labor Standards Enforcement is authorized to enforce the payment of the contributions to the fund or funds as set forth in the Labor Code section 227.

13.10.7 PRIME CONTRACTOR COMPLIANCE

The responsibility of compliance with section 13.10 and section 1777.5 of the Labor Code for all apprenticeable occupations is with the Prime Contractor.

13.10.8 DECISIONS OF JOINT APPRENTICESHIP COMMITTEE

All decisions of the joint apprenticeship committee under this section 13.10 and Labor Code section 1777.5 are subject to Labor Code section 3081.

13.10.9 NO BIAS

It shall be unlawful for an employer or a labor union to refuse to accept otherwise qualified employees as registered apprentices on any public works on the grounds of race, religious creed, color, national origin, ancestry, sex, or age, except as provided in the Labor Code section 3077.

13.10.10 VIOLATION OF LABOR CODE

Pursuant to Labor Code sections 1777.1 and 1777.7, if a Contractor or Subcontractor fails to comply with the provisions of this section 13.10 and Labor Code section 1777.5, among other things:

(a) If a contractor or subcontractor willfully fails to comply, the Labor Commissioner may deny to the contractor or subcontractor, and to its responsible officers, the right to bid on, or be awarded or perform work as a subcontractor on, any public works project for a period of up to one year for the first violation and for a period of up to three years for the second and subsequent violation. Each period of debarment shall run from the date the determination of noncompliance by the Labor Commissioner becomes a final order.

(b) A contractor or subcontractor who violates section 1777.5 shall forfeit as a civil penalty an amount not exceeding the sum of one hundred dollars ($100) for each full calendar day of noncompliance. Upon receipt of a determination that a civil penalty has been imposed, the awarding body shall enforce the penalty, which includes withholding the amount of the civil penalty from the Sublease Payments then due or to become due.

(c) In lieu of the penalty provided, the Labor Commissioner may for a first time violation and with the concurrence of an applicable apprenticeship program, order the contractor or subcontractor to provide apprentice employment equivalent to the work hours that would have been provided for apprentices during the period of noncompliance.

(d) Any funds withheld by the awarding body pursuant to this section shall be deposited in the General Fund.

(e) The interpretation and enforcement of section 1777.5 and this section shall be in accordance with the regulations of the California Apprenticeship Council.

Pursuant to Public Contract Code section 6109, no contractor or subcontractor may bid on, be awarded, or perform work as a subcontractor on a public works project if ineligible to bid or work on, or be awarded, a public works project pursuant to section 1777.1 of the Labor Code.

13.11 ASSIGNMENT OF ANTITRUST CLAIMS

13.11.1 APPLICATION

Pursuant to Public Contract Code section 7103.5 and Government Code section 4552, in entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, the Contractor or Subcontractor offers and agrees to assign to the Owner all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act, (15 U.S.C. § 15) or under the Cartwright Act (Chapter 2 [commencing with § 16700] of Part 2 of Division 7 of the Bus. & Prof. Code), arising from the purchase of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the Owner tenders Final Sublease Payment to the Contractor, without further acknowledgment by the parties. If the Owner receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under Chapter 11 (commencing with § 4550) of Division 5 of Title 1 of the Government Code, then the assignor may, upon demand, recover from the Owner any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the Owner as part of the bid price, less the expenses incurred in obtaining that portion of the recovery.

13.11.2 ASSIGNMENT OF CLAIM

Upon demand in writing by the assignor, the Owner shall, within one (1) year from such demand, reassign the cause of action assigned pursuant to this Article if the assignor has been or may have been injured by the violation of law for which the cause of action arose and the Owner has not been injured thereby or the Owner declines to file a court action for the cause of action.

13.12 AUDIT

Pursuant to and in accordance with the provisions of Government Code section 8546.7, or any amendments thereto, all books, records, and files of the Owner, the Contractor, or any Subcontractor connected with the performance of this Contract involving the expenditure of state funds in excess of Ten Thousand Dollars ($10,000.00), including, but not limited to, the administration thereof, shall be subject to the examination and audit of the Office of the Auditor General of the State of California for a period of three (3) years after the final Sublease Payment under this Contract. Contractor shall preserve and cause to be preserved such books, records, and files for the audit period.

During the progress of the Work and for three (3) years after the final sublease payment under the Contract, Owner shall also have the right to an audit of all of Contractor's documents (both electronic and hard copy) related to the project, including but not limited to books, records, subcontracts, material and equipment contracts, and files, and Contractor must cooperate by producing all requested items within seven (7) days for inspection or copying by Owner.

13.13 STORM WATER DISCHARGE PERMIT

If applicable, the Contractor shall file a Notice of Intent to comply with the terms of the general permit to discharge storm water associated with construction activity (WQ Order No. 920-08-DWQ). The Notice of Intent must be sent to the following address along with the appropriate payment (warrant to be furnished by the Owner upon request by the Contractor, allow warrant processing time.): California State Water Resources Control Board, Division of Water Quality, Storm Water Permit Unit, P.O. Box 1977, Sacramento, CA 95812-1977. The Contractor may also call the State Water Board's Construction Activity Storm Water Hotline at (916) 657-1146. The Notice of Intent shall be filed prior to the start of any construction activity.

13.14 USE OF LEAD PAINT, PLUMBING, ETC. PROHIBITED {TC "13.14 USE OF LEAD PAINT, PLUMBING, ETC. PROHIBITED"}

New school facilities under construction, or school facilities undergoing a modernization or renovation program, shall not utilize lead-based paint, lead plumbing or solders, or other potential sources of lead contamination (added by stats. 1992, c. 1317 (A.B. 1659) of General Education Code Provisions).

The California Health and Safety Code, Section 116875, effective January 1, 2010, states in part and requires that, no person shall use any pipe, pipe or plumbing fitting or fixture, or solder or flux that is not lead free in the installation or repair of any public water system or any plumbing in a facility providing for human consumption.

Water from new, contractor-installed drinking water fixtures shall meet current EPA requirements for drinking water. Drinking water fixtures will be considered non-compliant items subject to correction at no additional cost to the Owner. Drinking water fixtures include all fixtures that are likely sources of drinking water including but not limited to; drinking fountains, classroom sinks and bubblers, kitchen sinks, faculty sinks and nurse sinks.

Contractor shall adequately flush all newly installed drinking water fixtures prior to testing. Drinking water fixtures shall be flushed multiple times daily for a minimum of two weeks prior to testing.

Where drinking water fixtures have been installed but not tested, or where drinking water fixtures have not met the requirements specified herein, Contractor shall flush each fixture multiple times per day and maintain a detailed and accurate flushing log until such time acceptable testing results are achieved. At a minimum, Contractor shall be required to flush each drinking water fixture prior to the start of school each day.

Flushing logs must include dates, times and duration for each flushing event at each fixture. Contractor must sign and certify flushing logs are true and accurate and submit to the Owner on a weekly basis.

Upon completion of final cleaning, Contractor shall request final test and acceptance of dust wipe sampling for lead. Contractor shall give the Owner and Owner's Environmental Consultant forty-eight (48) hours written notice, excluding weekends and Owner holidays, of when and where testing is required. All test and acceptance dust wipe samples shall be below 10 micrograms of

lead per square foot prior to occupancy.

ARTICLE 14
TERMINATION OR SUSPENSION OF THE CONTRACT

14.1 TERMINATION BY THE CONTRACTOR FOR CAUSE

Contractor may not terminate performance for convenience. Contractor may only terminate performance for cause if the Work is stopped by others for a period of one hundred eighty (180) consecutive days through no act or fault of the Contractor, a Subcontractor of any tier, their agents or employees, or any other persons performing portions of the Work for whom the Contractor is contractually responsible, **and** the Work was stopped by others for one of the following reasons: (A) Issuance of an order of a court or other public authority having jurisdiction which requires Owner to stop all Work; or (B) an act of government, such as a declaration of national emergency, making material unavailable which requires Owner to stop all Work. If such grounds exist, then the Contractor may serve written notice of such grounds on Owner and demand a meet-and-confer conference to negotiate a resolution in good faith within twenty (20) days of Owner's receipt of such notice. If such conference does not lead to resolution and the grounds for termination still exist, then Contractor may terminate the Contract and recover from the Owner payment for Work executed and for reasonable verified costs with respect to materials, equipment, tools, construction equipment, and machinery, including reasonable overhead, profit, and damages for the Work executed, but excluding overhead (field and home office) and profit for (i) Work not performed and (ii) the period of time that the Work was stopped.

14.2 TERMINATION BY THE OWNER FOR CAUSE

14.2.1 GROUNDS FOR TERMINATION

The Owner may terminate performance of the Contract for cause if the Contractor:

A. Refuses or fails to supply enough properly skilled workers or proper materials, or refuses or fails to take steps to adequately prosecute the Work toward Completion by the Date for Completion or a Milestone Deadline;

B. Fails to make payment to Subcontractors for materials or labor in accordance with Public Contract Code section 10262 or Business and Professions Code section 7108.5, as applicable;

C. Disregards laws, ordinances, rules, regulations, or orders of a public authority having jurisdiction;

D. Violates Labor Code section 1771.1(a), subject to the provisions of Labor Code section 1771.1(f); or

E. Otherwise is in breach of the Contract Documents.

14.2.2 NOTIFICATION OF TERMINATION

When any of the above reasons exist, the Owner may, without prejudice to any other rights or remedies of the Owner, give notice to Contractor of the grounds for termination and demand cure of the grounds within seven (7) days (a "Notice of Intent to Terminate"). Owner has the discretion to include in its Notice of Intent to Terminate an option for the Contractor to reasonably commence cure of the grounds for termination within seven (7) days and reasonably continue to cure the grounds for termination until such cure is complete.

Owner may terminate the performance of the Contract for cause if (a) Contractor fails to completely cure the grounds for termination within seven (7) days, and (b) Contractor fails to reasonably commence cure of the grounds for termination within seven (7) days and reasonably continue to cure the grounds for termination until such cure is complete (if Owner had offered this alternative to Contractor in its Notice of Intent to Terminate). If the Contractor attempts to cure the grounds for termination but the attempted cure causes additional breaches of the Contract, then Owner may still terminate performance of the Contract for cause since the attempted cure would not be reasonable.

Such termination shall be effective immediately upon service of a written Notice of Termination, and Owner may, subject to any prior rights of Contractor's surety on the performance bond ("Surety"), do the following:

A. Take possession of the Site and of all material, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;

B. Accept assignment of subcontracts pursuant to section 5.4; and

C. Complete the Work by whatever reasonable method the Owner may deem expedient, including the tender of Completion to the Surety or the hire of another contractor to Complete the Work.

14.2.3 PAYMENTS

If the Owner terminates performance of the Contract for one of the reasons stated in section 14.2.1, then the Contractor shall not be entitled to receive further payment until the Work is Complete.

If the unpaid balance of the Total Sublease Amount exceeds costs of Completing the Work, including compensation for professional services and expenses made necessary thereby, then such excess shall be paid to the Contractor. If such costs exceed the unpaid balance, then the Contractor and its Surety shall pay the difference to the Owner. This payment obligation shall survive Completion of the Contract.

14.2.4 WRONGFUL TERMINATION

To claim a breach of contract or violation of law based on alleged wrongful termination for cause by the Owner, or if Contractor otherwise seeks any payment or damages related to a termination,

within fifteen (15) days of the alleged breach of contract, violation of law, or wrongful termination Contractor shall submit a Claim pursuant and subject to Sections 4.5.3-4.5.6. The Contractor need not submit a Notice of Potential Change or a Change Order Request.

14.2.5 INCLUSION OF TERMINATION FOR CONVENIENCE

Any purported termination by Owner for cause under this section 14.2, which is revoked or determined to not have been for cause, shall be deemed to have been a termination for convenience effective as of the same date as the purported termination for cause.

14.3 SUSPENSION OR TERMINATION BY THE OWNER FOR CONVENIENCE

14.3.1 SUSPENSION BY OWNER

The Owner may, without cause, order the Contractor in writing to suspend, delay, or interrupt the Work in whole or in part for such period of time as the Owner may determine.

14.3.1.1 ***Adjustments.*** An adjustment shall be made for increases in the cost of performance of the Contract, including profit on the increased cost of performance caused by suspension, delay, or interruption. No adjustment shall be made to the extent:

A. That performance is, was or would have been so suspended, delayed, or interrupted by another cause for which the Contractor is responsible; or
B. That an equitable adjustment is made or denied under another provision of this Contract.

14.3.1.2 ***Adjustments for Fixed Cost.*** Adjustments made in the cost of performance may have a mutually agreed fixed or percentage fee.

14.3.2 TERMINATION BY THE OWNER FOR CONVENIENCE

14.3.2.1 The Owner may, at any time, terminate performance of the Contract for the Owner's convenience and without cause.

14.3.2.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall:

1. Cease operations as directed by the Owner in the notice;

2. Take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and

3. Except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

14.3.2.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination.

14.4 NOT A WAIVER

Any suspension or termination by Owner of performance by Contractor for convenience or cause under this Article 14 shall not act as a waiver of any claims by Owner against Contractor or others for damages based on breach of contract, negligence or other grounds.

14.5 MUTUAL TERMINATION FOR CONVENIENCE

The Contractor and the Owner may mutually agree in writing to terminate performance of this Contract for convenience. The Contractor shall receive payment for all Work performed to the date of termination in accordance with the provisions of Article 9.

14.6 EARLY TERMINATION

Notwithstanding any provision herein to the contrary, if for any fiscal year of this Contract the governing body of the Owner fails to appropriate or allocate funds for future periodic payments under the Contract after exercising reasonable efforts to do so, then the Owner may upon thirty (30) days' notice, order work on the Project to cease. The Owner will remain obligated to pay for the work already performed but shall not be obligated to pay the balance remaining unpaid beyond the fiscal period for which funds have been appropriated or allocated and for which the work has not been done.

EXHIBIT V

CARB Compliance Declaration

CARB COMPLIANCE DECLARATION

To Be Executed by Proposer and
Submitted (including attachments) Prior to Award of Contract

Owner: Tracy Unified School District
Project: **McKinley Elementary School New Campus (Increment 2) Building Package Project**
Site: McKinley Elementary School

Background

CALIFORNIA AIR RESOURCES BOARD ("CARB") https://ww2.arb.ca.gov/

For any project awarded on or after January 1, 2024, Public Works Awarding Bodies are required to obtain valid CARB **Certificates of Reported Compliance ("CRCs")** from all contractors and listed subcontractors before awarding the contract for project. The Public Works Awarding Body will be required to retain CRCs for three years after the project is complete, and the CRCs are subject to CARB review upon five calendar days' notice.

The Regulations apply to all "Public Works Awarding Bodies," which phrase is broadly defined as "any public agency (state, county, city, school district, community college district, water district, sanitation district, transit district, etc.), or official thereof, in the state of California, that awards or enters into a contract for the erection, construction, alteration, repair, removal, or improvement of any public structure, building, road, or other public lands, property, or improvement of any kind."

The proposer must fully execute this document and submit it, including the required attachments, prior to award of the contract for the above-captioned contract for the project. The proposer must attach the CRCs for the proposer and all of its subcontractors to this document.

If the proposer will select additional subcontractors at a later time after the design of the project is complete (i.e., for delivery methods such as lease-leaseback with preconstruction services for school districts, alternative design-build for school districts, or progressive design-build), then proposer must re-submit this declaration prior to commencement of construction so that all CRCs for the proposer and all of its subcontractors are attached.

The ARB Diesel Off-Road Online Reporting System (DOORS) reporting system is where the proposer and its subcontractors are able to obtain their CRCs: DOORS (ca.gov). There is also an additional website that provides them with more information on the regulation along with FAQs and user guides. The website of the "Off-Road Zone" is https://ww2.arb.ca.gov/our-work/programs/truckstop-resources/road-zone.

If any questions, please call the DOORS Hotline at 877-593-6677 or email <doors@arb.ca.gov. Please note that at this time DOORS staff has limited access to documents received via mail and fax is unavailable.

Fact Sheet: Contracting Requirements | California Air Resources Board
https://ww2.arb.ca.gov/resources/fact-sheets/fact-sheet-contracting-requirements

Fact Sheet: Renewable Diesel Fuel Requirements | California Air Resources Board
https://ww2.arb.ca.gov/resources/fact-sheets/fact-sheet-renewable-diesel-fuel-requirements

Fact Sheet: Added Vehicle Restrictions and Tier Phase-Out Requirements | California Air Resources Board https://ww2.arb.ca.gov/resources/fact-sheets/fact-sheet-added-vehicle-restrictions-and-tier-phase-out-requirements

Declaration

I, _____ *[name of declarant]*, declare that I am the _____ *[title]* of _____ *[name of proposing contractor]*, the entity making and submitting the proposal for the above contract for the project; that all CRCs for _____ *[name of proposing contractor]* , and for all of its subcontractors on the above contract, are attached to this declaration; that all of the attached CRCs are current and valid; and that the attached CRCs will allow the Owner to comply with the applicable CARB requirements in connection with the contract.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and executed on _____, 20__, at _____ *[city]*, _____ *[state]*.

Date: _____ _____

Signature

Print Name: _____

Print Title: _____

EXHIBIT W

Form of Amendment to Be Used for Total Sublease Amount

McKinley Elementary School New Campus (Increment 2) Building Package Project

AMENDMENT No._____ TO LEASE-LEASEBACK CONTRACT

TOTAL SUBLEASE AMOUNT
AND SCHEDULE OF SUBLEASE PAYMENTS

For the Lease-Leaseback Agreement, Site Lease, and Sublease entered into between the Tracy Unified School District ("Owner") and _____ ("Contractor"), and dated _____, 20__, for the Owner's _____ work (the "Contract"), the Owner and Contractor hereby agree to amend the Contract as follows:

The terms of the Contract and previous amendments are incorporated into, and govern, this amendment except as may be provided otherwise by this amendment. In the event of a conflict between the Contract and previous amendments on the one hand, and this amendment on the other hand, the terms of this amendment shall control.

The scope of Work for this amendment consists of the DSA-approved Work that is included in the _____ *[insert names of documents that contain the plans and specs for all of the work for the entire project]* , dated _____, 20__.

Based on the DSA-approved design (which is hereby incorporated by reference into this Contract), the Total Sublease Amount shall be $_____.00, which includes the following allowances:

- A special allowance of $_____ for _____ work;
- A special allowance of $_____ for _____ work; and
- A general contingency allowance of $_____.

This Total Sublease Amount has been calculated as provided by law and by the Contract, including but not limited to Section 5 of the Lease-Leaseback Agreement.

The Date for Completion shall be as specified in the Lease-Leaseback Agreement (§4). ***[If the allotted number of calendar days for construction has changed since the LLB Agreement was approved, then delete the previous sentence and use the following instead:]*** The Date for Completion shall be _____ (___) calendar days from Owner's governing board's approval of this amendment at a public meeting.

Based on the net sublease amount (which is the Total Sublease Amount less any allowances listed above) and ___ ***[insert number of sublease payments; see Sublease §6(a)]*** Sublease Payments (representing ____ months of construction and ___ months of post-completion payments), the schedule of Sublease Payments for the Contract shall be as follows:

Payment Number ***[adjust number of payments as necessary to match Sublease §6]***	**Date Payment Is Due** ***[the first monthly payment shall not occur until after Board approval of this amendment]***	**Equal Monthly Payments** ***[each payment must be the same amount, which = (Total Sublease Amount less any allowances) ÷ number of payments listed in Sublease §6(a)]***
1	_____ 5, 20__	$ _____.__
2	_____ 5, 20__	_____.__
3	_____ 5, 20__	_____.__
4	_____ 5, 20__	_____.__
5	_____ 5, 20__	_____.__
6	_____ 5, 20__	_____.__
7	_____ 5, 20__	_____.__
8	_____ 5, 20__	_____.__
9	_____ 5, 20__	_____.__
10	_____ 5, 20__	_____.__

This schedule of Sublease Payments, and the amounts of the Sublease Payments, may be adjusted during the Contract as provided in the Contract Documents, including but not limited to adjustments based on delay, change orders, or allowance expenditures.

This amendment shall be approved by the Owner's governing board at a public meeting per Education Code section 17406(a)(3), after which Contractor may commence the Work that is the subject of this amendment.

CONTRACTOR:

_____

BY: _____
TITLE: President

BY: _____
TITLE: Corporate Secretary

OWNER:

Tracy Unified School District

BY: _____
Associate Superintendent of Business Services