

MASTER SITE LEASE

This master site lease ("**Master Site Lease**") dated February 28, 2019 ("**Effective Date**"), is made and entered into by and between the **San Diego Unified School District**, as lessor ("**District**"), and _____, as lessee ("**Contractor**") (together, the "**Parties**").

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

School Site	Address
Lindbergh Schweitzer Elementary School	4133 Mt. Albertine Ave., San Diego, CA 92111

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

WHEREAS, the District desires to provide for the **Preconstruction Services for Lindbergh Schweitzer Elementary School Whole Site Modernization and Joint Use Field (Lease-Leaseback)** ("**Project**"); and

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

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

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

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

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

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

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

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

1. **Definitions.** Unless the context clearly otherwise requires, all words and phrases defined in the Master Facilities Lease shall have the same meaning in this Master Site Lease.
2. **Exhibits.** The following Exhibits are attached to and by reference incorporated and made a part of this Master Site Lease.
 - 2.1. Exhibit A: Description of the School Site
 - 2.2. Exhibit B: Description of the Project Site and Description of the Project
3. **Lease of the Project Site(s).** The District hereby leases to the Contractor, and the Contractor hereby leases from the District, the Project Site, subject only to Permitted Encumbrances, in accordance with the provisions of this Master Site Lease, to have and to hold for the term of this Master Site Lease. In particular, the Master Site Lease shall only take effect if the Master Facilities Lease is executed by the District and Contractor within three (3) days of execution of this Master Site Lease.
 - 3.1. **Work in Phases.** If the Work of the Project is to be performed in phases, then the only areas bound by the terms of this Master Facilities Lease are:
 - 3.1.1. As indicated to be within specific phases of the Project and
 - 3.1.2. For which portions of the Lease Payments are still owing.
4. **Leaseback of the Project Site.** The Parties agree that the Project Site will be leased back to the District pursuant to the Master Facilities Lease for the term thereof.
5. **Term.** The term of this Master Site Lease shall commence as of the Effective Date and shall terminate on the last day of the Term of the Master Facilities Lease, provided the District has paid to the Contractor, or its assignee, all payments which may be due under the Master Facilities Lease, and provided this Master Site Lease has not been terminated pursuant to the termination provisions of the Master Facilities Lease.
6. **Payment.** In consideration for the lease of the Project Site(s) by the District to the Contractor and for other good and valuable consideration, the Contractor shall pay One Dollar (\$1.00) per year, prepaid for the duration of the Site Lease and the Facilities Lease for the parties' administrative convenience, to the District upon execution of this Master Site Lease, but before payment of the first Tenant Improvement. For illustrative purposes only, if the Site Lease is 3.25 years (which is 39 months) and the Facilities Lease is one year (which is 12 months), then the prepaid rent is Five Dollars (\$5.00). The District will notify the Contractor to prepay rent at the time the District issues the Notice to Proceed.
7. **Termination**
 - 7.1. **Termination Due to Default by Contractor.** If Contractor defaults pursuant to the provision(s) of the Master Facilities Lease and the District terminates the Master Facilities Lease pursuant to the Master Facilities Lease provision(s) allowing termination, then the Contractor shall be deemed to be in default of this Master Site Lease and this Master Site Lease shall also terminate or its right to perform the work of the Project, at the District's determination, at the same time as the Master Facilities Lease.
 - 7.1.1. Default of Contractor includes, without limitation:
 - 7.1.1.1. Contractor refuses or fails to execute the Work or any separable part thereof with sufficient diligence as will ensure its completion within the time specified or any extension thereof, or

- 7.1.1.2. Contractor fails to complete said Work within the time specified or any extension thereof, or
- 7.1.1.3. Contractor persistently fails or refused to perform Work or provide material of sufficient quality as to be in compliance with Contract Documents; or
- 7.1.1.4. Contractor files a petition for relief as a debtor, or a petition is filed against the Contractor without its consent, and the petition not dismissed within sixty (60) days or Contractor files for dissolution or otherwise stops operating as a business; or
- 7.1.1.5. Contractor makes a general assignment for the benefit of its creditors, or a receiver is appointed on account of its insolvency; or
- 7.1.1.6. Contractor persistently or repeatedly refuses or fails, except in cases for which extension of time is provided, to supply enough properly skilled workers or proper materials to complete the Work in the time specified; or
- 7.1.1.7. Contractor fails to make prompt payment to Subcontractors, or for material, or for labor; or
- 7.1.1.8. Contractor persistently disregards laws, or ordinances, or instructions of District; or
- 7.1.1.9. Contractor fails to supply labor, including that of Subcontractors, that can work in harmony with all other elements of labor employed or to be employed on the Work; or
- 7.1.1.10. Contractor or its Subcontractor(s) is/are otherwise in breach, default, or in substantial violation of any provision of this Contract.
- 7.1.2. Upon termination, District may immediately serve written notice of tender upon Surety whereby Surety shall have the right to takeover and perform this Contract only if Surety:
 - 7.1.2.1. Within seven (7) days after service upon it of the notice of tender, gives District written notice of Surety's intention to takeover and perform this Contract; and
 - 7.1.2.2. Commences performance of the Contract within ten (10) days from date of serving of its notice to District.
- 7.1.3. If Surety fails to notify District or begin performance as indicated herein, District may take over the Work and execute the Work to completion by any method it may deem advisable at the expense of Contractor and/or its Surety. Contractor and/or its Surety shall be liable to District for any excess cost or other damages the District incurs thereby. Time is of the essence in the Contract. If the District takes over the Work as herein provided, District may, without liability for so doing, take possession of and utilize in completing the Work such materials, appliances, plan, and other property belonging to Contractor as may be on the Site of the Work, in bonded storage, or previously paid for.
- 7.1.4. **Conversion to Termination for Convenience.** In the event the Contract is terminated under this "Termination Due to Default by Contractor" section and it is finally determined by an arbitrator, court, jury or other tribunal having competent

jurisdiction, that the Contractor was not in default for any reason, under the provisions hereof or that the District's exercise of its rights this section was defective, deficient, ineffective, invalid or improper for any reason, the termination shall be deemed a termination for convenience of the District under the "Termination of Contractor for Convenience" section in **Exhibit D** to this Facilities Lease and thereupon, the rights and obligations of the District and the Contractor shall be determined in accordance with the "Termination of Contractor for Convenience" section therein.

- 7.2. **Termination Due to Default by District.** If District defaults pursuant to the provision(s) of the Master Facilities Lease, the Contractor, or its assignee, will have the right, for the then remaining term of this Master Site Lease, to:
- 7.2.1. Take possession of the Project Site;
- 7.2.2. If it deems it appropriate, cause appraisal of the Project Site and a study of the then reasonable uses thereof; and
- 7.2.3. Relet the Project Site.
8. **Title to School Site.** During the term of this Master Site Lease, the District shall hold fee title to the School Sites, including the Project Site, and nothing in this Master Site Lease or the Master Facilities Lease shall change, in any way, the District's ownership interest in the School Site.
9. **Improvements.** Title to all improvements made on the Project Site during the term hereof shall be held, vest and transfer pursuant to the terms of the Master Facilities Lease.
10. **No Merger.** The leaseback of the Project Site by the Contractor to the District pursuant to the Master Facilities Lease shall not effect or result in a merger of the estates of the District in the Project Site, and the Contractor shall continue to have a leasehold estate in the Project Site pursuant to this Master Site Lease throughout the term hereof.
11. **Right of Entry.** The District reserves the right for any of its duly authorized representatives to enter upon the Project Site at any reasonable time to inspect the same, provided the District follows all safety precautions required by the Contractor.
12. **Quiet Enjoyment.** Subject to any rights the District may have under the Master Facilities Lease (in the absence of an Event of Default) to possession and enjoyment of the Project Site, the District hereby covenants and agrees that it will not take any inappropriate action to prevent the Contractor from having peaceable possession, use, and occupancy of the Project Site during the term hereof and will, at the request of the Contractor, to the extent that it may lawfully do so, join in any legal action in which the Contractor asserts its right to such possession and enjoyment.
13. **Waste.** The Contractor agrees that at all times that it is in possession of the Project Site, it will not commit, suffer or permit any waste on the Project Site, and that it will not willfully or knowingly use or permit the use of the Project Site for any illegal purpose or act.
14. **Further Assurances and Corrective Instruments.** The Parties shall, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Project Site hereby leased or intended so to be or for carrying out the expressed intention of this Master Site Lease and the Master Facilities Lease.
15. **Representations of the District.** The District represents, covenants and warrants to the Contractor as follows:

- 15.1. **Due Organization and Existence.** The District is a school district, duly organized and existing under the Constitution and laws of the State of California.
- 15.2. **Authorization.** The District has the full power and authority to enter into, to execute and to deliver this Master Site Lease, and to perform all of its duties and obligations hereunder, and has duly authorized the execution of this Master Site Lease.
- 15.3. **No Violations.** To the best of the District's actual knowledge, neither the execution and delivery of this Master Site Lease nor the Master Facilities Lease, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the District is now a party or by which the District is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the District, or upon the Project Site, except Permitted Encumbrances.
- 15.4. **CEQA Compliance.** The District has complied with all requirements imposed upon it by the California Environmental Quality Act (Public Resource Code Section 21000 *et seq.* ("**CEQA**") in connection with the Project, and no further environmental review of the project is necessary pursuant to CEQA before the construction of the Project may commence.
- 15.5. **No Litigation.** To the best of the District's actual knowledge, there is no pending or, to the knowledge of District, threatened action or proceeding before any court or federal, state, municipal, or other government authority or administrative agency which will materially adversely affect the ability of District to perform its obligations under this Master Site Lease.
- 15.6. **Condemnation Proceedings.**
- 15.6.1. District covenants and agrees, but only to the extent that it may lawfully do so, that so long as this Master Site Lease remains in effect, the District will not seek to exercise the power of eminent domain with respect to the Project so as to cause a full or partial termination of this Master Site Lease and the Master Facilities Lease.
- 15.6.2. If for any reason the foregoing covenant is determined to be unenforceable or in some way invalid, or if District should fail or refuse to abide by such covenant, then, to the extent they may lawfully do so, the Parties agree that the financial interest of Contractor shall be as indicated in the Master Facilities Lease.
- 15.7. **Use and Zoning.** To the best of the District's actual knowledge, the Project Site is properly zoned for its intended purpose and the use or activities contemplated by this Master Site Lease will not conflict with local, state or federal law.
- 15.8. **Taxes.** To the best of the District's actual knowledge, all taxes and assessments are paid current and such taxes and assessments will continue to be paid to the extent that the District is not exempt.
- 15.9. **Hazardous Materials.** District is not currently aware of any contamination to the Project Site by Hazardous Materials, except for Hazardous Materials of which District has already informed Contractor, if any. If District becomes aware of any act or circumstance which would change or render this representation incorrect, in whole or in part, District will give immediate written notice of such changed fact or circumstance to Contractor.
16. **Representations of the Contractor.** The Contractor represents, covenants and warrants to the District as follows:
- 16.1. **Due Organization and Existence.** The Contractor is a California corporation licensed to

provide such services in the state of California, duly organized and existing under the laws of the State of California, has power to enter into this Master Site Lease and the Master Facilities Lease; is possessed of full power to lease, leaseback, and hold real and personal property and has duly authorized the execution and delivery of all of the aforesaid agreements.

- 16.2. **Authorization.** The Contractor has the full power and authority to enter into, to execute and to deliver this Master Site Lease, and to perform all of its duties and obligations hereunder, and has duly authorized the execution of this Master Site Lease.
- 16.3. **No Violations.** Neither the execution and delivery of this Master Site Lease or the Master Facilities Lease, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the Contractor is now a party or by which the Contractor is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the Contractor, or upon the Project Site, except for Permitted Encumbrances.
- 16.4. **No Bankruptcy.** Contractor is not now nor has it ever been in bankruptcy or receivership.
- 16.5. **No Litigation.** There is no pending or, to the knowledge of Contractor, threatened action or proceeding before any court or administrative agency which will materially adversely affect the ability of Contractor to perform its obligations under this Master Site Lease or the Master Facilities Lease.
17. **Insurance and Indemnity.** The Contractor and the District shall comply with the insurance requirements and the indemnity requirements as indicated in the Master Facilities Lease.
18. **Assignment and Subleasing.** This Master Site Lease may be assigned and/or the Project Site(s) subleased, as a whole or in part, by the Contractor only upon the prior written consent of the District to such assignment or sublease, which shall not be unreasonably withheld.
19. **Restrictions on District.** The District agrees that it will not mortgage, sell, encumber, assign, transfer or convey the Project Site or any portion thereof during the term of this Master Site Lease in any way that would interfere with or diminish Contractor's interests indicated in this Master Site Lease.
20. **Liens and Further Encumbrances.** Contractor agrees to keep the Project Site and every part thereof free and clear of any and all encumbrances and/or liens, including without limitation, stop payment notices, pledges, charges, encumbrances, claims, mechanic liens and/or other liens for or arising out of or in connection with work or labor done, services performed, or materials or appliances used or furnished for or in connection with the Project Site(s) or the Project. Pursuant to the Master Facilities Lease, Contractor further agrees to pay promptly and fully and discharge any and all claims on which any encumbrance and/or lien, including but not limited to stop payment notices, may or could be based, and to indemnify and defend the District from any and all such stop payment notices, liens, mortgages, and claims of liens and suits or other proceedings pertaining thereto. This subsection does not apply to Permitted Encumbrances.
21. **Notices.** All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed to have been received as indicated below and to the parties indicated below.
- 21.1. If notice is given by personal delivery thereof, it shall be considered delivered on the day of delivery.

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

<p>If to District: San Diego Unified School District Strategic Sourcing & Contracts 2351 Cardinal Lane, Building M San Diego, CA 92123 Attn: Andrea R. O'Hara, SS&C Officer</p>	<p>If to Contractor: Company Name: Address: City, State, Zip Code: Attn:</p>
<p>With a copy to: San Diego Unified School District 4100 Normal St., Room 2148 San Diego, CA 92103 ATTN: Sandra T.M. Chong, Esq., Assistant General Counsel</p>	

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

- 22. **Binding Effect.** This Master Site Lease shall inure to the benefit of and shall be binding upon the Contractor and the District and their respective successors and assigns.
- 23. **No Additional Waiver Implied by One Waiver.** In the event any agreement contained in this Master Site Lease should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive future compliance with any term hereof or any other breach hereunder.
- 24. **Severability.** In the event any provision of this Master Site Lease shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof, unless elimination of such invalid provision materially alters the rights and obligations embodied in this Master Site Lease or the Master Facilities Lease.
- 25. **Amendments, Changes and Modifications.** Except as to the termination rights of both Parties as indicated in the Master Facilities Lease, this Master Site Lease may not be amended, changed, modified, altered or terminated without the written agreement of both Parties hereto.
- 26. **Obligations Absolute.** The Contractor agrees that the obligations of the Contractor are absolute and unconditional and not subject to any charges or setoffs against the District whatsoever.
- 27. **Execution in Counterparts.** This Master Site Lease may be executed in several counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.
- 28. **Contractor and District Representatives.** Whenever under the provisions of this Master Site Lease approval by the Contractor or the District is required, or the Contractor or the District is required to take some action at the request of the other, such approval or such request shall be given for the Contractor by the Contractor Representative and for the District by the District Representative, and any party hereto shall be authorized to rely upon any such approval or request.
- 29. **Applicable Law.** This Master Site Lease shall be governed by and construed in accordance with the laws of the State of California, and venue shall be in the County within which the School Site is located.
- 30. **Attorney's Fees.** If either party brings an action or proceeding involving the School Site(s) or to enforce the terms of this Master Site Lease or to declare rights hereunder, each party shall bear the cost of its own attorneys' fees.

- 31. **Captions.** The captions or headings in this Master Site Lease are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Master Site Lease.
- 32. **Prior Agreements.** This Master Site Lease and the corresponding Master Facilities Lease collectively contain all of the agreements of the Parties hereto with respect to any matter covered or mentioned in this Master Site Lease and no prior agreements or understanding pertaining to any such matter shall be effective for any purpose.
- 33. **Further Assurances.** Parties shall promptly execute and deliver all documents and instruments reasonably requested to give effect to the provisions of this Master Site Lease.
- 34. **Recitals Incorporated.** The Recitals set forth at the beginning of this Master Site Lease are hereby incorporated into its terms and provisions by this reference.
- 35. **Time of the Essence.** Time is of the essence with respect to each of the terms, covenants, and conditions of this Master Site Lease.
- 36. **Force Majeure.** A party shall be excused from the performance of any obligation imposed in this Master Site Lease and the exhibits hereto for any period and to the extent that a party is prevented from performing such obligation, in whole or in part, as a result of delays caused by the other party or third parties, a governmental agency or entity, an act of God, war, terrorism, civil disturbance, forces of nature, fire, flood, earthquake, strikes or lockouts, and such nonperformance will not be a default hereunder or a grounds for termination of this Master Site Lease.
- 37. **Interpretation.** None of the Parties hereto, nor their respective counsel, shall be deemed the drafters of this Master Site Lease or the Master Facilities Lease for purposes of construing the provisions of each. The language in all parts of this Master Site Lease shall in all cases be construed according to its fair meaning, not strictly for or against any of the Parties hereto.
- 38. **Contractor/Consultant.** Consents to conducting transactions for this Contract via electronic signature, which will have the same validity and effect as a signature affixed by hand, through an electronic system established and maintained by the District. Contractor/Consultant agrees that designated persons will sign an electronic signature acknowledgment and agreement attached and incorporated by reference under Exhibit I. _____ (Initials)

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

ACCEPTED AND AGREED on the date indicated below:

Dated: _____, 20_____

Dated: _____, 20_____

San Diego Unified School District

Company Name

By: _____

By: _____

Print Name: _____

Print Name: _____

Print Title: _____

Print Title: _____

APPROVED AS TO FORM AND LEGALITY

Approved in a public meeting of the Board of Education of the San Diego Unified School District on

Date _____

Sandra T.M. Chong, Asst. General Counsel II
San Diego Unified School District

Marty Stultz, Director of Board Services
Board of Education

APPROVED AS TO CONTENT

Gary Stanford, Director Project Management (Date)

EXHIBIT A

**TO
MASTER SITE LEASE**

AERIAL DESCRIPTION OF LINDBERGH/SCHWEITZER ELEMENTARY SCHOOL

4133 Mt. Albertine Ave., San Diego, CA 92111.



EXHIBIT B
TO
MASTER SITE LEASE

DESCRIPTION OF PROJECT SITE
AT
LINDBERGH/SCHWEITZER ELEMENTARY SCHOOL

San Diego Unified School District's capital improvements are funded by two General Obligation bond measures, Proposition S and Z. In an effort to provide a quality school in every neighborhood, the district is using Prop. S and Prop Z funds to repair, renovate and revitalize district schools. Lindbergh/Schweitzer Elementary School was originally built in the 1960's. While the schools received extensive upgrades and improvements over the years, the Long Range Facility Master Plan showed that the sites needs significant improvements. Based on the comprehensive planning study, and an Assessment recently completed, the District concluded that Lindbergh/Schweitzer Elementary School is to have a Whole Site Modernization, a new two story classroom building, and a Joint Use Field.

Lindbergh/Schweitzer Elementary School is being modernized for a capacity of 600 students. The design of Lindbergh/Schweitzer Elementary School is currently being developed. The scope which is not completely developed in the drawings, is described in the Specification Section, 01 10 00 Summary, and in this attachment and will be required as part of the contract. Once the design is completed the Project Documents will require DSA review and approval before construction of this work can begin. Public Improvements work (water lateral to the site) adjacent to Lindbergh/Schweitzer Elementary School will require further review with the City of San Diego in order to obtain approval prior to the start of construction. Franchise Utility Coordination will also require further review with the Utility Companies.

The Services for Lindbergh/Schweitzer Elementary School is divided into Preconstruction Stage and Construction Stage Services. Refer to attached Project Stage Timeline.

Stage 1 of the Project continues through approval of the Project plans by the Division of the State Architect ("DSA") and development and Board approval of the GMP for the Project, and is anticipated to be 11 months.

MASTER FACILITIES LEASE

This master facilities lease ("**Master Facilities Lease**"), dated February 28, 2019 ("**Effective Date**"), is made and entered into by and between _____ ("**Contractor**"), as sublessor, and **San Diego Unified School District**, as sublessee ("**District**") (together, the "**Parties**").

RECITALS

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

School Site	Address
Lindbergh Schweitzer Elementary School	4133 Mt. Albertine Ave., San Diego, CA 92111

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

WHEREAS, the District desires to provide for the **Preconstruction Services for Lindbergh Schweitzer Elementary School Whole Site Modernization and Joint Use Field** (Lease-Leaseback) ("**Project**"); and

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

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

- **Platt/Whitelaw Architects, Inc.** to prepare Plans and Specifications for the Lindbergh Schweitzer Elementary School Whole Site Modernization and Joint Use Field Project.

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

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

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

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

WHEREAS, the Board of Education of the District (the "**Board**") has determined that it is in the best interests of the District and for the common benefit of the citizens residing in the District to construct the Project by leasing the Project Site to Contractor and by simultaneously entering into this Master Facilities Lease under which the District will lease back the Project Site and the Project from Contractor and if necessary, make Lease Payments as indicated in **Exhibit C** attached hereto and incorporated herein by reference); and

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

duly authorized to execute and enter into this Master Facilities Lease; and

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

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

1. **DEFINITIONS.** In addition to the terms and entities defined above or subsequent provisions defined herein, and unless the context otherwise requires, the terms defined in this section shall, for all purposes of this Master Facilities Lease, have the meanings herein specified.
 - 1.1. **“Contractor”** or **“Lessor”** means (Contractor Name), a Corporation, organized and existing under the laws of the State of California, and its successors and assigns.
 - 1.2. **“Contractor’s Representative”** means the Managing Member of Contractor, or any person authorized to act on behalf of Contractor under or with respect to this Master Facilities Lease.
 - 1.3. **“Contract Documents”** are defined in **Exhibit D** to this Master Facilities Lease.
 - 1.4. **“District”** or **“Lessee”** means the **San Diego Unified School District**, a school district duly organized and existing under the laws of the State of California.
 - 1.5. **“District Representative”** means the Superintendent of the District, Chief Facilities Planning and Construction Officer or his designee, or any other person authorized by the District to act on behalf of the District under or with respect to this Master Facilities Lease.
 - 1.6. **“Permitted Encumbrances”** means, as of any particular time:
 - 1.6.1. Liens for general and valorem taxes and assessments, if any, not then delinquent, or which the District may permit to remain unpaid;
 - 1.6.2. The Project Master Site Lease;
 - 1.6.3. This Master Facilities Lease,
 - 1.6.4. Easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions or restrictions which exist of record as of the date of this Master Facilities Lease.
 - 1.6.5. Easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions or restrictions established following the date of recordation of this Master Facilities Lease and to which Contractor and the District consent in writing which will not impair or impede the operation of the Project Site; and
2. **EXHIBITS.** The following Exhibits are attached to and by reference incorporated and made a part of this Master Facilities Lease:
 - 2.1. Exhibit A: Description of the School Site: The aerial description of the real property constituting the School Site.
 - 2.2. Exhibit B: Description of the Project Site and Description of the Project: The description

of the Project Site and the Project.

- 2.3. Exhibit C: Guaranteed Maximum Price (GMP), also known as Guaranteed Project Cost, and Other Project Cost, Funding, and Payment Provisions for the Leased Project Site: A detailed description of the Guaranteed Maximum Price and the provisions related to the payment of that amount to the Contractor.
- 2.4. Exhibit D: General Conditions: The conditions generally describing the Project's construction.
- 2.5. Exhibit E: Memorandum of Commencement Date for the Facilities Lease for the Leased Project Site: The Memorandum which will memorialize the commencement and expiration dates of the Term.
- 2.6. Exhibit F: Construction Schedules for the Project Site: The Construction Schedule shall be submitted in computer generated network format and shall be organized by Activity Codes representing the Contractor's intended sequencing of the Work, and with time scaled network diagrams of activities. The Preliminary Construction Schedule(s) shall include but not limited to activities such as mobilization, preparation of submittals, specified review periods, procurement items, fabrication items, milestones, and all detailed construction activities.
- 2.7. Exhibit G: Schedule(s) of Values for Each of the Project Site(s)
- 2.8. Exhibit H: Terms and Conditions for Preliminary Services
- 2.9. Exhibit I: Executable Documents, Certificates and Bonds to Lease-Leaseback Documents and Division 1 List of Specifications to Lease-Leaseback Documents
- 2.10. Exhibit J: Revisions to Contract Documents (Supplementary Conditions)

3. LEASE OF PROJECT AND PROJECT SITE(S).

- 3.1. Contractor hereby leases the Project and the Project Site to the District, and the District hereby leases said Project and Project Site from Contractor upon the terms and conditions set forth in this Master Facilities Lease.
- 3.2. The leasing by Contractor to the District of the Project Site shall not affect or result in a merger of the District's leasehold estate pursuant to this Master Facilities Lease and its fee estate as lessor under the Master Site Lease. Contractor shall continue to have and hold a leasehold estate in the Project Site pursuant to the Master Site Lease throughout the term thereof and the term of this Master Facilities Lease.
- 3.3. As to the Project Site, this Master Facilities Lease shall be deemed and constitute a sublease.
- 3.4. No Disruption to Educational Activities
 - 3.4.1. **Occupied School Site(s).** Contractor acknowledges that portions of the Project Site shall, at all times, be occupied by the District as an operating school. The Parties have agreed to a plan and process whereby the Contractor's activities shall be kept separate from the operating school even though the operating school is within the Project Site. The specifics of the plan and process are as indicated in **Exhibit J.**
 - 3.4.2. **Work During Instructional Time.** Contractor affirms that Work may be performed

during ongoing instruction in existing facilities. If so, Contractor agrees to cooperate to the best of its ability to minimize any disruption to the School Site up to, and including, rescheduling specific work activities, at no additional cost to the District.

- 3.4.3 **Student Testing.** Contractor shall, at no additional cost to the District and at the District's request, coordinate its Work to not disturb District students to comply with school site specific testing calendar, as provided in **Exhibit J**.

4. TERM

- 4.1 **Master Facilities Lease is Legally Binding.** This Master Facilities Lease is legally binding on the Parties upon execution by the Parties and the District Board's approval of this Master Facilities Lease. The Term of this Master Facilities Lease for the purposes of District's occupancy and obligation to make Lease Payments shall commence on the earlier of the following two (2) events ("**Commencement Date**") and shall terminate **twelve (12) months** after the Commencement Date (the "**Term**"):

4.1.1 The date the District takes beneficial occupancy of the Project; or

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

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

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

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

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

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

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

5. **PAYMENT.** In consideration for the lease of the Project Site by the Contractor back to the District and for other good and valuable consideration, the District shall make the Tenant Improvements Payments and Lease Payments pursuant to the Guaranteed Maximum Price Provisions indicated in **Exhibit C**.

6. TERMINATION; LEASE TERMINABLE ONLY AS SET FORTH HEREIN.

- 6.1 Except as otherwise expressly provided in this Master Facilities Lease, this Master Facilities Lease shall not terminate, nor shall District have any right to terminate this Master Facilities Lease or be entitled to the abatement of any all necessary payments pursuant to the Guaranteed Maximum Price Provisions indicated in **Exhibit C** or any reduction thereof. The obligations hereunder of District shall not be otherwise affected by reason of any

damage to or destruction of all or any part of the Project; the taking of the Project or any portion thereof by condemnation or otherwise; the prohibition, limitation or restriction of District's use of the Project; the interference with such use by any private person or Contractor; the District's acquisition of the ownership of the Project (other than pursuant to an express provision of this Master Facilities Lease); any present or future law to the contrary notwithstanding. It is the intention of the Parties hereto that all necessary payments pursuant to the Guaranteed Maximum Price Provisions indicated in **Exhibit C** shall continue to be payable in all events, and the obligations of the District hereunder shall continue unaffected unless the requirement to pay or perform the same shall be terminated or modified pursuant to an express provision of this Master Facilities Lease.

- 6.2 Nothing contained herein shall be deemed a waiver by the District of any rights that it may have to bring a separate action with respect to any Event of Default by Contractor hereunder or under any other agreement to recover the costs and expenses associated with that action. The District covenants and agrees that it will remain obligated under this Master Facilities Lease in accordance with its terms.
- 6.3 Following Project Completion, that the District will not take any action to terminate, rescind or avoid this Master Facilities Lease, notwithstanding the bankruptcy, insolvency, reorganization, composition, readjustment, liquidation, dissolution, winding-up or other proceeding affecting Contractor or any assignee of Contractor in any such proceeding, and notwithstanding any action with respect to this Master Facilities Lease which may be taken by any trustee or receiver of Contractor or of any assignee of Contractor in any such proceeding or by any court in any such proceeding. Following Project Completion, except as otherwise expressly provided in this Master Facilities Lease, District waives all rights now or hereafter conferred by law to quit, terminate or surrender this Master Facilities Lease or the Project or any part thereof.
- 6.4 District acknowledges that Contractor may assign an interest in some or all of the necessary payments pursuant to the Guaranteed Maximum Price Provisions indicated in **Exhibit C** to a lender in order to obtain financing for the cost of constructing the Project and that the lender may rely on the foregoing covenants and provisions in connection with such financing.
- 6.5 **Termination of Contractor for Convenience.** The District in its sole discretion may terminate for convenience this Master Facilities Lease upon three (3) days written notice to the Contractor. In case of a termination for convenience, the Contractor shall have no claims against the District except the actual portion of the Guaranteed Maximum Price expended for labor, materials, and services performed that is unpaid and can be documented through timesheets, invoices, receipts, or otherwise, through the date of termination, plus necessary and reasonable documented demobilization costs.

7. TITLE

- 7.1 During the Term of this Master Facilities Lease, the District shall hold fee title to the School Site, including the Project Site, and nothing in this Master Facilities Lease or the Master Site Lease shall change, in any way, the District's ownership interest.
- 7.2 During the Term of this Master Facilities Lease, Contractor shall have a leasehold interest in the Project Site pursuant to the Master Site Lease.
- 7.3 During the Term of this Master Facilities Lease, the Contractor shall hold title to the Project improvements provided by Contractor which comprise fixtures, repairs, replacements or modifications thereto.
- 7.4 If the District makes all necessary payments under the Guaranteed Maximum Price

Provisions indicated in **Exhibit C**, all right, title and interest of Contractor, its assigns and successors in interest in and to the Project and the Project Site shall be transferred to and vested in the District at the end of the Term. Title shall be transferred to and vested in the District hereunder without the necessity for any further instrument of transfer; provided, however, that Contractor agrees to execute any instrument requested by District to memorialize the termination of this Master Facilities Lease and transfer of title to the Project.

- 8. QUIET ENJOYMENT.** Upon District's possession of the Project, Contractor shall thereafter provide the District with quiet use and enjoyment of the Project, and the District shall during the Term peaceably and quietly have and hold and enjoy the Project, without suit, trouble or hindrance from Contractor, except as otherwise may be set forth in this Master Facilities Lease. Contractor will, at the request of the District and at Contractor's cost, join in any legal action in which the District asserts its right to such possession and enjoyment to the extent Contractor may lawfully do so. Notwithstanding the foregoing, Contractor shall have the right to inspect the Project and the Project Site as provided herein.
- 9. REPRESENTATIONS OF THE DISTRICT.** The District represents, covenants and warrants to the Contractor as follows:
- 9.1 Due Organization and Existence.** The District is a school district, duly organized and existing under the Constitution and laws of the State of California.
- 9.2 Authorization.** The District has the full power and authority to enter into, to execute and to deliver this Master Facilities Lease, and to perform all of its duties and obligations hereunder, and has duly authorized the execution of this Master Facilities Lease.
- 9.3 No Violations.** Neither the execution and delivery of this Master Facilities Lease nor the Master Site Lease, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the District is now a party or by which the District is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the District, or upon the Project Site, except Permitted Encumbrances
- 9.4 CEQA Compliance.** The District has complied with all requirements imposed upon it by the California Environmental Quality Act (Public Resource Code Section 21000 *et seq.* ("**CEQA**") in connection with the Project, and no further environmental review of the project is necessary pursuant to CEQA before the construction of the Project may commence. Contractor shall comply with all applicable mitigation measures, if any, adopted by any public agency with respect to this Project pursuant to the California Environmental Quality Act. (Public Resources Code section 21000 *et seq.*).
- 9.5 No Litigation.** Except for a validation action related to this transaction that the District may file, there is no pending or, to the knowledge of District, threatened action or proceeding before any court or federal, state, municipal, or other government authority or administrative agency which will materially adversely affect the ability of District to perform its obligations under this Master Facilities Lease.
- 9.6 Condemnation Proceedings.**
- 9.6.1** District covenants and agrees, but only to the extent that it may lawfully do so, that so long as this Master Facilities Lease remains in effect, the District will not seek to exercise the power of eminent domain with respect to the Project so as to cause a full or partial termination of this Master Facilities Lease.

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

10. REPRESENTATIONS OF THE CONTRACTOR. The Contractor represents, covenants and warrants to the District as follows:

- 10.1 **Due Organization and Existence.** The Contractor is a California corporation licensed to provide such services in the state of California, duly organized and existing under the laws of the State of California, has the power to enter into this Master Facilities Lease and the Master Site Lease; is possessed of full power to lease, lease back, and hold real and personal property and has duly authorized the execution and delivery of all of the aforesaid agreements.
- 10.2 **Authorization.** Contractor has the full power and authority to enter into, to execute and to deliver this Master Facilities Lease, and to perform all of its duties and obligations hereunder, and has duly authorized the execution of this Master Facilities Lease.
- 10.3 **No Violations.** Neither the execution and delivery of this Master Facilities Lease and the Master Site Lease, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which Contractor is now a party or by which Contractor is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of Contractor, or upon the Project Site, except Permitted Encumbrances.
- 10.4 **No Bankruptcy.** Contractor is not now nor has it ever been in bankruptcy or receivership.
- 10.5 **No Litigation.** There is no pending or, to the knowledge of Contractor, threatened action or proceeding before any court or administrative agency which will materially adversely affect the ability of Contractor to perform its obligations under this Master Facilities Lease.
- 10.6 **No Encumbrances.** Contractor shall not pledge any District payments of any kind, related to the Master Site Lease, this Master Facilities Lease, or in any way derived from the Project Site, and shall not mortgage or encumber the Project Site, except as may be specifically permitted pursuant to the provisions of this Master Facilities Lease related to Contractor's financing the construction of the project.
- 10.7 **Continued Existence.** Contractor shall not voluntarily commence any act intended to dissolve or terminate the legal existence of Contractor, at or before the latest of the following:
- 10.7.1 Eighteen (18) months following Project Completion,
- 10.7.2 After dismissal and final resolution of any and all disputes between the Parties and/or any third-party claims related, in any way, to the Project, Contractor shall give District sixty (60) days written notice prior to dissolving or terminating the legal existence of Contractor.

11. PRELIMINARY SERVICES

- 11.1. The terms and conditions pertaining to the performance of preliminary services, if any, under this Facilities Lease, are set forth in **Exhibit H** to this Facilities Lease. To the extent

any terms and conditions set forth therein conflict with terms and conditions in the body of the Facilities Lease, the terms and conditions contained in **Exhibit H** shall control regarding the performance of preliminary services.

- 11.2. The payment provisions for the preliminary services, if any, under this Facilities Lease, are set forth in **Exhibit C** to this Facilities Lease.

12. CONSTRUCTION OF PROJECT

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

12.2 Construction of Project.

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

12.2.2 Contract Time / Construction Schedule.

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

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

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

- 12.2.4 **Liquidated Damages:** Time is of the essence for all work Contractor must perform to obtain Project Completion. It is hereby understood and agreed that it is and will be difficult and/or impossible to ascertain and determine the actual damage that the District will sustain in the event of and by reason of Contractor's delay; therefore, pursuant to Government Code section 53069.85 and Public Contract Code section 7203, Contractor shall forfeit and pay to District the following sum(s) as liquidated damages ("Liquidated Damages"): **Two Thousand Five Hundred (\$2,500)** per day, per phase, as liquidated damages for each and every day's delay beyond the Contract Time for each School Site(s).

Should such money not be sufficient to cover said Liquidated Damages, the District shall have the right to recover the balance from the Contractor or his sureties, who will pay said balance forthwith for each calendar day of delay until the work is completed and accepted, and the Contractor and his surety shall be liable for the amount thereof. Contractor shall not be charged Liquidated Damages because of any delays in completion of work due to unforeseeable causes beyond the control and without the fault or negligence of Contractor including, but not restricted to: acts of God, or of public enemy, acts of Government, acts of Owner or anyone employed by him or acts of another contractor in performance of a contract with District, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes,

and unusually severe weather or delays of subcontractors due to such causes. The Contractor shall within 10 days from the beginning of any such delay (unless the District shall grant a further period of time prior to the date of final settlement of the contract) notify the District in writing of the causes of delay; thereupon the District shall ascertain the facts and the extent of the delay and extend the time for completing the work when in its judgment the findings of fact justify such an extension, and its findings of fact thereon shall be final and conclusive on the parties hereto. The additional time granted by the District for completing of the work shall specify the portion of the total thereof, which shall be applied to each segment of the construction schedule yet to be performed according to the terms and conditions of this contract, if any.

- 12.2.4.1 Each portion of the Liquidated Damages shall be calculated cumulatively. For example, if two of the Stages are delayed as indicated here, the daily liquidated damage amount is two times (2x) the daily rate; three of the Stages, three times (3x), etc.
- 12.2.4.2 It is hereby understood and agreed that neither the total Liquidated Damages amount nor any portion of the Liquidated Damage amount are penalties.
- 12.2.4.3 In the event any portion of the liquidated damages is not paid to the District, the District may deduct that amount from any money due or that may become due the Contractor under this Master Facilities Lease. The District's right to assess liquidated damages is as indicated herein and in the **Exhibit D**. Contractor and Surety shall be liable for and pay to District the entire amount of Liquidated Damages including any portion that exceeds the amount of the Contract Price then held, retained, or controlled by District.
- 12.2.4.4 The time during which the construction of the Project is delayed for cause as hereinafter specified may extend the Contract Time for a reasonable time as the District may grant. This provision does not exclude the recovery of damages for delay by either party under other provisions in this Master Facilities Lease.
- 12.2.5 **Guaranteed Maximum Price.** Contractor will cause the Project to be constructed within the Guaranteed Maximum Price as set forth and defined in the Guaranteed Maximum Price Provisions indicated in **Exhibit C** and Contractor will not seek additional compensation from District in excess of that amount.
- 12.2.6 **Modifications.** If the DSA requires changes to the Contract Documents submitted by District to Contractor, and those changes alter the construction costs and/or construction time for the Project, then those changed costs will be handled as a Modification pursuant to the provisions of **Exhibit D**.
- 12.2.7 Contractor shall cooperate with the District's efforts to obtain State funding for the Project by complying with any State requirements as reasonably requested.
- 12.2.8 Compliance Monitoring and Enforcement by the Department of Industrial Relations.
- 12.2.8.1 District hereby provides notice of the requirements described in Labor Code section 1771.1, subdivision (a), which states the following:

"A contractor or subcontractor shall not be qualified to bid on,

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

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

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

13. **MAINTENANCE.** Following delivery of possession of the Project by Contractor to District, the repair, improvement, replacement and maintenance of the Project and the Project Site shall be at the sole cost and expense and the sole responsibility of the District, subject only to all warranties against defects in materials and workmanship of Contractor as provided in **Exhibit D**. The District shall pay for or otherwise arrange for the payment of the cost of the repair and replacement of the Project resulting from ordinary wear and tear. The District waives the benefits of subsections 1 and 2 of Section 1932 of the California Civil Code, but such waiver shall not limit any of the rights of the District under the terms of this Master Facilities Lease.
14. **UTILITIES.** Following delivery of possession of the Project by Contractor to District, the cost and expenses for all utility services, including, but not limited to, electricity, natural gas, telephone, water, sewer, trash removal, cable television, janitorial service, security, heating, water, internet service and all other utilities of any type shall be paid by District.
15. **TAXES AND OTHER IMPOSITIONS.** All ad valorem real property taxes, special taxes, possessory interest taxes, bonds and special lien assessments or other impositions of any kind with respect to the Project, the Project Site, and the improvements thereon, charged to or imposed upon either Contractor or the District or their respective interests or estates in the Project, shall at all times be paid by District. In the event any possessory interest tax is levied on Contractor, its successors and assigns, by virtue of this Master Facilities Lease or the Master Site Lease, District shall pay such possessory interest tax directly, if possible, or shall reimburse Contractor, its successors and assigns for the full amount thereof within thirty (30) days after presentation of proof of payment by Contractor.

16. CONTRACTOR'S INSURANCE

- 16.1 Insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by Contractor, his agents, representatives, employees or subcontractors.
- 16.2 Minimum Scope of Insurance: Coverage shall be at least as broad as:
- 16.2.1 Insurance Services Office (ISO) Commercial General Liability coverage (occurrence Form CG 00 01) or Insurance Services Office Form (CG 00 09 11 88 Owners and Contractors Protective Liability Coverage Form – Coverage for Operations of Designated Contractor.
 - 16.2.2 Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto).
 - 16.2.3 Workers' Compensation insurance as required by the State of California and Employers' Liability insurance.
 - 16.2.4 Builder's Risk (Course of Construction) insurance (or Installation Floater if project does not involve new or major reconstruction) covering "all risks" of loss (ISO Special Form) through final acceptance of the work.
 - 16.2.5 Surety bonds as described below.
 - 16.2.6 Professional Liability
 - 16.2.7 Contractors' Pollution Legal Liability and/or Asbestos Legal Liability
- 16.3 Minimum Limits of Insurance
- 16.3.1 General Liability: (Including operations, products and completed operations): **\$10,000,000** per occurrence for bodily injury, personal injury, advertising injury, contractual, product liability, completed operations, and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the **general aggregate limit shall be twice the required occurrence limit, which is \$10,000,000.**
 - 16.3.2 Automobile Liability: **\$2,000,000** per accident for bodily injury and property damage combined single limit.
 - 16.3.3 Workers Compensation Insurance: As required by the State of California.
 - 16.3.4 Employers Liability Insurance: **\$1,000,000** each accident, **\$1,000,000** policy limit bodily injury by disease, **\$1,000,000** each employee bodily injury by disease.
 - 16.3.5 Builder's Risk: Completed value of the project with no coinsurance penalty provisions.
 - 16.3.6 Professional Liability: **\$1,000,000**
 - 16.3.7 Pollution Legal Liability: **\$1,000,000** per occurrence / **\$2,000,000** aggregate
 - 16.3.8 Leased Interim Housing units insurance requirements: General Contractor ("Lessee") to include Commercial General Liability Insurance and Commercial

Property Insurance per the Modular company supplier (“Lessor”) insurance agreement requirements.

- 16.4 Deductibles and Self-Insured Retentions: Any deductibles or self-insured retentions must be declared to and approved by the District. At the option of the District, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the District, its officers, officials, employees and volunteers; or the Contractor shall provide a financial guarantee in the form of a bond satisfactory to the District guaranteeing payment of losses and related investigations, claim administration and defense expenses. Contractor shall be solely and exclusively responsible for the payment of any deductibles, under the required policies of insurance, without adjustment to the Guaranteed Maximum Price on account thereof.
- 16.5 Other Insurance Provisions: The General Liability and Automobile Liability policies are to contain, or be endorsed to contain, the following provisions:
- 16.5.1 The District, its officers, officials, employees, and volunteers are to be covered as insureds (“additional insureds”) with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the Contractor; and with respect to liability arising out of work or operations performed by on behalf of the Contractor including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor’s insurance, or as a separate owner’s policy.
- 16.5.2 For any claims related to this project, the Contractor’s insurance coverage shall be primary insurance with respect to the District, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the District, its officers, officials, employees, or volunteers shall be excess of the Contractor’s insurance and shall not contribute with it.
- 16.5.3 Each insurance policy required by this clause shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice has been provided to the District.
- 16.6 Builder’s Risk (Course of Construction) Insurance
- 16.6.1 Contractor may submit evidence of Builder’s Risk insurance in the form of “Course of Construction” coverage. In either case, the District shall be listed as an insured under the policy.
- 16.6.2 If the scope of work does not involve new, or major reconstruction, (as defined by the District), at the option of the District, an “Installation Floater” will be acceptable to meet this requirement. For such projects, a property installation floater shall be obtained that provide for the improvement, remodel, modification, alteration, conversion or adjustment to existing buildings, structures, processes, machinery and equipment. The Property Installation Floater shall provide property damage coverage for any building, structure, machinery or equipment damaged, impaired, broken or destroyed during the performance of the Work, including during transit, installation and testing at the District’s site.
- 16.6.3 Builder’s Risk insurance shall be maintained on all insurable Work included under the Contract Documents and Work in Progress, and shall include false-work (which includes but is not limited to temporary structures such as scaffolding, bridge centering, metal work, in which a temporary construction work of which a main work is wholly or partly built until the main work is self-supporting) temporary buildings, transit, debris removal, including demolition, increased cost of construction, architect fees and expenses and flood, including water damage,

windstorm, earthquake (if required) and, if applicable, all below and above ground structures, piping, foundations, including underground water and sewer mains, piling, including the ground on which the structure rests, and excavation, backfilling, filling and grading. Insured property shall include portions of the Work located away from the site but intended for use at the site and shall also cover portions of the Work in transit.

- 16.6.4 Such insurance shall include the interests of the District, any other person with an insurable interest designated by the District, the Contractor and subcontractors as insureds on the policy.
- 16.6.5 The Builder's Risk insurance shall include a Beneficial Occupancy Clause. The policy shall specifically permit occupancy of the building during construction. The Contractor shall take reasonable steps to obtain consent of its insurance company and delete any provisions with regard to restrictions within any occupancy clauses within the Builders Risk policy.
- 16.6.6 The deductible shall not exceed \$25,000 (except for flood, windstorm, and earthquake (if required), which may have a higher deductible subject to District approval but in no event more than \$100,000) and shall be the responsibility of the Contractor.
- 16.6.7 The Contractor shall submit to the District for its approval all items deemed to be uninsurable. The risk of damage to the Work due to the perils covered by the Builder's Risk "All Risk" 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 District, nor shall such loss or damage excuse the complete and satisfactory performance of the Contract by the Contractor.
- 16.7 Claims Made/Pollution Legal Liability: If General Liability, Contractor's Pollution Liability and/or Asbestos Pollution Liability and/or Errors & Omissions coverages are written on a claims-made form.
 - 16.7.1 The retroactive date must be shown, and must be before the date of the contract or the beginning of contract work.
 - 16.7.2 Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of contract work.
 - 16.7.3 If coverage is cancelled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective date, the Contractor must purchase extended reporting period coverage for a minimum for five (5) years after completion of contract work.
 - 16.7.4 A copy of the claims reporting requirements must be submitted to the District for review.
 - 16.7.5 If the services involve lead-based paint or asbestos identification/remediation, the Contractor's Pollution Liability policy shall contain lead-based paint or asbestos exclusions. If the services involve mold identification/remediation, the Contractors Pollution Liability policy shall not contain a mold exclusion, and the definition of Pollution shall include microbial matter, including mold.
- 16.8 Acceptability of Insurers: Insurance is to be placed with insurers with a current A.M. Best rating of no less than A:-VII, unless otherwise acceptable to the District, and authorized to do business in the State of California. Exception may be made for the State Compensation

Insurance Fund when not specifically rated. Coverage provided by non-admitted surplus lines carriers may be accepted provided the insurers are included in the current California LASLI list and otherwise meet rating requirements.

- 16.9 Verification of Coverage: Contractor shall furnish the District with endorsements effecting coverage required by this clause. The endorsements are to be signed by a person authorized by the Insurer to bind coverage on its behalf. All endorsements are to be received and approved by the District before work commences. However, failure to do so shall not operate as a waiver of these insurance requirements. The Contractor's insurer shall provide complete copies of all required insurance policies, including endorsements affecting the coverage required by these specifications.
- 16.10 Waiver of Subrogation: Contractor hereby agrees to waive subrogation rights which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the District for all work performed by the Contractor, its employees, agents and subcontractors.
- 16.11 Subcontractors: Contractor shall require and verify that all listed subcontractors maintain insurance meeting all the requirements stated herein.
- 16.12 Maintenance of Insurance: Any insurance, including Claims made policies bearing on the adequacy of performance of Work, shall be maintained after the District's Final Acceptance of all the Work, or from the date of Substantial Completion as provided in Article 15.2.2 of the General Conditions, for the full two years correction of Work period and any longer specific guarantee or warranty periods set forth in the Contract Documents. Should such insurance be canceled before the end of such periods and the Contractor fails to immediately procure replacement insurance as specified, the District reserves the right to procure such insurance and to charge the cost thereof to the Contractor. Nothing contained in these insurance requirements is to be construed as limiting the extent of the Contractor's defense and indemnity obligations or responsibility for payment of damages from its operations or performance of the Work under the Contract Documents, including without limitation the Contractor's obligation to pay liquidated damages. In no instance shall the District's exercise of its option to occupy and use completed portions of the Work relieve the Contractor of its obligation to maintain insurance required under this Article until the date of Final Acceptance of the Work by the District, or such time thereafter as required by the Contract Documents. The insurer providing any insurance coverage required hereunder shall be to the reasonable satisfaction of the District.
- 16.13 Surety Bonds
- 16.13.1 All surety bonds shall be duly executed by a responsible corporate surety, authorized to issue such bonds in the State of California and secured through an authorized agent with an office in California.
- 16.13.1.1 A Performance Bond for one hundred percent (100%) of the Guaranteed Maximum Price. Said Performance Bond shall be on the District form.
- 16.13.1.2 A Labor and Material Payment Bond for one hundred percent (100%) of the Guaranteed Maximum Price. Said Payment Bond shall be on the District form.
- 16.13.1.3 The failure or refusal of the Contractor to furnish either the Performance or the Labor and Material Payment Bond in strict conformity with this Article may be deemed by the District as a default by the Contractor of a material obligation hereunder.

16.4 District's Insurance.

16.4.1 Upon the execution of the Memorandum of Commencement, the District will include the facilities constructed as part of the Project to be thereafter a facility that the District is leasing and that will thereafter be covered by the insurance program in which the District currently participates. If requested by Contractor, District shall provide portions of the District's current insurance documents for the following. At the Contractor's request, District shall include Contractor as an additional covered party on those policies:

- 16.4.1.1 Property Program Liability Coverage
- 16.4.1.2 Interruption of Business / Extra Expense and Rental Value Coverage
- 16.4.1.3 Excess Liability

17. INDEMNIFICATION

17.1 **Contractor's Indemnity and Defense Obligations.** Unless arising solely out of the active negligence, gross negligence or willful misconduct of the Indemnified Parties, the Contractor shall indemnify, defend and hold harmless (i) the District, its Board of Education members, officers, employees, agents and representatives (including the District's Project Inspector, Construction Manager and Project Manager); (hereinafter collectively referred to as the "Indemnified Parties") from and against any and all damages, losses, claims, demands or liabilities of any kind or nature whatsoever, which arise from, or are alleged to arise from, or are in any way connected to, in whole or in part, the Work, the Contract Documents or the acts, omissions or other conduct of the Contractor or any Subcontractor or any person or entity engaged by them in connection with the Work. The Contractor's obligations under the foregoing include without limitation: (i) injuries to or death of persons; (ii) damage to property; or (iii) theft or loss of property; (iv) stop payment notice Claims asserted by any person or entity in connection with the Work; and (v) other losses, liabilities, damages or costs resulting from, in whole or part, any acts, omissions or other conduct of the Contractor, any Subcontractor, of any tier, or any other person or entity employed directly or indirectly by Contractor in connection with the Work and their respective agents, officers or employees, and (vi) other losses, liabilities, damages or costs resulting from, in whole or part, any acts, omissions or other conduct of the Contractor, any Subcontractor, of any tier, or any other person or entity employed directly or indirectly by Contractor in connection with the Work and their respective agents, officers or employees. Contractor's obligations hereunder shall include the obligation to defend, indemnify and hold harmless the Indemnified Parties from and against any and all claims asserted, or liability established, for damages or injuries to any person or property which may arise from, or are connected with, or are caused, or claimed to be caused, by the contractor's failure to comply with all of the requirements contained in Education Code, section 45125.1, including, but not limited to, the requirement prohibiting the contractor from using employees who may have contact with pupils who have been convicted of, or have charges pending for, a felony as defined in Education Code 45125.1.

17.1.1 If any action or proceeding, whether judicial, administrative, arbitration or otherwise, shall be commenced on account of any claim, demand or liability covered by this, and such action or proceeding names any of the Indemnified Parties as a party thereto, the Contractor shall, at its sole cost and expense, defend the Indemnified Parties in such action or proceeding with counsel reasonably satisfactory to the Indemnified Parties named in such action or proceeding.

17.1.2 In the event that there shall be any judgment, award, ruling, settlement, or other relief arising out of any such action or proceeding to which any of the Indemnified Parties are bound by, Contractor shall pay, satisfy or otherwise discharge any such judgment, award, ruling, settlement or relief; Contractor shall indemnify and hold

harmless the Indemnified Parties from any and all liability or responsibility arising out of any such judgment, award, ruling, settlement or relief. The Contractor's obligations hereunder are binding upon Contractor's Performance Bond Surety and these obligations shall survive notwithstanding Contractor's completion of the Work or the termination of the Contract.

- 17.2 **District's Indemnity Obligation.** District shall indemnify, but shall not be obligated to defend, Contractor from and against any claims, damages, expenses or liabilities connected with this Master Facilities Lease, only:
- 17.2.1 If those claims, damages, expenses or liabilities relate to District's status as a sublessee under this Facilities Lease; and
- 17.2.2 To the extent that those claims, damages, expenses or liabilities arise from the negligence or willful acts or omissions of District, its officers, agents or employees; and
- 17.2.3 If those claims, damages, expenses or liabilities are unrelated to District's obligations to pay the Guaranteed Maximum Price.
- 17.2.4 After the Commencement Date, the District shall also indemnify and defend Contractor from and against any claims, damages, expenses or liabilities including third-party tort or contract claims that are not covered by Contractor's warranty(s) or guarantee(s) and that arise from the District's use of the Facilities.
- 17.2.4 Under no circumstances does the District's indemnity obligation herein include any obligation to indemnify the Contractor from any claims, damages, expenses or liabilities connected in any way with a third-party's challenge to the validity of the Site Lease and/or the Facilities Lease.
- 17.3 The Parties understand and acknowledge that the indemnity obligations stated herein may be mutual, comparative or contributory depending on the facts of specific circumstances.

18. EMINENT DOMAIN

- 18.1 **Total Taking After Project Delivery.** If, following delivery of possession of the Project by Contractor to District, all of the Project and the Project Site is taken permanently under the power of eminent domain, the Term shall cease as of the day possession shall be so taken.
- 18.1.1 The financial interest of Contractor shall be limited to the amount of principal payments pursuant to the Guaranteed Maximum Price Provisions indicated in **Exhibit C** that are then due or past due together with all remaining and succeeding principal payments pursuant to the Guaranteed Maximum Price Provisions indicated in **Exhibit C** for the remainder of the original Term.
- 18.1.2 The balance of the award, if any, shall be paid to the District.
- 18.2 **Total Taking Prior to Project Delivery.** If all of the Project and the Project Site is taken permanently under the power of eminent domain and the Contractor is still performing the work of the Project and has not yet delivered possession of the Project to District, the Term shall cease as of the day possession shall be so taken. The financial interest of Contractor shall be the amount Contractor has expended to date for work performed on the Project, subject to documentation reasonably satisfactory to the District.
- 18.3 **Partial Taking.** If, following delivery of possession of the Project by Contractor to District, less than all of the Project and the Project Site is taken permanently, or if all of the Project

and the Project Site or any part thereof is taken temporarily, under the power of eminent domain:

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

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

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

20. ABATEMENT

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

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

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

20.3.1 Repair the Project to full use;

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

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

21. ACCESS

- 21.1 **By Contractor.** Contractor shall have the right at all reasonable times to enter upon the Project Site(s) to construct the Project pursuant to this Master Facilities Lease. Following the acceptance of the Project by District, Contractor may enter the Project at reasonable times with advance notice and arrangement with District for purposes of making any repairs required to be made by Contractor.
- 21.2 **By District.** The District shall have the right to enter upon the Project Site at all times. District shall comply with all safety precautions and procedures required by Contractor.

22. ASSIGNMENT, SUBLEASING

- 22.1 **Assignment and Subleasing by the District.** Any assignment or sublease by District shall be subject to all of the following conditions:
- 22.1.1 This Master Facilities Lease and the obligation of the District to make the payments required pursuant to the Guaranteed Maximum Price Provisions indicated in **Exhibit C** shall remain obligations of the District; and
- 22.1.2 The District shall, within thirty (30) days after the delivery thereof, furnish or cause to be furnished to Contractor a true and complete copy of any assignment or sublease; and
- 22.2 **Assignment by Contractor.** Contractor may assign its right, title and interest in this Master Facilities Lease, in whole or in part to one or more assignees, only after the written consent of District, which District will not unreasonably withhold. No assignment shall be effective against the District unless and until the District has consented in writing. Notwithstanding anything to contrary contained in this Master Facilities Lease, no consent from the District shall be required in connection with any assignment by Contractor to a lender for purposes of financing the Project as long as there are not additional costs to the District.

23. EVENTS OF DEFAULT OF DISTRICT

- 23.1 **Events of Default by District Defined.** The following shall be "Events of Default" of the District under this Master Facilities Lease. The terms "Event of Default" and "Default" shall mean, whenever they are used as to the District in the Master Site Lease or this Master Facilities Lease, shall only be one or more of the following events:
- 23.1.1 Failure by the District to pay payments required pursuant to the Guaranteed Maximum Price Provisions indicated in **Exhibit C**, and the continuation of such failure for a period of forty-five (45) days.
- 23.1.2 Failure by the District to perform any material covenant, condition or agreement in this Master Facilities Lease and that failure continues for a period of forty-five (45) days after Contractor provides District with written notice specifying that failure and requesting that the failure be remedied; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, Contractor shall not unreasonably withhold its consent to an extension of such time if corrective action is instituted by the District within the applicable period and diligently pursued until the default is corrected.
- 23.2 **Remedies on District's Default.** If there has been an Event of Default on the District's part, the Contractor may exercise any and all remedies available pursuant to law or granted pursuant to this Master Facilities Lease; provided, however, there shall be no right under

any circumstances to accelerate any of the payments required pursuant to the Guaranteed Maximum Price Provisions indicated in **Exhibit C** or otherwise declare those payments not then past due to be immediately due and payable.

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

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

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

23.2.2 District's obligation to make the payments required pursuant to the Guaranteed Maximum Price Provisions indicated in **Exhibit C** shall be:

23.2.2.1 Increased by the amount of costs, expenses, and damages incurred by the Contractor in re-renting the Project Site, and

23.2.2.2 Decreased by the amount of rent Contractor receives in reletting the Project Site.

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

23.3 **District's Continuing Obligation.** Unless there has been damage, destruction, a Taking as described above, or the Contractor is in Default as indicated herein, the District shall continue to remain liable for the payments required pursuant to the Guaranteed Maximum Price Provisions indicated in **Exhibit C** and those amounts shall be payable to Contractor at the time and in the manner as therein provided.

23.4 **No Remedy Exclusive.** No remedy herein conferred upon or reserved to Contractor is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Master Facilities Lease or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle Contractor to exercise any remedy reserved herein, it shall be necessary to give notice, as indicated in this Master Facilities Lease and by law.

24. EVENTS OF DEFAULT OF CONTRACTOR

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

- 24.1.1 Contractor unreasonably refuses or fails to prosecute the work on the Project with such reasonable diligence as will accomplish Project Completion within the Contract Time or any extension thereof;
- 24.1.2 Prior to Project Completion, Contractor is adjudged a bankrupt, or files for bankruptcy, or if it should make a general assignment for the benefit of its creditors, or if it voluntarily dissolves or if a receiver should be appointed on account of its insolvency;
- 24.1.3 Contractor persistently disregards applicable law as indicated in **Exhibit D**, or otherwise be in violation of **Exhibit D**.
- 24.1.4 Failure by the Contractor to perform any material covenant, condition or agreement in this Master Facilities Lease and that failure continues for a period of seven (7) days after District provides Contractor with written notice specifying that failure and requesting that the failure be remedied; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, District shall not unreasonably withhold its consent to an extension of such time if corrective action is instituted by the Contractor within the applicable period and diligently pursued until the default is corrected.

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

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

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

24.2.2.1 The right to assess liquidated damages due as permitted herein;

24.2.2.2 All rights the District holds to demand performance pursuant to the Contractor’s required performance bond;

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

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

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

If to District:

San Diego Unified School District
 Strategic Sourcing and Contracts
 2351 Cardinal Lane, Building M
 San Diego, CA 92123
 Attn: Andrea R. O'Hara, SS&C Officer

If to Contractor:

Company Name:
 Address:
 City, State, Zip Code
 Attn:

With a copy to:

San Diego Unified School District
 4100 Normal Street, Room 2148
 San Diego, CA 92103
 ATTN: Sandra T.M. Chong, Esq., Assistant
 General Counsel

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

- 26. **Binding Effect.** This Master Facilities Lease shall inure to the benefit of and shall be binding upon Contractor and the District and their respective successors, transferees and assigns.
- 27. **No Additional Waiver Implied by One Waiver.** In the event any agreement contained in this Master Facilities Lease should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.
- 28. **Severability.** In the event any provision of this Master Facilities Lease shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof, unless elimination of such invalid provision materially alters the rights and obligations embodied in this Master Facilities Lease or the Master Site Lease.
- 29. **Amendments, Changes and Modifications.** Except as to the termination rights of both Parties as indicated herein, this Master Facilities Lease may not be amended, changed, modified, altered or terminated without the written agreement of both Parties hereto.
- 30. **Net-Net-Net Lease.** This Master Facilities Lease shall be deemed and construed to be a "net-net-net lease" and the District hereby agrees that all payments it makes pursuant to the Guaranteed Maximum Price Provisions indicated in **Exhibit C** shall be an absolute net return to Contractor, free and clear of any expenses, charges or set-offs.
- 31. **Execution in Counterparts.** This Master Facilities Lease may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.
- 32. **Contractor and District Representatives.** Whenever under the provisions of this Master Facilities Lease the approval of Contractor or the District is required, or Contractor or the District is required to take some action at the request of the other, such approval or such request shall be given for Contractor by Contractor's Representative and for the District by the District's Representative, and any party hereto shall be authorized to rely upon any such approval or request.
- 33. **Applicable Law.** This Master Facilities Lease shall be governed by and construed in accordance with the laws of the State of California, and venued in the County within which the School Site(s) is located.
- 34. **Attorney's Fees.** If either party brings an action or proceeding involving the Property or to enforce the terms of this Master Facilities Lease or to declare rights hereunder, each party shall bear the

cost of its own attorneys' fees.

35. **Captions.** The captions or headings in this Master Facilities Lease are for convenience only and in no way define, limit or describe the scope or intent of any provisions or Sections of this Master Facilities Lease.
36. **Prior Agreements.** This Master Facilities Lease and the corresponding Master Site Lease collectively contain all of the agreements of the Parties hereto with respect to any matter covered or mentioned in this Master Facilities Lease and no prior agreements or understanding pertaining to any such matter shall be effective for any purpose.
37. **Further Assurances.** Parties shall promptly execute and deliver all documents and instruments reasonably requested to give effect to the provisions of this Master Facilities Lease.
39. **Recitals Incorporated.** The Recitals set forth at the beginning of this Master Facilities Lease are hereby incorporated into its terms and provisions by this reference.
40. **Time of the Essence.** Time is of the essence with respect to each of the terms, covenants, and conditions of this Master Facilities Lease.
41. **Force Majeure.** A party shall be excused from the performance of any obligation imposed in this Master Facilities Lease and the exhibits hereto for any period and to the extent that a party is prevented from performing such obligation, in whole or in part, as a result of delays caused by the other party or third parties, a governmental agency or entity, an act of God, war, terrorism, civil disturbance, forces of nature, fire, flood, earthquake, strikes or lockouts, and such nonperformance will not be a default hereunder or a grounds for termination of this Master Facilities Lease.
42. **Interpretation.** None of the Parties hereto, nor their respective counsel, shall be deemed the drafters of this Master Facilities Lease for purposes of construing the provisions thereof. The language in all parts of this Master Facilities Lease shall in all cases be construed according to its fair meaning, not strictly for or against any of the Parties hereto.
43. **Contractor/Consultant.** Consents to conducting transactions for this Contract via electronic signature, which will have the same validity and effect as a signature affixed by hand, through an electronic system established and maintained by the District. Contractor/Consultant agrees that designated persons will sign an electronic signature acknowledgment and agreement attached and incorporated by reference in **Exhibit I.** _____ (Initials)

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

ACCEPTED AND AGREED on the date indicated below:

Dated: _____, 20_____

Dated: _____, 20_____

San Diego Unified School District

Company Name

By: _____

By: _____

Print Name: _____

Print Name: _____

Print Title: _____

Print Title: _____

APPROVED AS TO FORM AND LEGALITY

Approved in a public meeting of the Board of Education of the San Diego Unified School District on

Date _____

Sandra T.M. Chong, Asst. General Counsel II
San Diego Unified School District

Marty Stultz, Director of Board Services
Board of Education

APPROVED AS TO CONTENT

Gary Stanford, Director Project Management (Date)

EXHIBIT A
TO
MASTER FACILITIES LEASE

AERIAL DESCRIPTION OF LINDBERGH/SCHWEITZER ELEMENTARY SCHOOL

4133 Mt. Albertine Ave., San Diego, CA 92111.



EXHIBIT B
TO
MASTER FACILITIES LEASE

DESCRIPTION OF THE PROJECT FOR
LINDBERGH/SCHWEITZER ELEMENTARY SCHOOL

San Diego Unified School District's capital improvements are funded by two General Obligation bond measures, Proposition S and Z. In an effort to provide a quality school in every neighborhood, the district is using Prop. S and Prop Z funds to repair, renovate and revitalize district schools. Lindbergh/Schweitzer Elementary School was originally built in the 1960's. While the schools received extensive upgrades and improvements over the years, the Long Range Facility Master Plan showed that the sites needs significant improvements. Based on the comprehensive planning study, and an Assessment recently completed, the District concluded that Lindbergh/Schweitzer Elementary School is to have a Whole Site Modernization, a new two story classroom building, and a Joint Use Field.

Lindbergh/Schweitzer Elementary School is being modernized for a capacity of 600 students. The design of Lindbergh/Schweitzer Elementary School is currently being developed. The scope which is not completely developed in the drawings, is described in the Specification Section, 01 10 00 Summary, and in this attachment and will be required as part of the contract. Once the design is completed the Project Documents will require DSA review and approval before construction of this work can begin. Public Improvements work (water lateral to the site) adjacent to Lindbergh/Schweitzer Elementary School will require further review with the City of San Diego in order to obtain approval prior to the start of construction. Franchise Utility Coordination will also require further review with the Utility Companies.

The Services for Lindbergh/Schweitzer Elementary School is divided into Preconstruction Stage and Construction Stage Services. Refer to attached Project Stage Timeline.

Stage 1 of the Project continues through approval of the Project plans by the Division of the State Architect ("DSA") and development and Board approval of the GMP for the Project, and is anticipated to be 11 months.

EXHIBIT C
TO
FACILITIES LEASE

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

1. **SITE LEASE PAYMENTS.** As indicated in the Site Lease, Contractor shall pay **One Dollar (\$1.00) per year**, prepaid for the duration of the Site Lease and the Facilities Lease for the parties' administrative convenience, to the District upon execution of this Master Site Lease, but before payment of the first Tenant Improvement. For illustrative purposes only, if the Site Lease is for 3.25 years (which is 39 months) and the Facilities Lease is for one year (which is 12 months), then the prepaid rent is Five Dollars (\$5.00). The District will notify the Contractor to prepay rent at the time the District issues the Notice to Proceed.
2. **Lindbergh/Schweitzer Elementary School – Preconstruction Services:** \$ _____
3. **GUARANTEED MAXIMUM PRICE (OR “GMP”).** Pursuant to the Facilities Lease, Contractor will cause the Project to be constructed for _____ **Dollars (\$ _____), (“Guaranteed Maximum Price” or “GMP”).** Except as indicated herein for modifications to the Project approved by the District, Contractor will not seek additional compensation from District in excess of Guaranteed Maximum Price. District shall pay the Guaranteed Maximum Price to Contractor in the form of Tenant Improvement Payments and Lease Payments as indicated herein. The Guaranteed Maximum Price includes the following components and as further detailed herein:
 - 3.1. **Cost to Perform Work.**
 - 3.1.1. **Subcontract Costs.** Payments made by the Contractor to Subcontractors, which payments shall be made in accordance with the requirements of the Contract Documents.
 - 3.1.2. **Contractor-Performed Work.** Costs incurred by the Contractor for self-performed work.
 - 3.2. **General Conditions.** The fixed amount to be paid be for all costs for labor, equipment and materials for the items identified therein which are necessary for the proper management of the Project, and shall include all costs paid or incurred by the Contractor for insurance (except for general liability insurance), permits, taxes, and all contributions, assessments and benefits, holidays, vacations, retirement benefits, and incentives, whether required by law or collective bargaining agreements, including project stabilization agreement or otherwise paid or provided by Contractor to its employees. The District reserves the right to request changes to the personnel, equipment, or facilities provided as General Conditions as may be necessary or appropriate for the proper management of the Project, in which case, the cost of General Conditions shall be increased or reduced accordingly.
 - 3.3. **Fees.** All fees, assessments and charges that are required to be paid to other agencies or entities to permit, authorize or entitle construction, reconstruction or completion of the Project.
 - 3.4. **Allowances.**
 - 3.5. **Overhead and Profit.**
 - 2.6 **Bonds and Insurance.**

4. PAYMENT OF GUARANTEED MAXIMUM PRICE. District shall pay the Guaranteed Maximum Price to Contractor in the form of Tenant Improvement Payments and Lease Payments plus interest as indicated herein.

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

4.2. **Lease Payments Plus Interest.** After the Parties execute the Memorandum of Commencement Date, attached to the Facilities Lease as **Exhibit E** and the Contractor has completed and satisfied the conditions indicated below, the District shall pay to Contractor _____ **Dollars (\$ _____)** ("**Lease Payment(s)**") plus interest, as indicated below. Contractor shall submit to the District a written invoice for each Lease Payment separately, at least thirty (30) days prior to the "Date of Payment" as indicated below for that Lease Payment.

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

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

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

4.2.4. Each Payment Constitutes a Current Expense of the District.

4.2.4.1. The District and Contractor understand and intend that the obligation of the District to pay Lease Payments plus interest and other payments hereunder constitutes a current expense of the District and shall not in any way be construed to be a debt of the District in contravention of any applicable constitutional or statutory limitation or requirement concerning the creation of indebtedness by the District, nor shall anything contained herein constitute a pledge of the general tax revenues, funds or moneys of the District.

4.2.4.2. Lease Payments plus interest due hereunder shall be payable only from current funds which are budgeted and appropriated or otherwise made legally available for this purpose. This Facilities Lease shall not create an immediate indebtedness for any aggregate payments that may become due hereunder.

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

annual budgets.

4.2.4.4. The District further covenants to in good faith make all necessary appropriations (including any supplemental appropriations) from any source of legally available funds of the District for the actual amount of Lease Payments plus interest that come due and payable during the period covered by each such budget. Contractor acknowledges that the District has not pledged the full faith and credit of the District, State of California or any state agency or state department to the payment of Lease Payments plus interest or any other payments due hereunder. The covenants on the part of District contained in this Facilities Lease constitute duties imposed by law and it shall be the duty of each and every public official of the District to take such action and do such things as are required by law in the performance of the official duty of such officials to enable the District to carry out and perform the covenants and agreements in this Facilities Lease agreed to be carried out and performed by the District.

4.2.4.5. The Contractor cannot, under any circumstances, accelerate the District's payments under the Facilities Lease.

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

3.2.5.1 The Final Tenant Improvement Payment has been paid;

3.2.5.2 All retention has been paid;

3.2.5.3 The Parties have executed the Memorandum of Commencement Date, attached to the Facilities Lease as **Exhibit E**; and

3.2.5.4 The Contractor has provided a duly completed and executed **"Unconditional Waiver and Release upon Final Payment"** compliant with Civil Code section 8138 from all subcontractors of any tier and suppliers that each has been paid all amounts owing to it from the Contractor for all work on the Project.

3.2.6 The Lease Payment Amount shall be paid pursuant to the following structure and the annual interest rate shall be at **Percent** (**Numeric %**):

Date of Payment	(A) Total Lease Payment	(B) Total Interest Due on Lease Payment	Total Lease Payment plus interest due by District to Contractor (A + B)
30 Days after all of the above conditions have been completed and satisfied	\$Numeric Lease Payments/12	\$	\$
30 days thereafter	\$Numeric Lease Payments/12	\$	\$
30 days thereafter	\$Numeric Lease Payments/12	\$	\$
30 days thereafter	\$Numeric Lease Payments/12	\$	\$
30 days thereafter	\$Numeric Lease	\$	\$

	Payments/12		
30 days thereafter	\$Numeric Lease Payments/12	\$	\$
30 days thereafter	\$Numeric Lease Payments/12	\$	\$
30 days thereafter	\$Numeric Lease Payments/12	\$	\$
30 days thereafter	\$Numeric Lease Payments/12	\$	\$
30 days thereafter	\$Numeric Lease Payments/12	\$	\$
30 days thereafter	\$Numeric Lease Payments/12	\$	\$
30 days thereafter	\$Numeric Lease Payments/12	\$	\$
Total	\$Numeric Sum	\$	\$

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

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

5. CHANGES TO GUARANTEED MAXIMUM PRICE

5.1. As indicated in the Facilities Lease, the Parties may add or remove specific scopes of work from the Project. Based on these change(s), the Parties may agree to a reduction or increase in the Guaranteed Maximum Price. If a cost impact or a change is agreed to by the Parties, it shall be reflected as a reduction or increase in the Tenant Improvement Payments and paid upon the payment request from the Contractor when the work is performed, or deducted from the next payment request from the Contractor, as applicable.

5.2. The Parties acknowledge that the Guaranteed Maximum Price is based on the Construction Documents, including the Plans and Specifications, as identified and incorporated by reference herein.

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

5.4. **Insurance and Bond Reimbursements.** At Project Completion, Contractor shall require reimbursement from its insurance brokers and/or insurers and its bond brokers and/or

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

SAMPLE

EXHIBIT D
TO
MASTER FACILITIES LEASE

GENERAL CONDITIONS
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ARTICLE 1

1. DEFINITIONS – GENERAL

1.1 ALLOWANCE(S)

1.1.1 Amount(s) stated in the Contract Documents for specific scopes of work that, if used at all, will be to pay for the cost of construction of a scope of work identified at the time the Allowance is utilized.

1.2. ARCHITECT; BENEFICIAL OCCUPANCY; CHANGE ORDER

1.2.1. The Architect is the person or entity identified as such in the Master Facility Lease; references to the "Architect" in the Contract Documents shall mean the Architect or the Architect's authorized representative. Unless otherwise stated, references in the Contract Documents to "the Architect" are references to the Architect or Architectural Firm retained by the District specifically for the Work and not the District Architect.

1.2.2. Beneficial Occupancy is occupancy of the Project by the District for its intended purpose and which produces relatively little interference with the Contractor in completing construction.

1.2.3. Change Order is a written order to the Contractor, authorizing an addition to, deletion from, or revision in the Work, and/or authorizing an adjustment in the Guaranteed Maximum Price or Contract

1.3 CONSTRUCTION EQUIPMENT

1.3.1. The term "Construction Equipment" shall be deemed to refer to equipment utilized for the performance of any portion of the Work, but which is not incorporated into the Work.

1.4. CONSTRUCTION MANAGER

1.4.1. The Construction Manager is authorized and empowered to represent the District in construction supervisory and coordination activities and as provided for in the Contract Documents, including the authority to issue Field Work Orders on behalf of the District.

1.5. CONSTRUCTION SUPERINTENDENT

1.5.1. The Construction Superintendent is the individual employed by the Contractor whose principal responsibility shall be the supervision and coordination of the Work. The Construction Superintendent shall not perform routine construction labor.

1.6. CONTRACT DOCUMENTS

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

- 1.6.1.1 Master Site Lease
- 1.6.1.2 Master Facilities Lease, with all of its Exhibits
- 1.6.1.3 These General Conditions
- 1.6.1.4 Noncollusion Declaration
- 1.6.1.5 Iran Contracting Act Certification
- 1.6.1.6 Workers' Compensation Certification
- 1.6.1.7 Prevailing Wage Certification
- 1.6.1.8 Disabled Veterans Business Enterprise Participation Certification
- 1.6.1.9 Drug-Free Workplace Certification
- 1.6.1.10 Tobacco-Free Environment Certification
- 1.6.1.11 Lead-Based Paint Certification
- 1.6.1.12 Hazardous Materials Certification

- 1.6.1.13 Imported Materials Certification
- 1.6.1.14 Criminal Background Investigation/Fingerprinting Certification
- 1.6.1.15 Roofing Contract Financial Interest Certification
- 1.6.1.16 Project Stabilization Agreement & Letter of Assent
- 1.6.1.17 Electronic Signature Acknowledgment & Agreement
- 1.6.1.18 Storm Water Pollution Prevention Plan
- 1.6.1.19 Performance Bond
- 1.6.1.20 Payment Bond (Contractor's Labor & Material Bond)
- 1.6.1.21 All Division 1 Documents, which shall only supplement these General Conditions, but shall not control if their provisions contradict these Construction Provisions
- 1.6.1.22 All Plans, Technical Specifications, and Drawings
- 1.6.1.23 Any and all addenda to any of the above documents
- 1.6.1.24 Any and all change orders or written modifications to the above documents if approved in writing by the District
- 1.6.2. Organization of the Specifications into divisions, sections or Articles, and the 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.
- 1.6.3. Unless otherwise stated in the Contract Documents, words or terms, which have well-known technical or construction industry meanings, are used in the Contract Documents in accordance with such recognized meanings.
- 1.6.4. Conflicts in the Contract Documents shall be resolved by the Architect in accordance with Article 19 herein.
- 1.7. CONTRACT DOCUMENT TERMS
 - 1.7.1. As used in the Contract Documents, the term "provide" shall mean "provide complete in place" or to "furnish and install" such item. The terms "approved;" "directed;" "satisfactory;" "accepted;" "acceptable;" "proper;" "required;" "necessary" and "equal" shall mean as approved, directed, satisfactory, accepted, acceptable, proper, required, necessary and equal, in the opinion of the Architect in consultation with the District's Representative. The term "typical" as used in the Drawings shall require the installation or furnishing of such item(s) of the Work designated as "typical" in all other areas similarly marked as "typical"; Work in such other areas shall conform to that shown as "typical" or as reasonably inferable therefrom.
 - 1.7.2. CONTRACT TIME refers to the time period as stated in the Master Facilities Lease for the completion of the Work.
- 1.8. CONTRACTOR
 - 1.8.1. The person or persons or entity identified in the Master Facilities Lease as contracting to perform the Work to be done under this Contract, or the legal representative of such a person or persons.
- 1.9. CRITICAL PATH
 - 1.9.1. The term "critical path" as used in the Contract Documents shall mean the construction activity schedule that establishes the minimum overall Project duration.
- 1.10. DAY
 - 1.10.1. The term "day" as used in the Contract Documents shall mean consecutive calendar day unless otherwise specifically defined.

1.11. DEFECTIVE OR NON-CONFORMING WORK

1.11.1. Defective or non-conforming Work is any Work which is unsatisfactory, faulty or deficient by: (a) not conforming to the requirements of the Contract Documents; (b) not conforming to the standards of Workmanship of the applicable trade or industry; (c) not being in compliance with the requirements of any inspection, reference, standard, test, or approval required by the Contract Documents; or (d) damage occurring prior to Final Completion of all of the Work.

1.12. DELIVERY

1.12.1. The term "delivery" used in conjunction with any equipment, materials or other items to be incorporated into the Work shall mean the unloading and storage in a protected condition pending incorporation into the Work.

1.13. DISTRICT

1.13.1. The term "District" shall refer to the San Diego Unified School District, the District's Board of Education and the District's officers, employees, agents and representatives.

1.14. DIVISION OF STATE ARCHITECT ("DSA")

1.14.1. DSA is the California Division of the State Architect including without limitation the DSA's Office of Construction Services, Office of Design Services and the Office of Regulation Services; references to the DSA in the Contract Documents shall mean the DSA, its offices and its authorized employees and agents. The authority of DSA over the Work and the performance thereof shall be as set forth in the Contract Documents and Title 24 of the California Code of Regulations.

1.15. DRAWINGS AND SPECIFICATIONS

1.15.1. The Drawings are the graphic and pictorial portions of the Contract Documents, wherever located and whenever issued, showing generally, the design, location and dimensions of the Work and may include without limitation, plans, elevations, sections, details, schedules or diagrams. The Specifications are the portion of the Contract Documents consisting of the written requirements for materials, equipment, construction systems, standards, criteria and Workmanship for the Work and related services. The Drawings and Specifications are intended to delineate and describe the Work and its component parts so as to permit skilled and competent Contractors to bid upon the Work and prosecute the same to completion.

1.16. FIELD CLARIFICATIONS; FIELD WORK ORDER; GUARANTEED MAXIMUM PRICE ("GMP"); JOB COST REPORTS

1.16.1. Field Clarifications are written or graphic documents, consisting of supplementary details, instructions or information issued on behalf of the District, which clarifies or supplements the Contract Documents and which becomes a part of the Contract Documents upon issuance. Field Clarifications do not constitute an adjustment of the Contract Time or the Contract Price, unless a Change Order relating to a Field Clarification is authorized and issued.

1.16.2 Field Work Order is a process that may be used when the District and the Contractor cannot agree on a price for a specific portion of work or before the Contractor prepares a price for a specific portion of work and whereby the Contractor performs the work as indicated herein on a documented time and materials basis.

1.16.3 Guaranteed Maximum Price is the total monies payable to the Contractor under the terms and conditions of the Contract Documents.

1.16.4 Job Cost Reports are any and all reports or records detailing the costs associated with work performed on or related to the Project that Contractor shall maintain for the Project.

Specifically, Job Cost Reports shall contain, but are not limited by or to, the following information: a description of the work performed (hours, square feet, cubic yards, pounds, etc.) for the Project; Project budget; costs for the Project to date; estimated costs to complete the Project; and expected costs at completion. The Job Cost Reports shall also reflect all Contract cost codes, change orders, elements of non-conforming work, back charges, and additional services.

1.17. MATERIAL SUPPLIER

1.17.1. A Material Supplier is any person or entity that only furnishes materials, equipment or supplies for the Work without fabricating, installing or consuming them in the performance of the Work of the Contract.

1.18. NOTICE TO PROCEED (“NTP”); PREMISES

1.18.1. The Notice to Proceed (NTP) is the written notice issued by or on behalf of the District to the Contractor authorizing the Contractor to proceed with commencement of the Work or portions of the Work and which establishes the date for commencement of the Contract Time.

1.18.2 Premises refers to the real property on which the Site is located.

1.19. PROGRESS REPORTS; VERIFIED REPORTS

1.19.1. Progress Reports, if required, are written reports prepared by the Contractor and periodically submitted to the District in the form and content as required by the Contract Documents. Verified Reports are periodic written reports prepared by the Contractor and submitted to DSA; Verified Reports shall be in such form and content as required by the applicable provisions of Title 24 of the California Code of Regulations. Preparation of complete and accurate Progress Reports, as required in Division 1, and Verified Reports, as well as the timely submission of the same are material obligations of the Contractor.

1.20. THE PROJECT

1.20.1. The Project is the total construction of the Work performed by the Contractor under the Contract Documents, which may be the whole or a part of the Project and which may include construction by the District or by separate Contractors.

1.21. PROJECT MANAGER

1.21.1. The Project Manager is authorized and empowered to act on behalf of the District in administering the Architect’s Contract and as set forth in the Contract Documents.

1.22. PROJECT INSPECTOR

1.22.1. The Project Inspector is the individual designated and employed by the District in accordance with the requirements of Title 24 of the California Code of Regulations. The Project Inspector shall be authorized to act on behalf of the District as provided for in the Contract Documents and in Title 24 of the California Code of Regulations, as the same may be amended from time to time.

1.23. RECORD DRAWINGS; REQUEST FOR INFORMATION (“RFI”)

1.23.1. The Record Drawings are a full size set of the Drawings marked by the Contractor during the performance of the Work to indicate completely and accurately the actual as-built condition of the Work. The Record Drawings shall be sufficient for a capable and qualified draftsman to modify the Drawings to reflect and indicate the Work actually in place at Final Completion of the Work.

1.23.2 Request for Information is a written request prepared by the Contractor requesting that the Architect provide additional information necessary to clarify or amplify an item in the

Contract Documents that the Contractor believes is not clearly shown or called for in the Drawings or Specifications or other portions of the Contract Documents, or to address problems that have arisen under field conditions.

1.24. SHOP DRAWINGS; SAMPLES; PRODUCT DATA (“SUBMITTALS”)

1.24.1. Shop Drawings are diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-Subcontractor, Manufacturer, Material Supplier, or Distributor to illustrate some portion(s) of the Work. Samples are physical examples of materials, equipment or Workmanship forming a part of, or to be incorporated into the Work. Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work. Shop Drawings, Samples, and Product Data prepared or furnished by the Contractor or any of its Subcontractors or Material Suppliers are collectively referred to as “Submittals”.

1.25. SITE

1.25.1. The Site is the physical area designated in the Contract Documents for Contractor’s performance, construction, and installation of the Work.

1.26. SUPPLEMENTARY CONDITIONS

1.26.1. Supplementary Conditions are supplemental provisions which apply to the Work that are not otherwise provided for in the Master Facilities Lease or the General Conditions, attached as Exhibit J (“Revisions”) to this Master Facilities Lease.

1.27. SUBCONTRACTORS; SUB-SUBCONTRACTORS

1.27.1. A Subcontractor is a person or entity that has a direct 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 any Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate Contractor to the District or Subcontractors of any separate Contractor. A Sub-Subcontractor is a person or entity of any tier, 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 any Sub-Subcontractor, of any tier, or an authorized representative of any Sub-Subcontractor.

1.28. SUBSTANTIAL COMPLETION

1.28.1. Substantial Completion is that stage in the progress of the Work when all the Work is complete in accordance with the Contract Documents such that the District can occupy or use all the Work for its intended purpose.

1.29. SURETY; TERM

1.29.1. The Surety is the person or entity that executes, as surety, the Contractor's Labor and Material Payment Bond and/or Performance Bond.

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

1.30. THE WORK

1.30.1. The term "Work" shall be deemed to mean the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment or services provided or to be provided by the Contractor to fulfill the Contractor's obligations under the Contract Documents. The Work may constitute the whole or a part of the Project.

SAMPLE

ARTICLE 2**2. DISTRICT****2.1. INFORMATION AND SERVICES REQUIRED OF DISTRICT**

- 2.1.1. The District shall furnish information or services to be provided by the District under the Contract Documents with reasonable promptness to avoid delay in the orderly progress of the Work. Information about existing conditions or present improvements on or about the Site, furnished by the District to the Contractor, is obtained from sources believed to be reliable. The District neither guarantees nor warrants that such information is complete and accurate. The Contractor shall verify all information provided by the District and shall notify the District of any discrepancies pursuant to Article 4.1 herein.
- 2.1.2. Information, if any, concerning physical characteristics of the Site, including without limitation, surveys and utility locations, to be provided by the District are set forth in the Contract Documents. Information not provided by the District, which is required for Contractor's completion of the Work, shall be obtained by Contractor without adjustment to the Guaranteed Maximum Price or the Contract Time. The soils reports (geotechnical reports) are not part of the Contract Documents but are available for the Contractor's examination.
- 2.1.3. The District shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities, which are expressly identified as the District's responsibility in connection with the Work. The Contractor's responsibilities for obtaining the same are set forth in the Contract Documents.
- 2.1.4. If under federal excise tax law any transaction hereunder constitutes a sale on which a federal excise tax is imposed and the sale is exempt from such excise tax because it is a sale to a state or local government for its exclusive use, the District, upon written request, will execute a certificate of exemption which will certify (i) that the District is a political subdivision of the state for the purposes of such exemption; and (ii) that the sale is for the exclusive use of the District. No excise tax for such materials shall be included in any Contract price.
- 2.1.5. Except as otherwise provided for in the Contract Documents, the District shall furnish the Contractor, free of charge, the number of copies of the Drawings and the Specifications as set forth in the Supplementary Conditions. All of the Drawings and the Specifications provided by the District to the Contractor remain the property of the District; the Contractor shall not use the same in connection with any other Work of improvement other than the Work of the Project.

2.2. DISTRICT'S RIGHT TO STOP THE WORK

- 2.2.1. In addition to the District's right to suspend the Work or terminate the Contract pursuant to the Contract Documents, the District, may, by written order, direct the Contractor to stop the Work, or any portion thereof, until the cause for such stop Work order has been eliminated if the Contractor: (i) fails to correct Work which is not in conformity and in accordance with the requirements of the Contract Documents, or (ii) otherwise fails to carry out the Work in conformity and accordance with the Contract Documents. Contractor shall not be entitled to any adjustment of Contract Time or Guaranteed Maximum Price as a result of such stoppage of Work.
- 2.2.2. The right of the District to stop the Work hereunder shall not be deemed a duty on the part of the District to exercise such right for the benefit of the Contractor or any other person or entity, nor shall the District's exercise of such right waive or limit the exercise of any other right or remedy of the District under the Contract Documents or at law.

2.3. PARTIAL OCCUPANCY OR USE

- 2.3.1. The District may occupy or use any completed or partially completed portion of the Work upon ten (10) days' notice to Contractor, provided that: (i) the District has obtained the consent of, or is otherwise authorized by, public authorities with jurisdiction thereof to so occupy or use such portion of the Work and (ii) the District and the Contractor have accepted, in writing, the responsibilities assigned to each of them for payments, retention (if any), security, maintenance, utilities, damage to the Work, insurance and the period for correction of the Work and commencement of warranties required by the Contract Documents for such portion of the Work partially used or occupied by the District.
- 2.3.2. In the event the Contractor and the District are unable to agree upon the matters set forth in (2) above, the District may nevertheless use or occupy any completed or partially completed portion of the Work, with the responsibility for such matters subject to resolution in accordance with the Contract Documents. Immediately prior to such partial occupancy or use of the Work, or portions thereof, the Project Inspector, Contractor, and the Architect shall jointly inspect the portions of the Work to be occupied or to be used to determine and record the condition of the Work. The District's use or occupancy of portions of the Work pursuant to the preceding shall not be deemed an event of "completion" under Public Contract Code §7107.
- 2.3.3. Unless otherwise expressly agreed upon by the District and the Contractor, the District's partial occupancy or use of the Work or any portion thereof, shall not constitute the District's acceptance of the Work that fails to comply with the requirements of the Contract Documents or which is otherwise defective

2.4. PROHIBITED INTERESTS

- 2.4.1. No official of the District who is authorized in such capacity and on behalf of the District to negotiate, make, accept, or approve, or to take part in negotiating, making, accepting or approving any Architectural, engineering, inspection, construction or material supply Contract or any Subcontract in connection with construction of the Project, shall become directly or indirectly interested financially in this Contract or in any part thereof. No officer, employee, Architect, attorney, engineer or Project Inspector of or for the District who is authorized in such capacity and on behalf of the District to exercise any executive, supervisory or other similar functions in connection with construction of the Project shall become directly or indirectly interested financially in this Contract or in any part thereof.

ARTICLE 3**3. ARCHITECT – DUTIES OF****3.1. ARCHITECT'S RESPONSIBILITIES**

- 3.1.1. The purpose of this Article is to provide the Contractor with information on the role and responsibilities of the Architect. This Article does not direct the Work of the Architect. The Architect's Work is directed by the Architects' Contract which is not a part of this Master Facilities Lease.
- 3.1.2. The Architect shall assist the District in administration of the Contract as described in the Contract Documents, and shall be one of the District's representatives during construction until the time that Final Tenant Improvement Payment is due the Contractor under the Contract Documents. The Architect shall advise and consult with the Construction Manager, Project Manager, and the Project Inspector with respect to the administration of the Contract and the Work.
- 3.1.3. The Architect is authorized to act on behalf of the District to the extent provided for in the Contract Documents; and shall have the responsibilities and powers established by law, including Title 24 of the California Code of Regulations. Nothing contained in the Contract Documents shall create any Contractual relationship between the Architect and the Contractor.
- 3.1.4. The Architect shall visit the Site weekly or at intervals appropriate to the stage of construction 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, shall be in accordance with the Contract Documents. The Architect shall not be required to make exhaustive or continuous Site inspections to check quality or quantity of the Work. On the basis of Site observations as an Architect, the Architect shall keep the District informed of the progress of the Work, and shall endeavor to guard the District against defects and deficiencies in the Work. At the District's sole discretion, the District may require more frequent site visits by the Architect to prevent Project delays.
- 3.1.5. The Architect and the Project Inspector are authorized to reject Work that is defective, unsafe, or does not conform to the requirements of the Contract Documents. Whenever the Architect or Project Inspector consider it necessary or advisable, for implementation of the intent of the Contract Documents, the Architect and the Project Inspector shall each have authority to require additional inspections or testing of the Work, whether such Work is fabricated, installed, or completed.
- 3.1.6. The Architect shall conduct observations to determine the date or dates of Substantial Completion and the date of Final Completion, shall receive and forward to the District, for the District's review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor, and shall verify that the Contractor has complied with all requirements of the Contract Documents and is entitled to receipt of Final Tenant Improvement Payment.
- 3.1.7. The Architect shall interpret and decide matters concerning the requirements of the Contract Documents on written request of either the District or the Contractor. The Architect's response to such requests shall be made with reasonable promptness and within the time limits agreed upon, if any, and in no event to exceed a five (5) working day period from receipt of the request. Interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of Drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both the District and the Contractor, shall not show partiality to either and shall not be liable for results of interpretations or decisions so rendered in good faith.

3.2. TERMINATION OF ARCHITECT; SUBSTITUTE ARCHITECT

- 3.2.1. In case of termination of employment of the Architect, the District shall appoint a substitute Architect whose status under the Contract Documents shall be that of the Architect.

SAMPLE

ARTICLE 4

4. CONTRACTOR – DUTIES OF

A. The Contractor shall construct and complete, in a good and workmanlike manner, the Work for the Guaranteed Maximum Price including any adjustment(s) to the Guaranteed Maximum Price pursuant to provisions herein regarding changes to the Guaranteed Maximum Price. Except as otherwise noted, Contractor shall provide and pay for all labor, materials, equipment, permits (excluding DSA), fees, licenses, facilities, transportation, taxes, bonds and insurance, and services necessary for the proper execution and completion of the Work, except as indicated herein.

B. Status of Contractor

1. The Contractor is and shall at all times be deemed to be an independent Contractor and shall be wholly responsible for the manner in which it and its Subcontractors perform the services required of it by the Contract Documents. Nothing herein contained shall be construed as creating the relationship of employer and employee, or principal and agent, between the District, or any of the District's employees or agents, and Contractor or any of Contractor's Subcontractors, agents or employees. Contractor assumes exclusively the responsibility for the acts of its agents and employees as they relate to the services to be provided during the course and scope of their employment. Contractor, its Subcontractors, and its agents and employees shall not be entitled to any rights or privileges of District employees. District shall be permitted to monitor the Contractor's activities to determine compliance with the terms of the Contract Documents.
2. As required by law, the Contractor and all Subcontractors shall be properly licensed and regulated by the Contractors State License Board, 9821 Business Park Drive, Sacramento, California 95827 (Post Office Box 26000, Sacramento, California 95826), <http://www.cslb.ca.gov>.
3. As required by law, the Contractor and all Subcontractors shall be properly registered as public works Contractors by the Department of Industrial Relations <https://efiling.dir.ca.gov/PWCR/ActionServlet?action=displayPWCRegistration> Form or current URL.
4. The Contractor represents that it has no existing interest and will not acquire any interest, direct or indirect, which could conflict in any manner or degree with the performance of Work required under this Contract and that no person having any such interest shall be employed by Contractor.

4.1. CONTRACTOR REVIEW OF CONTRACT DOCUMENTS

- 4.1.1. The Contractor shall carefully study and compare the Contract Documents with information furnished by the District pursuant to the Contract Documents and shall at once report to the Architect any errors, inconsistencies or omissions discovered by issuing a Request for Information (RFI) to the Architect. If the Contractor performs any Work that the Contractor knows, or with reasonable diligence should know, involves an error, inconsistency or omission in the Contract Documents without prior notice to the Architect, the Contractor shall assume full responsibility for such performance and bear all attributable costs for correction of the same.
- 4.1.2. If at any time the Contractor encounters any condition which the Contractor believes, in good faith and with reasonable basis, is the result of an ambiguity, conflict, error or omission in the Contract Documents (collectively "the Conditions"), it shall be the affirmative obligation of the Contractor to timely notify the Architect, in writing via an RFI,

of the Conditions encountered and to request information from the Architect necessary to address and resolve any such Conditions. The Contractor shall act with promptness in submitting any such written RFI so as to allow the Architect a reasonable period of time to review, evaluate and respond to any such request. If the Contractor submits an RFI on a schedule activity within five (5) days or less of float on the most current Project CPM schedule, the Contractor shall not be entitled to any time extension provided that the Architect responds to the RFI within the five (5) working days set forth in Article 3.1.7.

- 4.1.3. If the Contractor fails to timely notify the Architect in writing of any Conditions encountered and the Contractor proceeds to perform any portion of the Work containing or affected by such Conditions, the Contractor shall bear all costs associated with or required to correct, remove, or otherwise remedy any portion of the Work affected thereby without adjustment of the Contract Time or the Contract Price.
- 4.1.4. The Architect's responses to any such Contractor RFI shall conform to the standards and time frame set forth in Article 3.1.7 of these General Conditions. A response to an RFI is not an authorization to proceed with any Work that the Contractor considers to be an impact to the time or cost of the Work. Changes to the Contract Time or the Guaranteed Maximum Price shall be governed by the provisions of Article 10.1 hereof.
- 4.1.5. The foregoing provisions notwithstanding, in the event that the Architect reasonably determines that any of Contractor's RFI's (i) do(es) not reflect adequate or competent supervision or coordination by the Contractor or any Subcontractor; or (ii) do(es) not reflect the Contractor's adequate or competent knowledge of the requirements of the Work or the Contract Documents; or (iii) is/are not justified for any other reason, Contractor shall be liable to the District for all costs incurred by the District associated with responding to any such request for information, including without limitation, fees of the Architect and any other design consultant to the Architect or the District which shall be deducted from the Contract Price.
- 4.1.6. Prior to commencement of the Work, or portions thereof, the Contractor shall take field measurements and verify field conditions at the Site and shall carefully compare such field measurements and conditions and other information known to the Contractor with information provided in the Contract Documents. Errors, inconsistencies or omissions discovered shall be reported in writing to the Architect at once.
- 4.1.7. The Contractor shall be solely responsible for measuring dimensions and coordinating the Work of the Contract Documents. Scaling of the Contract Documents is not permitted. All field engineering required for laying out the Work and establishing grades for earthwork operations shall be by the Contractor at its expense. Any field engineering or other engineering to be provided or performed by the Contractor under the Contract Documents and required or necessary for the proper execution or installation of the Work shall be provided and performed by an engineer duly registered under the laws of the State of California in the engineering discipline for such portion of the Work.
- 4.2. SITE INVESTIGATION; SUBSURFACE CONDITIONS
- 4.2.1. The Contractor shall be responsible for, and by executing the Master Facilities Lease acknowledges, that it has carefully examined the Site and has taken all steps it deems reasonably necessary to ascertain all conditions which may affect the Work, or the cost thereof, including, without limitation, conditions bearing upon transportation, disposal, handling or storage of materials; availability of labor or utilities; access to the Site; and the physical conditions and the character of equipment, materials, labor and services necessary to perform the Work. If the Contractor reasonably determines there is an existing condition which is materially different than depicted in the Contract Documents or at the time of bid, Contractor shall immediately notify the District and the Architect in writing of the same in accordance with Article 4.1.2 herein.

- 4.2.2. By executing the Master Facilities Lease, the Contractor acknowledges that it has examined the boring data and other subsurface data available and satisfied itself as to the character, quality and quantity of surface and subsurface materials, including without limitation, obstacles which may be encountered in performance of the Work, insofar as this information is reasonably ascertainable from an inspection of the Site, review of available subsurface data and analysis of information furnished by the District under the Contract Documents. The Contractor shall examine all boring and other subsurface data to make its own independent interpretation of the subsurface conditions and acknowledges that its bid is based upon its own opinion of the conditions that may be encountered. The District assumes no responsibility for any conclusions or interpretations made by Contractor on the basis of available subsurface data or other information furnished by District under the Contract Documents.
- 4.2.3 Pursuant to Labor Code section 6705, if the Guaranteed Maximum Price exceeds \$25,000 and involves the excavation of any trench or trenches five (5) feet or more in depth, the Contractor shall, in advance of excavation, promptly submit to the District and/or a registered civil or structural engineer employed by the District or Architect, a detailed plan showing the design of shoring for protection from the hazard of caving ground during the excavation of such trench or trenches.

When digging trenches or other excavations that extend deeper than four feet below the surface (per Public Contract Code §7104):

- 4.2.3.1 Contractor shall promptly, and before the following conditions are disturbed, notify District, in writing, of any material that the Contractor believes may be material that is hazardous waste, as defined in §25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law. Contractor shall notify District in writing of 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. Contractor shall notify District in writing of 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.
- 4.2.3.2 District shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in the Contractor's cost of, or the time required for, performance of any part of the work shall issue a change order under the procedures described in the contract.
- 4.2.3.3 In the event that a dispute arises between the District and the Contractor whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Contractor's cost of, or time required for, performance of any part of the work, the Contractor shall not be excused from any scheduled completion date provided for by the contract, but shall proceed with all work to be performed under the contract. The Contractor shall retain any and all rights provided either by contract or by law which pertain to the resolution of disputes and protests between the contracting parties.
- 4.2.3.4 Time or cost adjustments will not be allowed unless the Contractor has given notice as indicated above.

4.3. SUPERVISION AND CONSTRUCTION PROCEDURES

- 4.3.1. The Contractor shall supervise and direct performance of the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures, and for safety

precautions and programs, and for coordinating all portions of the Work under the Contract Documents. The Contractor shall be responsible for inspection of portions of Work already performed under the Contract Documents to determine that such portions are in proper condition to receive subsequent Work.

- 4.3.2. The Contractor shall be responsible to the District for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and all other persons performing any portion of the Work under a Contract with the Contractor. The Contractor shall not be relieved of the obligation to perform the Work in accordance with the Contract Documents either by activities or duties of the Construction Manager, Project Manager, Project Inspector, or the Architect in the administration of the Contract, or by tests, inspections or approvals required or performed by persons other than the Contractor. The Contractor must maintain on the job site contemporaneous daily construction reports that record, at a minimum, weather conditions, weather effects, visitors to the Site, meetings/conversations, inspections made and results, problems encountered, materials delivered, equipment delivered, material procurement problems, safety meetings/issues, accidents, description of actions initiated to correct reported deficiencies, and detailed descriptions of all Work activities, including Work location, Subcontractor name, crew size, equipment utilized, identification of change order Work and identification of the beginning and ending of significant activities.
- 4.3.3. The Contractor shall prepare, or cause to be prepared, all detailed surveys necessary for performance of the Work, including without limitation, slope stakes, points, lines and elevations. The Contractor shall be responsible for the establishment, location, maintenance and preservation of benchmarks, reference points and stakes for the Work. The cost of any surveys and the establishment, location, maintenance and preservation of benchmarks, reference points and stakes shall be included within the Guaranteed Maximum Price. The Contractor shall be solely responsible for all loss or costs resulting from the loss, destruction, disturbance or damage of benchmarks, reference points or stakes.
- 4.3.4. Unless otherwise provided elsewhere in the Contract Documents, the Contractor shall arrange for the furnishing of and shall pay the costs of all utility services, including, without limitation, electricity, water, gas, voice, data, fire and intrusion alarm necessary for performance of the Work and the Contractor's obligations under the Contract Documents. The Contractor shall furnish and install necessary or appropriate temporary distributions of utilities, including meters, to the Site. The Contractor, upon completion of the Work, shall remove any such temporary distributions. The costs of all such utility services, including the installation and removal of temporary distributions thereof, shall be borne by the Contractor and included in the Guaranteed Maximum Price.
- 4.3.5. In accordance with California Government Code §4215, the District shall assume the responsibility for the timely removal, relocation, or protection of existing main or trunkline utility facilities located on the Site which are not identified in the Drawings, Specifications or other Contract Documents. Contractor shall be compensated for the costs of locating or repairing damage not due to the Contractor's failure to exercise reasonable care, and removing or relocating such utility facilities not indicated in the Contract Documents with reasonable accuracy, and for equipment on the Site necessarily idled during such Work. Contractor shall not be assessed Liquidated Damages for delay in completion of the Work when such delay is caused by the failure of the District or the owner of the utility to provide for removal or relocation of such utility facilities.
- 4.3.6. The District is not required to indicate the presence of existing service laterals or appurtenances whenever the presence of such utilities on the Site can be inferred from the presence of other visible facilities, such as buildings, meters and junction boxes, on or adjacent to the Site. In the event that Contractor, in performing the Work, shall encounter utility facilities not identified by the District in the Contract Documents, the Contractor shall

immediately notify, in writing, the District, the Architect, and the utility owner. In the event that such utility facilities are owned by a public utility, the public utility shall have the sole discretion to perform repairs or relocation Work or permit the Contractor to do such repairs or relocation Work at a reasonable price

- 4.3.7. Within ten (10) days of the date of the District's Board of Education action awarding the Contract, the Contractor shall submit to the District a list of the individuals authorized to execute documents and instruments relating to the Work and the Contract Documents on behalf of the Contractor and to bind the Contractor to its obligations under such documents or instruments. If the Contractor is a corporation, in addition to the list of authorized representatives, the Contractor shall concurrently submit a duly certified resolution of the Contractor's Board of Directors reflecting authorization or ratification of the authority conferred upon each of the individuals on the list submitted in accordance with the provisions hereof.
- 4.3.8. The Contractor shall enforce strict discipline and good order among the Contractor's employees, the employees of any Subcontractor or Sub-Subcontractor and all other persons performing any part of the Work at the Site. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. The Contractor shall dismiss from its employ, and direct any Subcontractor or Sub-Subcontractor to dismiss from their employment; any person deemed by the District to be unfit or incompetent to perform Work and shall not reemploy such person without the prior written consent of the District. The District reserves the right to interview and accept or reject proposed personnel, including but not limited to the Project Manager, Project Engineer, Superintendent, Assistant Superintendents and Safety Representative. Personnel assigned and accepted by the District shall be maintained throughout the Project, unless otherwise accepted by the District.
- 4.3.9. The Contractor shall employ a competent Superintendent and all necessary assistants who shall be in attendance at the Site at all times during performance of the Work. The Contractor's communications relating to the Work or the Contract Documents shall be through the Contractor's Superintendent. The Superintendent shall represent the Contractor and communications given to the Superintendent shall be binding as if given to the Contractor. The Contractor shall dismiss the Superintendent or any of his/her assistants if they are deemed, in the sole reasonable judgment of the District, to be unfit, incompetent or incapable of performing the functions assigned to them. In such event, the District shall have the right to approval of the replacement of Superintendent or assistant. The Contractor shall designate a separate Superintendent for each construction site included within the Work.
- 4.4. LABOR AND MATERIALS
- 4.4.1. Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, 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 whether or not incorporated or to be incorporated in the Work.
- 4.5. TAXES
- 4.5.1. The Contractor shall pay, without adjustment of the Guaranteed Maximum Price, all sales, consumer, use and other taxes for the Work or portions thereof provided by the Contractor under the Contract Documents.
- 4.6. PERMITS, FEES AND NOTICES; COMPLIANCE WITH LAWS
- 4.6.1. Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permits, other permits, governmental fees, licenses and inspections necessary or required for the proper execution and completion of the Work.

- 4.6.2. The Contractor shall comply with and give notices required by laws, ordinances, rules, regulations and other orders of public authorities bearing on performance of the Work.
- 4.6.3. If the Contractor knows, or has reason to believe, that any portion of the Contract Documents are at variance with applicable laws, statutes, ordinances, building codes, regulations or rules, the Contractor shall promptly notify the Architect and the Project Inspector, in writing, of the same. If the Contractor performs Work knowing, or with reasonable diligence should have known, it to be contrary to such laws, applicable to the Work without prior notice, the Contractor shall assume full responsibility for such Work and shall bear the attributable costs arising or associated therefrom, including without limitation, the removal, replacement or correction of the same.
- 4.6.4. The Contractor shall comply with all conditions of the State Water Resources Control Board ("State Water Board") National Pollutant Discharge Elimination System General Permit (NPDES) for Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activities Order No. 2009-009-DWQ ("Storm Water Construction General Permit") for all construction activity which results in the disturbance in excess of one (1) acre of total land area or which is part of a larger common area of development for sale. For projects with land disturbance less than a total acre of land or for projects with an Erosivity Waiver, the Contractor is not required to comply with the Stormwater Construction General Permit, but shall comply with similar standards for sediment erosion control and material and waste best management practices as detailed in the District's Water Pollution Control Program (WPCP).
- 4.6.5. The District is responsible for preparing a Stormwater Pollution Prevention Plan (SWPPP) and filing the Notice of Intent and fee to obtain coverage under the State Water Board Storm Water Construction General Permit for any project that disturbs one (1) acre or more which is not eligible for an Erosivity Waiver. A copy of the project SWPPP is provided by the District. A copy of the Storm Water Construction General Permit is provided by the District. Both the SWPPP and Storm Water Construction General Permit shall be kept on file at the construction site by the Contractor. The Contractor shall comply with both the project SWPPP and the Storm Water Construction General Permit without adjustment to the Guaranteed Maximum Price or the Contract Time. The Contractor shall provide a designated individual meeting the specified qualifications and shall implement the SWPPP with regards to contract work items and shall timely and completely submit required reports and monitoring information required by the conditions of the Storm Water Construction General Permit and SWPPP for the Work. In addition to the compliance with the Storm Water Construction General Permit and SWPPP, the Contractor shall comply with all other applicable state, municipal or regional laws, ordinances, rules or regulations governing discharge of storm water, including applicable municipal storm water management programs. Contractor's Qualified SWPPP Practitioners (QSP) operating under the Construction General Permit shall meet the training requirements of the Construction General Permit and shall provide evidence of training to the District prior to start of construction.
- 4.6.6. The District is responsible for developing a Water Pollution Control Program (WPCP) for projects designated as disturbing less than 1 acre and for projects with Erosivity Waivers. The Contractor shall provide a designated individual with evidence of adequate training to implement the WPCP.
- 4.7. USE OF SITE AND CLEAN-UP
- 4.7.1. The Contractor shall confine operations at the Site to areas permitted by law, ordinances or permits, subject to any restrictions or limitations set forth in the Contract Documents. The Contractor shall not unreasonably encumber the Site or adjoining areas with materials or equipment. The Contractor shall be solely responsible for providing security at the Site with all such costs included in the Guaranteed Maximum Price.

- 4.7.2. The District shall be providing CM and PI site supervision Monday through Friday from 7:00 AM to 3:30 PM. Working hours shall conform to local laws, which includes no street parking, deliveries, hoisting, welding, etc. or equipment startup. Scheduled and limited exceptions such as utility shutdowns and tie-ins to existing work shall be performed during "off-hours". All Work performed during off-hours must be coordinated and approved by the District, with a minimum of 48 hour notice. The Contractor is responsible for the costs of all overtime, shift time differentials, and other premium time costs required to achieve the schedule commitments. This includes, but is not limited to, work in excess of eight (8) hours per day, forty (40) hours per week, and/or work on Saturdays, Sundays and Holidays. If Contractor is behind schedule or not working full shifts in accordance with the hours indicated above, they shall be considered behind schedule and responsible for delay impacts.
- 4.7.3. The Contractor shall at all times keep the Site and all adjoining areas free from the accumulation of any waste material or rubbish caused or generated by performance of the Work. Contractor shall be aware of and take appropriate measure to avoid nuisances. Should the Project Inspector determine that any waste materials, rubbish, or other stored materials have become a nuisance; the Contractor will remedy the condition immediately upon oral and/or written notice. Contractor shall separately contain hazardous and unsanitary waste materials from other waste and mark each container appropriately and dispose of legally. Contractor shall maintain the Site in a "broom-clean" standard on a daily basis. Prior to completion of the Work, Contractor shall remove from the Site all rubbish, waste material, excess excavated material, tools, Construction Equipment, machinery, surplus material and any other items which are not the property of the District under the Contract Documents. If the Contractor fails to clean up as provided for in the Contract Documents, the District may do so, and all costs incurred in connection therewith shall be charged to the Contractor; the District may deduct such costs from any portion of the Guaranteed Maximum Price then or thereafter due the Contractor.
- 4.8. ACCESS TO THE WORK
- 4.8.1. The Contractor shall provide DSA, the Project Inspector, Construction Manager, Project Manager, and the Architect with access to the Work at all times, whether in place, in preparation or in progress and wherever located. The Contractor shall also furnish the Project Inspector and the Architect access to the Work for obtaining such information as may be necessary to keep the Project Inspector and Architect fully informed respecting the progress, quality and character of the Work and materials, equipment or other items incorporated therein.
- 4.9. PATENTS AND ROYALTIES
- 4.9.1. The Contractor and the Surety shall defend, indemnify and hold harmless the District and its agents, employees and officers from any Claim, demand or legal proceeding arising out of or pertaining, in any manner, to any actual or Claimed infringement of patent rights or royalties therefrom in connection with performance of the Work under the Contract Documents.
- 4.10. CUTTING AND PATCHING
- 4.10.1. The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make the component parts thereof fit together properly in accordance with the Contract Documents.
- 4.11. EMPLOYEE FINGERPRINTING; STUDENT BARRIER/EMPLOYEE MONITORING
- 4.11.1. Pursuant to Education Code §§45125.1 and 45125.2, the Contractor shall implement the measures set forth in the Supplementary Conditions. The Contractor's implementation and maintenance of such measures is a material obligation of the Contract.

4.12. COMMUNICATIONS

4.12.1. All communications regarding the Work or the Contract Documents shall be in writing; verbal communications shall be reduced to writing and signed by both parties. Communications between the Contractor and the District shall be through the Architect. Communications between separate Contractors, if any, shall be through the Architect. All communications from the Contractor to the Architect will be copied to the Construction Manager. All written communications between the Contractor and any Subcontractor, Material Supplier or others directly or indirectly engaged by the Contractor to perform or provide any portion of the Work shall be available on the job site to the Architect and the Construction Manager for review, inspection and reproduction as may be requested from time to time. Failure or refusal of the Contractor to permit such review may be deemed a default of a material obligation of the Contractor.

4.13. ASSIGNMENT OF ANTITRUST CLAIMS; PRESERVATION OF RECORDS

4.13.1. Pursuant to California Government Code §§4550, *et seq.*, the Contractor and its Subcontractor(s), of any tier, hereby offers and agrees to assign to the District all rights, title and interest in and to all causes of action they may have under Section 4 of the Clayton Act, (15 U.S.C. §15) or under the Cartwright Act (California Business and Professions Code §§16700 *et seq.*), arising from purchases of goods, services or materials hereunder or any Subcontract. This assignment shall be made and become effective at the time the District tenders Final Tenant Improvement Payment to the Contractor, without further acknowledgment by the parties.

4.13.2. If the District receives, either through judgment or settlement, a monetary recovery in connection with a cause of action assigned under California Government Code §§4550, *et seq.*, the assignor thereof shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the District any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the District as part of the Guaranteed Maximum Price, less the expenses incurred by the District in obtaining that portion of the recovery. Upon demand in writing by the assignor, the District shall, within one 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 (i) the District has not been injured thereby; or (ii) the District declines to file a court action for the cause of action.

ARTICLE 5**5. SUBCONTRACTORS****5.1. SUBCONTRACTS**

- 5.1.1. Any portion of the Work performed for the Contractor by a Subcontractor shall be pursuant to a written Master Facilities Lease between the Contractor and such Subcontractor which specifically incorporates by reference the Contract Documents and which specifically binds the Subcontractor to the applicable terms and conditions of the Contract Documents, including without limitation, the policies of insurance required in the Supplementary Conditions and obligates the Subcontractor to assume toward the Contractor all the obligations and responsibilities of the Contractor which by the Contract Documents the Contractor assumes toward the District and the Architect. Specialty Subcontractors shall be utilized for the performance of such parts of the Work, which, under normal Contract practices, are performed by such Subcontractors unless the Contractor has customarily performed such Work, is equipped to do so, and the District in its reasonable discretion has agreed to same. The foregoing notwithstanding, no Contractual relationship shall exist, or be deemed to exist, between any Subcontractor and the District, unless the Contract is terminated and the District, in writing, elects to assume the Subcontractor.
- 5.1.2. Each Subcontract for a portion of the Work shall provide that such Subcontract may be assigned to the District if the Contract is terminated by the District pursuant to Article 16.3 or 16.4 hereof, subject to the prior rights of the Surety obligated under a bond relating to the Contract.
- 5.1.3. The Contractor shall, upon the District's request, and within ten (10) days of the request, provide to the District copies of all executed Subcontracts and Purchase Orders to which Contractor is a party. The Contractor's failure or refusal, for any reason, to provide copies of such Subcontracts or Purchase Orders shall be deemed Contractor's default in the performance of a material term of the Contract Documents.

5.2. SUBSTITUTION OF LISTED SUBCONTRACTOR

- 5.2.1. Any request of the Contractor to substitute a listed Subcontractor shall be considered only if such request is in strict conformity with this Article 5.2 and California Public Contract Code §4100 *et seq.* All costs incurred by the District, including without limitation, costs of the Construction Manager or Architect, in the review and evaluation of a request to substitute a listed Subcontractor shall be borne by the Contractor; such costs may be deducted by the District from the Guaranteed Maximum Price then or thereafter due the Contractor.
- 5.2.2. Any request of the Contractor to substitute a listed DVBE or SDVOB Subcontractor or supplier shall be considered only if such request is in strict conformity with this Article 5.2 and the substituted Subcontractor is replaced with another DVBE /SDVOB Subcontractor or supplier. The District's Outreach Program, the Elite SDVOB Network and the DVBE Alliance are available to assist Contractor in locating a qualified DVBE/SDVOB of the same license classification if needed. In the event there is not another qualified DVBE/SDVOB Subcontractor or supplier to replace the DVBE/SDVOB being substituted, or Contractor is unable to obtain bids from existing DVBE/SDVOB Subcontractors or suppliers, Contractor shall submit proof of contact and refusal to bid from the solicited DVBE/SDVOB Subcontractors or suppliers, as well as proof of contact and assistance request/receipt from the three referenced resources above. If District accepts the proof of contact and refusal then Contractor may substitute a non-DVBE/SDVOB Subcontractor or supplier to perform the work, subject District's approval. All costs incurred by the District, including without limitation, costs of the Construction Manager or Architect, in the review and evaluation of a request to substitute a listed Subcontractor shall be borne by the Contractor;

such costs may be deducted by the District from the Guaranteed Maximum Price then or thereafter due the Contractor.

- 5.2.3. The District's consent to Contractor's substitution of a listed Subcontractor shall not relieve Contractor from its obligation to complete the Work within the Contract Time and for the Guaranteed Maximum Price. The substitution of a listed Subcontractor shall not, under any circumstance, result in, or give rise to any increase of the Guaranteed Maximum Price or the Contract Time on account of such substitution.
- 5.2.4. In the event of the District's consent to the substitution of a listed Subcontractor, the Architect shall determine the extent to which, if any, revised or additional Submittals shall be required of the newly substituted Subcontractor. In the event that the Architect determines that revised or additional Submittals are required of the newly substituted Subcontractor, the Architect shall promptly notify the Contractor, in writing, of such requirement. In such event, revised or additional Submittals shall be submitted to Architect not later than thirty (30) days following the date of the Architect's written notice to the Contractor; provided that if in the reasonable and good faith judgment of the Architect, the progress of the Work or completion of the Work requires submission of additional or revised Submittals by the newly substituted Subcontractor in less than thirty (30) days, the Architect shall so state in its written notice to the Contractor.
- 5.2.5. In the event that the revised or additional Submittals are not submitted by Contractor within thirty (30) days, or such earlier time as determined by the Architect pursuant to the preceding sentence, following the Architect's written notice of the requirement for revised or additional Submittals, Contractor shall be subject to the per diem assessments reflected in Article 8.1.2 herein. Contractor shall reimburse the District for all fees and costs, including without limitation fees of the Architect or any design consultant to the Architect or the District and DSA fees, incurred or associated with the processing, review and evaluation of any revised or additional Submittals required pursuant to Article 5.2.4. *et seq.*; the District may deduct such fees and costs from any portion of the Guaranteed Maximum Price then or thereafter due the Contractor.

ARTICLE 6

6. CONTRACT TIME

6.1. SUBSTANTIAL COMPLETION OF THE WORK WITHIN CONTRACT TIME

6.1.1. The Contract Time is the period of time, including authorized adjustments thereto, allotted in the Contract Documents for Substantial Completion of the Work. By executing the Master Facilities Lease, the Contractor confirms that the Contract Time is a reasonable period for performing and achieving Substantial Completion of the Work for each phase, if any. The date for commencement of the Work is the date established by the Notice to Proceed issued by the District pursuant to the Master Facilities Lease, which shall not be postponed by the failure to act of the Contractor or of persons or entities for whom the Contractor is responsible. The date of Substantial Completion is the date certified by the Architect and the Project Inspector as such in accordance with the Contract Documents. Substantial Completion shall be determined by the Architect and the Project Inspector upon request by the Contractor in accordance with the Contract Documents. The good faith and reasonable determination of Substantial Completion by the Project Inspector and the Architect shall be controlling and final.

6.1.2. District's Right to Beneficial Occupancy or Use: The District may, at its sole discretion, have Beneficial Occupancy or use of any completed or partially completed portion of the Project at any stage. Neither the District's Final Acceptance, the making of Final Payment, nor the Beneficial Occupancy or use of the Project, in whole or in part, by District shall constitute acceptance of the Project not in accordance with the Contract Documents nor relieve the Contractor or the Contractor's Performance Bond Surety from liability with respect to any warranties or responsibility for faulty or defective Work or materials, equipment and workmanship incorporated therein. The District and the Contractor shall agree in writing to the responsibilities assigned to each of them for payments, security, maintenance, heat, utilities, damage to the Project, insurance, the period for correction of the Work, and the commencement of warranties required by the Contract Documents. Any dispute as to responsibilities shall be resolved pursuant to the Disputes and Claims provisions herein, with the added provision that during the dispute process, the District shall have the right to Beneficial Occupancy or use any portion of the Project that it needs or desires to use.

6.1.3 Inspection Prior to Beneficial Occupancy or Use: Immediately prior to partial Beneficial Occupancy or use of the Project, the District, the Contractor, and the Architect shall jointly inspect the area to be occupied or portion of the Project to be used in order to determine and record the condition of the Work.

6.1.4 No Waiver: Unless otherwise agreed upon, partial or entire occupancy or use of a portion or portions of the Project shall not in of itself constitute or acceptance of the Project not complying with the requirements of the Contract Documents.

6.2. NO EARLY COMPLETION

6.2.1 By executing the Master Facilities Lease, Contractor agrees that the Guaranteed Maximum Price includes all direct and indirect overhead costs (both home office and field office) throughout the Contract performance period, which ends on the Contract completion date specified in this Contract. By executing the Master Facilities Lease, the Contractor acknowledges that it does not intend to complete the Contract earlier than said Contract completion date. Any intent by Contractor to complete the Contract earlier than said Contract completion date shall be void and of no force or effect, and Contractor shall not be entitled to claim additional compensation on the basis that it intended to, but was prevented from completing the project prior to the Contract completion date.

6.2.2 District shall not additionally compensate Contractor for early completion of the Work, unless agreed to in writing by the District and approved as an amendment to this Contract

by the District's Board of Education. If the District accepts the Contractor's early completion schedule, the District reserves the right to execute a unilateral change order that amends the Contractual date of Substantial Completion and associated savings to the Guaranteed Maximum Price to coincide with the Contractor's anticipated Substantial completion date as depicted in such early completion schedule. The Contractor shall be subject to assessment of Liquidated Damages, as set forth in the Supplementary Conditions of the Contract and Article 6.7 of these General Conditions, if the Contractor fails to complete the Work and portions thereof within the Contract Time as adjusted by said unilateral change order.

6.3. CORRECTION OF DEFICIENCIES AND ACCEPTANCE OF WORK

6.3.1. Prior to the Contractor's request for determination of Substantial Completion by the Architect and the Project Inspector, the Contractor is required to issue its own comprehensive list of items of the Work to be corrected or completed by the Contractor ("Punchlist"). The Contractor must perform the corrective work and submit a signed-off copy of its own Punchlist to the Architect and the Project Inspector acknowledging Contractor's completion prior to requesting a determination of Substantial Completion. In the event the Contractor shall request determination of Substantial Completion or Final Completion by the Project Inspector and the Architect and it is determined by the Project Inspector and the Architect that the Work does not then justify certification of Substantial Completion or Final Completion and re-inspection is required at a subsequent time to make such determination, the Contractor shall be responsible for all costs of such re-inspection, including without limitation, the fees of the Architect and the salary of the Project Inspector. The District may deduct all such costs from the balance of the Guaranteed Maximum Price then due or thereafter due to the Contractor.

6.3.2. Upon achieving Substantial Completion of all the Work or for each phase if any, the Project Inspector, the Architect, and the Contractor shall jointly inspect the Work and prepare a comprehensive Punchlist of the Work to be corrected or completed by the Contractor. The exclusion of, or failure to include, any item on such list shall not alter or limit the obligation of the Contractor to complete or correct any portion of the Work in accordance with the Contract Documents. Notwithstanding any other provisions of the Contract Documents to the contrary, inspection of the mechanical and electrical portions of the Work shall be conducted jointly by the Contractor's authorized representative(s), the Architect and the Project Inspector for the mechanical and electrical portions of the Work.

6.3.3. The Contractor shall promptly and diligently proceed to complete or correct all items noted on the Punchlist within thirty (30) days from the date the Contractor is in receipt of the Punchlist. In the event that the Contractor shall fail or refuse, for any reason, to complete items requiring completion or correction within the time so established, Contractor shall be subject to assessment of Liquidated Damages in accordance with Article 6.7 thereof. The foregoing notwithstanding, in the event of Contractor's failure or refusal to complete all items of the Work requiring correction or completion within the time so established, the District may, in its sole and exclusive discretion, elect to cause the completion of such items of the Work; provided, however, that such election by the District shall be in addition to, and not in lieu of, any other right or remedy of the District under the Contract Documents or the law. In the event that the District shall elect to complete items of the Work requiring correction or completion pursuant to the foregoing, Contractor shall be responsible for all costs incurred by the District in connection therewith.

6.4. FINAL COMPLETION

6.4.1 Final Completion is that stage of the Work when all Work has been completed in accordance with the Contract Documents, including without limitation, the performance of all correction or completion items noted upon Substantial Completion, and the Contract has been otherwise fully performed by the Contractor. Final Completion shall be determined by the Architect and the Project Inspector. The good faith and reasonable

determination of Final Completion by the Project Inspector and the Architect shall be controlling and final. Final Completion of the Work shall not be deemed to have been achieved until: (a) all inspections have been completed; (b) Submittals, Guarantees, Record Drawings, Maintenance and Operations Manuals have been submitted and accepted; (c) all equipment shall be operational as specified; and (d) the Work and adjoining areas of the Site are clean and ready for occupancy as an educational Facilities.

6.4.2 Final Acceptance of the Work shall occur upon approval of the Work by the District's Board of Education; such approval shall be submitted for adoption at the next regularly scheduled meeting of the District's Board of Education after the determination of Final Completion.

6.5. CONTRACT SCHEDULES

The Contractor shall comply with the construction schedule attached to the Master Facilities Lease as Exhibit "F" ("Construction Schedule").

6.5.1. Execution

6.5.1.1. This section describes the scheduling of Work requirements to be performed by the Contractor. The term "Contract Schedules" refers to all schedules that are required herein and in the Specifications. The Contractor's planning, scheduling and execution of the Contract Work shall be presented to the Construction Manager by submission of the Contract Schedule information and data as described herein and in the Specifications. The Contractor shall plan, schedule, execute and report the Work under the Contract using a Critical Path Method (CPM) schedule. The Contractor shall prepare the Contract Schedules to reflect the Contractor's proposed means and methods for accomplishing the entire scope of Work as awarded and included in the Contract Documents. The Contractor shall employ and supply a sufficient force of Workers, material and equipment, and shall prosecute the Work with such diligence so as to maintain progress, to prevent Work stoppage and to achieve Substantial Completion of all of the Work within the Contract Time. The Contractor shall not be entitled to, nor shall the District be required to make payment for any Contract Work until all Schedules comply with all Contract Requirements.

6.5.2. Baseline Schedule

6.5.2.1. The Baseline Schedule is defined as the Contractor's initial plan to conduct the Work, reviewed for acceptance by the Construction Manager in accordance with the Specifications. The Baseline Schedule shall show the breakdown of work into activities to the extent required to effectively plan the project, report work progress and analyze time impacts, and shall show all logical interrelationships (ties) between activities. The Baseline Schedule shall be the basis for monitoring the Contractor's progress, and the evaluation and reconciliation of Contract Time extensions. The Contractor shall prepare the Baseline Schedule based on the Contract as awarded, providing materials and equipment described in the Contract Documents, and without considering possible substitute or "or equal" items, even if the Contractor pursues a substitution in accordance with provisions of the Contract. The Construction Manager's final determination on proposed substitutions may not be made until after the Baseline Schedule or a Revised Schedule is submitted and accepted by the Construction Manager, or conditionally accepted with note exceptions.

6.5.3. Monthly Schedule Update

6.5.3.1. At monthly intervals, the Contractor shall update the schedule to reflect actual progress and submit the schedule update to the Construction Manager for review and acceptance in accordance with the Specification. The Monthly Schedule

Update shall record progress for the period from the last Monthly Schedule Update through the current cutoff date set forth by the Construction Manager. The Monthly Schedule Update shall also forecast the remainder of the Work. The Monthly Schedule Update must not deviate significantly from the Baseline Schedule and shall not be used to delete or add activities, make title changes, and to make duration or logic changes. The Construction Manager may refuse to recommend the whole or part of any payment if, in the Construction Manager's opinion, the Contractor's failure, refusal or neglect to provide the required schedule information precludes a proper evaluation of whether or not the Contractor is prosecuting the work with the diligence that will ensure completion of the work within the Contract Time.

6.5.4. Schedule Corrections

6.5.4.1. Each month, in accordance with the Specification, the Contractor shall address corrections to the schedule that were identified by the Construction Manager during the review of the last Monthly Schedule Update. If the submittal is rejected, the Contractor must individually respond to every correction and review comment received from both the Construction Manager and/or Architect via the schedule narrative of the resubmittal. If the submittal is conditionally accepted with noted exceptions, the Contractor must individually respond to every correction and review comment via the schedule narrative of the next monthly update. Failure of the Contractor to specifically respond to each of the Construction Manager's previous review comments may result in rejection of the following submittal and a monthly payment portion withheld.

6.5.5. Look-Ahead Schedules

6.5.5.1. In accordance with the Specification, the Contractor shall submit a look ahead schedule that shows, at a level of detail satisfactory to the Construction Manager, the work planned and accomplished during the previous week and the work planned for the next two weeks. The Contractor shall list the activity number from the Contract Schedule to which the activity on the look ahead schedule corresponds.

6.5.6. Schedule Revisions

6.5.6.1. Schedule Revisions are defined as any changes to schedule activities or logic other than the updating of actual start and completion dates, percent complete or remaining duration. The Contractor shall revise the Baseline Schedule when the Construction Manager determines that it is no longer useful as a status and control mechanism, when a change or delay impacts the Contractor's timing and sequence of the work, or when the Contractor has submitted logic changes that affect critical or near critical activities as determined by the Construction Manager. Schedule Revisions must be submitted in accordance with the Specification for the Construction Manager's review and acceptance. After the Construction Managers accepts the schedule revision, the Contractor shall incorporate the accepted revision into the next Monthly Schedule Update. Schedule Revisions are not to be used to change milestones dates of Contract Time.

6.5.7. Recovery Schedules

6.5.7.1. The Contractor's refusal, failure or neglect to take appropriate recovery action or to submit a Recovery Schedule shall constitute reasonable evidence that the Contractor is not prosecuting the Work with the diligence that will ensure its completion within the applicable Contract Time. Such lack of action shall

constitute sufficient basis for the Construction Manager to withhold payments to the Contractor.

6.5.8 Contractor Responsibility Not Affected By Acceptance of Schedules

6.5.8.1. The Construction Manager's review or acceptance of the Contract Schedules shall not relieve the Contractor of its responsibility for scheduling, sequencing, and pursuing the Work to comply with the requirements of the Contract Documents, including adverse effects such as delays resulting from ill-timed Work or Work omitted from the schedule. Neither the submission nor the updating of any Contract Schedule Submittal shall have the effect of modifying the Contract Time, Contract Completion Date, Contract milestone dates, or the Contractor's obligations under this Contract. The Contractor shall be responsible for the coordination of Work activities performed by each Subcontractor and supplier, and to obtain information pertinent to the planning and updating of Subcontractor and supplier activities in preparing all Contract Schedules. The District reserves the right to review and comment on the Contract Schedules for conformance with the Contract Time and those sequences of Work indicated in or required by the Contract Documents, to record dates for milestones, for conformance with the scheduling requirements and other information provided in the Contract Documents that may have a bearing on the schedule, for reasonableness of durations and logic, and for consistency in the cost loading of the schedule activities. The Construction Manager's review shall not extend to the Contractor's means, methods, or techniques, the correctness of which shall remain the sole responsibility of the Contractor.

6.5.9. Cost of Schedule Preparation and Maintenance

6.5.9.1. The Contractor's responsibility for the preparation, Submittal and maintenance of the Contract Schedules is a material obligation under the Contract Documents. Any and all costs or expenses required or incurred to prepare, submit, maintain, and update the Contract Schedules shall be solely that of the Contractor and no such cost or expense shall be charged to the District. The Guaranteed Maximum Price shall not be subject to adjustment on account of costs, fees or expenses incurred or associated with the Contractor's preparation, Submittal, and maintenance or updating of the Contract Schedules including adjustments required by change orders.

6.6. ADJUSTMENT OF CONTRACT TIME

6.6.1. Excusable, Non compensable Delays

6.6.1.1. If Substantial Completion of the Work is delayed by Excusable Delays, the Contract Time shall be subject to adjustment for such reasonable period of time as determined by the Construction Manager and the District; Excusable Delays shall not result in any increase in the Guaranteed Maximum Price. Excusable Delays refer to unforeseeable and unavoidable casualties or other unforeseen causes beyond the control, and without fault or neglect, of the Contractor, any Subcontractor, Material Supplier or other person directly or indirectly engaged by the Contractor in performance of any portion of the Work. Excusable Delays include, but are not limited to, unanticipated and unavoidable labor disputes, unusual and unanticipated delays in transportation of equipment, materials or Construction Equipment reasonably necessary for completion and proper execution of the Work, and unanticipated unusually severe weather conditions. Neither the financial resources of the Contractor or any person or entity directly or indirectly engaged by the Contractor in performance of any portion of the Work shall be deemed conditions beyond the control of the Contractor.

6.6.1.2. If an event of Excusable Delay occurs, the Contract Time shall be subject to adjustment hereunder only if the Contractor establishes: (i) full compliance with all applicable provisions of the Contract Documents relative to the method, manner and time for Contractor's notice and request for adjustment of the Contract Time; (ii) that the event(s) forming the basis for Contractor's request to adjust the Contract Time are outside the reasonable control and without any fault or neglect of the Contractor or any person or entity directly or indirectly engaged by Contractor in performance of any portion of the Work; and (iii) that the event(s) forming the basis for Contractor's request to adjust the Contract Time directly and adversely impacted Work activities on the Critical Path of the then current accepted Monthly Schedule Update as of the date on which such delay first occurs.

6.6.2. Compensable Delays

6.6.2.1. If Substantial Completion of the Work is delayed and such delay is caused by the acts or omissions of the District, the Architect, or separate Contractor employed by the District (collectively "Compensable Delays"), upon Contractor's request and notice, in strict conformity with Articles 6 and 10 of these General Conditions, the Contract Time shall be adjusted by Change Order for such reasonable period of time as determined by the Construction Manager and the District. In accordance with California Public Contract Code §7102, if the Contractor's progress is delayed by any of the events described in the preceding sentence, Contractor shall be entitled to the recovery of damages directly and proximately resulting therefrom, provided that the District is liable for the delay, the delay is unreasonable under the circumstances and was not within the reasonable contemplation of the District or the Contractor at the time of execution of the Master Facilities Lease. In such event, Contractor's damages, if any, shall be limited to direct, actual and unavoidable additional costs of labor, materials or Construction Equipment directly resulting from such delay, and shall exclude indirect Field office, indirect additional Home office, unabsorbed overhead, or other consequential damages. No adjustment of the Contract Time shall be made on account of any Compensable Delays unless such delay(s) actually and directly impact Work activities on the Critical Path of the then current accepted Monthly Schedule Update as of the date on which such delay first occurs.

6.6.3. Inexcusable Delays

6.6.3.1. Inexcusable Delays refer to any delay to the progress of the Work caused by events or factors other than those specifically identified in Articles 6.6.1 and 6.6.2 above. Neither the Guaranteed Maximum Price nor the Contract Time shall be adjusted on account of Inexcusable Delays.

6.6.4. Notice of Delay

6.6.4.1. Failure of Contractor to request adjustment(s) of the Contract Time in strict conformity with applicable provisions of the Contract Documents shall be deemed Contractor's waiver of the same. Any delay, which will result in a request for an adjustment to the Contract Time, shall be documented by the Contractor in a letter to the Construction Manager within five (5) days of the occurrence.

6.6.5. Concurrent Delays

6.6.5.1. If an Inexcusable Delay occurs concurrently with either an Excusable Delay or a Compensable Delay, the Contractor may not recover damages for the period of the concurrency under the provisions of Article 6.6.2, and the maximum

extension of the Contract Time shall be equal to the Excusable Delay or the Compensable Delay.

6.6.5.2. Notwithstanding the foregoing, the District's failure to require compliance of any past delays shall not constitute a waiver or preclude it from enforcing such provisions in connection with any present or future delays.

6.6.6 Time Impact Analyses

6.6.6.1 When the Contractor experiences a delay, the Contractor shall submit within fifteen (15) days after a delay occurs, or upon issuance of a Field Work Order or a Unilateral Change Order, a written Time Impact Analysis (TIA) in accordance with the Specifications to the Construction Manager with each cost estimate or cost proposal pursuant to Article 10 and with each request for adjustment of Contract Time. The cost estimate shall include any and all anticipated costs due to the delay, including direct actual extended General Conditions overhead where applicable. If the Contractor does not submit a TIA for a specific change order or delay within the specified time, the Contractor shall be deemed to have voluntarily irrevocably waived any rights to additional time and cost. The Contractor shall allow the Construction Manager two (2) weeks after receipt to approve or reject the submitted TIA. The Contractor shall not incorporate any part of the Time Impact Analysis into the Monthly Schedule Update until authorized in writing by the Construction Manager.

6.7. LIQUIDATED DAMAGES

6.7.1. Should the Contractor neglect, fail or refuse to achieve Substantial Completion of the Work or phase thereof, within the Contract Time, as adjusted, the Contractor agrees to pay to the District the amount of per diem Liquidated Damages set forth in the Supplementary Conditions, not as a penalty but as Liquidated Damages, for every day beyond the Contract Time, as adjusted, until Substantial Completion of the Work or phase thereof is achieved. Contractor and District acknowledge and agree that if the Contractor fails to achieve Substantial Completion in accordance with the Contract Schedule, the District will incur costs and expenses not contemplated by the Contract Documents, the actual amount of which will be impracticable to ascertain. Contractor and District further acknowledge and agree that the per diem assessment set forth in the Supplementary Conditions represents a reasonable joint effort by the parties to establish an amount of Liquidated Damages that corresponds to actual loss and which is reasonable under the circumstances existing at the time the parties entered into the Contract. Liquidated Damages may be deducted from the Guaranteed Maximum Price then or thereafter due the Contractor. The Contractor and the Surety shall be liable to the District for any Liquidated Damages exceeding any amount of the Guaranteed Maximum Price then held or retained by the District. If the Contractor fails or refuses, for any reason, to promptly correct or complete all Punch list items upon Substantial Completion for each phase within thirty (30) days as determined pursuant to Article 6.3 hereof, the Contractor shall be liable to the District for the per diem Liquidated Damages set forth in the Supplementary Conditions from the date that such items should have been corrected or completed until the date that all such items are actually corrected or completed. In the event the Contractor fails or refuses to correct or complete items of the Work noted upon Substantial Completion and the District elects to exercise its right to cause completion or correction of such items, the Contractor will be charged with the cost of completing or correcting the same.

ARTICLE 7

7. GUARANTEED MAXIMUM PRICE

7.1. SCHEDULE OF VALUES AND COST BREAKDOWN

Contractor shall certify that the preliminary schedule of values as submitted to the District is accurate and reflects the costs as developed in the Contractor's Guaranteed Maximum Price. The Contractor shall provide for District review and acceptance prior to commencement of the Work a schedule of values for all of the Work, which includes quantities and prices of items aggregating the Guaranteed Maximum Price and subdivided into component parts as per specifications.

7.1.1. The Contractor shall prepare, on electronic spreadsheet forms provided by the District, a detailed Schedule of Values comprising an estimate and complete Cost Breakdown of the Guaranteed Maximum Price.

7.1.1.1. If the Contract requires a cost-loaded schedule per Specifications, the Schedule of Values shall be directly resulting from the cost-loaded schedule and the Contractor shall adhere to the requirements contained within Specifications. The Schedule of Values shall be submitted with the Baseline Critical Path Method (CPM) Schedule Submittal, and shall follow the same review and approval timeline as the Baseline CPM Schedule.

7.1.1.2. If the Contract does not require a cost-loaded schedule per Specifications, the Schedule of Values shall be sufficiently detailed and organized in a manner acceptable to the Construction Manager. The Schedule of Values shall be submitted to the Construction Manager, in both printed and electronic form, for review and approval within fifteen (15) days of the (NTP) date. Payment for uninstalled materials is limited to major pieces of equipment with a cost value in excess of \$10,000. The Construction Manager has ten (10) days to review the Schedule of Values Submittal. If the Construction Manager rejects the Schedule of Values, the Contractor has five (5) days after the date of the rejection to submit a revised Schedule of Values to the Construction Manager for review and approval. The foregoing procedure for the approval of the Schedule of Values shall continue until the District has accepted the entirety of the Schedule of Values.

7.1.1.3. The Schedule of Values shall be divided into costs in order to comply with the District's cost coding system.

7.1.2. Once the District accepts the Schedule of Values, the Schedule of Values shall not be thereafter modified or amended by the Contractor without the prior consent and approval of the District, except that the Contractor shall amend the Schedule of Values to separately list each change order upon District approval of said Change Order in accordance with the provisions of Article 10.5.

7.1.3. If the Contract requires a cost-loaded schedule per Specifications, upon District approval of a Change Order in accordance with the provisions of Article 10.5, the Contractor shall add separate cost-loaded activities to the Contract Schedule for each Change Order individually.

7.1.4. If the Contract does not require a cost-loaded schedule per Specifications, upon District approval of a Change Order in accordance with the provisions of Article 10.5, the Contractor shall amend the Cost Breakdown to separately list each approved change order.

7.1.5. If the Construction Manager so determines, the Contractor must further divide each Change Order as necessary to comply with the District's cost coding system.

7.2. APPLICATIONS FOR TENANT IMPROVEMENT PROGRESS PAYMENTS

Guaranteed Maximum Price: As compensation for Contractor's construction of the Project, the District shall pay Contractor pursuant to the terms of Exhibit "C" to the Master Facilities Lease.

- 7.2.1. During the Contractor's performance of the Work, the Contractor shall submit to the Construction Manager a CPM schedule update each month in accordance with the provisions of General Requirements. The CPM schedule update Submittal that is to be submitted to the Construction Manager after the Monthly Schedule Review Meeting shall include Applications for Tenant Improvement Payments, on forms provided by the Construction Manager, setting forth an itemized estimate of Work completed in the preceding month for the purpose of the District's making of Tenant Improvement Payments thereon. Values utilized in the Applications for Tenant Improvement Payments shall be based upon the District accepted Cost Breakdown pursuant to Article 7.1 above and shall not be considered as fixing a basis for adjustments to the Guaranteed Maximum Price.
- 7.2.1.1. Where the Contract requires a cost-loaded schedule per Specifications, the estimate of Work completed in the preceding month shall be directly determined by the cost-loaded Monthly Schedule Update. Refer to Specifications regarding Monthly Schedule Updates.
- 7.2.1.2. Where the Contract does not require a cost-loaded CPM schedule per Specification, the Contractor shall estimate the amount of the Application for Tenant Improvement Payment by updating the status of each Schedule of Value item that is complete or in progress with a physical percent complete as of the last day of the preceding month or other cutoff date as approved or directed by the Construction Manager.
- 7.2.1.3. The Contractor shall submit the updated Schedule of Values, in both printed and electronic form, to the Construction Manager for review and approval. Monthly Schedule Review meetings shall be conducted in accordance with Specifications for the purpose of finalizing the percent to be paid for Work completed or in progress. After the meeting, the Contractor shall make revisions to the status of Schedule of Value line items, as directed by the Construction Manager, and submit the Application for Tenant Improvement Payment and electronic Schedule of Values on the due date set forth herein. The Contractor must submit the Monthly Schedule Update package to the Construction Manager before the District will process an Application for Tenant Improvement Payment for a given month.
- 7.2.2. In accordance with Public Contract Code §20104.50, upon receipt of an Application for Tenant Improvement Payment, the District shall review the same for approval. Such Application shall be deemed "proper" for payment only if it is submitted on the appropriate District form fully completed and accompanied by: (i) Certified Payrolls of the Contractor and all Subcontractors, of any tier, for laborers performing any portion of the Work for which a Tenant Improvement Payment is requested; (ii) if applicable, duly completed and executed forms of Conditional and Unconditional Waiver(s) and Release(s) of Rights Upon Tenant Improvement Payment in accordance with California Civil Code §8132 covering the Tenant Improvement Payment requested; (iii) if applicable, a current union statement reflecting that the Contractor and any Subcontractor of any tier, are current in the payment of any supplemental fringe benefits required pursuant to any collective bargaining Master Facilities Lease to which the Contractor or any such Subcontractor is a party to or is otherwise bound by; (iv) a certification by the Contractor that it has continuously maintained, or caused to be maintained, the Record Drawings reflecting the actual as-built conditions of the Work performed for which the Tenant Improvement Payment is requested, it being understood that such certification is subject to verification by the District; (v) the Construction Progress Schedule, (vi) daily construction reports, (vii) when appropriate, (a) completed and signed-off punch lists; (b) health and safety reports; and (c) test/adjust/balance records; (viii) signatures of the Project Inspector, Construction

Manager, and the Architect; (ix) Updated List of Employees for both Contractor and all of his Subcontractors (Attachment 2) with their DOJ fingerprinting status. In accordance with Public Contract Code §20104.50, an Application for Tenant Improvement Payment determined by the District not to be proper shall be returned by the District to the Contractor not more than seven (7) days after the District's receipt thereof setting forth, in writing, the reason(s) for the return.

- 7.2.3. Upon receipt of an Application for Tenant Improvement Payment, the Architect and the Project Inspector shall inspect and verify the Work to determine whether it has been performed in accordance with the terms of the Contract Documents and to determine the portion of the Application for Tenant Improvement Payment which is properly due to the Contractor under the terms of the Contract Documents.
- 7.2.4. Within thirty (30) days after District approval of the Application for Tenant Improvement Payment, Contractor shall be paid a sum equal to ninety-five percent (95%) of the value of the Work performed (as verified by Architect and Inspector and certified by Contractor) up to the last day of the previous month, less the aggregate of previous payments and other amounts statutorily or contractually necessary to be withheld. District shall withhold five percent (5%) retention from all Tenant Improvement Payments. The Lease Payments will be withheld from the retention at or near the end of the Project. Contractor shall continue to perform and shall complete the Project. The value of the Work completed shall be Contractor's best estimate. No inaccuracy or error in Contractor's estimate shall operate to release the Contractor, or any Surety upon any bond, from damages arising from such Work, or from the District's right to enforce each and every provision of this Contract, and the District shall have the right subsequently to correct any error made in any estimate for payment.
- 7.2.5. District and Contractor acknowledge that the District's protections, restrictions and requirements outlined in the "retention" provisions of applicable California law (including, without limitation, Public Contract Code sections 7201, 9203 and 20104.50) are satisfied by the amount(s) the District will only pay as Lease Payments under this Contract and, therefore, the Tenant Improvement Payments may be paid at one hundred percent (100%) for work the Contractor satisfactorily performs. As the amount of the Guaranteed Maximum Price that remains with the District approaches the total amount of the Lease Payments, the District shall ensure it maintains sufficient funds for the total Lease Payments and all other amounts statutorily or contractually necessary, including, without limitation, any item listed as "Reasons to Withhold Payment" herein below. Contractor shall continue to perform and shall complete the Project.
- 7.2.6. In accordance with Public Contract Code §20104.50, in the event that the District fails to make any Tenant Improvement Payment within thirty (30) days after receipt of a properly submitted Application for Tenant Improvement Payment, the District shall pay the Contractor interest on the undisputed amount equal to the legal rate of interest set forth in California Code of Civil Procedure §685.010(a). The foregoing notwithstanding, if the District does not return an improper Application for Tenant Improvement Payment within the allowed seven (7) day period provided in Article 7.2.2, the period of time for the District's disbursement of the Tenant Improvement Payment without incurring the interest liability shall be reduced by the number of days exceeding the seven (7) day return period.
- 7.2.7. Provided that the District is in receipt of the applicable Subcontract or Purchase Order, the District, may at its sole discretion, issue joint checks to the Contractor and such Subcontractor or Material Supplier in satisfaction of its obligation to make Tenant Improvement Payments or the Final Tenant Improvement Payment due hereunder.
- 7.2.8. The approval of any Application for Tenant Improvement Payment or the disbursement of any Tenant Improvement Payment to the Contractor shall not be deemed nor constitute acceptance of defective Work or Work not in conformity with the Contract Documents.

- 7.2.9. The Contractor's Applications for Tenant Improvement Payment may include requests for payment on account of Changes in the Work which have been properly authorized and approved by the District's Project Inspector, the Architect and all other governmental agencies with jurisdiction over such Change in accordance with the terms of the Contract Documents and for which a Change Order has been issued. Change Orders must be clearly identified and referenced on the itemization sheet submitted with the Contractor's Application for Tenant Improvement Payment. Change Orders must be itemized in conformance with the Contractor's accepted Cost Breakdown. Except as provided for herein, the District shall make no other payment for Changes in the Work.
- 7.2.10. Except as expressly provided for herein, no payments shall be made by the District on account of any item of the Work, including without limitation, materials or equipment which, at the time of the Contractor's Submittal of an Application for Tenant Improvement Payment, have not been incorporated into and made a part of the Work.
- 7.2.11. The District may, in its sole and exclusive discretion, approve a request for payment not to exceed eighty percent (80%) submitted with an Application for Tenant Improvement Payment for materials or equipment not yet incorporated into the Work if all of the following are complied with: (a) the materials or equipment have been delivered to the Site; (b) arrangements satisfactory to the District have been made by the Contractor to store and protect such materials or equipment at the Site including without limitation, insurance satisfactory to the District, covering and protecting against the risk of loss, destruction, theft or other damage to such materials or equipment while in storage; and (c) the establishment of procedures satisfactory to the District by which title to such materials or equipment shall be vested in the District upon the District's payment therefore. In the event that the District shall elect to make payment for materials or equipment delivered and stored at the Site, the costs and expenses incurred to comply with the requirements of (b) and (c) of this Article 7.2.11 shall be borne solely and exclusively by the Contractor.
- 7.2.12. The foregoing notwithstanding, the District may, in its sole and exclusive discretion, elect to make payment not to exceed eighty percent (80%) for materials or equipment not incorporated into the Work and which are not delivered or stored at the Site at or prior to the time of the Contractor's Submittal of an Application for Tenant Improvement Payment. Contractor shall incorporate with the Application a request for payment of such materials or equipment and comply with all of the following requirements: (a) arrangements satisfactory to the District have been made by the Contractor to store and protect such materials or equipment at a bonded warehouse, and which arrangements shall include without limitation, insurance satisfactory to the District, covering and protecting against the risk of loss, destruction, theft or other damage to such materials or equipment while in storage; and (b) the establishment of procedures satisfactory to the District by which title to such materials or equipment shall be vested in the District upon the District's payment therefore. The Contractor acknowledges that the discretion to make, or not to make, payment for such materials or equipment delivered or stored at a bonded warehouse pursuant to the preceding sentence shall be exercised exclusively by the District; the District's exercise of discretion not to make payment for such materials or equipment shall not be deemed the District's default hereunder. In the event that the District shall elect to make payment for materials or equipment delivered and stored at a bonded warehouse, the costs and expenses incurred to comply with the requirements of (a) and (b) of this Article 7.2.12 shall be borne solely and exclusively by the Contractor and no payment shall be made by the District on account of such costs and expenses.
- 7.2.13. The provisions of this Article 7.2 notwithstanding, the District shall not make any payment on account of any materials or equipment which is in the process of being fabricated or which are in transit to the Site or other storage location.
- 7.2.14. Neither the Contractor's Application for Tenant Improvement Payment shall include, nor shall the District be obligated to disburse, any portion of the Guaranteed Maximum Price

for amounts which the Contractor does not intend to pay any Subcontractor, of any tier, or Material Supplier because of a dispute or any other reason.

Applications received after June 20th will not be paid until the second week of July and applications received after December 12th will not be paid until the first week of January.

Any payments made to Contractor where criteria set forth herein have not been met shall not constitute a waiver of said criteria by District. Instead, such payment shall be construed as a good faith effort by District to resolve differences so Contractor may pay its Subcontractors and suppliers.

Contractor agrees that failure to submit such items may constitute a breach of Contract by Contractor and may subject Contractor to termination.

7.3. TITLE TO WORK

7.3.1. The Contractor warrants that title to all Work covered by an Application for Tenant Improvement Payment shall pass to the District no later than the time of payment. The Contractor further warrants that upon Submittal of an Application for Tenant Improvement Payment, all Work for which a Tenant Improvement Payment has been previously issued and the Contractor has received payment from the District therefore shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, Claims, stop notices, security interests or encumbrances in favor of the Contractor, Subcontractors, Material Suppliers or other persons or entities making a Claim by reason of having provided labor, materials and equipment relating to the Work.

7.4. FINAL TENANT IMPROVEMENT PAYMENT AND RETENTION

7.4.1. When the Contractor has achieved Final Completion of the Work and has otherwise fully performed its obligations under the Contract Documents, the Contractor shall submit an application for Final Tenant Improvement Payment. Thereupon, the Architect and the Project Inspector shall promptly make a final inspection of the Work and when the Architect and the Project Inspector find the Work acceptable under the Contract Documents and that the Contract has been fully performed by the Contractor, the Architect and the Project Inspector shall thereupon promptly approve the Application for Payment, stating that to the best of their knowledge, information and belief, the Work has been completed in accordance with the terms of the Contract Documents. The Final Tenant Improvement Payment shall include the remaining balance of the Guaranteed Maximum Price and any amounts previously withheld by the District for occupied, utilized, partially completed and accepted portions of the Work. In addition, the retention shall be paid as indicated herein.

7.4.2. Neither the Final Tenant Improvement Payment nor any remaining Guaranteed Maximum Price shall become due until the Contractor submits to the District each and all of the following (i) a certificate evidencing that insurance required by the Contract Documents to remain in force after the Contractor's receipt of Final Tenant Improvement Payment is currently in effect and shall be held for ~~two (2)~~ one (1) years from the final approval date set by the District; (ii) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover any period following Final Tenant Improvement Payment as required by the Contract Documents; (iii) duly completed and executed forms of Conditional or Unconditional Waivers and Releases of rights upon Final Tenant Improvement Payment of the Contractor in accordance with California Civil Code §8132, with each of the same stating that there are, or shall be, no Claims for additional compensation after disbursement of the Final Tenant Improvement Payment; (iv) Operations and Maintenance manuals and separate warranties provided by any Manufacturer or Distributor of any materials or equipment incorporated into the Work; (v) the Record Drawings; (vi) the form of Guarantee included in the Contract Documents duly executed by an authorized representative of the Contractor; (vii) Training and Orientation videos required by the Contract Documents; (viii) all equipment operating as specified; (ix) any and all other items or documents required by the Contract Documents to be delivered

to the District upon completion of the Work; and (x) if required by the District, such other data establishing payment or satisfaction of obligations such as receipts, releases and waivers of liens, stop notices, Claims, security interest or encumbrances arising out of the Contract to the extent and in such form as may be required by the District.

- 7.4.3. Not later than sixty (60) days following Final Acceptance, the District shall disburse the Final Tenant Improvement Payment to the Contractor. Pursuant to California Public Contract Code §7107, if there is any dispute between the District and the Contractor at the time that disbursement of the Final Tenant Improvement Payment is due, the District may withhold from disbursement of the Final Tenant Improvement Payment an amount not to exceed one hundred fifty percent (150%) of the amount in dispute. Any dispute regarding the District's alleged failure to comply with this section or with Public Contract Code §7107 shall be subject to the claims resolution procedures set forth in Article 18 of the Contract.
- 7.4.4. The Contractor's acceptance of the Final Tenant Improvement Payment shall be deemed a waiver and release by the Contractor of any and all Claims against the District for compensation or otherwise in connection with the Contractor's performance of the Contract.
- 7.4.5. Any lien, stop payment notice or other Claim filed or asserted after the Contractor's acceptance of the Final Tenant Improvement Payment by any Subcontractor, of any tier, laborer, Material Supplier or others in connection with or for Work performed under the Contract Documents shall be the sole and exclusive responsibility of the Contractor who further agrees to indemnify, defend and hold harmless the District and its officers, agents, representatives and employees from and against any Claims, demands or judgments arising or associated therewith. In the event any lien, stop notice or other Claim of any Subcontractor, Laborer, Material Supplier or others performing Work under the Contract Documents remain unsatisfied after Final Tenant Improvement Payment is made, Contractor shall refund to District all monies that the District may pay or be compelled to pay in discharging any lien, stop notice or other Claim, including, without limitation, all costs incurred by District in connection therewith.
- 7.4.6 Retention
- 7.4.6.1 The retention (5% of the total Contract Price), **less** the total Lease Payments and less any amounts disputed by the District or that the District has the right to withhold pursuant to provisions herein, shall be paid as follows:
- 7.4.6.1.1 After approval by the District of the Architect's Certificate of Payment,
- 7.4.6.1.2 After the satisfaction of the conditions set forth herein, and
- 7.4.6.1.3 By the end of sixty (60) days following Project Completion pursuant to Public Contract Code section 7107.
- 7.4.6.1.4 No earlier than thirty-five (35) days of the recording of the Notice of Completion by District, if a Notice of Completion is recorded by the District.
- 7.4.6.2 No interest shall be paid on any amounts withheld due to a failure of the Contractor to perform, in accordance with the terms and conditions of the Contract Documents.

7.5. WITHHOLDING OF PAYMENTS

7.5.1. The District may withhold any Tenant Improvement Progress Payment or the Final Tenant Improvement Payment, in whole or in part, or back charge the Contractor to the extent it may deem advisable to protect the District on account of: (i) defective Work or Work not in conformity with the requirements of the Contract Documents which is not remedied within FORTY-EIGHT (48) hours of written notice; (ii) failure of the Contractor to make payments when due to Subcontractors or Material Suppliers for materials or labor; (iii) Claims filed or reasonable evidence of the probable filing of Claims by Subcontractors, laborers, Material Suppliers, or others performing any portion of the Work under the Contract Documents for which the District may be liable or responsible including, without limitation, Stop Notice Claims filed with the District pursuant to California Civil Code §3179, *et seq.*; (iv) a reasonable doubt that the Contract can be completed for the then unpaid balance of the Guaranteed Maximum Price; (v) tax demands filed in accordance with California Government Code §12419.4; (vi) other Claims, penalties and/or forfeitures for which the District is required or authorized to retain funds otherwise due the Contractor; (vii) any amounts due from the Contractor to the District under the terms of the Contract Documents; or (viii) the Contractor's failure to perform any of its obligations under the Contract Documents, including performance of any lawful or proper direction given by the District or public authority having jurisdiction over the Work or its default under the Contract Documents or its failure to maintain adequate progress of the Work. When the District is reasonably satisfied that the Contractor has remedied any such deficiency, payment shall be made of the amount withheld.

7.5.2 Payment After Cure: When Contractor removes the grounds for declining approval for the release of withholds, payment shall be made for amounts withheld because of them. No interest shall be paid on any retainage or amounts withheld due to the failure of the Contractor to perform in accordance with the terms and conditions of the Contract Documents.

7.6. SUBSTITUTE SECURITY FOR RETENTION

7.6.1. Eligible and equivalent securities may be substituted for any monies withheld by the District to ensure the Contractor's performance under the Contract Documents at the request and expense of the Contractor and in conformity with the provisions of California Public Contract Code §22300. The foregoing and the provisions of California Public Contract Code §22300 notwithstanding, failure of the Contractor to request the substitution of eligible and equivalent securities for monies to be withheld by the District within ten (10) days following the execution of the Contract Documents to Contractor shall be deemed a waiver of such right.

7.6.2 The District will permit the substitution of securities in accordance with the provisions of Public Contract Code section 22300, but only for the amount of retention that is anticipated to be remaining in excess of the Lease Payments amount.

7.7. PAYMENTS TO SUBCONTRACTORS

7.7.1. The Contractor shall pay all Subcontractors for and on account of Work of the Contract performed by such Subcontractors in accordance with the terms of their respective Subcontracts and as provided for pursuant to California Public Contract Code §§10262 and 10253, the provisions of which are deemed incorporated herein by this reference.

ARTICLE 8**8. CONTRACTOR'S SUBMITTALS****8.1. SUBMITTALS**

- 8.1.1. Shop Drawings, Product Data, Samples and similar Submittals (collectively "Submittals") are not Contract Documents. The purpose for submission of Submittals is to demonstrate, for those portions of the Work for which Submittals are required, the manner in which the Contractor proposes to provide or incorporate such item of the Work in conformity with the information given and the design concept expressed in the Contract Documents.
- 8.1.2. The Contractor shall review, approve and submit to the Architect or such other person or entity designated by the District, the number of copies of Submittals required by the Contract Documents. Contractor's submission of Submittals in conformity with the Submittal Schedule is a material obligation of the Contractor under the Contract Documents. In the event of Contractor's failure or refusal to deliver Submittals to the Architect in accordance with the Submittal Schedule, the Contractor shall be subject to per diem assessments in the amount set forth in the Supplementary Conditions for each day of delayed submission for any Submittal beyond the date set forth in the Submittal Schedule, not as a penalty but as Liquidated Damages.
- 8.1.3. Contractor and District acknowledge and agree that if the Contractor fails to deliver Submittals in accordance with the Submittal Schedule, the District will incur costs and expenses not contemplated by the Contract Documents, the actual amount of which will be impracticable to ascertain. Contractor and District further acknowledge and agree that the per diem assessment set forth in the Supplementary Conditions represents a reasonable joint effort by the parties to establish an amount of Liquidated Damages that corresponds to actual loss and which is reasonable under the circumstances existing at the time the parties entered into the Contract.
- 8.1.4. In the event that the District or the Architect reasonably determines that all or any portion of such Submittals require re-submission, Contractor shall bear all costs associated with the review and approval of resubmitted Submittals, including without limitation Architect's fees incurred in connection therewith; such costs are in addition to, and not in lieu of, any per diem assessments. Submittals not required by the Contract Documents or which do not otherwise conform to the requirements of the Contract Documents may be returned without action. No adjustment to the Contract Time or the Guaranteed Maximum Price shall be granted to the Contractor on account of its failure to timely submit any Submittal.
- 8.1.5. All Submittals prepared by Subcontractors, of any tier, Material Suppliers, Manufacturers or Distributors shall bear the written approval of the Contractor thereto prior to submission to the Architect for review. Any Submittal not bearing the Contractor's written approval shall be subject to return to the Contractor for Re-Submittal in conformity herewith, with the same being deemed to not have been submitted. Any delay, impact or cost associated therewith shall be the sole and exclusive responsibility of the Contractor without adjustment to the Contract Time or the Guaranteed Maximum Price.
- 8.1.6. By approving and submission of Submittals, the Contractor represents to the District and Architect that the Contractor has determined and verified materials, field measurements, field construction criteria, catalog numbers and similar data related thereto and has checked and coordinated the information contained within such Submittals with the requirements of the Work and of the Contract Documents.
- 8.1.7. All Submittals shall be accompanied by a written transmittal or other writing by the Contractor providing an identification of the portion of the Drawings or the Specifications pertaining to the Submittal, with each Submittal numbered consecutively for ease of reference along with the following information: (i) date of submission; (ii) Project name; (iii) name of submitting Subcontractor; and (iv) if applicable, the revision number. The

foregoing information is in addition to, and not in lieu of, any other information required for the Architect's review, evaluation and approval of the Contractor's Submittals.

- 8.1.8. The Contractor shall not be relieved of responsibility for correcting deviations from the requirements of the Contract Documents by the Architect's review and acceptance of Submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submission of the Submittal and the Architect has given written approval to the specific deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Submittals by the Architect's acceptance thereof.
- 8.1.9. The Contractor shall perform no portion of the Work requiring the Architect's review and acceptance of Submittals until the Architect has completed its review and indicated acceptance of such Submittal. The Contractor shall not perform any portion of the Work forming a part of a Submittal or which is affected by a related Submittal until the entirety of the Submittal or other related Submittal has been fully accepted. Such Work shall be in accordance with accepted Submittals and other applicable portions of the Contract Documents.
- 8.1.10. The Architect shall review the Contractor's Submittals in compliance with the Contract Documents for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's approval of a specific item in a Submittal shall not indicate approval of an assembly of which the item is a component. The Architect's review of Submittals shall be conducted promptly so as not to delay or hinder the progress of the Work or the activities of the Contractor, the District or the District's separate Contractors while allowing sufficient time, in the Architect's reasonable professional judgment to permit adequate review of Submittals. If the Architect returns a Submittal as rejected or requiring correction(s) and re-submission, the Contractor, so as not to delay the progress of the Work, shall promptly thereafter resubmit a Submittal conforming with the requirements of the Contract Documents; the resubmitted Submittal shall indicate the portions thereof modified in order to obtain the Architect's acceptance. When professional certification of performance criteria of materials, systems or equipment is required by the Contract Documents, the Architect shall be entitled to rely upon the accuracy and completeness of such calculations and certifications accompanying Submittals.
- 8.1.11. If any portion of the Work is designated in the Contract Documents as a "Deferred Approval" item, Contractor shall be solely and exclusively responsible for the preparation of Submittals for such item(s) in a timely manner so as not to delay or hinder the completion of the Work within the Contract Time.

ARTICLE 9

9. MATERIALS AND EQUIPMENT

9.1. SPECIFIED MATERIALS, EQUIPMENT

9.1.1. References in the Contract Documents to any specific Article, device, equipment, product, material, fixture, patented process, form, method or type of construction, by name, make, trade name, or catalog number, with or without the words "or equal" shall be deemed to establish a minimum standard of quality or performance and in conformance with the public interest.

9.1.2. References in the Contract Documents to any specific article, device, equipment, product, material, fixture, patented process, form, method or type of construction, by name, make, trade name or catalog number, with the wording "No Substitutions", shall be limited to the referenced item only.

9.2. APPROVAL OF SUBSTITUTIONS OR ALTERNATIVES

9.2.1. After issuance of Notice to Proceed (NTP), the Contractor may propose to furnish equals, alternatives or substitutes for a particular item specified in the Contract Documents. Contractor's bid must be based on the specific article, device, equipment, product, material, fixture, patented process, form, method or type of construction identified in the specifications. "Or equals", alternatives or substitutions will be considered, after issuance of NTP, provided that the Contractor provides advance written notice to the Architect of such proposed substitution or alternative and certifies to the Architect and the District that the quality, performance capability and functionality (including visual and/or aesthetic effect) of the proposed alternative or substitute shall meet or exceed the quality, performance capability and functionality of the item or process specified and that the use of the substitution or alternative is appropriate and shall not delay completion of the Work or result in an increase to the Guaranteed Maximum Price. The Contractor shall submit engineering, construction, dimension, visual, and aesthetic and performance data to the Architect to permit its proper evaluation of the proposed substitution or alternative on the District furnished Substitution Request Form.

9.2.2. If requested by the Architect, Contractor shall promptly furnish any additional information or data regarding a proposed substitution or alternative, which the Architect deems reasonably necessary for the evaluation of the proposed substitution or alternative. The Contractor shall not provide, furnish or install any substitution or alternative without the Architect's prior written approval of the same; any alternative or substitution installed or incorporated into the Work without first obtaining the District's approval of the same shall be subject to removal pursuant to Article 14 hereof. The District's decision shall be final regarding the approval or disapproval of the Contractor's proposed substitutions or alternatives. Neither the Contract Time nor the Guaranteed Maximum Price shall be increased on account of any substitution or alternative proposed by the Contractor and which is approved by the District; provided, however, that in the event a substitution or alternative is approved by the Architect and purchase, fabrication and/or installation or such approved substitution or alternative shall be less expensive than the originally specified item, the Guaranteed Maximum Price shall be reduced by the actual cost savings realized by the Contractor's furnishing and/or installation of such approved substitution or alternative.

9.2.3. The Contractor shall be solely responsible for all costs and fees of the Architect, of the Architect's consultant(s) and/or governmental agencies to review and/or approve any proposed substitution or alternative. The Contractor shall be solely responsible for any increase in the cost of any approved substitution or alternative or any Work affected by such alternative or substitution. All requests for the Architect's review and approval of any proposed substitution or alternative and all engineering, construction, dimension and

performance data substantiating the equivalency of the proposed substitution or alternative shall be submitted by Contractor on the District Substitution Request Form. Submission of substitution requests is allowed during the period indicated in the Specifications.

- 9.2.4. The Architect may reject, without review, any request for approval of proposed alternatives or substitutions not submitted within the time limitations indicated in the Specifications. The foregoing process and time limits shall apply to any proposed substitution or alternative regardless of whether the substitute or alternate item is to be provided, furnished or installed by Contractor, any Subcontractor, any Sub-Subcontractor, Material Supplier or Manufacturer. Any request for substitution of specified materials or equipment will be considered only if submitted on the District Substitution Request Form.

9.3. PLACEMENT OF MATERIALS AND EQUIPMENT ORDERS

- 9.3.1. Contractor shall, after award of the Contract, promptly and timely place all orders for materials and/or equipment necessary for completion of the Work so that delivery of the same shall be made without delay or interruption to the timely completion of the Work. Contractor shall require that any Subcontractor or Sub-Subcontractor performing any portion of the Work similarly place orders for all materials and/or equipment to be furnished by any such Subcontractor or Sub-Subcontractor in a prompt and timely manner so that delivery of the same shall be made without delay or interruption to the timely completion of the Work. Upon request of the Architect or the District, the Contractor shall furnish written evidence of the placement of orders for materials and/or equipment necessary for completion of the Work, including without limitation, orders for materials and/or equipment to be provided, furnished or installed by any Subcontractor or Sub-Subcontractor.

- 9.3.2. In the event the Contractor fails or refuses to comply with the requirements set forth in Article 9.3.1, above, the District shall have the right, but not the obligation, to place such orders on behalf of the Contractor. The election of the District to exercise, or not to exercise, such right shall not relieve the Contractor from any of Contractor's obligations under the Contract Documents, including without limitation, completion of the Work within the Contract Time and for the Guaranteed Maximum Price. If the District exercises the right hereunder to place orders for materials and/or equipment on behalf of Contractor pursuant to the foregoing, Contractor shall reimburse the District for all costs and fees incurred by the District in placing such orders; such costs and fees may be deducted by the District from any portion of the Guaranteed Maximum Price then or thereafter due the Contractor.

9.4. DELIVERIES OF MATERIALS AND EQUIPMENT TO THE SITE

- 9.4.1. All materials or equipment to be incorporated into the Work shall be designated on the Drawings and delivered to the designated staging or storage area at the Site utilizing delivery route(s) designated in the Drawings and/or as directed from time-to-time by the Project Inspector or Construction Manager. Promptly upon delivery of materials/equipment for incorporation into the Work, the Contractor shall provide the District's Project Inspector with copies of delivery slips, invoices, bills of lading and similar instruments that indicate the type, nature and quantity of the materials/equipment delivered. The Contractor is solely responsible for adequately protecting the designated delivery route(s) and improvements in, on or about the designated delivery route(s) without adjustment of the Contract Time or the Guaranteed Maximum Price; the Contractor shall repair or replace all damage on or about the delivery route resulting from deliveries.

9.5. SALVAGE AND DISPOSAL OF EXISTING MATERIALS AND EQUIPMENT

- 9.5.1. All existing materials/equipment to be removed or disconnected and which have not been specifically designated in the Contract Documents for re-use in the Work, or for salvage by the District, shall become the property of the Contractor. All items designated for removal and deemed the property of the Contractor upon removal shall be disposed by the Contractor in conformity with applicable law, rule or regulation. The District shall have no

liability for any materials or equipment once they are removed from the Site. The Contractor shall not dispose of any such items at the Site by gift, sale or otherwise. If any existing materials/equipment or other existing improvements at the Site are to be removed, disconnected or relocated for re-use in connection with the Work, the removal, disconnection or relocation shall be completed in a manner to avoid damage or destruction of the Work or other existing improvements or facilities. Damage or destruction of the Work, any existing improvements, facilities or other items designated for re-use in connection with the Work shall be repaired or replaced by the Contractor without adjustment of the Guaranteed Maximum Price or the Contract Time. Any damage or destruction of existing improvements, facilities, or other items caused by construction activities, or any activity by the Contractor shall be repaired, replaced, or corrected to return said item in kind with preconstruction status.

9.6. DISTRICT PROVIDED, CONTRACTOR INSTALLED PRODUCTS

- 9.6.1. The Provisions of this Article 9.6 apply only to materials, supplies, equipment, furnishings, or other things or property of any kind of type that will be paid for and provided by the District but incorporated into the Project or installed by the Contractor. The foregoing notwithstanding, the Contractor's responsibility related to materials, supplies, equipment, furnishings, or other things or property of any kind or type paid for and provided by the District and incorporated into the Project or installed by the District's own forces or by separate Contractors shall be as set forth in Article 11 hereof.
- 9.6.2. If the District provides any materials, supplies, equipment, furnishings, or other things or property of any kind or type for incorporation into the Project or installation by the Contractor, the Construction Manager will coordinate delivery dates of such items with the Contractor. The Contractor shall thereupon coordinate the delivery, incorporation, and installation of such items with the remainder of the Work and the Contract Schedule. District will arrange and pay for delivery of such items to the Project site. After delivery of such items to the Project site, the Construction Manager, Project Manager, Project Inspector, and Contractor will jointly inspect delivered items for damage. If such District provided items are damaged, defective, or missing, the District will arrange for their replacement.
- 9.6.3. For District provided and Contractor incorporated or installed products, the Contractor shall notify the Construction Manager of the required schedule for any Manufacturer's field services, and the Construction Manager will thereupon arrange for such Manufacturer's field services; the Contractor shall request the Construction Manager arrange for delivery of Manufacturer's warranties to the Contractor; and the Contractor shall request the Construction Manager arrange for and deliver to the Contractor appropriate shop Drawings, product data and samples. When and as received from the Construction Manager, the Contractor shall review such shop Drawings, product data, and samples and notify the Construction Manager, in writing, of any discrepancies or anticipated problems in incorporating or installing said products.
- 9.6.4. The Contractor is responsible for receiving, unloading, and handling at the Project site District provided and Contractor incorporated or installed items. The Contractor is responsible for protecting such District provided items from damage during storage and handling, including damage from exposure to the elements. If such District provided items are damaged as a result of the Contractor's operations, the Contractor shall promptly repair or replace them.
- 9.6.5. If the Contractor Claims that delay or additional cost is involved because the materials, supplies, equipment, furnishings, or other things or property of any kind or type provided by the District and to be incorporated or installed by the Contractor are not delivered to the Project site in accordance with the Contract Schedule and in an undamaged condition, the Contractor may seek an adjustment to the Guaranteed Maximum Price or the Contract Time as provided for in the Contract Documents. Failure of the Contractor to request such

an adjustment of the Contract Time or the Guaranteed Maximum Price in strict conformity with the provisions of the Contract Documents applicable thereto shall be deemed a waiver of the same.

SAMPLE

ARTICLE 10

10. CHANGES

10.1. CHANGES IN THE WORK

10.1.1. The District, at any time, by written order, may make Changes within the general scope of the Work under the Contract Documents or issue additional instructions; require additional Work or direct deletion of Work. The Contractor shall not proceed with any Change involving an increase or decrease in the Guaranteed Maximum Price or the Contract Time without prior written authorization from the District via a Field Work Order or an approved Change Order.

10.1.2. The District's right to make Changes shall not invalidate the Contract nor relieve the Contractor of any liability or other obligations under the Contract Documents. Any requirement of notice of Changes in the scope of Work to the Surety shall be the responsibility of the Contractor, including any additional surety costs that may result from the adjustment of the Contract value. The Contractor can allow for these added costs through the Change Order provisions only. Changes to the Work depicted or described in the Drawings or the Specifications shall be subject to approval by DSA. The District may make Changes to bring the Work or the Project into compliance with environmental requirements or standards established by state or federal statutes and regulations enacted after the execution of the Contract Documents.

10.2. ORAL ORDER OF CHANGE IN THE WORK

10.2.1. If the Contractor should Claim that any oral order, instruction, interpretation, determination, request, the Drawings, the Specifications, action, condition, omission, default, or other situation (collectively "Instructions") causes any change to the scope of the Work, or otherwise obligates the District to increase the Guaranteed Maximum Price - or to extend the Contract Time, the Contractor shall notify the Construction Manager and the Architect, in writing, of such Claim within five (5) days from the date of its actual or constructive notice of the factual basis supporting the same. The District shall consider any such Claim of the Contractor only if sufficient supporting documentation is submitted with the Contractor's notice to the Construction Manager and the Architect. The District, upon receipt from the Contractor, shall countersign such document.

10.2.2. Contractor acknowledges that its failure, for any reason, to give written notice (with sufficient supporting documentation to permit the District's review and evaluation) within five (5) days of its actual or constructive knowledge of any proposed adjustment of the Contract Time or the Guaranteed Maximum Price shall be deemed Contractor's waiver, release, discharge and relinquishment of any right to assert or Claim any entitlement to an adjustment of the Contract Time or the Guaranteed Maximum Price on account of any such Instructions. In the event that the District determines that the Guaranteed Maximum Price or the Contract Time are subject to adjustment based upon the events, circumstances and supporting documentation submitted with the Contractor's written notice, any such adjustment shall be determined in accordance with this Article 10.

10.3. WRITTEN ORDER OF CHANGE IN THE WORK

10.3.1. Within fifteen (15) days after receipt of a written request for cost estimate or written Field Work Order from the District directing a Change in the Work, or furnishing the written notice regarding any oral order directing a Change in the Work pursuant to paragraph 10.2 above, the Contractor shall submit to the Architect and the Construction Manager a detailed written statement setting forth the general nature of the Change, the amount claimed for any adjustment to the Guaranteed Maximum Price on account thereof and the extent of adjustment of the Contract Time, if any, required by such Change. Said statement shall be properly itemized and supported by sufficient substantiating data to permit evaluation of the same, such documentation shall be submitted in conformance with the District form

entitled "Payment – Extra, Additional or Deleted Work" which is attached hereto as Attachment 1 and incorporated herein by reference. The Contractor may not reserve a right to assess impact costs, extended job site costs, extended general conditions overhead and any/or constructive acceleration costs at some later date as related to any and all changes of the Work. These Costs must be supported with full Schedule and Cost documentation with each proposed change within the Contract prescribed submission times. No Claim or adjustment to the Guaranteed Maximum Price or the Contract Time shall be allowed if not asserted by the Contractor in strict conformity with this paragraph.

10.4. ADJUSTMENT TO GUARANTEED MAXIMUM PRICE AND CONTRACT TIME ON ACCOUNT OF CHANGES TO THE WORK

10.4.1. Adjustments to the Guaranteed Maximum Price due to Changes in the Work shall be determined by application of one of the following methods, in the following order of priority:

10.4.1.1. By negotiation and mutual agreement, on a lump sum basis, between the District and the Contractor on the basis of the estimate of the actual costs and direct increase or decrease in costs on account of the Change. Upon request of the Construction Manager or the Architect, the Contractor shall provide a detailed estimate of increase or decrease in costs directly associated with performance of the Change along with Cost Breakdowns of the components of the Change and supporting data and documentation. The Contractor's estimate, if requested, shall be in sufficient detail and in such form as to allow the Construction Manager and the Architect to review and assess the completeness and accuracy thereof. The Contractor shall be solely responsible for any additional costs or additional time arising out of, or related in any manner to, its failure to provide the estimate of costs within the time specified in the request.

10.4.1.2. By the District based upon actual and necessary costs incurred by the Contractor as determined by the District on the basis of the Contractor's records. If the procedure set forth herein is utilized to determine the extent of adjustment to the Guaranteed Maximum Price on account of Changes to the Work, promptly upon determining the extent of adjustment to the Guaranteed Maximum Price the District shall notify the Contractor in writing of the same. The Contractor shall be deemed to have accepted the District's determination of the amount of adjustment to the Guaranteed Maximum Price on account of a Change to the Work unless Contractor shall notify the District's Representative and the Architect, in writing, not more than fifteen (15) days from the date of the District's written notice, of any objection to the District's determination. Failure of the Contractor to timely notify the District's Representative and the Architect of Contractor's objections to the District's determination of the extent of adjustment to the Guaranteed Maximum Price shall be deemed Contractor's acceptance of the District's determination and a waiver of any right or basis of the Contractor to thereafter protest or otherwise object to the District's determination. The District reserves the right to unilaterally execute changes to the contract if impasse is reached after a Good Faith Attempt to Resolve has failed to reach consensus. If the District makes a change unilaterally, the Contractor is referred to the Dispute Resolution clause herein.

10.4.1.3. If the Contractor was required to furnish prices for identified Unit Price Items and a Change to the Work involves a Unit Price Item, the adjustment of the Guaranteed Maximum Price for the portion of a Change involving a Unit Price Item shall be based upon the Unit Price furnished by the Contractor for the applicable Unit Price Item. The foregoing notwithstanding, if at the time of a Change involving a Unit Price Item, the District reasonably determines that the price proposed for a Unit Price Item materially varies from the then existing marketplace costs for such item, the District shall not be bound by the price

furnished for such Unit Price Item. In such event, the adjustment of the Guaranteed Maximum Price for a Change involving a Unit Price Item shall be the then existing marketplace costs for such item.

10.4.2. In the event of Changes in the Work resulting in an adjustment of the Guaranteed Maximum Price and the adjustment of the Guaranteed Maximum Price is based upon the methods set forth in Articles 10.4.1.2 and 10.4.1.3 above, the basis for adjustment of the Guaranteed Maximum Price shall be as follows:

10.4.2.1. Contractor shall be compensated for the costs of labor actually and directly utilized in the performance of the Change. Such labor costs shall be limited to field labor for which there is a prevailing wage rate classification. Wage rates for labor shall not exceed the prevailing wage rates in the locality of the Site and shall be in the labor classification(s) necessary for the performance of the Change. Use of a labor classification, which would increase labor costs associated with any Change, shall not be permitted. Labor costs shall exclude costs incurred by the Contractor in preparing estimate(s) of the costs of the Change, in the maintenance of records relating to the costs of the Change or the supervision and other overhead and general conditions costs associated with the Change or performance thereof.

10.4.2.2. Contractor shall be compensated for the costs of materials and equipment necessarily and actually used or consumed in connection with the performance of Changes. Costs of materials and equipment shall include reasonable costs of transportation from a source closest to the site of the Work and delivery to the Site. If discounts by Material Suppliers are available for materials necessarily used in the performance of Changes, they shall be credited to the District. If materials and/or equipment necessarily used in the performance of Changes are obtained from a supplier or source owned in whole or in part by the Contractor, compensation therefore shall not exceed the current wholesale price for such materials or equipment. If, in the reasonable opinion of the District, the costs asserted by the Contractor for materials and/or equipment in connection with any Change is excessive, or if the Contractor fails to provide satisfactory evidence of the actual costs of such materials and/or equipment from its supplier or vendor of the same, the costs of such materials and/or equipment and the District's obligation for payment of the same shall be limited to the then lowest wholesale price at which similar materials and/or equipment are available in the quantities required to perform the Change. The District reserves the right to furnish materials and/or equipment required for the performance of Changes to the Work, in which event the Contractor shall not be compensated for the costs of furnishing such materials and/or equipment or any mark-up thereon.

10.4.2.3. Contractor shall be compensated for the actual cost of the necessary and direct use of Construction Equipment in the performance of Changes to the Work. Use of such Construction Equipment in the performance of Changes to the Work shall be compensated in increments of fifteen (15) minutes. Rental time for Construction Equipment moved by its own power shall include time required to move such Construction Equipment to the site of the Work from the nearest available rental source of the same. If Construction Equipment is not moved to the Site by its own power, Contractor will be compensated for the loading and transportation costs in lieu of rental time. The foregoing notwithstanding, neither moving time or loading and transportation time shall be allowed if the Construction Equipment is used for performance of any portion of the Work other than Changes to the Work. Unless prior approval in writing is obtained by the Contractor from the Architect or the Construction Manager no costs or compensation shall be allowed for time while Construction Equipment is inoperative, idle or on standby, for any reason. The Contractor shall not be

entitled to an allowance or any other compensation for Construction Equipment or tools under this paragraph where such Construction Equipment or tools have a replacement value of Five Hundred Dollars (\$500) or less. Construction Equipment costs Claimed by the Contractor in connection with the performance of any Change to the Work shall not exceed rental rates established by Distributors or construction equipment rental agencies in the locality of the Site. Unless otherwise specifically approved in writing by the Architect or the Construction Manager, the allowable rate for the use of Construction Equipment in connection with Changes to the Work shall constitute full compensation to the Contractor for the cost of rental, fuel, power, oil, lubrication, supplies, necessary attachments, repairs or maintenance of any kind, depreciation, storage, insurance, labor (exclusive of labor costs of the Construction Equipment operator), and any or all other costs incurred by the Contractor incidental to the use of such Construction Equipment.

- 10.4.3. In determining the cost to the District and the extent of increase to the Guaranteed Maximum Price resulting from a Change adding to the Work, the allowance for mark-ups on the costs of the Change for all overhead (including home office and field overhead for any period of delay caused by the Change in the Work) direct, indirect and consequential costs, general conditions costs and profit associated with the Change shall not exceed the percentage set forth in Attachment 1, regardless of the number of Subcontractors, of any tier, performing any portion of any Change to the Work. The allowance for mark-ups includes all insurance costs, bonds, all field and home office staff and assistants, all on-site project administration, labor compliance, PSA, administration costs, site clean-up costs, security costs, warranty costs, as-built costs, scheduling costs, the cost of small tools and consumables, incidental job burdens and all general home office expenses. The risk of unanticipated price or cost fluctuations by a supplier of material or labor needed by a Contractor is assumed by the Contractor.
- 10.4.4. The foregoing notwithstanding, in the event that the Means Construction Cost Data, or a mutually agreed to estimating manual in the event that Means Construction Cost Data shall cease publication, is utilized to determine the costs of only materials contained in a Change and the cost computation therein includes an allowance for overhead, general conditions costs and/or profit, the Contractor and any Subcontractor, of any tier, performing any portion of such Change, shall not be entitled to an allowance for overhead general conditions costs and/or profit beyond that reflected for such item of Change in the Means Construction Cost Data or other mutually agreed upon estimating manual.
- 10.4.5. In the event of a Change to the Work resulting in a reduction of the Guaranteed Maximum Price, the District shall pay no profit or general conditions costs to the Contractor for the reduced or deleted Work. Costs for overhead related expenses related to the reduction of the Guaranteed Maximum Price shall be addressed on a per-change basis. In such event, the adjustment to the Guaranteed Maximum Price shall be the actual cost reduction realized by the reduced or deleted Work, plus profit and/or General Condition's costs. The profit and/or General Conditions costs that are added to the cost reduction shall not exceed the percentage set forth in Attachment 1 for mark-ups on the cost of a Change adding to the scope of the Work.
- 10.4.6. In the event that Contractor shall be directed to perform any Changes to the Work pursuant to Article 10.1 or 10.2, or should the Contractor encounter conditions, which the Contractor, pursuant to Article 10.6, believes would obligate the District to adjust the Guaranteed Maximum Price and/or the Contract Time; Contractor shall maintain detailed records on a daily basis. Such records shall include without limitation hourly records for labor and Construction Equipment and itemized records of materials and equipment used that day in connection with the performance of any Change to the Work. In the event that the Contractor performs more than one Change to the Work in a calendar day, Contractor shall maintain separate records for each such Change.

- 10.4.7. Contractor shall maintain detailed records on a time and material basis of Work required by Field Work Orders. Project Inspector review and signature is required for each daily time and material document.
- 10.4.8. In the event that any Subcontractor, of any tier, provides or performs any portion of any Change to the Work, Contractor shall require that each such Subcontractor maintain records in accordance with the requirements set forth herein. Each daily record maintained hereunder shall be signed by Contractor or Contractor's authorized representative; such signature shall be deemed Contractor's representation and warranty that all information contained therein is true, accurate, and complete and relate only to the Change referenced therein. All records maintained by a Subcontractor, of any tier, relating to the costs of a Change to the Work shall be signed by such Subcontractor's authorized representative.
- 10.4.9. All records maintained hereunder shall be subject to on-site inspection, review and/or reproduction by the Architect, Construction Manager, or the Project Inspector upon request. If the Contractor fails or refuses, for any reason, to maintain or make available for inspection, review and/or reproduction such records and the adjustment to the Guaranteed Maximum Price on account of any Change to the Work is determined by the District, the District's reasonable good faith determination of the extent of adjustment to the Guaranteed Maximum Price on account of such Change shall be final, conclusive, dispositive, and binding upon Contractor.
- 10.4.10. In the event of any Change(s) to the Work pursuant to this Article 10, the Contract Time shall be extended or reduced by Change Order pursuant to Article 6.4. In the event that any Change shall require an extension of the Contract Time, the Contractor shall not be subject to Liquidated Damages for such period of time. In the event that completion of the Work is delayed by causes for which the District is responsible, the Contractor shall be entitled to an adjustment pursuant to this Article 10.4 in the District's sole discretion.
- 10.4.11. Addition or deletion of an Alternate Item(s) shall be in compliance with the procedures indicated in the Master Lease Agreement.

10.5. CHANGE ORDERS

- 10.5.1. If the District approves of a Change, a written Change Order by the District and prepared by the Construction Manager shall be forwarded to the Contractor describing the Change and setting forth the adjustment to the Contract Time and the Guaranteed Maximum Price, if any, on account of such Change. All Change Orders shall be in full payment and final settlement of all Claims for direct, indirect and consequential costs, including without limitation, costs of delays or impacts related to, or arising out of, items covered and affected by the Change Order, including any and all overhead costs (both field and office) during any period of delay caused by the Change, as well as any adjustments to the Contract Time.
- 10.5.2. Any Claim or item relating to any Change incorporated into a Change Order not presented by the Contractor for inclusion in the Change Order shall be deemed waived. The Contractor waives and releases any and all claims, rights or interest, including but not limited to, those of cost, profit, acceleration, delay costs, interference, impact, disruption, loss of efficiency, ripple, or other extraordinary or consequential causes arising directly or indirectly out of the Work described in the Change Order except as specifically included within. The Contractor shall execute the Change Order prepared pursuant to the foregoing; once the Change Order has been prepared and forwarded to the Contractor for execution, without the prior approval of the District which may be granted or withheld in the sole and exclusive discretion of the District, the Contractor shall not modify or amend the form or content of such Change Order, or any portion thereof. Contractor will not alter Change Orders or reserve time in Change Orders.

- 10.5.3. The Contractor's attempted or purported modification or amendment of any such Change Order, without the prior approval of the District, shall not be binding upon the District; any such unapproved modification or amendment to such Change Order shall be null, void and unenforceable. Unless otherwise expressly provided for in the Contract Documents or in the Change Order, any Change Order issued hereunder shall be binding upon the District only upon action of the District's Board of Education approving and ratifying such Change Order.
- 10.5.4. In the event of any amendment or modification made by the Contractor to a Change Order for which there is no prior approval by the District, in accordance with the provisions of this Article 10.5, unless otherwise expressly stated in its approval and ratification of such Change Order, any action of the Board of Education to approve and ratify such Change Order shall be deemed to be limited to the Change Order as written by the Architect and prepared by the Construction Manager; approval and ratification of such Change Order shall not be deemed the District's approval and ratification of any unapproved amendment or modification by the Contractor to such Change Order.
- 10.5.5. If the District has put in contingency(s) and/or allowance(s) in **Exhibit C** to the Master Facilities Lease, then approved Change Order(s) may be paid out of those contingency(s) and/or allowance(s), pursuant to the Contract Documents including without limitation, **Exhibit C** and Section 01 21 00 of the Division 1 Documents, and if agreed to by the District.
- 10.6. DISPUTED CHANGES
- 10.6.1. Regardless of any dispute or disagreement between the Contractor and the District or the Architect regarding the characterization of any item as a Change to the Work or as to the appropriate adjustment of the Guaranteed Maximum Price or the Contract Time on account thereof, the Contractor shall promptly commence and proceed diligently with the Change upon receipt of written authorization from District, in which case the dispute shall be subject to resolution in accordance with the claims procedures set forth in the Contract Documents.
- 10.6.2. In no event shall Contractor be entitled to stop the Work, or refuse to perform any Work required due to Changes in the Work, based upon a dispute between Contractor and the District regarding the amount to be paid to Contractor for any Change in the Work or the Adjustment of Time to be provided to account for such change.
- 10.7. EMERGENCIES
- 10.7.1. In an emergency affecting the safety of life, Work, or property, the Contractor, without special instruction or prior authorization from the District or the Architect, is permitted to act at its discretion to prevent such threatened loss or injury. Any compensation Claimed by the Contractor on account of such emergency Work shall be submitted and determined in accordance with this Article 10.
- 10.8. MINOR CHANGES IN THE WORK
- 10.8.1. The Architect may order minor Changes in the Work not involving an adjustment in the Guaranteed Maximum Price or the Contract Time and not inconsistent with the intent of the Contract Documents. Such Changes shall be effected by written order via an Architect's Supplemental Instructions (ASI) and shall be binding on the District and the Contractor. The Contractor shall carry out such orders promptly.
- 10.9. UNAUTHORIZED CHANGES
- 10.9.1. Any Work beyond the lines and grades shown on the Contract Documents, or any extra Work performed or provided by the Contractor without notice to the Architect and the Construction Manager in the manner and within the time set forth in Article 10.2 shall be considered unauthorized and at the sole expense of the Contractor. Work so done shall

not be measured or paid for, no extension to the Contract Time shall be granted on account thereof and any such Work may be ordered removed at the Contractor's sole cost and expense.

10.10. PRESERVATION OF RECORDS

10.10.1. Contractor shall maintain, and the District shall have the right to inspect, examine, and audit all financial records for the Project, including without limitation, Job Cost Reports, daily job reports of Contractor's Project Manager(s), Project Superintendent(s) and/or Project Supervisors, all books, estimates, records, contracts, documents, bid documents, bid cost data, subcontract job cost reports, certified payroll records, payment, timekeeping, tracking documents, and other data of the Contractor, any Subcontractor, and/or supplier, including computations and Projections related to bidding, negotiating, pricing, or performing the Work or Contract modification, in order to evaluate the accuracy, completeness and currency of the cost, manpower, coordination, supervision or pricing data at no additional cost to the District. These documents are in addition to any Documents held in escrow by the District. The Contractor shall make available at its office at all reasonable times the materials described in this paragraph for the examination, audit or reproduction until three (3) years after Final Tenant Improvement Payment under this Contract. Notwithstanding the provisions above, Contractor shall provide any records requested by any governmental agency, available, after the time set forth above.

With respect to portions of the Work performed by Change Orders, the Contractor shall keep and maintain cost-accounting records satisfactory to the District, including, without limitation, Job Cost Reports as provided in these General Conditions, which shall be available to the District on the same terms as any other books and records the Contractor is required to maintain under the Contract Documents. Such records shall include without limitation hourly records for Labor and Equipment and itemized records of materials and Equipment used that day in connection with the performance of any Work. All records maintained hereunder shall be subject to inspection, review and/or reproduction by the District, the Construction Manager, Architect or the Project Inspector upon request. In the event that the Contractor fails or refuses, for any reason, to maintain or make available for inspection, review and/or reproduction such records, the District's determination of the extent of adjustment to the Guaranteed Maximum Price shall be final, conclusive, dispositive and binding upon Contractor.

ARTICLE 11**11. SEPARATE CONTRACTS****11.1. DISTRICT'S RIGHT TO AWARD SEPARATE CONTRACTS**

11.1.1. The District reserves the right to perform construction or operations related to the Project with the District's own forces or to award separate contracts in connection with other portions of the Project or other construction or operations at or about the Site. If the Contractor Claims that delay or additional cost is involved because of such action by the District, the Contractor shall request an adjustment to the Guaranteed Maximum Price or the Contract Time in accordance with the Contract Documents. Failure of the Contractor to request such an adjustment of the Contract Time or the Guaranteed Maximum Price in strict conformity with the provisions of the Contract Documents applicable thereto shall be deemed a waiver of the same.

11.2. DISTRICT'S COORDINATION OF SEPARATE CONTRACTORS

11.2.1. The District shall provide for coordination of the activities of the District's own forces and of each separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate Contractors and the District in reviewing their respective Construction Schedules when directed to do so. The Contractor shall make any revisions to the Accepted Construction Schedule for the Work hereunder deemed necessary after a joint review and mutual agreement. The Construction Schedules shall then constitute the Construction Schedules to be used by the Contractor, separate Contractors and the District until subsequently revised.

11.3. MUTUAL RESPONSIBILITY

11.3.1. The Contractor shall afford the District and separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities at the Site of the Work and shall connect and coordinate the Contractor's Work, construction and operations with theirs as required by the Contract Documents.

11.4. DISCREPANCIES OR DEFECTS

11.4.1. If part of the Contractor's Work depends for proper execution or results upon construction or operations by the District or a separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect and the District's Project Inspector any apparent 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 District'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 discoverable by the Contractor's reasonable diligence.

ARTICLE 12**12. PROTECTION OF PERSONS AND PROPERTY****12.1. GENERAL SAFETY**

- 12.1.1. The Contractor shall be solely responsible for initiating, maintaining, and supervising all safety programs required by applicable law, ordinance, regulation or governmental orders in connection with the performance of the Contract, or otherwise required by the type or nature of the Work. The Contractor's safety program shall include all actions and programs necessary for compliance with California or federal statutorily mandated Workplace safety programs, including without limitation, compliance with the California Drug Free Workplace Act of 1990 (California Government Code §§8350, *et seq.*). Without limiting or relieving the Contractor of its obligations hereunder, the Contractor shall require that its Subcontractors similarly initiate and maintain all appropriate or required safety programs.
- 12.1.2. The Contractor shall be solely responsible for initiating and maintaining reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to: (i) employees on the Work and other persons who may be affected thereby; (ii) the Work and materials and equipment to be incorporated therein, 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 (iii) other property or items at the site of the Work, or adjacent thereto, such as classroom equipment, supplies, furnishings, trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction. The Contractor shall, at all times, maintain emergency first aid treatment materials at the Site that conform to applicable law, rule or regulation.
- 12.1.3. The Contractor shall have a written Safety Program acceptable to the District, which is formally communicated to, and fully understood by, all levels of the Contractor organization. The program must promote all of the following:
- Complete Management support of the program.
 - The immediate identification and elimination of unsafe Work practices and conditions in the Work place.
 - A heightened awareness of individual responsibility and increased supervisory attention to detail.
 - Building a team safety mentality where each Worker contributes to the effort and each supervisor is fully aware of the capabilities and limitations of their team.
 - A culture in which everyone accepts responsibility and accountability for their own, and each co-Worker's safety and health.
- 12.1.4. The Contractor shall erect and maintain, as required by existing conditions and conditions resulting from performance of the Contract, reasonable safeguards for safety and protection of property and persons, including, without limitation, posting danger signs and other warnings against hazards, promulgating safety regulations and notifying District and users of adjacent sites and utilities. Each separate physical area where Work activities occur shall be enclosed or barricaded with a 9 ga. chain link fence of at least 8'-0" height with gates and knurled fabric at the top and bottom of the fencing with flat feet, or imbedded posts in asphalt or concrete. Barricades may need to be moved from time to time to accommodate Site needs; such moves shall be completed without adjustment of the Contract Time or the Guaranteed Maximum Price. Solid board fencing shall be used in lieu of chain-link if shown on the plans. The Project Inspector shall determine final locations and types of fencing. If the Project Inspector requires fencing types and/or quantities not indicated in the Contract Documents, an appropriate change document will be negotiated. All Work shall be arranged as to minimize inconvenience or disruption of school activities and to minimize danger to students, faculty, staff and

others at or about the Site. Work, which may interfere with school activities, shall be done before or after school hours. All such enclosures or barricades shall provide adequate exiting from occupied structures at all times.

- 12.1.5. The Contractor shall give or post all notices required by applicable law and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss. No more than twenty-four (24) hours following: (i) any accident occurring at the Site involving any person performing Work and/or construction equipment; or (ii) any injury to any person at or about the Site, the Contractor shall submit a written Accident/Injury Report to the Construction Manager. The form of the Accident/Injury Report shall be as required by the District. An Accident/Injury Report shall be submitted for all accidents and injuries regardless of severity or whether an accident or injury constitutes a loss time accident. The timely submission of an Accident/ Injury Report with all required information accurately and completely provided is a material obligation of the Contractor.
- 12.1.6. The Contractor shall designate a responsible member of the Contractor's organization at the Site whose duty shall be the prevention of accidents and the implementation and maintenance of safety precautions and programs. The Contractor shall advise the Project Inspector and Construction Manager of the name of the designated safety coordinator in writing. The safety coordinator shall conduct safety meetings at least once a week with Contractor's employees, Subcontractors, and any tiers thereof. In addition, the Contractor shall provide the Construction Manager with a copy of a safety plan and copies of safety plans from each of Contractor's Subcontractors at the commencement of the Project.
- 12.1.7. In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss.
- 12.1.8. In the event that the District identifies a loss of property, the Contractor shall assist the District in the investigation of said loss and shall fill out the District's Property Damage and Loss Report as requested.

12.2. RESPONSIBILITIES

- 12.2.1. Unless otherwise notified, the Contractor shall submit to the District a written Environmental Safety and Health (ES&H) Execution Plan, specific to the Work under this contract, for review and acceptance within thirty (30) calendar days after contract execution and in any event prior to commencing Work at the Site. This plan shall be amended when operations or conditions require and such amendments shall be submitted to the District for review and acceptance.
- 12.2.2. The Contractor shall flow all Project safety and health requirements to lower tier suppliers, Subcontractors, and visitors and acknowledges it is responsible for the performance of its visitors and suppliers and Subcontractors of every tier.
- 12.2.3. The Contractor's ES&H Execution Plan shall delineate the roles and responsibilities of Managers and supervisors and require that their actions clearly demonstrate an understanding of their roles and responsibilities in regard to the safety and environmental protection processes. The plan shall describe the system by which Managers and supervisors will be held accountable for ES&H implementation.
- 12.2.4. The Contractor's ES&H Representative(s) and their staff shall have sufficient authority and control to ensure effectiveness of the ES&H process and the Contractor shall hold them accountable for facilitating its implementation.
- 12.2.5. The Contractor's Managers and supervisors shall be familiar with, and shall enforce ES&H rules, regulations, and laws, and shall document all actions taken to ensure compliance with Contractor's ES&H Execution Plan.

- 12.2.6. The Contractor's Managers and supervisors shall take part in scheduled Work area audits, and shall implement and document required corrective actions.
 - 12.2.7. The Contractor's Site Management shall attend and clearly communicate ES&H expectations at all employee ES&H Orientations.
 - 12.2.8. Unless otherwise directed by the District, the Contractor's Site Management, Managers, and supervisors shall participate in any scheduled, documented ES&H assessments to be conducted by Contractor or the District.
 - 12.2.9. The Contractor's Managers and supervisors shall attend, actively participate in, and consistently demonstrate strong leadership at weekly "Tailgate" Safety Meetings.
 - 12.2.10. The Contractor's Managers and supervisors shall actively participate in documented pre-job planning activities.
 - 12.2.11. The Contractor's ES&H Representative shall actively participate in, and/or provide any needed, Specialized ES&H training, such as confined space, fire watch, Work from elevated platforms, etc. and keep the appropriate documentation.
 - 12.2.12. The Contractor shall inform all its Project personnel of potential hazardous conditions and/or near miss incidents and shall document such communications.
 - 12.2.13. Unless otherwise directed by the District, and before beginning any Work, the Contractor shall require all lower tier suppliers and Subcontractors to submit a written ES&H Plan specific to their scope of Work. The Contractor shall review and accept all such plans for compliance with District, and regulatory requirements.
 - 12.2.14. The Contractor shall participate in any Work area audits performed by the District, and root cause investigations.
 - 12.2.15. The Contractor's foremen shall complete, file on-site and make available to the District, weekly Tailgate Safety Meeting minutes.
 - 12.2.16. The Contractor shall stop Work if unknown or unanticipated hazards or Work conditions evolve which place employees at risk or necessitate greater precautions than currently exist or are required in the Project ES&H Execution Plan. The Contractor shall immediately report all such incidents to the District.
- 12.3. ORIENTATION AND TRAINING
- 12.3.1. Contractor Management shall provide the support and resources necessary to ensure adequate and effective training is provided and documented. Supervisors shall ensure adequate time is provided for such training.
 - 12.3.2. Before Contractor employees are placed on any Worksite, training shall be provided which satisfies regulatory requirements. A verification process (i.e., comprehension testing) may be required at the District's discretion.
 - 12.3.3. The Contractor shall update training materials to reflect changes in applicable local state and federal laws, regulations or Project requirements.
 - 12.3.4. The Contractor shall provide and require employees to attend sufficient specialized training applicable to their Work (e.g., confined space, Work at height, fire watch, etc.).
 - 12.3.5. All Contractor employees shall attend their company specific New Employee Orientation. Documentation of all training and comprehension testing shall be kept on file on-site and made available to the District.
 - 12.3.6. The Contractor shall ensure that all Project visitors/vendors/delivery personnel are escorted at all times by an authorized and responsible Contractor employee who is

knowledgeable of all ES&H practices and procedures and instructs and supervises the visitor/vendor/delivery person accordingly.

12.4. MEDICAL SERVICES & MEDICAL TREATMENT

- 12.4.1. Contractor site personnel who provide first aid or other medical care shall be properly trained and qualified with a copy of their current certifications/licenses maintained on site.
- 12.4.2. The Contractor shall ensure its employees understand and comply with its medical management procedures.
- 12.4.3. The Contractor's ES&H Representative shall review all return-to-Work orders.
- 12.4.4. The Contractor emergency equipment shall be inspected daily to ensure effective operation. All such inspections shall be documented, kept on file on-site, and made available to the District.
- 12.4.5. Where applicable, the Contractor shall maintain clean and orderly first-aid facilities and locations where first aid treatment is provided.
- 12.4.6. The Contractor shall ensure injured employees are promptly referred to qualified industrial/occupational medical providers if offsite treatment is needed. The injured employee's employer shall provide transportation for such offsite medical treatment.
- 12.4.7. The Contractor employees injured on the Project and returned for modified duty shall have this status documented by the treating medical practitioner and reported to the District's Site Safety Supervisor or Construction Manager.

12.5. MEDICAL REPORTING AND RECORDS

- 12.5.1. Contractor medical records shall be maintained up-to-date. Any recordable injuries are to be promptly reported to the District's Site Safety Supervisor or Construction Manager. All other matters pertaining to medical records and reports shall be kept strictly confidential. The Contractor shall maintain and file its own Workers' compensation or insurance Claims forms as necessary.
- 12.5.2. The Contractor shall develop a method for tracking the status of injuries and shall be able to produce and provide to the District a Safety Performance Report with that information.

12.6. JOB HAZARD ANALYSIS

- 12.6.1. Unless otherwise directed by the District, the Contractor shall perform a Job Hazard Analysis (JHA) common to the construction industry for any Work of a hazardous nature. The JHA is generally in table form and simply describes tasks to be performed, potential hazards and mitigating measures. The JHA is used to identify, analyze, understand and mitigate potential hazards associated with repetitive or potentially hazardous Work operations.
- 12.6.2. Supervisors shall ensure that their employees understand the purpose of, and participate in the JHA and Tailgate meetings and shall use them as primary planning and lessons learned tools.

12.7. PERSONAL PROTECTIVE EQUIPMENT

- 12.7.1. Contractor shall require employees to wear eye protection at all times while working in the field. Safety glasses shall be equipped with hard side shields and should be manufactured to ANSI standard Z87.1. This applies to prescription eyewear as well. Contractor shall monitor the eye protection worn by its employees and take immediate corrective actions when non-compliance is noted. Employees performing grinding and buffing operations shall wear face shields and safety glasses or mono goggles.

- 12.7.2. Hardhats shall be worn with the brim forward at all times when in the field and shall be worn at all times when in direct proximity to construction operations.
- 12.7.3. Welders shall wear hardhat/welding hood combinations and safety glasses while welding. Welding screens shall be used to protect other employees from the hazards associated with direct welding arc rays.
- 12.7.4. Contractor employees with field responsibilities shall wear sturdy Work shoes or boots acceptable to the District.
- 12.7.5. Contractor employees shall receive information regarding personal protective equipment requirements during Contractor's New Employee Orientation.
- 12.7.6. Contractor employees who handle chemicals or harmful substances shall be trained in accordance with local, state and federal regulations, and shall wear appropriate personal protective equipment per the chemical Manufacturer's recommendations.
- 12.7.7. Contractor shall require all employees to wear long pants and a suitable shirt, with no less than 4" or 10 cm length sleeves, as the minimum Work clothing to be worn on the Project.
- 12.7.8. Contractor shall provide and require the use of appropriate hearing protection whenever a hearing hazard exists in accordance with local, state and federal regulations and or at the direction of the District.

12.8. RESPIRATORY PROTECTION

- 12.8.1. Contractor shall provide and require the use of appropriate respiratory protective equipment in accordance with 29 CFR 1910.134 and acceptable to the District, whenever a respiratory hazard exists.
- 12.8.2. A competent person knowledgeable of inhalation hazards and respiratory protective equipment shall be designated by the Contractor to conduct a step-by-step evaluation to insure that only respiratory protection appropriate for the conditions of exposure is selected and utilized.
- 12.8.3. Where respiratory protection is required or expected to be required, the Contractor shall have a written Respiratory Protection Program, which describes the selection, use, care and sanitation of respiratory equipment. This procedure shall include the name of the procedure administrator for the site, cartridge change out data, method to be used for sanitizing respirators, medical qualifications of those required to wear respirators, methods for fit testing and employee training.
- 12.8.4. Contractor supervisors shall notify the District's Site Safety Representative or Construction Manager before starting any Work that requires employees wear respiratory protection.

12.9. HEARING CONSERVATION PROGRAM

- 12.9.1. Contractor shall have a written Hearing Conservation Procedure. The procedure shall include information on noise surveys, engineering controls, the procurement and use of low noise equipment when possible, posting of signs and warnings for areas found to require hearing protection, and training on hearing protection devices used on the Project.

12.10. HAZARDOUS MATERIALS AND HAZARD COMMUNICATION

- 12.10.1. In the event that the Contractor, any Subcontractor or anyone employed directly or indirectly by them shall use, at the Site, or incorporate into the Work, any material or substance deemed to be hazardous or toxic under any law, rule, ordinance, regulation

or interpretation thereof (collectively "Hazardous Materials"), the Contractor shall comply with all laws, rules, ordinances or regulations applicable thereto and shall exercise all necessary safety precautions relating to the use, storage or disposal thereof.

- 12.10.2. Contractor shall develop a written Hazard Communication Plan and, as required, implementing procedures describing the method it will use to communicate the hazards associated with chemical handling, use, storage and disposal. The plan shall be consistent with the project SWPPP and submitted and acceptable to the District prior to start of Work.
- 12.10.3. Contractor shall make available to the District, Material Safety Data Sheets (MSDS) for each chemical substance purchased and/or carried onto a Worksite. Materials that arrive without an MSDS shall be quarantined and not released until the MSDS is received on site and the material is approved for use by the District. The Contractor shall maintain a list of hazardous materials on site and the quantities of each.
- 12.10.4. Contractor shall ensure that employees are trained (in accordance with local, state and federal regulations) in the recognition, proper handling and use of hazardous substances. Contractor's New Employee Orientation shall include introductory training on the topic of hazardous substances however; specific hazardous material training shall be provided by the Contractor for its Project employees whose Work involves the use of any hazardous material under its control. Such training shall be properly documented, filed and made available to the District. Contractor personnel shall be prohibited from participating in, or in the on-site supervision of, hazardous, toxic or radiological materials activities unless they have been certified as having successfully completed the training to a level required by their position, function and responsibilities.
- 12.10.5. Contractor shall properly label all hazardous substances and/or chemicals that have been transferred from the Manufacturer's container into another container. Inspections shall be made and documented by the Contractor to ensure that adequate labeling occurs.
- 12.10.6. Transportation, use, storage, and disposal of hazardous substances shall be under the supervision of a qualified person. Transportation, use and storage of hazardous substances shall be planned and controlled to prevent contamination of people, animals, food, water, equipment, materials and environment in accordance with local, state and federal regulations.
- 12.10.7. Disposal of surplus or excess materials and containers shall occur in a manner that will not contaminate or pollute any water supply, ground water, or streams, and will comply with the project SWPPP, federal, state and local regulations and guidelines.
- 12.10.8. In the event the Contractor encounters Hazardous Materials at the Site which have not been rendered harmless or for which there is no provision in the Contract Documents for containment, removal, abatement or handling of such Hazardous Materials, the Contractor shall immediately stop the Work in the affected area, but shall diligently proceed with the Work in all other unaffected areas. Upon encountering such Hazardous Materials, the Contractor shall immediately notify the Project Inspector and the Architect, in writing, of such condition. The Contractor shall proceed with the Work in such affected area only after such Hazardous Materials have been rendered harmless, contained, removed or abated. In the event such Hazardous Materials are encountered, the Contractor shall be entitled to an adjustment of the Contract Time to the extent that the Work is stopped and Substantial Completion of the Work is affected thereby. The District reserves the right to request the Contractor to de-mobilize and re-mobilize in the event unexpected Hazardous materials are encountered and alternate Work areas are not available. Upon the District's remediation of the Hazardous materials, the District will contact the Contractor and a re-mobilization date agreed to. If the District selects this scenario the Contractor shall be reimbursed only for the costs associated directly with

de-mobilization and re-mobilization and the Contract time extended accordingly. In no event shall there be an adjustment to the Guaranteed Maximum Price solely on account of the Contractor encountering such Hazardous Materials.

- 12.10.9. Notwithstanding any provision of the Drawings or the Specifications to the contrary, it is the intent of the District that Asbestos Construction Building Materials ("ACBMs") not be used or incorporated into any portion of the Work. In the event that any portion of the Work depicted in the Drawings or the Specifications shall require materials or products which the Contractor knows, or should have known with reasonably diligent investigation, to contain ACBMs, Contractor shall promptly notify the Architect and the Project Inspector of the same so that an appropriate alternative can be selected in a timely manner so as not to delay the progress of the Work. Contractor warrants to the District that there are no materials or products used or incorporated into the Work, which contain ACBMs. Whether before or after completion of the Work, if it is discovered that any product or material forming a part of the Work or incorporated into the Work contains ACBMs, the Contractor shall at its sole cost and expense remove such product or material in accordance with any laws, rules, procedures and regulations applicable to the handling, removal and disposal of ACBMs and to replace such product or material with non-ACBM products or materials and to return the affected portion(s) of the Work to the finish condition depicted in the Drawings and Specifications relating to such portion(s) of the Work. Contractor's obligations under the preceding sentence shall survive the termination of the Contract, the warranty period provided under the Contract Documents, the Contractor's completion of the Work or the District's acceptance of the Work. In the event that the Contractor shall fail or refuse, for any reason, to commence the removal and replacement of any material or product containing ACBMs forming a part of, or incorporated into the Work, within ten (10) days of the date of the District's written notice to the Contractor of the existence of ACBM materials or products in the Work, the District may thereafter proceed to cause the removal and replacement of such materials or products in any manner which the District determines to be reasonably necessary and appropriate; all costs, expenses and fees, including without limitation fees and costs of consultants and attorneys, incurred by the District in connection with such removal and replacement shall be the responsibility of the Contractor and the Contractor's Performance Bond Surety.
- 12.10.10. Contractor, Subcontractor, or any tiers thereof, are prohibited from using any material or substance containing lead.
- 12.10.11. Contractor shall be solely and exclusively responsible for the disposal of any Hazardous Materials on or about the Contractor's Site. Contractor's obligations hereunder shall include without limitation, the transportation and disposal of any Hazardous Materials in strict conformity with any and all applicable laws, regulations, orders, procedures or ordinances.

12.11. TOOLS AND EQUIPMENT

- 12.11.1. Contractor shall provide and ensure that all tools are used in accordance with the Manufacturers' recommendations, have required guards in place, and are maintained in good Working order.
- 12.11.2. Contractor will ensure that excess flow valves are installed on air manifolds and compressors supplying air to >1/2 inch (or equivalent metric) ID hoses.
- 12.11.3. Contractor will not use job-made tools of any kind on the Project. All tools and equipment shall be used and maintained in accordance with Manufacturer recommendations. If exceptions to this rule are needed, they must be brought to the District's attention for review and acceptance prior to use.

- 12.11.4. Contractor shall only permit properly trained and certified employees to use powder-actuated tools. Documentation of the employees training shall be made available to the District and each employee using such tools shall carry qualification cards. Control shall be kept of the powder-actuated charges. Each cartridge shall be accounted for and properly stored. No live or spent cartridges shall be left on the ground or disposed of in Project trashcans or other unauthorized on or off-site container.
- 12.11.5. Contractor shall ensure that Work is performed only in areas and at times where adequate illumination exists. Contractor shall provide all lighting required to safely perform Work. Artificial lighting equipment shall be manufactured to a recognized standard acceptable to the District.

12.12. PEST CONTROL

- 12.12.1. The Contractor shall be solely responsible for initiating, maintaining and supervising all requirements of the State of California Healthy Schools Act of 2000, (Article 4, commencing with §17608, to Chapter 5 of Part 10.5 of the Education Code) and the Food and Agricultural Code relating to school safety (Article 17, commencing with §13180, to Chapter 2 of Division 7 of the Food and Agricultural Code), including without limitation:
 - 12.12.2. The Contractor shall obtain from the District Integrated Pest Management Office the approved Pesticide list. The Contractor must use only the Pesticides on the list. If the Contractor wants to request a Pesticide that is not on the list, the Contractor is required to submit to the District the MSDS and the Label of Pesticide for consideration.
 - 12.12.3. The Contractor shall obtain from the District Integrated Pest Management Office a list of those individuals who have requested notification of pesticide application. The Contractor shall notify 72 hours prior to a pesticide application, all staff and parents or guardians of students enrolled at a school, and those who have requested notification, of any pending pesticide application. This notice shall include the product name, the active ingredient or ingredients in the product, and the intended area and date of application.
 - 12.12.4. The Contractor shall post each area of the site where pesticides will be applied with a warning sign. The warning sign shall prominently display the term "Warning - Pesticide Treated Area" and shall include the product name, Manufacturer's name, the United States Environmental Protection Agency's product registration number, intended date of application, areas of application, and reason for the pesticide application. The warning sign shall be visible to all persons entering the treated area and shall be posted twenty-four (24) hours prior to the application and remain posted until seventy-two (72) hours after the application. The Contractor shall be responsible for removing the posted signs in a timely manner after the seventy-two (72) hour posting period.
- 12.12.5. The Contractor shall prepare a report to the Department of Pesticide Regulation of pesticide applications for each site at which a pesticide application occurred. The report shall include the name and address of the site, date and location of application, pesticide product name, and the quantity of pesticide used.
- 12.12.6. The Contractor shall be solely responsible for complying with the requirements of the District Integrated Pest Management Policy as follows:
 - 12.12.7. The Contractor shall ensure that proposed pest control operators are educated and trained in the use of current pesticides approved for use by the District Integrated Pest Management Office, and that applicators follow label directions, precautions, and application regulations.
 - 12.12.8. The Contractor shall provide the District Integrated Pest Management Office with copies of all reports the Contractor is required to prepare and submit to the Department of Pesticide Regulation.

- 12.12.9. The Contractor shall obtain, ten (10) Working days prior to any pesticide application at a site, written approval from the District Integrated Pest Management Office, that the material Specifications proposed for application are for District approved pesticides, and that the area of intended use of the proposed pesticide is consistent with the pesticide label Specifications. The Contractor shall ensure pesticide application is included in the SWPPP or initiate an amendment to the SWPPP to incorporate the application of pesticides to ensure stormwater best management practices are in place to prevent contamination of stormwater or non-stormwater runoff.
- 12.12.10. The Contractor shall provide the District Integrated Pest Management Office certification that any company engaged in pest control Work possess a valid Pest Control Business License and that landscape maintenance Subcontractors who perform pest control Work possess a valid Qualified Applicator's Certificate in the category of Landscape Maintenance (Category B). For Work of a structural nature, the pest control operator must possess either a valid Qualified Applicator's Certificate in the category of Residential, Industrial and Institutional (Category A), or a structural Pest Control License Branch 2 (Field Representative), or Branch 3 (Wood Destroying Organisms).

12.13. REPORTING/INVESTIGATING INCIDENTS AND ACCIDENTS

- 12.13.1. The Contractor's New Employee Orientation shall include information about employee responsibility for reporting all injuries, illnesses, property damage and near miss incidents. Contractor shall promptly report all such occurrences to the District and unless directed otherwise, take the lead in the investigation, documentation and initiation of corrective action. Contractor shall keep records of all incident/accident investigations in a format acceptable to the District and shall provide the District with a copy within 24 hours of the occurrence.
- 12.13.2. Contractor shall develop a written notification and investigation procedure acceptable to the District. The Contractor's Safety Representative shall oversee the investigation of all incident and accident cases and reports. Information derived from such reports shall be issued as "lessons learned" to all employees on the Project.

12.14. ASSESSMENTS AND INSPECTIONS

- 12.14.1. The Contractor shall establish a documented assessment process acceptable to the District which measures compliance with the Project ES&H Execution Plan and Contractor's own ES&H processes.
- 12.14.2. The District may perform periodic safety assessments of the Project. The Contractor shall provide the District with timely, complete and open access to its safety process, files, records, etc., and shall participate in this assessment as required.
- 12.14.3. The Contractor will ensure its personnel are aware of and comply with the procedures to be taken in the event of an inspection by any regulatory agency.
- 12.14.4. The Contractor shall immediately notify the District Construction Manager and Safety Supervisor when a regulatory agency inspector of any type requests entry onto the Jobsite.
- 12.14.5. Following any regulatory agency inspection, the Contractor shall submit a written report to the District Construction Manager or Safety Supervisor which details all aspects of the inspection.

12.15. EMERGENCIES AND EVACUATIONS

- 12.15.1. The Contractor shall develop an Emergency Response Plan and shall provide all emergency equipment and supplies needed to support the Work and each Work location. The plan will address emergency evacuation, medical emergencies, natural disasters, etc. The plan shall be submitted and acceptable to the District. The plan shall include

emergency alarm systems, assembly and evacuation points, an employee head count process, and provisions for employee training before entering the Jobsite. Periodic tests and drills shall be conducted as required.

- 12.15.2. The Contractor shall ensure that Emergency Response Plan requirements are clearly communicated to its Project personnel. Such communication and employee comprehension and participation shall be documented.

12.16. BLOOD BORNE PATHOGENS

12.16.1. Contractor employees who are designated as responsible for rendering first aid or medical assistance shall be included in their employer's blood-borne pathogen program in accordance with 29 CFR 1910.1030 and, shall be properly trained regarding their responsibilities, required control measures, and personal safety. Proper personal protective equipment shall be used when exposure hazards exist. Each Contractor employee whose job duties puts them at risk of exposure (i.e. medic, nurse, first aid person, etc.) shall be offered vaccinations and documentation of the vaccination or declination shall be maintained and made available to the District upon request.

- 12.16.2. Contractor shall provide all its employees with a general overview on the hazards associated with blood borne pathogens, possible means of exposure, and proper control methods.

12.17. AIR SURVEILLANCE PROGRAM

12.17.1. As required, the Contractor shall develop a written Air Surveillance Procedure. All operations, materials, and equipment shall be evaluated to determine the presence of hazardous environments or if hazardous or toxic agents could be released into the Work environment. All logs and records shall be maintained on-site for sampling, monitoring, and identifying the source of contaminants. These records shall be made available to the District. A competent person, whose resume and qualifications shall be submitted and determined acceptable by the District, shall conduct all evaluations, air monitoring and/or sampling.

- 12.17.2. The Contractor shall perform inspections to identify and mitigate Project and/or public risks and exposures to potential toxic, hazardous or explosive atmospheres.

12.17.3. The Contractor shall provide equipment adequate for the environmental sampling and monitoring of atmospheres and shall ensure that the equipment is calibrated per the Manufacturer recommendations.

12.18. HEAT STRESS PREVENTION

12.18.1. As required, Contractor shall have operating and emergency procedures for heat stress.

12.18.2. Contractor shall ensure that all field employees, especially front line supervisors, are trained on the warning signs/symptoms of early heat related disorders, and instructed on the clothing and Work methods best suited to avoid heat stress. Stay times or monitoring methods shall be developed to reduce the possibility of heat related disorders, if necessary.

12.18.3. Contractor shall provide an immediately accessible, adequate, and sanitary potable water supply during all periods of the day and have available electrolyte replacement drinks or tablets during seasons of the year when heat stress may occur.

12.19. HOUSEKEEPING, FIRE PREVENTION & PROTECTION

12.19.1. All eating and sanitary facilities shall be maintained in a clean and sanitary condition at all times. Contractor must provide the necessary resources to accomplish this, including

adequate washing facilities with soap and disposable towels and whatever labor is required to clean and maintain a high level of sanitation.

- 12.19.2. Unless specified elsewhere in the contract, Contractor shall provide clean, potable drinking water for its employees in a safe, hygienic manner at all Worksites. Single use cups shall be provided in a sanitary dispenser. These cups shall be replenished as needed during the day and trashcans provided for their disposal. "Community" or common use cups shall not be used.
- 12.19.3. Unless specified elsewhere in the contract, Contractor shall provide and maintain its own sanitary toilet facilities for its employees. The daily facilities cleaning, and maintenance, and method and location of waste disposal shall be to a high standard acceptable to the District.
- 12.19.4. Contractor shall provide all fire protection and prevention equipment necessary for its operations, including, but not limited to fire hoses, nozzles, extinguishers, etc. Contractor shall provide an adequate number of fire extinguishers of the correct size and type for its Work activities. Extinguishers shall be maintained per Manufacturer's recommendations, inspected monthly, and tested annually. Contractor shall train employees in the proper use of fire extinguishers.
- 12.19.5. Contractor shall monitor its Work and office areas to ensure that all doors, stairwells, aisles and means of egress are kept clear and unobstructed at all times.
- 12.19.6. Contractor shall ensure all exits are clearly marked and adequately lighted, and that all emergency lights remain functional.
- 12.19.7. Contractor shall ensure that the handling, storage, and use of flammable and combustible liquids is performed properly, that these liquids are dispensed in safety cans manufactured to a recognized standard acceptable to the District, and areas designated for these activities are maintained in an orderly fashion. All hazardous areas shall be posted with appropriate signs and access shall be controlled.
- 12.19.8. Where temporary welding enclosures are required, Contractor shall ensure that these enclosures are constructed with flame resistant materials (such as fire blanket).
- 12.19.9. Contractor shall instruct its employees in regards to the Facilities/Project smoking policy and monitor to ensure that posted "no-smoking" zones are observed.
- 12.19.10. Contractor office areas shall be monitored to reduce and control storage and loading of combustible materials. Material shall be well arranged, and aisles shall be maintained open and clear of obstructions. Stored material shall be kept away from heaters, lamps, hot pipes, equipment, and machinery and the use of extension cords minimized.
- 12.19.11. Contractor personnel whose Work tasks are in the vicinity of fire cabinets and equipment, fire hydrants, and fire lanes shall keep them clear and unobstructed.
- 12.19.12. Contractor shall maintain a minimum of 18 inches or 1/2 meter of free space around sprinkler heads when working in facilities having sprinkler systems.
- 12.19.13. Contractor shall ensure that combustible waste containers are emptied regularly; equipment, tables, and floors are free from oil or oily rags; and oily rag containers are kept covered and emptied regularly. Janitor/storage closets shall be maintained in an orderly condition and shall not be used to store quantities of hazardous or toxic chemicals. Electrical, mechanical, and MDF rooms shall be kept in order and free of combustible storage materials.
- 12.19.14. Contractor shall protect its employees against welding and cutting hazards. Contractor's ES&H Plan shall address fire concerns including fire watches where necessary, welding fumes, preservative coatings, respiratory protection, eye/head/body protection, etc.

Welding and cutting apparatus shall be inspected before each use. Cutting torch assemblies shall be equipped with pressure relief valves, back flow prevention devices, and flash arrestors.

- 12.19.15. Contractor shall ensure that employees are trained in and comply with the requirements for proper fire prevention and equipment use when welding or cutting.
- 12.19.16. Contractor shall effectively ground the frame of Arc-welding and cutting machines that incorporate a power outlet.
- 12.19.17. Contractor shall develop a written Cutting, Welding and Grinding Procedure for the maintenance and inspection of welding, grinding, or cutting equipment and ensure that the procedure is implemented and maintained.
- 12.19.18. Unless otherwise specified by the District, Contractor shall not permit open fires on the Jobsite.

12.20. FALL PREVENTION/PROTECTION

- 12.20.1. The Contractor ES&H Plan shall include a written Fall Prevention/Protection Procedure acceptable to the District, which makes maximum use of primary fall protection systems, such as scaffolds, aerial lifts, nets, personnel hoists, etc.
- 12.20.2. Contractor shall require the inspection of fall protection equipment prior to each use.
- 12.20.3. Contractor shall adopt a 100% fall protection policy that makes provision for secondary fall protection (full-body harness) for all employees who are working or traveling more than 6 feet or 2 meters above ground.
- 12.20.4. Contractor shall review its scope of Work to identify the methods to achieve 100% fall protection prior to commencement of such Work. Selection of personal fall protective equipment shall be based on the type of Work; the Work environment, the weight, size, and shape of the user; the type and position of anchorage; and the length of the lanyard. Where lifeline systems are used, anchor points shall be capable of supporting at least 5,000 pounds or 2275 kg. Lifelines shall be installed and maintained by qualified persons who are competent and possess the rigging knowledge necessary to ensure the integrity and safety factors necessary for lifeline system installation. Lanyards shall be secured to vertical lifelines by rope grabs only. Knots, painters-hitches, or loops are not acceptable. Horizontal lifelines shall have tie-off points at least waist high.
- 12.20.5. Contractors using retractable lifeline devices shall secure them by means acceptable to the District and in all cases by a means capable of supporting at least 5000 pounds or 2275 kg.
- 12.20.6. Contractor shall require employees to wear an approved safety harness/lanyard system if they Work from ladders where the fall exposure is less than 6 feet or 2 meters, and they are unable to maintain 3-point contact.

12.21. SCAFFOLDING

- 12.21.1. Contractor shall have a written Scaffolding Procedure and use scaffold material acceptable to the District.
- 12.21.2. Scaffold platforms shall be fully planked or decked out, capable of supporting 4 times the maximum intended load to be imposed upon them, and all sides protected by standard guardrail systems. The top rail shall be approximately 42 inches or 110 cm from the platform. A mid-rail and 4 inch or 10 cm toe-board shall be installed.
- 12.21.3. Contractor erected scaffolds where employees are Working/passing below shall have planking or netting installed from the platform to the top rail.

- 12.21.4. Contractor shall develop a scaffold tagging system which identifies the status of each scaffold. Suggested system uses a red tag to indicate scaffolds under construction or demolition, yellow to indicate scaffolds that are complete but have hazards associated with them, and green to indicate scaffolds erected to a complete, safe standard.
- 12.21.5. Contractor shall erect or modify scaffolds under the direction of a trained, competent scaffold builder whose qualifications must be made available at the District's request. The competent person shall sign all scaffold tags and perform and document inspections before initial use, including initial use following alteration, and daily thereafter.
- 12.21.6. Contractor shall provide safe access/egress to all levels of scaffolds. Scaffold platform accesses shall be protected to prevent the possibility of accidental fall through utilizing secured access gates.
- 12.21.7. Special scaffolds (hanging scaffolds, 2 point suspension scaffolds, etc.) shall be designed by a competent engineer and erected with all necessary personnel safety equipment installed, such as rope grabs and lifelines.
- 12.21.8. Contractor must have a qualified, professional engineer design all scaffolds over 125 feet or 38 meters in height.
- 12.21.9. All scaffolds erected by the Contractor shall have casters, jackscrews, or base plates installed. Mudsills shall be used where required. Scaffolds shall be level and plumb, capable of supporting at least four times the anticipated load, and secured to a solid structure whenever possible.
- 12.21.10. Contractor shall provide scaffold user training to all employees, shall verify employee comprehension by testing and shall maintain training and testing records which will be made available to the District upon request.

12.22. BARRICADES

- 12.22.1. Contractor is responsible for properly erecting and maintaining barricades and barriers in such a manner that they provide adequate protection and do not impede the Work of other Contractors unless the District approves such placement. All floor and roof openings into which persons can accidentally walk or fall through shall be guarded by a physical barrier or covered.
- 12.22.2. Contractor shall barricade all floor openings, or install properly labeled and substantial covers (3/4 inch, or equivalent metric, exterior grade plywood able to withstand at least twice the anticipated load). All floor-opening covers shall be stenciled or painted with this statement: "OPEN HOLE - DANGER, DO NOT REMOVE."
- 12.22.3. Barricades and barriers erected by the Contractor shall have appropriate signs and tags indicating the nature of the hazard and the responsible supervisor. Barricades left after dark on or in close proximity to roadways shall be properly equipped with flashing amber lights.
- 12.22.4. Contractor shall provide and use appropriate barrier devices to identify the nature of the job hazard involved (i.e., yellow and black for "CAUTION" or red and black for "DANGER"). Barrier devices, including barrier tape, shall not be used as a substitute for a barricade as they do not offer adequate protection from falls. Barrier devices shall be used only in those applications where temporary identification of a hazard is needed; but not as a primary means of protecting employees from exposure.
- 12.22.5. Contractor shall ensure that employees understand and comply with barricade and barrier procedures (i.e. prohibited entry into red barrier taped areas).

12.23. FLOOR & WALL OPENINGS

- 12.23.1. Contractor shall review the fall hazards involved in its scope of Work and construct standard handrail systems where required. Handrails shall be constructed with the top rail 42 inches or 110 cm from the floor or platform level and shall have a mid-rail and toe-board. Toe-boards shall extend 4 inches or 10 cm above the floor or platform level.
- 12.23.2. Contractor shall install vertical support posts for handrails at intervals of not more than 8 feet or 2.5 meters.
- 12.23.3. All floor and roof holes through which equipment, materials, or debris can fall shall be covered.

12.24. EXCAVATIONS & TRENCHING

- 12.24.1. Contractor shall not commence any excavation or trenching Work, until they have obtained permission and complied with the conditions of all required approval and permit authorities. Permits shall be kept on file on-site and made available to the District upon request.
- 12.24.2. Contractor shall provide at the Jobsite a competent person whose resume and qualifications have been submitted to and accepted by the District, who will classify all soils and perform daily inspections of all excavations/trenches. These inspections shall be documented, kept on file on-site, and made available to the District upon request.
- 12.24.3. Contractor shall have an engineered drawing for reference showing the location of all underground services and/or utilities, and will make all required notifications prior to commencing any excavation.
- 12.24.4. Contractor shall ensure that spoil material is kept at least 3 feet or 1 meter away from the excavation edge.
- 12.24.5. Where trenches or excavations will exceed 4 feet or 1.5 meters in depth, the Contractor shall use protective systems acceptable to the District. No more than 25 feet or 7 meters of lateral travel shall be required in any trench to reach a ladder. Warning signs and barricades shall be installed in a manner that prevents accidental entry into the trenched or excavated area.

12.25. VESSELS AND CONFINED SPACES

- 12.25.1. Where confined space Work is anticipated, Contractor shall have a written Confined Space Procedure that is acceptable to the District and which requires that all such Work be performed only on the basis of a Contractor issued logged and numbered permit. Contractor is responsible for air evaluation and monitoring in confined spaces. At a minimum, in newly constructed confined spaces with little hazard of airborne contamination, monitoring for oxygen and explosive gasses shall be conducted. Monitoring equipment shall be provided by the Contractor, calibrated to Manufacturer recommendations and all calibration shall be documented. All employees conducting air monitoring shall have proper, documented training. All calibration and training records shall be made available to the District upon request.
- 12.25.2. The Contractor shall ensure that all employees have awareness training regarding the hazards of confined spaces and the procedures to be followed. Special training shall be provided to all entry supervisors, entrants, and attendants. The Contractor shall ensure that entry supervisors know, understand and execute their full responsibilities.
- 12.25.3. Contractor shall review its Work areas and ensure confined spaces have been identified and marked accordingly. Contractor shall examine each confined space before initial entry to evaluate the specific hazards and safety precautions.

- 12.25.4. Prior to each entry into a confined space Contractor shall ensure:
- Proper ventilation equipment is used to purge or supply air to the confined space,
 - All electrical service is low voltage or GFCI protected,
 - Adequate access/egress from the confined space is provided,
 - A task specific rescue plan has been developed and reviewed with all involved employees, and
 - All external sources of atmospheric contamination are isolated.
- 12.25.5. Contractor shall evaluate all confined spaces for possible heat stress.
- 12.25.6. Contractor shall ensure that all personnel responsible for safety watches (confined space attendants) are easily identified, properly trained and aware of the duties associated with each emergency situation that may occur within the confined space.
- 12.25.7. Contractor shall ensure that an emergency rescue team is available for all permit-required confined space entries and that all employees know how to summon assistance.
- 12.25.8. Contractor shall not permit entry into any permit-required confined space until the permit system has been properly executed. The permit shall be conspicuously posted at the confined space and all entrants must sign a log upon entering and exiting the confined space.
- 12.26. LOCK OUT/TAG OUT PROCEDURE
- 12.26.1. Where applicable, Contractor shall develop an effective and compliant written lock-out/tag-out procedure.
- 12.26.2. Contractor shall ensure that all employees have instruction on the specific lockout/ tagout procedure and comprehension testing shall be conducted to verify knowledge and understanding of the procedure. Records of training and testing shall be kept, filed on-site, and made available to the District upon request.
- 12.27. PORTABLE LADDERS - CONTROL & INSPECTION
- 12.27.1. Contractor shall monitor ladders to ensure all ladders used on the Project are constructed of wood or fiberglass (not metal) have non-slip feet, and that wooden ladders have been treated with preservative.
- 12.27.2. Contractor will erect ladders so that access/egress areas are unobstructed.
- 12.27.3. Contractor shall have a Ladder Inspection Procedure. A documented quarterly inspection of ladders is recommended.
- 12.27.4. Contractor will use ladders for egress and/or to conduct low level Work of short duration and will not use ladders in lieu of scaffolds as a primary means of conducting Work of longer duration.
- 12.28. CRANES AND MATERIAL HANDLING
- 12.28.1. Contractor shall provide the resources necessary for inspection and maintenance of rigging and lifting equipment and shall monitor all lifts to ensure that acceptable lifting practices are followed.
- 12.28.2. Tag lines shall be used on all lifts.
- 12.28.3. Contractors who are performing lifts in excess of 10 tons shall submit a lifting plan to the District for review and acceptance prior to performing the lift. If the lift is over 50 tons or classified as critical (exceeding 90% of the crane capacity chart, any two-crane lift or any lift over operating or occupied facilities, process pipe racks or near power lines) the

Contractor shall submit a detailed rigging plan with all applicable supporting calculations to the District for review and acceptance prior to the lift.

- 12.28.4. Contractor shall designate a qualified supervisor to determine the methods and develop plans for rigging operations to ensure safe lifts.
 - 12.28.5. Contractor shall ensure that the equipment operators they provide are adequately trained and informed of their responsibility to operate their equipment within design limits.
 - 12.28.6. All cranes supplied by Contractor shall have current, annual, documented inspections of sufficient detail to be acceptable to the District. Documentation of such inspections shall be made available to the District prior to initial Jobsite use.
 - 12.28.7. Contractor shall provide and ensure that operators keep daily inspection logs for all equipment. No equipment shall be operated if hazardous conditions are identified.
 - 12.28.8. Contractor shall ensure that chain-falls, inertia reels, etc. have a documented inspection annually (including load tests). All rigging equipment shall undergo a visual inspection prior to each use and a documented inspection quarterly (a color code system shall be used to achieve this). All capacities shall be clearly indicated on lifting devices.
 - 12.28.9. All rigging shall be stored properly (i.e. on racks or in protected areas).
 - 12.28.10. Contractor shall ensure all crane operations maintain minimum safe distances from all high voltage lines. Up to 50KV the distance shall be 10 feet or 3 meters.
 - 12.28.11. Contractor shall ensure that the counter weight and housing swing radius of all cranes is properly barricaded whenever it is possible personnel may come into contact with or be struck by them.
- 12.29. SUSPENDED PERSONNEL PLATFORMS
- 12.29.1. Contractor shall notify the District prior to using any suspended personnel platform and develop a Lift Procedure to be reviewed and accepted by the District prior to their use. The procedure shall include, but not be limited to, employee training, pre-lift meetings, trial lifts, and platform inspection.
 - 12.29.2. Personnel platforms (baskets) provided by Contractor shall be designed by a qualified engineer and Manufactured by competent personnel. They shall have permanent markings indicating maximum weight.
 - 12.29.3. If the District approves the use of crane suspended personnel platforms, Contractor shall thoroughly inspect the crane/derrick and ensure it has an operational anti two block device and locking devices on the hook. Free fall capacity, if present, shall be positively locked out or disabled. The area under the lift shall be isolated by barrier tape and signs.
 - 12.29.4. Contractor shall provide a positive means of communication between the crane operator and employees in a crane suspended personnel platform. Employees in the platform shall wear full body harnesses attached to a designated anchor point.
- 12.30. ARTICULATING BOOM PLATFORMS
- 12.30.1. Machines Manufactured and used for elevated personnel platform Work (JLG, Hi-lift, etc.) shall be operated and maintained in accordance with Manufacturer recommendations and only by trained and qualified individuals. Training and comprehension test records shall be maintained on file at the Jobsite and made available to the District upon request.
 - 12.30.2. All persons inside Work platforms shall wear a full body harness attached to the Manufacturer's designated anchor point. A fire extinguisher shall be provided on all such

equipment. Equipment used to hoist personnel shall not be used for material, if this constitutes a hazard.

12.31. COMPRESSED GAS CYLINDERS

- 12.31.1. Contractor shall provide cradles and/or cages for lifting compressed gas cylinders and ensure that cylinders being transported are secured and in the upright position.
- 12.31.2. Unless otherwise directed by the District, and where applicable, the Contractor shall create a Gas Cylinder Use and Storage Procedure that allows for proper use and storage of compressed gas cylinders. The procedure shall include segregation by type, proper signage, protective isolation of fuel gasses from oxygen, provisions to keep cylinder caps in place when provided by the supplier, positive upright securing of bottles, and maintenance of safe distances from ignition sources.
- 12.31.3. Contractor shall ensure that each individual cylinder turned off by a key wrench is provided with a key wrench whenever in use.

12.32. ELECTRICAL EQUIPMENT INSPECTION / ASSURED GROUNDING / GFCI

- 12.32.1. Contractor shall implement use of ground fault circuit interrupters (GFCI) on all temporary electrical applications.
- 12.32.2. Contractor shall train employees regarding electrical inspection and electrical safety.
- 12.32.3. Contractor shall ensure all tools are checked for electrical continuity after repairs are made.

12.33. VEHICLE OPERATIONS

- 12.33.1. Contractor shall ensure all vehicles are registered/licensed, maintained in a roadworthy condition, and operated in a safe manner.
- 12.33.2. Contractor shall ensure all persons operating vehicles are healthy and unimpaired, have appropriate and required operator's licenses, and observe established road regulations and/or Jobsite regulations.
- 12.33.3. Contractor shall provide a seat belt for each vehicle passenger and enforce the wearing of seat belts any time a vehicle is in motion.

ARTICLE 13**13. TESTS AND INSPECTIONS****13.1. TESTS; INSPECTIONS; OBSERVATIONS**

- 13.1.1. If the Contract Documents, laws, ordinances or any public authority with jurisdiction over the Work requires the Work, or any portion thereof, to be specially tested, inspected or approved (collectively "Testing"), the Contractor shall give the Architect and the Project Inspector written notice of the readiness of such Work for Testing at least two (2) Working days prior to the time for the conducting of such Testing. If testing is by an authority other than the District, the Contractor shall inform the Architect and Project Inspector not less than two (2) Working days prior to the date fixed for such Testing. Contractor shall indicate on the Contract Schedule the dates of special tests or inspections.
- 13.1.2. The Contractor shall not cover up any portion of the Work subject to testing and inspection prior to the completion, inspection, punch list correction, and sign-off by the Project Inspector of same. In the event that any portion of the Work subject to Testing shall be covered up by Contractor prior to completion, Contractor shall be responsible for the uncovering of such portion of the Work as is necessary without adjustment of the Guaranteed Maximum Price or the Contract Time on account thereof. Work such as, but not limited to drywall, insulation, ceiling tile installation, roofing, and concrete shall not be commenced without the approval of the Project Inspector.
- 13.1.3. Costs for special tests and inspection of materials shall be paid by the District as provided for herein. The Contractor shall provide all materials to be tested at no additional cost to the District. The Contractor shall provide safe access to all locations where materials are to be tested. Within twenty (20) days after the establishment of the Accepted Contract Schedule pursuant to Article 6.5 hereof, the District shall submit to the Contractor a written list of the portions of the Work subject to special tests or inspections to be paid for by the District along with the number of hours or costs of testing or inspection allocated for each such portion of the Work. Should any act, omission or other conduct of the Contractor, any of its Subcontractors, of any tier, or Material Suppliers cause the number of hours or the costs of such tests or inspections to exceed that set forth in the District's list submitted pursuant to the foregoing, the Contractor shall be solely responsible for all such excess costs and the District may deduct such amount from any portion of the Guaranteed Maximum Price then or thereafter due the Contractor.
- 13.1.4. The District shall select duly qualified person(s) or testing laboratory(ies) to conduct the special tests and inspections to be paid for by the District and required by the Contract Documents. All such tests and inspections shall be in conformity with Title 24 of the California Code of Regulations. Where inspection or testing is to be conducted by an independent laboratory or testing agency, materials or samples thereof shall be selected by the laboratory, testing agency, the Project Inspector or the Architect and not by the Contractor, Subcontractor or any tier thereof.
- 13.1.5. If the Architect, the Project Inspector, or public or quasi-public authority having jurisdiction over the Work determine that portions of the Work require additional testing, inspection or approval, ("Additional Tests") the Architect and the Project Inspector shall, upon written authorization from the District, instruct the Contractor to make arrangements for such Additional Tests by an entity acceptable to the District, and the Contractor shall give timely notice to the Architect and the Project Inspector of when and where the Additional Tests are to be made so the District's representative(s) and the Architect may observe such procedures. The District shall bear the costs of such Additional Tests, except to the extent that such Additional Tests reveal any failure of the Work to comply with the requirements of the Contract Documents, in which case the Contractor shall bear all costs made necessary by such failures, including without limitation, the costs of corrections, repeat

tests, inspections or approvals and the costs of the Architect's services or its consultants in connection therewith.

13.1.6. It is the Contractor's responsibility when calling for testing or inspections to verify and confirm that the Work is complete, according to Contract Documents and ready for inspection. Any re-inspections due to incomplete Work are subject to re-inspection fees at a minimum rate of \$100 per hour.

13.2. DELIVERY OF CERTIFICATES

13.2.1. Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

13.3. TIMELINESS OF TESTS, INSPECTIONS AND APPROVALS

13.3.1. Tests or inspections required and conducted pursuant to the Contract Documents shall be made or arranged by Contractor to avoid delay in the progress of the Work.

SAMPLE

ARTICLE 14**14. UNCOVERING AND CORRECTION OF WORK****14.1. INSPECTION OF THE WORK**

14.1.1. All Work done and all materials and equipment forming a part of the Work or incorporated into the Work are subject to inspection by the Architect and the Project Inspector in conformity with the Contract Documents. The Contractor shall, at its cost and without adjustment to the Guaranteed Maximum Price or the Contract Time, furnish any facilities necessary for sufficient and safe access to the Work for purposes of inspection at any and all times requested by the Architect, the District's representative(s), DSA or any other public or quasi-public authority with jurisdiction over the Work or any portion thereof.

14.1.2. Inspections, tests, measurements, or other acts of the Architect and the Project Inspector hereunder are for the sole purpose of assisting them in determining that the Work, materials, equipment, progress of the Work, and quantities generally comply and conform with the requirements of the Contract Documents. No inspection by the Architect or District Project Inspector shall constitute or imply acceptance of Work inspected.

14.2. UNCOVERING OF WORK

14.2.1. If any portion of the Work is covered contrary to the request of the Architect, the Project Inspector or the requirements of the Contract Documents, it must, if required by the Architect or the Project Inspector, be uncovered for observation by the Architect and the District's Representative and be replaced at the Contractor's expense without adjustment of the Contract Time or the Guaranteed Maximum Price.

14.3. REJECTION OF WORK

14.3.1. Prior to the District's Final Acceptance of the Work, any Work or materials or equipment forming a part of the Work or incorporated into the Work which is defective or not in conformity with the Contract Documents may be rejected by the Architect or the Project Inspector and the Contractor shall correct such rejected Work without any adjustment to the Guaranteed Maximum Price or the Contract Time, even if the Work, materials or equipment have been previously inspected by the Architect or the Project Inspector or even if they failed to observe the defective or non-conforming Work, materials or equipment.

14.4. CORRECTION OF WORK

14.4.1. The Contractor shall promptly correct any portion of the Work rejected by the Architect or the Project Inspector for failing to conform to the requirements of the Contract Documents, or which is determined by them to be defective, whether observed before or after Substantial Completion, and whether or not fabricated, installed or completed. The Contractor shall bear all costs of correcting such rejected Work, including additional testing and inspections and compensation for the Architect's services and expenses made necessary thereby. The Contractor shall bear all costs of correcting and/or replacing destroyed or damaged construction, and components which do not operate properly, whether completed or partially completed, of the District or separate Contractors, caused by the Contractor's correction or removal of Work which is not in accordance with the requirements of the Contract Documents, or which is defective. Contractor is also responsible for restoring permanent facilities used during the Work to their original or specified condition.

14.4.2. The Contractor shall, at its sole cost and expense, remove from the Site all portions of the Work, which are defective or are not in accordance with the requirements of the Contract Documents, which are neither corrected by the Contractor nor accepted by the District.

14.4.3. If the Contractor fails to commence to correct defective or non-conforming Work within three (3) days of notice of such condition and promptly thereafter complete the same within

a reasonable time, the District may correct it in accordance with the Contract Documents. If the Contractor does not proceed with correction of such defective or non-conforming Work within the time fixed herein, the District may remove it and store the salvable materials or equipment at the Contractor's expense. If the Contractor does not pay costs of such removal and storage after written notice, the District may sell such materials 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 without limitation compensation for the Architect's services and other expenses made necessary thereby. If such proceeds of sale do not cover costs, which the Contractor should have borne, the Guaranteed Maximum Price shall be reduced by the deficiency. If payments of the Guaranteed Maximum Price then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor and the Surety shall promptly pay the difference to the District.

14.5. ACCEPTANCE OF DEFECTIVE OR NON-CONFORMING WORK

14.5.1. The District may, in its sole and exclusive discretion, elect to accept Work which is defective or which is not in accordance with the requirements of the Contract Documents, instead of requiring its removal and correction, in which case the Guaranteed Maximum Price shall be reduced as appropriate and equitable.

ARTICLE 15

15. WARRANTIES

15.1. CONTRACTOR'S WARRANTY

15.1.1. The Contractor warrants to the District that all materials and equipment furnished under the Contract Documents shall be new, of good quality and of the most suitable grade and quality for the purpose intended, unless otherwise specified in the Contract Documents. All Work shall be performed in accordance with accepted industry practices and shall be of good quality, free from faults and defects and in conformity with the requirements of the Contract Documents. If required by the Architect or the District, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment incorporated into the Work. Any Work or portion thereof not conforming to these requirements may be deemed defective. Where there is an approved substitution of, or alternative to, material or equipment specified in the Contract Documents, the Contractor warrants to the District that such installation, construction, material, or equipment shall equally perform the function and have the quality of the originally specified material or equipment. The Contractor expressly warrants the merchantability, the fitness for use, and quality of all substitute or alternative items in addition to any warranty given by the Manufacturer or supplier of such item.

15.2. DISTRICT'S FINAL ACCEPTANCE; WARRANTY PERIOD

15.2.1. For Projects that are completed in their entirety and not performed in phases, the warranty or guarantee period under the Contract Documents shall be for a period of two (2) years and shall commence on the date of Final Acceptance of the Work, unless specified.

15.2.2. For Projects that are completed in phases during performance of the Work, the warranty or guarantee period under the Contract Documents is for a period of two (2) years and shall commence on the date of Substantial Completion for the District's partial use or occupancy of portions of the Work, as certified by the Architect and the District, unless otherwise specified.

15.2.3 Nothing in this section shall be deemed to shorten the otherwise applicable statute of limitations period for claims by the District against Contractor for defects (latent or patent) in the Work.

15.3. WARRANTY WORK

15.3.1. If within two (2) years after the date of Final Acceptance, or Substantial Completion as provided in Article 15.2.2 above, any of the Work is found to be defective or not in accordance with the requirements of the Contract Documents, or otherwise contrary to the warranties contained in the Contract Documents, the Contractor shall commence all necessary corrective action not more than seven (7) days after receipt of a written notice from the District to do so, and to thereafter diligently complete the same. In the event that Contractor shall fail or refuse to commence correction of any such item within said seven (7) day period or to diligently prosecute such corrective actions to completion, the District may then without further notice cause such corrective Work to be performed and completed. In such event, Contractor and Contractor's Performance Bond Surety shall be responsible for all costs in connection with such corrective Work, including without limitation, general administrative overhead costs of the District in securing and overseeing such corrective Work.

15.3.2. Nothing contained herein shall be construed to establish a period of limitation with respect to any obligation of the Contractor under the Contract Documents. The obligations of the Contractor hereunder shall be in addition to, and not in lieu of, any other obligations imposed by any special guarantee or warranty required by the Contract Documents, guarantees or warranties provided by any Manufacturer of any item or equipment forming

a part of, or incorporated into the Work, or otherwise recognized, prescribed or imposed by law. Neither the District's Final Acceptance, the making of the Final Tenant Improvement Payment, any provision in Contract Documents, nor the use or occupancy of the Work, in whole or in part, by District shall constitute acceptance of Work not in accordance with the Contract Documents nor relieve the Contractor or the Contractor's Performance Bond Surety from liability with respect to any warranties or responsibility for faulty or defective Work or materials, equipment and Workmanship incorporated therein.

15.4. GUARANTEE

15.4.1. Upon completion of the Work, Contractor shall execute and deliver to the District the form of Guarantee included within the Contract Documents. Pursuant to Article 7.4.2 herein, Contractor's execution and delivery of the form of Guarantee is an express condition precedent to any obligation of the District to disburse the Final Tenant Improvement Payment to the Contractor.

15.5. SURVIVAL OF WARRANTIES

15.5.1. The provisions of this Article 15 shall survive the Contractor's completion of Work under the Contract Documents, the District's Final Acceptance or the termination of the Contract.

SAMPLE

ARTICLE 16

16. SUSPENSION OR TERMINATION OF WORK

The Parties' rights to terminate the Project are as indicated in the Master Facilities Lease. In the event of a termination of the Master Facilities Lease and notwithstanding any other provision in the Contract Documents, the Surety shall remain liable to all obligees under the Payment Bond and to the District under the Performance Bond for any claim related to the Project.

16.1. DISTRICT'S RIGHT TO SUSPEND WORK

16.1.1. The District may, without cause, and without invalidating or terminating the Contract, order the Contractor, in writing, to suspend, delay or interrupt the Work in whole or in part for such period of time as the District may determine. The Contractor shall resume and complete the Work suspended by the District in accordance with the District's directive, whether issued at the time of the directive suspending the Work or subsequent thereto.

16.2. ADJUSTMENTS TO GUARANTEED MAXIMUM PRICE AND CONTRACT TIME

16.2.1. In the event the District shall order suspension of the Work, an adjustment shall be made to the Guaranteed Maximum Price for increases in the direct cost of performance of the Work of the Contract Documents, actually caused by suspension, delay or interruption ordered by the District; provided, however, that no adjustment of the Guaranteed Maximum Price shall be made to the extent: (i) that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible under the Contract Documents; or (ii) that an equitable adjustment is made or denied under another provision of the Contract Documents. The foregoing notwithstanding, any such adjustment of the Guaranteed Maximum Price shall not include any adjustment to increase the Contractor's overhead, general administrative costs or profit, all of which shall remain as reflected in the Cost Breakdown submitted by the Contractor pursuant to the Contract Documents. In the event of the District's suspension of the Work, the Contract Time shall be equitably adjusted.

16.3. TERMINATION FOR CAUSE

16.3.1. The District may terminate the Contract upon the occurrence of any one or more of the following events of the Contractor's default: (i) if the Contractor refuses or fails to prosecute the Work with diligence as shall insure Substantial Completion of the Work within the Contract Time, or if the Contractor fails to substantially Complete the Work within the Contract Time; (ii) if the Contractor becomes bankrupt or insolvent, or makes a general assignment for the benefit of creditors, or if the Contractor or a third party files a petition to reorganize or for protection under any bankruptcy or similar laws, or if a trustee or receiver is appointed for the Contractor or for any of the Contractor's property on account of the Contractor's insolvency, and the Contractor or its successor in interest does not provide adequate assurance of future performance in accordance with the Contract Documents within ten (10) days of receipt of a request for such assurance from the District; (iii) if the Contractor repeatedly fails to supply sufficient skilled Workmen or suitable materials or equipment; (iv) if the Contractor repeatedly fails to make prompt payments to any Subcontractor, of any tier, or Material Suppliers or others for labor, materials or equipment; (v) if the Contractor disregards laws, ordinances, rules, codes, regulations, orders applicable to the Work or similar requirements of any public entity having jurisdiction over the Work; (vi) if the Contractor disregards proper directives of the Architect or the Construction Manager under the Contract Documents; (vii) if the Contractor performs Work which deviates from the Contract Documents and neglects or refuses to correct such Work; or (viii) if the Contractor otherwise violates in any material way any provisions or requirements of the Contract Documents. Once the District determines that sufficient cause exists to justify the action, the District may terminate the Contract without prejudice to any other right or remedy the District may have, after giving the Contractor and the Surety at

least seven (7) days advance written notice of the effective date of termination. The District shall have the sole discretion to permit the Contractor to remedy the cause for the termination without waiving the District's right to terminate the Contract, or otherwise waiving, restricting or limiting any other right or remedy of the District under the Contract Documents or at law.

- 16.3.2. In the event that the Contract is terminated pursuant to this Article 16.3, the District may take over the Work and prosecute it to completion, by contract or otherwise, and may exclude the Contractor from the site. The District may take possession of the Work and of all of the Contractor's tools, appliances, construction equipment, machinery, materials, and plant which may be on the site of the Work, and use the same to the full extent they could be used by the Contractor without liability to the Contractor. In exercising the District's right to prosecute the completion of the Work, the District may also take possession of all materials and equipment stored at the site of the Work or for which the District has paid the Contractor but which are stored elsewhere, and finish the Work as the District deems expedient. In exercising the District's right to prosecute the completion of the Work, the District shall have the right to exercise its sole discretion as to the manner, methods, and reasonableness of the costs of completing the Work and the District shall not be required to obtain the lowest figure for completion of the Work. In the event that the District takes bids for remedial Work or completion of the Work, the Contractor shall not be eligible for the award of such contract(s).
- 16.3.3. In the event that the Contract is terminated pursuant to this Article 16.3, the District may demand that the Surety take over and complete the Work. The District may require that in so doing, the Surety not utilize the Contractor in performing and completing the Work. Upon the failure or refusal of the Surety to take over and begin completion of the Work within twenty (20) days after demand therefore, the District may take over the Work and prosecute it to completion as provided for above.
- 16.3.4. The District shall, in its sole and exclusive discretion, have the option of requiring any Subcontractor or Material Supplier to perform in accordance with its Subcontract or Purchase Order with the Contractor and assign the Subcontract or Purchase Order to the District or such other person or entity selected by the District to complete the Work.
- 16.3.5. In the event of termination under this Article 16.3, the Contractor shall not be entitled to receive any further payment of the Guaranteed Maximum Price until the Work is completed. If the unpaid balance of the Guaranteed Maximum Price as of the date of termination exceeds the District's direct and indirect costs and expenses for completing the Work, including without limitation, compensation for additional professional and consultant services, such excess shall be used to pay the Contractor for the cost of the Work performed prior to the effective date of termination with a reasonable allowance for overhead and profit. If the District's costs and expenses to complete the Work exceed the unpaid Guaranteed Maximum Price, the Contractor and/or the Surety shall pay the difference to the District.
- 16.3.6. The Contractor and the Surety shall be liable for all damages sustained by the District resulting from, in any manner, the termination of this Contract under this Article 16.3, and for all costs necessary for repair and completion of the Work over and beyond the Guaranteed Maximum Price.
- 16.3.7. In the event the Contract is terminated under this Article 16.3, and it is determined, for any reason, that the Contractor was not in default under the provisions hereof, the termination shall be deemed a Termination for Convenience of the District and thereupon, the rights and obligations of the District and the Contractor shall be determined in accordance with Article 16.4 hereof.
- 16.3.8. In the event the Contract is terminated pursuant to this Article 16.3, the termination shall not affect or limit any rights or remedies of the District against the Contractor or the Surety.

The rights and remedies of the District under this Article 16.3 are in addition to, and not in lieu of, any other rights and remedies provided by law or otherwise under the Contract Documents. Any retention or payment of monies to the Contractor by the District shall not be deemed to release the Contractor or the Surety from any liability hereunder.

16.4. TERMINATION FOR CONVENIENCE OF THE DISTRICT

16.4.1. The District may at any time, in its sole and exclusive discretion, by written notice to the Contractor, terminate the Contract in whole or in part when it is in the interest of, or for the convenience of, the District. Notice is deemed given when sent. In such case, the Contractor shall be entitled to payment for: (i) Work actually performed and in place as of the effective date of such termination for convenience of the District, with a reasonable allowance for profit and overhead on such Work, (ii) reasonable termination expenses for reasonable protection of Work in place and suitable storage and protection of materials and equipment delivered to the site of the Work but not yet incorporated into the Work; and (iii) retainage on Work completed, provided that such payments exclusive of termination expenses shall not exceed the total Guaranteed Maximum Price as reduced by payments previously made to the Contractor. The Contractor shall not be entitled to profit and overhead on Work, which was not performed as of the effective date of the termination for convenience of the District. The District's right to terminate under this paragraph shall be in addition to any other rights reserved to the District under the Master Facilities Lease. Said termination shall not be deemed to be a breach of the Master Facilities Lease and/or tortious conduct. Termination shall have no effect upon any of the rights and obligations of the parties arising out of any transaction occurring prior to the effective date of such termination.

ARTICLE 17

17. STATUTORY REQUIREMENTS

17.1. PROHIBITION ON HARASSMENT

- 17.1.1. The District is committed to providing a campus and Workplace free of sexual harassment and harassment. It is the policy of the District that in connection with all Work performed under the Contract Documents, there will be no discrimination against any prospective or active employee engaged in the Work because of race, color, religion, national origin, ancestry, age, medical condition, marital status, sexual orientation, disability or veteran status. Harassment includes without limitation, verbal, physical or visual conduct which creates an intimidating, offensive or hostile environment such as racial slurs; ethnic jokes; posting of offensive statements, posters or cartoons or similar conduct. Sexual harassment includes without limitation the solicitation of sexual favors, unwelcome sexual advances, or other verbal, visual or physical conduct of a sexual nature.
- 17.1.2. Contractor shall adopt and implement all appropriate and necessary policies prohibiting any form of discrimination in the Workplace, including without limitation harassment on the basis of any classification protected under local, state or federal law, regulation or policy. The Contractor agrees to comply with applicable federal and California laws, including, but not limited to, Labor Code §1735. Contractor shall take all reasonable steps to prevent harassment from occurring, including without limitation affirmatively raising the subject of harassment among its employees, expressing strong disapproval of any form of harassment, developing appropriate sanctions, informing employees of their right to raise and how to raise the issue of harassment and informing complainants of the outcome of an investigation into a harassment Claim. Contractor shall require that any Subcontractor or Sub-Subcontractor performing any portion of the Work adopt and implement policies in conformity with this Article 17.1.
- 17.1.3. Contractor shall not permit any person, whether employed by Contractor, a Subcontractor, of any tier, or any other person or entity, performing any portion of the Work at or about the Site to engage in any prohibited form of harassment. Any such person engaging in a prohibited form of harassment directed to any individual performing or providing any portion of the Work at or about the Site shall be subject to appropriate sanctions in accordance with the anti-harassment policy adopted and implemented pursuant to Article 17.1.2 above. Any such person engaging in a prohibited form of harassment directed to any student, faculty member or staff of the District, or directed to any other person on or about the Site shall be subject to immediate removal and shall be prohibited thereafter from providing or performing any portion of the Work. Upon the District's receipt of any notice or complaint that any person employed directly or indirectly by Contractor in performing or providing the Work has engaged in a prohibited form of harassment, the District shall promptly undertake an investigation of such notice or complaint. In the event that the District, after such investigation, reasonably determines that a prohibited form of harassment has occurred, the District shall promptly notify the Contractor of the same and direct that the person engaging in such conduct be immediately removed from the Site. Unless the District's determination that a prohibited form of harassment has occurred is grossly negligent or without reasonable cause, District shall have no liability for directing the removal of any person determined to have engaged in a prohibited form of harassment nor shall the Guaranteed Maximum Price or the Contract Time be adjusted on account thereof.
- 17.1.4. Contractor and the Surety shall defend, indemnify and hold harmless the District and its employees, officers, Board of Education, agents, and representatives from any and all Claims, liabilities, judgments, awards, actions or causes of actions, including without limitation, attorneys' fees, which arise out of, or pertain in any manner to: (i) the assertion by any person dismissed from performing or providing Work at the direction of the District pursuant to Article 17.1.3 above; or (ii) the assertion by any person that any person directly or indirectly under the employment or direction of the Contractor has engaged in a

prohibited form of harassment directed to or affecting such person. The obligations of the Contractor and the Surety under the preceding sentence shall be in addition to, and not in lieu of, any other obligation of defense, indemnity and hold harmless whether arising under the Contract Documents, at law or otherwise; these obligations shall survive the completion of the Work or the termination of the Contract.

17.2. WAGE RATES; EMPLOYMENT OF LABOR

- 17.2.1. Attention is called to the fact that State of California prevailing wage requirements apply to this project.
- 17.2.2. Pursuant to the provisions of Articles 1 and 2 of Chapter 1, Part 7, Division II, of the Labor Code of the State of California (Labor Code §§1720 *et seq.* and implementing regulations of the Department of Industrial Relations), Title 8, California Code of Regulations, Chapter 8, Subchapter 3, commencing with §16000, for any “public works” (as that term is defined in the statutes), there shall be paid to each Worker of the Contractor, or any Subcontractor, of any tier, engaged in the Work, not less than the general prevailing wage rate, and not less than the general prevailing rate of per diem wages for holidays and overtime work, for each craft, classification or type of worker needed to execute the work contemplated under this Contract regardless of any contractual relationship which may be alleged to exist between the Contractor or any Subcontractor, of any tier, and such Worker. For purpose of compliance with prevailing wage law, the Contractor shall comply with provisions applicable to an awarding body. Compliance with state prevailing wage law includes without limitation: payment of at least prevailing wage as applicable; overtime and working hour requirements; apprenticeship obligations; payroll recordkeeping requirements; and other obligations as required by law.
- 17.2.3 Copies of the prevailing rate of per diem wages applicable to this Project are on file at the District's office, and shall be made available to any interested party on request; or may be found on the Internet at: <http://www.dir.ca.gov/DLSR/PWD>. The Contractor shall post at appropriate conspicuous weatherproof points on the site of the Project a schedule showing the Prevailing Wage Determinations published by the Director of the California Department of Industrial Relations, which are applicable to the Project.
- 17.2.4 Contractor is responsible for ascertaining and complying with all current general prevailing wage rates for crafts and any rate changes that occur during the life of the contract; and shall ensure that the above requirements are included in all its contracts and any layer of subcontracts for activities for the Project.
- 17.2.5 Contractor shall certify to the District on each Payment Request Form, that prevailing wages were paid to eligible workers who provided labor for work covered by the payment request and that the Contractor and all Subcontractors complied with prevailing wage laws. Prior to the release of any retained funds under the Master Facilities Lease, the Contractor shall submit to the District a certificate signed by the Contractor and all Subcontractors performing public works activities stating that prevailing wages were paid as required by law.
- 17.2.6 Failure to comply with prevailing wage laws and/or failure to employ apprentices as required by law shall subject Contractor and/or its Subcontractors to penalties, including forfeitures and debarment under Labor Code §§1775; 1776; 1777.1; 1777.7 and 1813.
- 17.2.7 Nothing contained herein shall be deemed to supersede any applicable laws, orders or regulations issued by competent authority governing wages, hours of Work of the employment of labor, nor to condone any violation of such laws, orders or regulations.

17.3. PAYROLL RECORDS

- 17.3.1. As required by Labor Code §§1700 *et seq.*, (including but not limited to Labor Code §§1776 and 1812), and Title 8 of California Code of Regulations, the Contractor and every

Subcontractor, of any tier, shall keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker or other employee employed by them in connection with the Work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating that the information contained in the payroll record is true and correct and that the Contractor or Subcontractor has complied with the requirements of §§1771, 1811, and 1815 for any work performed by its employees on the public works project.

17.3.2 The payroll records enumerated under Paragraph 17.3.1 shall be certified and shall be available for inspection at all reasonable hours at the principal office of the Contractor. A certified copy of employee's payroll record shall be made available for inspection or furnished to the employee or his or her authorized representative upon request.

17.3.3 Upon request by the District, the Division of Labor Standards Enforcement (DLSE), or the Division of Apprenticeship Standards of the Department of Industrial Relations, the payroll records of the Contractor, and every Subcontractor, of any tier, shall be available for inspection at all reasonable hours at the principal office of the Contractor or furnished to DIR, within 10 days of receipt of a written request. Failure to comply shall result in applicable penalties.

17.4. COOPERATION AND WITHHOLDING OF CONTRACT PAYMENTS

17.4.1. The Contractor, and every Subcontractor, of any tier, shall cooperate with the DIR, the Labor Commissioner, or DLSE in any investigation of suspected prevailing wage violations. The District shall likewise cooperate and shall withhold contract payments in accordance with any lawful order by DLSE.

17.5. HOURS OF WORK

17.5.1. As required by Labor Code §§1700 *et seq.* (including but not limited to Labor Code §1810), and Title 8 of California Code of Regulations, eight (8) hours of labor shall constitute a legal day's Work. Under Labor Code §1811, the time of service of any Worker employed at any time by the Contractor or by a Subcontractor, of any tier, upon the Work or upon any part of the Work, is limited and restricted to eight (8) hours during any one calendar day and forty (40) hours during any one calendar week, except as hereafter provided. Notwithstanding the foregoing provisions, under Labor Code §1815, Work performed by employees of Contractor or any Subcontractor, of any tier, in excess of 8 hours per day and 40 hours during any one week, shall be permitted upon compensation for all hours Worked in excess of 8 hours per day or 40 hours per week at not less than one and one-half (1½) times the basic rate of pay. Failure to comply with any of the foregoing shall result in applicable penalties.

17.5.2. Any Work performed by Workers necessary to be performed after regular Working hours or on Sundays or other holidays shall be performed without adjustment to the Guaranteed Maximum Price or any other additional expense to the District.

17.6. APPRENTICES

17.6.1. It is the duty of the Contractor and Subcontractors to employ registered apprentices on the public works project and to comply with all aspects of Labor Code §1777.5, relating to Apprentices on Public Works. (1) Notify approved apprenticeship programs of contract award; (2) employ apprentices; (3) pay training fund contributions.

17.6.2 Under Labor Code §1777.5(e) the Contractor and all Subcontractors, of any tier, shall notify an approved training program that can supply apprentices to the area of the Public Works Project. All apprentices employed by the Contractor to perform any of the Work shall be paid the prevailing wages identified by the DIR. Only apprentices, as defined in Labor Code §3077 who are in training under apprenticeship standards and written apprenticeship

Master Facilities Leases under Labor Code §§3070, *et seq.* are eligible to be employed for the Work. The employment and training of each apprentice shall be in accordance with the provisions of the apprenticeship standards and apprentice Master Facilities Leases under which such apprentice is training or the Standards established by the Division of Apprenticeship Standards.

- 17.6.3. As required by Labor Code §§1700 *et seq.* (including but not limited to Labor Code §1777.5), and Title 8 of California Code of Regulations, the Contractor and any Subcontractor, of any tier, in performing any of the Work employs workers in any Apprenticeable Craft or Trade the Contractor and such 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 Work for a certificate approving the Contractor or such Subcontractor under the apprenticeship standards for the employment and training of apprentices in the area or industry affected; provided, however, that the approval as established by the Joint Apprenticeship Committee or Committees shall be subject to the approval of the Administrator of the Division of Apprenticeship Standards. The Joint Apprenticeship Committee or Committees, subsequent to approving the Contractor or Subcontractor, shall arrange for the dispatch of apprentices to the Contractor or such Subcontractor in order to comply with Labor Code §1777.5. The Contractor and Subcontractors shall submit contract 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.
- 17.6.4 The ratio of work performed by apprentices to journeymen, who shall be employed in the Work, may be the ratio stipulated in the apprenticeship standards under which the Joint Apprenticeship Committee operates, but in no case shall the ratio be less than one hour (1) of apprentice Work for each five (5) hours of labor performed by a journeyman, except as otherwise provided in §1777.5. 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 site of the Work 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 completion of the Work. The Contractor shall, however, 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 site of the Work. 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 apprentice for each five journeymen in a craft or trade classification. This Article shall not apply to Contracts of general Contractors, or to Contracts of Specialty Contractors not bidding for Work through a general or prime Contractor, involving less than Thirty Thousand Dollars (\$30,000).
- 17.6.5 The Contractor or any Subcontractor, of any tier, who performs any of the Work by employment of 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 Work, to which fund or funds other Contractors in the area of the site of the Work are contributing, shall contribute to the fund or funds in each craft or trade in which it employs journeymen or apprentices 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 such funds, Contractors not signatory to the trust Master Facilities Lease shall pay a like amount to the California Apprenticeship Council. The Contractors shall provide proof of such contributions when requested, including checks, check stubs, receipts, or other records required to prove that all required payments were made.

17.6.6. Failure to knowingly comply with any of the foregoing shall result in applicable penalties and in addition, upon determination by the Chief of Division of Apprenticeship Standards under Labor Code §1777.7, the Contractor may be denied the right to bid on any public Works Contract for a period of one (1) year from the date the determination of non-compliance for the first violation and for a period of up to three years for a second or subsequent violation.

17.7. EMPLOYMENT OF INDEPENDENT CONTRACTORS

Pursuant to Labor Code §1021.5, Contractor shall not willingly and knowingly enter into any agreement with any person, as an independent Contractor, to provide any services in connection with the Work where the services provided or to be provided requires that such person hold a valid Contractor's license issued pursuant to Business and Professions Code §§7000, *et seq.* and such person does not meet the burden of proof of his/her independent Contractor status pursuant to Labor Code §2750.5. In the event that Contractor shall employ any person in violation of the foregoing, Contractor shall be subject to the civil penalties under Labor Code §1021.5 and any other penalty provided by law. In addition to the penalties provided under Labor Code §1021.5, Contractor's violation of this Article 17.7 or the provisions of Labor Code §1021.5 shall be deemed an event of Contractor's default under Article 16.3 of these General Conditions. The Contractor shall require any Subcontractor, of any tier, performing or providing any portion of the Work to adhere to and comply with the provisions of this Article 17.7.

ARTICLE 18

18. MISCELLANEOUS

18.1. GOVERNING LAW

18.1.1. This Contract shall be governed by and interpreted in accordance with the laws of the State of California.

18.2. MARGINAL HEADINGS; INTERPRETATION

18.2.1. The titles of the various Articles of these General Conditions and elsewhere in the Contract Documents are used for convenience of reference only and are not intended to, and shall in no way, enlarge or diminish the rights or obligations of the District or the Contractor and shall have no effect upon the construction or interpretation of the Contract Documents. The Contract Documents shall be construed as a whole in accordance with their fair meaning and not strictly for or against the District or the Contractor.

18.3. SUCCESSORS AND ASSIGNS

18.3.1. Except as otherwise expressly provided in the Contract Documents, all terms, conditions and covenants of the Contract Documents shall be binding upon, and shall inure to the benefit of the District and the Contractor and their respective heirs, representatives, successors-in-interest and assigns.

18.4. CUMULATIVE RIGHTS AND REMEDIES; NO WAIVER

18.4.1. Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not in lieu of or otherwise a limitation or restriction of duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the District shall constitute a waiver of a right or remedy afforded it under the Contract Documents or at law nor shall such an action or failure to act constitute approval of or acquiescence in a breach hereunder, except as may be specifically agreed in writing.

18.5. SEVERABILITY

18.5.1. In the event a court or any other governmental agency of competent jurisdiction shall deem any provision of the Contract Documents illegal, invalid, unenforceable and/or void, such provision shall be deemed to be severed and deleted from the Contract Documents, but all remaining provisions hereof, shall in all other respects, continue in full force and effect.

18.6. NO ASSIGNMENT BY CONTRACTOR

18.6.1. Except as specifically permitted in the Master Facilities Lease, the Contractor shall not sublet or assign the Contract, or any portion thereof, or any monies due thereunder, without the express prior written consent and approval of the District, which approval may be withheld in the sole and exclusive discretion of the District. The District's approval to such assignment shall be upon such terms and conditions as determined by the District in its sole and exclusive discretion. Contractor shall not assign or transfer in any manner to a Subcontractor or supplier the right to prosecute or maintain an action against the District.

18.7. GENDER AND NUMBER

18.7.1. Whenever the context of the Contract Documents so requires, the neuter gender shall include the feminine and masculine, the masculine gender shall include the feminine and neuter, the singular number shall include the plural and the plural number shall include the singular.

18.8. INDEPENDENT CONTRACTOR STATUS

18.8.1. In performing its obligations under the Contract Documents, the Contractor shall be deemed an independent Contractor to the District and not an agent or employee of the District

18.9. NOTICES

18.9.1. Except as otherwise expressly provided for in the Contract Documents, all notices which the District or the Contractor may be required, or may desire, to serve on the other, shall be effective only if delivered by personal delivery or by postage prepaid, First Class Certified Return Receipt Requested, United States Mail, addressed to the District or the Contractor at their respective address set forth in the Contract Documents, or such other address (es) as either the District or the Contractor may designate from time to time by written notice to the other in conformity with the provisions hereof. Such notice shall be dated and signed by the party giving such notice or by a duly authorized representative of such party. In the event of personal delivery, such notices shall be deemed effective upon delivery, provided that such personal delivery requires a signed receipt by the recipient acknowledging delivery of the same. In the event of mailed notices, such notice shall be deemed effective on the third Working day after deposit in the mail. Unless otherwise directed by the District, the Contractor's notices to the District shall be addressed as specified in the Supplementary Conditions.

18.9.2. If the notice is given to the surety or other person, by personal delivery to such surety or other person, or by depositing the same in the United States Mail, First Class Certified Return Receipt Requested, enclosed in a sealed envelope, addressed to such surety or person, at the address of such surety or person last communicated by him/her to the party giving the notice, postage prepaid and registered.

18.10. DISPUTES; CONTINUATION OF WORK; TAXES; SHIPMENTS

18.10.1. Notwithstanding any Claim, dispute or other disagreement between the District and the Contractor regarding performance under the Contract Documents, the scope of Work thereunder, or any other matter arising out of or related to, in any manner, to the Contract Documents, the Contractor shall proceed diligently with performance of the Work in accordance with the District's written direction, pending any final determination or decision regarding any such Claim, dispute or disagreement.

18.10.2 The Guaranteed Maximum Price includes any and all applicable sales taxes or other taxes that may be due in accordance with section 7051 et seq. of the Revenue and Taxation Code, Regulation 1521 of the State Board of Equalization or any other tax code that may be applicable

18.10.3. All shipments must be F.O.B. destination to Site or approved sites, as indicated in the Contract Documents. There must be no charge for containers, packing, unpacking, drayage, or insurance. The total Guaranteed Maximum Price shall be all inclusive (including sales tax) and no additional costs of any type will be considered.

18.11. DISPUTE RESOLUTION

18.11.1. [Reserved]

18.11.2. Definition of Claim. "Claim," as used herein, means a separate written demand or a separate written assertion by Contractor seeking (a) an extension of time, (b) the payment of money in a sum certain arising from Work done by, or on behalf of, the Contractor pursuant to the Contract and payment of which is not otherwise expressly provided for or the Claimant is not otherwise entitled to, or (c) an amount the payment of which is disputed by the District. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a Claim or dispute under the Contract. The voucher, invoice, or

other request for payment may be converted to a Claim under the Contract, by complying with the submission requirements herein, if it is disputed either as to liability or amount. A written demand or assertion by a Contractor does not become a Claim under this Article until Contractor has received a written determination from Construction Manager under Article 10. If the Contractor fails to submit sufficient substantiating data in strict conformity with Article 10 and/or fails to provide notice in strict conformity with Articles 10.2 and 10.4.1.2, the Contractor shall waive any and all right to pursue any relief as to that Claim. However, the term "Claim" shall not include the following:

- 18.11.2.1. Claims regarding penalties for forfeitures prescribed by statute, or regulation, which a government agency is specifically authorized to administer, settle, or determine;
 - 18.11.2.2. Claims regarding personal injury, death, reimbursement, or other compensation arising out of or resulting from liability for personal injury or death;
 - 18.11.2.3. Claims regarding a latent defect, patent defect, breach of warranty, or guarantee to repair; or
 - 18.11.2.4. Claims regarding stop payment notices.
- 18.11.3. Written Notice of Claim and Request for Meet and Confer Required: If the Contractor disagrees with the Construction Manager's written determination pursuant to Article 10 and intends to further pursue the subject Claim, the Contractor must request in writing the following two items: 1) an executive negotiation session ("Meet and Confer") and pursuant to Public Contract §20104 *et seq.* with the office of the Construction Management Director; and 2) a respective written decision ("Written Decision").
- 18.11.4. Good Faith Attempt to Resolve: The Contractor and District shall make good faith attempts to resolve any and all Claims that may from time to time arise during the performance of the Work covered by this Contract. Notwithstanding the provisions of Public Contract Code §20104, *etc. seq.*, the procedures for dispute resolution set forth therein shall not be commenced until after a dispute subject to resolution under the §20104 procedures has been submitted to Meet and Confer. Pursuant to the Contractor's written request for a Meet and Confer, the District's Construction Management Director or his or her designee will schedule the meeting within a reasonable time, consult with the Supervising Project Manager and the Construction Manager, and issue a Written Decision within ten (10) days of the Meet and Confer, unless action or response by the Contractor to provide additional supporting documentation is required.
- 18.11.5. Written Formal Claim Required: If the Contractor disagrees with the Written Decision from the District, and the Contractor intends to submit a Claim as provided for in Article 18.11.2, the Contractor shall submit its Claim in writing to the Construction Manager in strict conformity with the Claim format set forth below within thirty (30) days of date of Written Decision. Contractor's failure to provide all justifying documentation within thirty (30) days of date of Written Decision shall waive any and all right to pursue any relief as to that Claim
- 18.11.6. Claim Format: The Contractor (and Subcontractor(s), if the Contractor is submitting the Claim on its/their behalf) shall submit the Claim justification in the following format:
- a. Cover letter containing a statement that it is a Claim, and a summary description of the Claim, amount of the Claim, and clause or section under the Contract under which the Claim is made.
 - b. Copies of documents relating to the Claim as attachments:
 - 1) Specifications

- 2) Drawings
 - 3) Clarifications (RFI's)
 - 4) Correspondence
 - 5) Other relevant information
- c. Chronology of events
 - d. Detailed analysis of Claim merit
 - e. Time Impact Analysis pursuant to Article 6
 - f. Detailed analysis of Claim cost
 - g. Certification
- 18.11.7. Certification: The Contractor (and Subcontractor(s), if the Contractor is submitting the Claim on its/their behalf) shall submit with the Claim a certification that:
- a. The Claim is made in good faith;
 - b. Supporting data are accurate and complete to the best of the Contractor's knowledge and belief; and
 - c. The amount requested accurately reflects the Contract adjustment for which the Contractor believes the District is liable.
- 18.11.8. The certification shall contain the following statement: "I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct." Said declaration shall be dated and signed by an authorized person. If the Contractor is not an individual, the certification shall be executed by an officer or general partner of the Contractor having overall responsibility for the Contractor's business affairs.
- 18.11.9. Failure to provide the certification in accordance with the above requirements will result in the Contractor's waiver of any and all right to pursue the subject Claim.
- 18.11.10. If a false, claim is submitted (as defined under the False Claims Act found in California Government Code §§12650 *et seq.*) it will be considered fraudulent and the Contractor may be subject to criminal prosecution under California Penal Code §72 and/or civil liability under False Claims Act. In such case, the District shall be entitled to recover all costs incurred to investigate any False Claim, including but not limited to attorneys' fees and expert fees incurred in connection with said investigation.
- 18.11.11. Formal Claim Review and Determination: Upon receipt of a Claim, the District shall review the Claim and, within a period not to exceed forty-five (45) days, shall provide Contractor a written statement identifying what portion of the Claim is disputed and what portion is undisputed. Upon receipt of a Claim, the District and the Contractor may, by mutual written agreement, extend the forty-five (45) day time period. The District shall process and make payment of any undisputed portion of a Claim within sixty (60) days after the District issues its written statement. Failure by the District to provide a written statement in response to a Claim from the Contractor within the forty-five (45) day time period, or within an agreed upon extended time period, shall result in the Claim being deemed rejected in its entirety. A Claim that is rejected by reason of the District's failure to respond, or failure to timely respond, to the Claim shall not constitute an adverse finding regarding the merits of the Claim or the claimant's responsibility or qualifications. Contractor agrees that strict compliance with Articles 6, 10, and 18 is an express condition precedent to Contractor's right to litigate a Claim. Contractor specifically agrees to assert no Claims in litigation unless there has been strict compliance with Articles 6, 10, and 18.
- 18.11.12. Meet and Confer Meeting: If the Contractor disputes the District's written response, or if the District fails to respond within the time frame prescribed above, the Contractor, within fifteen (15) days of the District's written response or, if the District fails to respond, within fifteen (15) days after the District's response was due, may demand, in a writing sent to the District's Construction Manager by registered mail or certified mail, return receipt

requested, with a copy to the Project Manager, an informal conference to meet and confer for settlement of the issues in dispute. The District shall schedule a meet and confer conference within thirty (30) days of its receipt of the Contractor's written demand.

- 18.11.13. Mediation: Within ten (10) business days following the conclusion of the meet and confer conference, if the Claim or any portion of the Claim remains in dispute, the District shall provide the Contractor a written statement 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 be processed and made within sixty (60) days after the District issues its written statement. Any disputed portion of the Claim, as identified by the Contractor in writing, shall be submitted to nonbinding mediation. The expenses and fees of the mediator and the administrative fees shall be divided among the parties equally. Each party shall pay its own legal fees, witness fees, and other expenses. The District and the Contractor shall mutually agree to a mediator within ten (10) business days after the disputed portion of the Claim has been identified in writing. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the Claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator.

At the District's sole discretion, this mediation may be a multiple-party mediation with the Architect, the Construction Manager, the Inspector, and/or other District consultants.

- 18.11.14. Post Mediation:

Claims of \$375,000 or Less: Claims between the District and the Contractor of \$375,000 or less shall be resolved in accordance with the procedures established in California Public Contract Code §§20104, *et seq.*; provided, however that California Public Contract Code §20104.2(a) shall not supersede the requirements of the Contract Documents with respect to the Contractor's notification to the District of such Claim or extend the time for the giving of such notice as provided in the Contract Documents.

Litigation of Claims in Excess of \$375,000: If, after a mediation as indicated above, the Parties have not resolved the Claim, either Party may commence an action in a court of competent jurisdiction to contest that decision within ninety (90) days following the conclusion of that mediation or one (1) year following the accrual of the cause of action, whichever is later. By mutual agreement, the Parties can agree to instead resolve the Claim through arbitration.

- 18.11.15. Contractor's Obligation to File a Government Code Claim: Nothing in this Contract, including this Claims Resolution Process, waives, modifies or tolls the Contractor's obligation to present a timely claim under Government Code section 910, *et seq.* Therefore, in addition to complying with this Claims Resolution Process, the Contractor is required to present claims to the District pursuant to Government Code section 910, *et seq.* If after the requirements of this Claims Resolution Process are satisfied, and all or a portion of the Claim remains unresolved, and if the Government Code claim is rejected by the District, the Contractor may proceed under the post-mediation provisions of this Claims Resolution Process.

- 18.11.16. Subcontractors:

Public Contract Code section 9204(d)(5) states that the Contractor may present to the District a Claim on behalf of a Subcontractor or lower tier Subcontractor. A Subcontractor may request in writing, either on his or her own behalf or on behalf of a lower tier Subcontractor, that the Contractor present a claim for Work which was performed by the Subcontractor or by a lower tier Subcontractor on behalf of the Subcontractor. The Subcontractor requesting that the Claim be presented to the District shall furnish reasonable documentation to support the Claim. Within 45 days of receipt of this written

request, the Contractor shall notify the Subcontractor in writing as to whether the Contractor presented the claim to the District and, if the Contractor did not present the Claim, provide the Subcontractor with a statement of the reasons for not having done so.

Contractor is responsible for providing this Dispute Resolution Process to its Subcontractors and for ensuring that all Subcontractors or others who may assert Claims by and through Subcontractors and/or the Contractor are informed of this Dispute Resolution Process. No Claim submitted by any party that fails to follow the provisions of this Dispute Resolution Process will be considered. Contractor shall bind all its Subcontractors to this Dispute Resolution Process and indemnify, keep and hold harmless the District and its consultants, against all suits, claims, damages, losses, and expenses, including but not limited to attorney's fees, caused by, arising out of, resulting from, or incidental to, the failure to provide this Dispute Resolution Process to its Subcontractors or others who may assert Claims by and through Subcontractors and/or the Contractor.

18.12. CAPITALIZED TERMS

18.12.1. Except as otherwise expressly provided, capitalized terms used in the Contract Documents shall have the meaning and definition for such term as set forth in the Contract Documents.

18.13. ATTORNEYS FEES

18.13.1. Except as expressly provided for in the Contract Documents, or authorized by law, neither the District nor the Contractor shall recover from the other any attorney's fees or other costs associated with or arising out of any legal, administrative or other proceedings filed or instituted in connection with or arising out of the Contract Documents or the performance of either the District or the Contractor thereunder.

18.14. PROVISIONS REQUIRED BY LAW DEEMED INSERTED

18.14.1. Each and every provision of law and clause required by law to be inserted in the Contract Documents shall be deemed to be inserted herein and the Contract Documents shall be read and enforced as though such provision or clause are included herein, and if through mistake, or otherwise, any such provision or clause is not inserted or if not correctly inserted, then upon application of either party, the Contract Documents shall forthwith be physically amended to make such insertion or correction.

18.15. TIME OF THE ESSENCE

18.15.1. Time is of the essence as to each and every provision of the Contract Documents.

18.16. MUTUAL COVENANT OF GOOD FAITH AND FAIR DEALING

18.16.1. The District and the Contractor are each obligated to exercise good faith and fair dealing in their respective performance of obligations and enforcement of rights under the Contract Documents. The District and Contractor commit to the following mutual obligations of good faith and fair dealing: (a) each shall function within the laws, rules and/or regulations applicable to their respective obligations and rights under the Contract Documents; (b) each shall assist the other's performance of obligations under the Contract Documents; (c) each shall avoid hindering the other's performance of obligations under the Contract Documents; (d) each shall perform and complete their respective obligations under the Contract Documents in a timely and diligent manner; and (e) each shall cooperate in achieving common interests under the Contract Documents.

18.17 ENTIRE AGREEMENT AND UNDERSTANDING

- 18.17.1 The Master Facility Lease, the Project Master Site Lease, and these Contract Documents contain the entire agreement and understanding between the District and the Contractor concerning the subject matter hereof, and supersedes and replaces all prior negotiations, proposed agreement or amendments, whether written or oral. No amendment or modification to any provision of the Contract Documents shall be effective or enforceable except by mutual agreement in writing executed by the District and the Contractor.

SAMPLE

ARTICLE 19

19. CONFLICTS IN CONTRACT DOCUMENTS

19.1. ARCHITECT'S RESOLUTION

19.1.1. Conflicts, inconsistencies or ambiguities in the Contract Documents shall be resolved by the Architect, in consultation with the District, in accordance with Article 3.1.7. of the General Conditions.

19.2. INTERPRETATION OF CONTRACT DOCUMENTS

19.2.1. The Contract Documents are complementary and what is required by one part shall be as binding as if required by all unless one or more parts are in conflict with each other. When there are conflicts, Article 19.2.2. of the General Conditions applies. Where any portion of the Contract Documents is silent and information appears elsewhere in the Contract Documents, such other portions of the Contract Documents shall control.

19.2.2. Where conflicts or inconsistencies arise in the Contract Documents, the conflict shall first be resolved by giving precedence to the most recently amended version of the document and in the following order, and if that does not resolve the conflict, by complying with the most stringent requirement:

- Change Orders in reverse order of issuance, issued by the District after receipt of approval of the plans and Specifications from the State of California, Division of State Architect.
- Plans and Specifications approved by the Division of State Architect, limited, however, to the extent that approval relates to the safety of design and construction.
- Executed Master Facilities Lease.
- Supplementary Conditions.
- General Conditions.
- Construction Documents - Technical Specifications.
- Construction Documents - Drawings and Exhibits, with figured dimensions controlling over scaled measurements.

Should any question arise concerning the intent or meaning of the Contract Documents, including the Plans and Specifications, the question shall be submitted to the District for interpretation. If a conflict exists in the Contract Documents, these General Conditions shall control over the Master Facilities Lease, which shall control over the Project Master Site Lease, which shall control over Division 1 Documents, which shall control over Division 2 through Division 33 documents, which shall control over figured dimensions, which shall control over large-scale drawings, which shall control over small-scale drawings.

END OF GENERAL CONDITIONS - ATTACHMENTS FOLLOW

Attachment 1 – Payment – Extra, Additional, or Deleted Work

PAYMENT – EXTRA, ADDITIONAL, OR OR DELETED WORK	Extra/Credit
<p>1. <u>Contractor Material and Equipment</u></p> <p>a. Attach itemized quantity and unit cost plus sales tax</p> <p>b. Include information where derived, i.e., “Means Building Construction Cost Data” or other source mutually agreed to by all parties.</p>	
<p>2. <u>Contractor Labor</u></p> <p>Attach itemized hours and rates per certified payrolls, prevailing wage chart and PSA agreements. Rates shall only include a maximum of 15% for payroll burden plus actual costs for Workers’ Compensation Insurance. Payment for extra supervision will be paid when extra Work is done in a time period other than normal Working hours.</p>	
<p>3. Subtotal - (Item #1 plus Item #2)</p>	
<p>4. <u>Contractor’s overhead, profit, supervision, bond fees</u></p> <p>A maximum aggregate total of 16% of Item #3. This item is not allowed on Extended Overhead</p>	
<p>5. Total Contractor (Item #3 plus Item #4)</p>	
<p>6. <u>Subcontractor Material and Equipment</u></p> <p>a. Attach itemized quantity and unit cost plus sales tax</p> <p>b. Include information where derived, i.e., “Means Building Construction Cost Data” or other source mutually agreed to by all parties.</p>	
<p>7. <u>Subcontractor Labor</u></p> <p>Attach itemized hours and rates per certified payrolls and prevailing wage chart and PSA agreements. Rates shall only include a maximum of 15% for payroll burden plus actual costs for Workers’ Compensation Insurance. Payment for extra supervision will be paid when extra Work is done in a time period other than normal Working hours.</p>	
<p>8. Subtotal – (Items #6 and #7)</p>	
<p>9. <u>Contractors’ overhead, supervision, bond fees and profit for Subcontractor Work</u> (maximum aggregate total of 11% of Item #8)</p> <p>This item is not allowed on Extended Overhead</p>	
<p>10. <u>Subcontractor’s Overhead and Profit</u></p> <p>Maximum aggregate total of 10% of Item #8. Not to be included for Work provided by Contractor. No Sub-Tier markups allowed. Attach signed Subcontractor documentation on Subcontractor letterhead.</p> <p>This item is not allowed on Extended Overhead</p>	

11. Subtotal - (Items #9 & #10)	
TOTAL (Item #5 plus Item #8 plus Item #11)	
ESTIMATED TIME (Zero unless indicated; "TBD" not allowed)	Calendar Days

EXTRA OR CREDIT CHANGE ORDERS WILL NOT BE CONSIDERED UNLESS THIS ATTACHMENT IS COMPLETELY FILLED IN WITH ALL ADDS AND DEDUCTS ACCOUNTED FOR ALONG WITH APPROPRIATE BACKUP DOCUMENTATION. ANY SPACES LEFT BLANK WILL BE DEEMED NO CHANGE TO COST OR TIME.

Cost summaries, breakdowns, back-up or requests shall not be based, in whole or in part, upon any methodology (such as "total cost", "modified total cost" or "Eichleay" formalitic methodologies) that purports to calculate or estimate additional costs of performance of the extra, additional or disputed work (including without limitation the additional costs of delay, disruption, interference, hindrance, unabsorbed overhead or other impacts) and the cumulative impact of each extra, additional or deleted work on other parts of the Work.

SAMPLE

EXHIBIT E
TO
MASTER FACILITIES LEASE

MEMORANDUM OF COMMENCEMENT DATE

**TO BE ENTERED INTO AFTER CONSTRUCTION IS COMPLETE TO COMMENCE THE LEASE TERM
– DO THIS AFTER NOC**

This MEMORANDUM OF COMMENCEMENT DATE is dated _____, 20____, and is made by and between **Company Name TBD** ("Contractor"), as Lessor, and the **San Diego Unified School District** ("District"), as Lessee.

- 1. Contractor and District have previously entered into a Master Facilities Lease dated as of _____, **20**__, (the "Lease") for the leasing by Contractor to District of the Project Site(s) and Project in _____, CA, referenced in the Lease.
- 2. District hereby confirms the following:
 - a. That all construction of the Project required to be performed pursuant to the Master Facilities Lease has been completed by Contractor in all respects;
 - b. That District has accepted and entered into possession of the Project and now occupies same; and
 - c. That the term of the Master Facilities Lease commenced on _____, 20____, and will expire at 11:59 P.M. on _____, 20____.

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

Dated: _____, 20____ Dated: _____, 20____

San Diego Unified School District

Contractor Name

By: _____

By: _____

Print Name: _____

Print Name: _____

Print Title: _____

Print Title: _____

EXHIBIT F
TO
MASTER FACILITIES LEASE

CONSTRUCTION SCHEDULE
FOR
LINDBERGH SCHWEITZER ELEMENTARY SCHOOL

Construction Schedule. The Construction Schedule for the Lindbergh Schweitzer Project is as follows:

- It is hereby understood and agreed that assuming the District issues a Notice to Proceed for the Project on or before **February 28, 2018** then:
 - District shall have Beneficial Occupancy of the Project on or before **[Date]**, and
 - Project Completion shall be on or before **[Date]**.
- In addition to the general parameters above for the Construction Schedule, attached is a detailed Project Construction Schedule with a duration no longer than the Contract Time, and with specific milestones that Contractor shall meet.

[ATTACH SCHEDULE]

EXHIBIT G
TO
MASTER FACILITIES LEASE

SCHEDULE OF VALUES FOR
LINDBERGH SCHWEITZER ELEMENTARY SCHOOL

Attached is a detailed Schedule of Values that complies with the requirements of the General Conditions (**Exhibit D**) and that has been approved by the District.

[ATTACH SCHEDULE OF VALUES]

SAMPLE

EXHIBIT H
TO
MASTER FACILITIES LEASE

TERMS AND CONDITIONS FOR PRELIMINARY SERVICES

[THE FOLLOWING TERMS ARE DRAFT PROVISIONS; THE PARTIES MUST SPECIFY THE SCOPE OF THE PRELIMINARY SERVICES]

1. **SCOPE OF CONTRACTOR'S PRELIMINARY SERVICES.** Contractor, as the District's development consultant and authorized representative as contemplated by Business and Professions Code 7040, agrees to perform the services described herein. Contractor shall perform management and coordination services, plan and specification constructability reviews, provide value-engineering reviews and recommendations and other reviews as necessary to verify that the drawings and specifications are clear and reasonably accurate to minimize the need for changes during the construction phase of the project, including but not limited to the following ("Preliminary Services"):
 - 1.1. General Services.
 - 1.1.1. Contractor shall attend regular meetings during Project development between the Architect, the District, District site personnel, and any other applicable consultants of the District as required to discuss the Project, including budget, scope and schedule.
 - 1.1.2. Contractor shall assist Architect with the making of a written record of all meetings, conferences, discussions and decisions made between or among the District, Architect and Contractor.
 - 1.1.3. Contractor shall assist the Architect with making formal presentations to the governing board of District.
 - 1.1.4. Contractor shall prepare and update the preliminary Project schedule.
 - 1.1.5. Contractor shall prepare and update the components of the Guaranteed Project Cost and shall be primarily in control of ensuring that the Project can and is constructed for no more than that amount.
 - 1.1.6. Contractor shall assist District with City land use issues;
 - 1.1.7. Contractor shall assist District with DSA review, input, and timeframe for same;
 - 1.1.8. Contractor shall provide review and comment upon geotechnical / soils investigation and report;
 - 1.1.9. Contractor shall provide review and comment upon survey of the Project site;
 - 1.1.10. Contractor shall provide review and comment upon any environmental impact report ("EIR") or other required California Environmental Quality Act ("CEQA") documents with District's CEQA consultant.
 - 1.2. Review of Design Documents.
 - 1.2.1. Contractor shall review Project design and budget with the District and the Architect during the Schematic Design Phase, the Design Development Phase, at 50% Construction Documents Phase, and at 100% Construction Documents

Phase to:

- 1.2.1.1. Contractor shall provide recommendations on site use and improvements, selection of materials, building systems and equipment and methods of Project delivery;
- 1.2.1.2. Contractor shall provide recommendations on relative feasibility of construction methods, availability of materials and labor, time requirements for procurement, installation and construction of the Project and subparts thereof if requested, and factors relating to cost including, but not limited to, construction costs of alternate designs of materials, preliminary budgets and possible economics that could be achieved through alternate methods or substitutions;
- 1.2.1.3. Contractor shall provide interim design phase estimates to establish and maintain the Project budget and scheduled costs; and
- 1.2.1.4. Contractor shall provide plan review.
- 1.2.1.5. Value-engineering. Contractor shall prepare a value-engineering report for District review and approval that:
 - 1.2.1.5.1. Details areas of cost saving (e.g. construction processes/procedures, specified materials and equipment, and equipment or other aspects of the design documents that can be modified to reduce costs and/or the time for achieving final completion of the Project and/or to extend life-cycle and/or to reduce maintenance/operations costs, without diminution in the quality of materials/equipment/workmanship, scope or intended purposes of the Project);
 - 1.2.1.5.2. Provides detailed estimate for proposed value-engineering items;
 - 1.2.1.5.3. Defines methodology or approaches that maximize value; and
 - 1.2.1.5.4. Identifies design choices that can be more economically delivered.
- 1.2.1.6. Constructability Review. Contractor shall prepare detailed interdisciplinary constructability review within thirty (30) days of receipt of the plans from the District that:
 - 1.2.1.6.1. Ensures construction documents are well coordinated and reviewed for errors;
 - 1.2.1.6.2. Identifies to the extent known, construction deficiencies and areas of concern;
 - 1.2.1.6.3. Back-checks design drawings for inclusion of modifications;
 - 1.2.1.6.4. Provides the District with written confirmation that:
 - 1.2.1.6.4.1. Requirements noted in the design documents prepared for the Project are consistent with and conform to the District's Project requirements and design standards; and
 - 1.2.1.6.4.2. Various components have been coordinated and are consistent with each other so as to minimize conflicts within or between components of the design documents.
 - 1.2.1.6.4.3. BIM Coordination. The current drawing except for Civil, Landscape, and Food Services are

developed in Revit 2016. Design Team's Building Information Model ("BIM") will only be developed at a level 300. BIM includes all architectural, structural, mechanical, plumbing, electrical conduits over 2" in diameter and fire sprinkler piping. This model is available to the LLB Entity, free of charge, with a signed release of liability for the LLB and subcontractor's use/coordination at the start of construction.

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

1.3. Budget of Project Costs

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

- 1.3.2. In each budget of the Guaranteed Project Cost, Contractor shall include values of scopes of work subdivided into component parts in sufficient detail to serve as the basis for progress payments during construction. This budget of the Guaranteed Project Cost shall include, at a minimum, the following information divided into at least the following categories:

- 1.3.2.1. Overhead and profit;
- 1.3.2.2. Supervision;
- 1.3.2.3. General conditions;
- 1.3.2.4. Layout & Mobilization (not more than 1%)
- 1.3.2.5. Submittals, samples, shop drawings (not more than 3%);
- 1.3.2.6. Bonds and insurance (not more than 2%);
- 1.3.2.7. Close-out documentation (not less than 3%);
- 1.3.2.8. Demolition;
- 1.3.2.9. Installation;
- 1.3.2.10. Rough-in;
- 1.3.2.11. Finishes;
- 1.3.2.12. Testing;
- 1.3.2.13. Punchlist and acceptance.

- 1.3.3 Contractor shall indicate its willingness and ability to enter into the Contract Document to construct the Project for at or below that Guaranteed Project Cost, excluding unforeseen conditions or District-requested changes. This commitment will be a component of the Contract Documents.

1.4. Construction Schedule and Phasing Plan

Contractor shall prepare a preconstruction schedule to guide the design team through to bid dates. That schedule shall show the multi-phases and interrelations of design, constructability review, and estimating. Contractor shall also prepare a full construction

schedule for the Project detailing the phasing and construction activities. Contractor shall further investigate, recommend and prepare a schedule for the District's purchase of materials and equipment requiring long lead time procurement, and coordinate the schedule with the early preparation of portions of the Contract Documents by the Architect.

- 1.5. Construction Planning and Bidding
 - 1.5.1. Contractor shall prepare and distribute specifications and drawings provided by District to facilitate bidding to Contractor's subcontractors.
 - 1.5.2. Contractor shall review the drawings and specifications to eliminate areas of conflict and overlapping in the work to be performed by various subcontractors, and with a view to eliminating change order requests by the Architect or subcontractors.
 - 1.5.3. Contractor shall conduct pre-bid conferences. Contractor shall coordinate with District and the Architect in responding to subcontractor questions or providing clarification to all subcontractors.
 - 1.5.4. Contractor shall prepare appropriate subcontractor bid packages.
2. **LIMITED AUTHORITY.** The duties, responsibilities and limitations of authority of Contractor shall not be restricted, modified or extended without written agreement between the District and Contractor.
3. **DISTRICT'S RESPONSIBILITIES.** The District has and shall continue to provide to Contractor information regarding requirements for the Project, including information regarding the District's objectives, schedule, constraints and criteria.
4. **TERMINATION**
 - 4.1. **Termination by Contractor.** The services described in this Exhibit may be terminated by Contractor upon fourteen (14) days written notice to District in the event of an uncured substantial failure of performance by District, unless the District has acted to commence cure efforts in any case where a reasonable cure cannot be concluded within the fourteen (14) day notice period.
 - 4.2. **Termination by District.** The services described in this Exhibit may be terminated at any time without cause by District upon fourteen (14) days written notice to Contractor. In the event of such a termination by District, the District shall pay Contractor for all undisputed services performed and expenses incurred per this Exhibit, supported by documentary evidence, including, but not limited to, payroll records, invoices from third parties retained by Contractor pursuant to this Exhibit, and expense reports up until the date of notice of termination plus any sums due Contractor for Board-approved extra services. In ascertaining the services actually rendered hereunder up to the date of termination, consideration shall be given to both completed work and work in process that would best serve the District if a completed product was presented.
 - 4.3. **Ownership of Records.** It is mutually agreed that all materials prepared by Contractor under this Exhibit shall become the property of the District and Contractor shall have no property right therein whatsoever. Contractor hereby assigns to District any copyrights associated with the materials prepared pursuant to this Exhibit. Immediately upon termination and upon written request, the District shall be entitled to, and Contractor shall deliver to the Contractor, all data, drawings, specifications, reports, estimates, summaries and such other materials and commissions as may have been prepared or accumulated to date by the District in performing this Exhibit (the "Termination Material") which is not Contractor privileged information, as defined by law, or Contractor's personnel information.

5. **COMPENSATION TO CONTRACTOR.** District shall pay for the Contractor's performance of the preliminary services pursuant to the payment provisions indicated in **Exhibit C** to the Facilities Lease.
6. **SCHEDULE OF PRELIMINARY SERVICES.** The Contractor shall perform the Preliminary Services pursuant to the schedule indicated in **Exhibit F** to the Facilities Lease.

SAMPLE

EXHIBIT I
TO
MASTER FACILITIES LEASE

**EXECUTABLE DOCUMENTS, CERTIFICATES AND BONDS TO LEASE-LEASEBACK DOCUMENTS
AND
LIST OF DIVISION 1 SPECIFICATIONS TO LEASE-LEASEBACK DOCUMENTS**

Construction Services at Lindbergh Schweitzer Elementary School

**San Diego Unified School District
and
Company Name**

SAMPLE

**NON-COLLUSION DECLARATION
Public Contract Code § 7106**

TO BE EXECUTED BY CONTRACTOR

The undersigned declares:

I am the _____ **[PRINT YOUR TITLE]**

of _____ **[PRINT FIRM NAME]**.

the party making the foregoing Contract.

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

Any person executing this declaration on behalf of a Contractor that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of the Contractor.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on the following date:

Date: _____

Proper Name of Contractor: _____

City, State: _____

Signature: _____

Print Name: _____

Title: _____

(ATTACH NOTARIAL ACKNOWLEDGMENT FOR THE ABOVE SIGNATURE)

IRAN CONTRACTING ACT CERTIFICATION (Public Contract Code § 2204)

Pursuant to Public Contract Code (PCC) section 2204, an Iran Contracting Act certification is required for solicitations of goods or services of one million dollars (\$1,000,000) or more.

Contractor shall complete **ONLY ONE** of the following three paragraphs.

- 1. Contractor’s total Guaranteed Maximum Price is less than one million dollars (\$1,000,000).

OR

- 2. Contractor’s total Guaranteed Maximum Price is one million dollars (\$1,000,000) or more, but Contractor is **not** on the current list of persons engaged in investment activities in Iran created by the California Department of General Services (“DGS”) pursuant to Public Contract Code § 2203(b), and Contractor is not a financial institution extending twenty million dollars (\$20,000,000) or more in credit to another person, for 45 days or more, if that other person will use the credit to provide goods or services in the energy sector in Iran and is identified on the current list of persons engaged in investment activities in Iran created by DGS.

OR

- 3. Contractor’s total Guaranteed Maximum Price is one million dollars (\$1,000,000) or more, but the District has given prior written permission to Contractor to submit a proposal pursuant to PCC 2203(c) or (d). **A copy of the written permission from the District is included with this Contract.**

I certify that I am duly authorized to legally bind the Contractor to this certification, that the contents of this certification are true, and that this certification is made under the laws of the State of California.

Date: _____

Proper Name of Contractor: _____

Signature: _____

Print Name: _____

Title: _____

WORKERS' COMPENSATION CERTIFICATION

Labor Code section 3700 in relevant part provides:

Every employer except the State shall secure the payment of compensation in one or more of the following ways:

- 1. By being insured against liability to pay compensation by one or more insurers duly authorized to write compensation insurance in this state.
- 2. By securing from the Director of Industrial Relations a certificate of consent to self-insure, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to its employees.

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

Date: _____

Proper Name of Contractor: _____

Signature: _____

Print Name: _____

Title: _____

(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.)

PREVAILING WAGE AND RELATED LABOR REQUIREMENTS CERTIFICATION

I hereby certify that I will conform to the State of California Public Works Contract requirements regarding prevailing wages, benefits, on-site audits with 48-hours' notice, payroll records, and apprentice and trainee employment requirements, for all Work on the Project.

Date: _____

Proper Name of Contractor: _____

Signature: _____

Print Name: _____

Title: _____

**DISABLED VETERAN BUSINESS ENTERPRISE
PARTICIPATION CERTIFICATION**

Section 17076.11 of the Education Code requires school districts using funds allocated pursuant to the State of California School Facility Program ("Program") for the construction and/or modernization of school buildings to have a participation goal for disabled veteran business enterprises ("DVBE") of at least three percent (3%), per year, of the overall dollar amount expended each year by the school district on projects that receive state funding.

1. **Disabled Veteran Business Enterprise.** A DVBE is a business enterprise certified by the California Office of Small Business as a DVBE.
2. **DVBE Participation Policy.** The District is committed to achieving this DVBE participation goal. The District encourages Contractor to ensure maximum opportunities for the participation of DVBEs in the Work of the Contract.
3. **DVBE Participation Goal.** The three percent (3%) participation goal is not a quota, set-aside or rigid proportion.
4. **Certification of Participation.** At the time of execution of the Contract, the Contractor will provide a statement to the District of anticipated participation of DVBEs in the contract.
5. **Submission of Report.** During performance of the Contract, Contractor shall monitor the Work of the Contract, award of subcontracts and contracts for materials, equipment and supplies for the purpose of determining DVBE participation in the Work of the Contract.
 - a. Contractor shall report on a monthly basis all DVBEs utilized in the performance of the Work, the type or classification of the Work performed by each DVBE, and the dollar value of the Work performed by each DVBE.
 - b. Upon completion of the Work of the Contract, Contractor shall submit a report to the District in the form attached hereto identifying all DVBEs utilized in the performance of the Work, the type or classification of the Work performed by each DVBE, and the dollar value of the Work performed by each DVBE.
 - 1) The submission to the District of this report is a condition precedent to the District's obligation to make payment of the Final Payment under the Contract Documents. The submission of this report shall be in addition to, and not in lieu of, any other conditions precedent set forth in the Contract Documents for the District's obligation to make payment of the Final Payment.
 - 2) The District reserves the right to request additional information or documentation from the Contractor evidencing efforts to comply with the three percent (3%) DVBE participation goal.

DRUG-FREE WORKPLACE CERTIFICATION

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

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

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

1. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the person's or organization's workplace and specifying actions which will be taken against employees for violations of the prohibition;
2. Establishing a drug-free awareness program to inform employees about all of the following:
 - a. The dangers of drug abuse in the workplace.
 - b. The person's or organization's policy of maintaining a drug-free workplace.
 - c. The availability of drug counseling, rehabilitation, and employee-assistance programs.
 - d. The penalties that may be imposed upon employees for drug abuse violations.
3. Requiring that each employee engaged in the performance of the contract or grant be given a copy of the statement required above, and that, as a condition of employment on the contract or grant, the employee agrees to abide by the terms of the statement.

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

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

Date: _____
 Proper Name of Contractor: _____
 Signature: _____
 Print Name: _____
 Title: _____

TOBACCO-FREE ENVIRONMENT CERTIFICATION

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

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

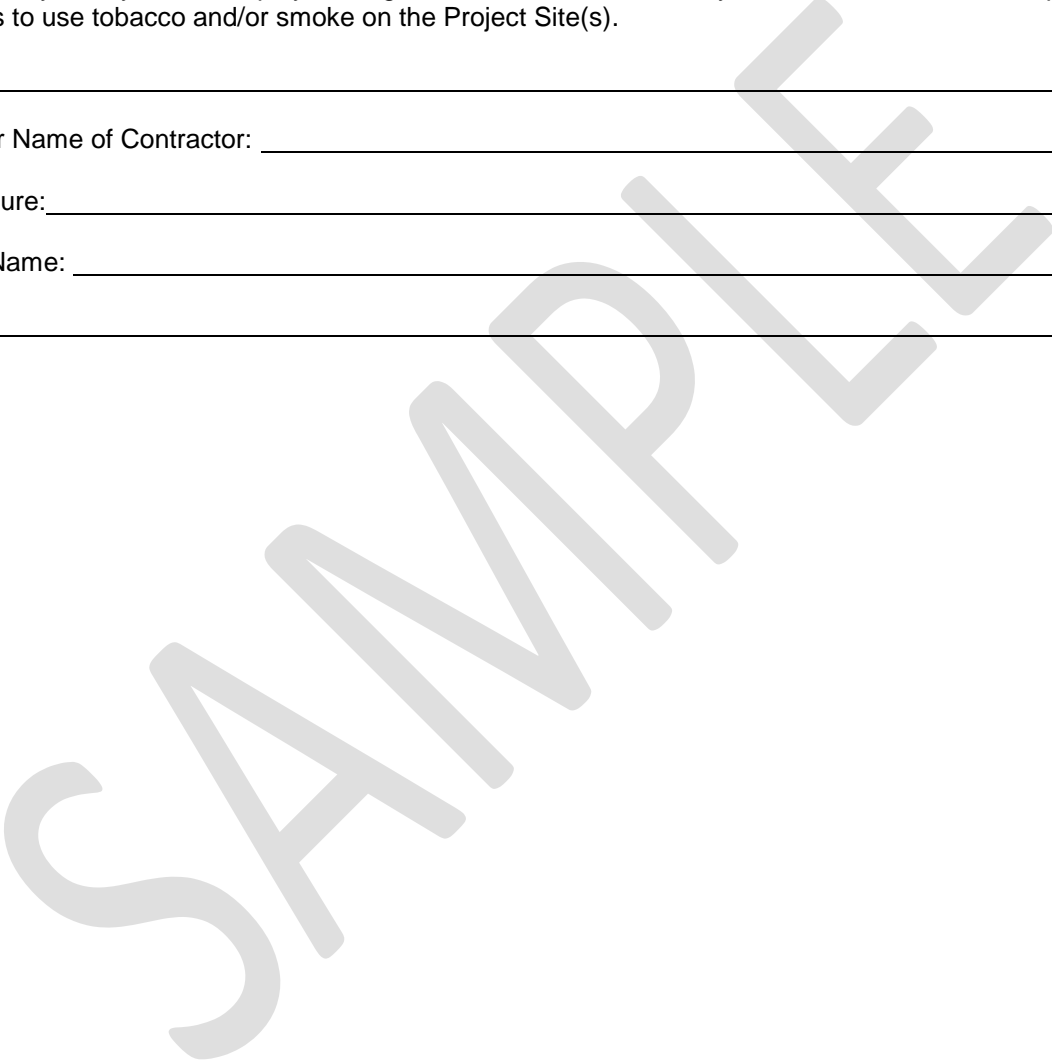
Date: _____

Proper Name of Contractor: _____

Signature: _____

Print Name: _____

Title: _____



HAZARDOUS MATERIALS CERTIFICATION

1. Contractor hereby certifies that no Asbestos, or Asbestos-Containing Materials, polychlorinated biphenyl (PCB), or any material listed by the federal or state Environmental Protection Agency or federal or state health agencies as a hazardous material, or any other material defined as being hazardous under federal or state laws, rules, or regulations ("New Hazardous Material"), shall be furnished, installed, or incorporated in any way into the Project or in any tools, devices, clothing, or equipment used to affect any portion of Contractor's work on the Project for District.
2. Contractor further certifies that it has instructed its employees with respect to the above-mentioned standards, hazards, risks, and liabilities.
3. Asbestos and/or asbestos-containing material shall be defined as all items containing but not limited to chrysotile, crocidolite, amosite, anthophyllite, tremolite, and actinolite. Any or all material containing greater than one-tenth of one percent (.1%) asbestos shall be defined as asbestos-containing material.
4. Any disputes involving the question of whether or not material is New Hazardous Material shall be settled by electron microscopy or other appropriate and recognized testing procedure, at the District's determination. The costs of any such tests shall be paid by Contractor if the material is found to be New Hazardous Material.
5. All Work or materials found to be New Hazardous Material or Work or material installed with equipment containing "New Hazardous Material" will be immediately rejected and this Work will be removed at Contractor's expense at no additional cost to the District.
6. Contractor has read and understood the document Hazardous Materials Procedures & Requirements, and shall comply with all the provisions outlined therein.

Date: _____

Proper Name of Contractor: _____

Signature: _____

Print Name: _____

Title: _____

In addition to the requirement to provide this certification, Contractor agrees that it shall provide all documentation requested by the District to confirm compliance with the requirements herein.

LEAD-BASED MATERIALS CERTIFICATION

This certification provides notice to the Contractor that:

- A. The Contractor's work may disturb lead-containing building materials.
- B. The Contractor must notify the District if any work may result in the disturbance of lead-containing building materials.

1. **Lead as a Health Hazard**

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

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

Because the Contractor and its employees will be providing services for the District, and because the Contractor's work may disturb lead-containing building materials, CONTRACTOR IS HEREBY NOTIFIED of the potential presence of lead-containing materials located within certain buildings utilized by the District. All school buildings built prior to 1993 are presumed to contain some lead-based paint until sampling proves otherwise.

2. **Overview of California Law**

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

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

Both the Federal Occupational Safety and Health Administration ("Fed/OSHA") and the California Division of Occupational Safety and Health ("Cal/OSHA") have implemented safety orders applicable to all construction work where a contractor's employee may be occupationally exposed to lead.

The OSHA Regulations apply to all construction work where a contractor's employee may be occupationally exposed to lead. The OSHA Regulations contain specific and detailed requirements imposed on contractors subject to that regulation. The OSHA Regulations define construction work as work for construction, alteration, and/or repair, including

painting and decorating. It includes, but is not limited to, the following:

- a. Demolition or salvage of structures where lead or materials containing lead are present;
- b. Removal or encapsulation of materials containing lead;
- c. New construction, alteration, repair, or renovation of structures, substrates, or portions thereof, that contain lead, or materials containing lead;
- d. Installation of products containing lead;
- e. Lead contamination/emergency cleanup;
- f. Transportation, disposal, storage, or containment of lead or materials containing lead on the site or location at which construction activities are performed; and
- g. Maintenance operations associated with the construction activities described in the subsection.

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

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

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

In 2008, the U.S. Environmental Protection Agency, issued a rule pursuant to the authority of Section 402(c)(3) of the Toxic Substances Control Act, requiring lead safe work practices to reduce exposure to lead hazards created by renovation, repair and painting activities that disturb lead-based paint (Renovation, Repair and Painting Rule). Renovations in homes, childcare facilities, and schools built prior to 1978 must be conducted by certified renovations firms, using renovators with accredited training, and following the work practice requirements to reduce human exposures to lead.

Contractor, its workers and subcontractors must fully and adequately comply with all applicable laws, rules and regulations governing lead-based materials, including those rules and regulations appearing within title 40 of the Code of Federal Regulations as part 745 (40 CFR 745).

The requirements apply to all contractors who disturb lead-based paint in a six-square-foot area or greater indoors or a 20-square-foot area outdoors. If a DPH-certified inspector or risk assessor determines that a home constructed before 1978 is lead-free, the federal certification is not required for anyone working on that particular building.

4. **Contractor's Liability**

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

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

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

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

The Contractor hereby acknowledges, under penalty of perjury, that it:

- a. Has received notification of potential lead-based materials on the District's property;
- b. Is knowledgeable regarding and will comply with all applicable laws, rules, and regulations governing work with, and disposal of, lead.

The undersigned warrants that he/she has the authority to sign on behalf of and bind the Contractor. The District may require proof of such authority.

Date: _____

Proper Name of Contractor: _____

Signature: _____

Print Name: _____

Title: _____

IMPORTED MATERIALS CERTIFICATION

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

To the furthest extent permitted by California law, the indemnification provisions in the Contract Documents apply to, without limitation, any claim(s) connected with providing, delivering, and/or supplying Fill.

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

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

Name of firm ("Firm"): _____

Mailing address: _____

Addresses of branch office used for this Project: _____

If subsidiary, name and address of parent company: _____

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

Date: _____

Proper Name of Contractor: _____

Signature: _____

Print Name: _____

Title: _____

In addition to the requirement to provide this certification, Contractor agrees that it shall provide all documentation requested by the District to confirm compliance with the requirements herein.

CRIMINAL BACKGROUND INVESTIGATION / FINGERPRINTING CERTIFICATION

At all times when a Site is used or occupied for academic purposes or for other school related functions, no employee or independent contractor to the Contractor or any Subcontractor shall be permitted access to the Site or to perform any Work at the Site unless: (a) such person has submitted her/his fingerprints to the California Department of Justice ("DOJ") pursuant to Education Code §45125.1; (b) the DOJ has ascertained, based upon the submitted fingerprints, that the individual has not been convicted of a felony defined in Education Code §45122.1 and has no criminal felony proceedings (as defined in Education Code §45122.1) pending against her/him; (c) the Contractor or Subcontractor engaging the individual for the Work has received written or electronic verification from the DOJ of the absence of felony convictions and pending felony criminal proceedings; and (d) the Contractor or Subcontractor engaging such individual as an employee or independent contractor has submitted a Fingerprint Certification to the District specifically identifying such individual as having been verified by the DOJ as not having been convicted of a felony and not having pending criminal felony proceeding pending against her/him. The provisions of Education Code §45125.2(a) notwithstanding, erection and maintenance of physical barriers and/or continuous supervision and monitoring are insufficient measures to comply with the requirements of this paragraph when a Site is being used or occupied for academic purposes or other school related functions. At all other times during the Work, as appropriate, or as directed by the District, to limit contact between workers performing the Work and students and for the safety of students, the Contractor shall: (i) erect a physical barrier around the Work to limit contact between students and the individuals performing Work; or (ii) designate an employee of the Contractor and require each Subcontractor to designate an employee who shall be responsible for the continuous monitoring and supervision of the other employees of the Contractor and Subcontractors, provided that the employees designated for such monitoring and supervision has submitted her/his fingerprints to the Department of Justice under Education Code §45125.1 for verification that she/he has not been convicted of a felony and does not have any criminal proceeding pending against her/him and the Contractor/Subcontractor employee has submitted a Fingerprint Certification attesting to such Department of Justice fingerprint verification and the absence of criminal convictions or pending criminal proceedings. The responsibility for complying with the requirements of Education Code §45125.2 rests solely with the Contractor; the District will not designate any District personnel for surveillance of the Contractor's employees under Education Code §45125.2(a)(3).

In accordance with General Conditions section 7.2 PROGRESS PAYMENTS, Contractor must submit an updated list (see Exhibit C of the General Conditions) of all Contractor's and his Subcontractor's employees with their DOJ fingerprinting status with their monthly payment application. Failure to include the list with their monthly payment application will be reason to reject the application and delay of payment until the payment application has been submitted as required and accepted by the District.

At time of proposal submission date, if Contractor checks box 3) on the "Contractor Certification Regarding Background Checks" form stating he will execute the required Department of Justice application and send the required employees to be fingerprinted, Contractor must provide certification with his first payment application that the required employees were indeed fingerprinted. Failure to provide certification will result in delay of payment until such certification is provided to the project's Construction Manager.

Contact www.oag.ca.gov to obtain an ORI number or more information from the Department of Justice regarding this requirement.

CONTRACTOR CERTIFICATION REGARDING BACKGROUND CHECKS

_____ certifies that it has performed one of the following:
Name of Contractor/Consultant

Pursuant to Education Code Section 45123.1, Contractor has conducted criminal background checks, through the California Department of Justice, of all employees providing services to the San Diego Unified School District, pursuant to the contract dated _____, and that none have been convicted of serious or violent felonies, as specified in Penal Code 1192.7(c) and 667.5(c), respectively.

OR

Pursuant to Education Code Section 45125.2, Contractor will ensure the safety of pupils by one or more of the following methods:

1) The installation of a physical barrier at the worksite to prevent contact with pupils (i.e. 8 foot chain link fencing).

AND

2) Continual supervision and monitoring of all employees of the entity by an employee of the entity, such as foremen, whom the Department of Justice has ascertained has not been convicted of a violent or serious felony.

OR

3) Will execute the required Department of Justice application and send either all employees or supervising and monitoring employees for fingerprinting at an authorized processing center. ***Prior to performing work on site Contractor must provide certification that the required employees have been fingerprinted.***

Contact www.oag.ca.gov to obtain an ORI number or more information from the Department of Justice regarding this requirement.

AND

As further required by Education Code Section 45125.1, attached hereto as "Attachment A" is a list of the names of the employees of the undersigned who will be working on the project and who, to the best knowledge of the undersigned, are not convicted felons or awaiting trial for a felony charge.

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

Date: _____, 20__

Signature

Title

Megan’s Law (Sex Offenders). I have verified and will continue to verify that the employees of Contractor that will be on the Project Site and the employees of the Subcontractor(s) that will be on the Project Site are **not** listed on California’s “Megan’s Law” Website (<http://www.meganslaw.ca.gov/>).

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

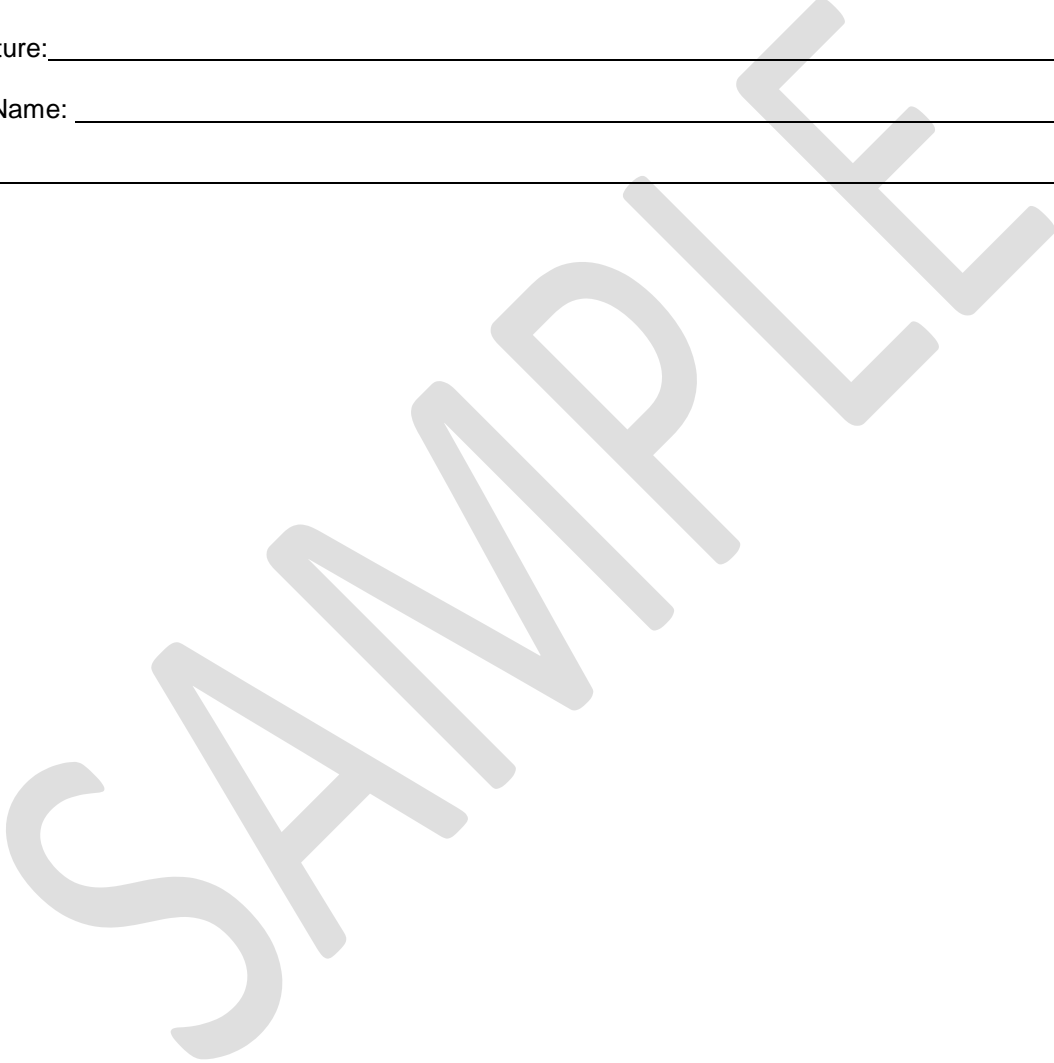
Date: _____

Proper Name of Contractor: _____

Signature: _____

Print Name: _____

Title: _____



GUARANTEE

DISTRICT: SAN DIEGO UNIFIED SCHOOL DISTRICT

PROJECT: Lindbergh Schweitzer Elementary School WSM & JUF

CONTRACTOR NAME: _____

The Contractor hereby warrants and guarantees to the District that all work, materials, equipment and workmanship provided, furnished or installed by or on behalf of Contractor in connection with the above-referenced Project (the "Work") have been provided, furnished and installed in strict conformity with the Contract Documents for the Work, including without limitation, the Drawings and the Specifications. Contractor further warrants and guarantees that all work, materials, equipment and workmanship as provided, furnished and/or installed are fit for use as specified and fulfill all applicable requirements of the Contract Documents including without limitation, the Drawings and the Specifications. Contractor shall, at its sole cost and expense, repair, correct and/or replace any or all of the work, materials, equipment and/or workmanship of the Work, together with any other items which may be affected by any such repairs, corrections or replacement, that may be unfit for use as specified or defective within a period of two (2) years from the date of the District's Final Acceptance of the Work, ordinary wear and tear and unusual abuse or neglect excepted.

In the event of the Contractor's failure and/or refusal to comply with the provisions of this Guarantee, within the period of time set forth in the Contract Documents after the District's issuance of the Notice to the Contractor of any defect(s) in the Work, materials, equipment or workmanship, Contractor authorizes the District, without further notice to Contractor, to repair, correct and/or replace any such defective item at the expense of the Contractor. The Contractor shall reimburse the District for all costs, expenses or fees incurred by the District in providing or performing such repairs, corrections or replacements within ten (10) days of the District's presentation of a demand to the Contractor for the same.

The provisions of this Guarantee and the provisions of the Contract Documents for the Work relating to the Contractor's Guarantee(s) and warranty(ies) relating to the Work shall be binding upon the Contractor's Performance Bond Surety and all successors or assigns of Contractor and/or Contractor's Performance Bond Surety.

The provisions of this Guarantee are in addition to, and not in lieu of, any provisions of the Contract Documents for the Work relating to the Contractor's guarantee(s) and warranty(ies) or any guarantee(s) or warranty(ies) provided by any material supplier or manufacturer of any equipment, materials or other items forming a part of, or incorporated into the Work, or any other guarantee or warranty obligation of the Contractor, prescribed, implied or imposed by law.

The undersigned individual executing this Guarantee on behalf of Contractor warrants and represents that he/she is duly authorized to execute this Guarantee on behalf of Contractor and to bind Contractor to each and every provision hereof.

By: _____
(Signature)

(Date)

(Typed or Printed Name)

(Title)

**ROOFING CONTRACT FINANCIAL INTEREST CERTIFICATION
(Public Contract Code § 3006)**

Contractor shall be responsible for securing a signed certification from the roofing materials manufacturer, if any, supplying vendor, if any, as well as the subcontractor performing the work, if any, in the event that Contractor has any materials manufacturer, vendor, or subcontractor involved in its proposal for an applicable roof project. Failure to disclose and submit certifications in the timeline given by the District may result in the contract being rescinded and awarded to the qualified proposer whose responses conform to the RFP. Any person who knowingly provides false information or fails to disclose a financial relationship in the disclosure set forth in Public Contract Code section 3006(b) shall be subject to a civil penalty up to one-thousand dollars (\$1,000) in addition to other available remedies.

I, _____, _____
Name Name of Contractor

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

Furthermore, I _____, _____
Name Name of Contractor

certify that I do not have, and throughout the duration of the Contract, I will not have, any financial relationship in connection with the performance of the Contract with any architect, engineer, roofing consultant, materials manufacturer, distributor, or vendor that is not disclosed below.

I, _____, _____
Name Name of Contractor

have the following financial relationships with an architect, engineer, roofing consultant, materials manufacturer, distributor, or vendor, or other person in connection with the following roof project contract:

Name of firm ("Firm"): _____
Mailing address: _____
Address of branch office used for this Project: _____
If subsidiary, name and address of parent company: _____

I certify that to the best of my knowledge, the contents of this disclosure are true, or are believed to be true.

Date: _____
Proper Name of Contractor: _____
Signature: _____
Print Name: _____
Title: _____

PERFORMANCE BOND (100% of Contract Price)

Note: Contractor must use this form, NOT a surety company form.

KNOW ALL PERSONS BY THESE PRESENTS:

WHEREAS, the San Diego Unified School District ("the District") has awarded to

_____ as Principal, a contract dated the _____ day of _____, 20____, (the "Contract"), which Contract is by this reference made a part hereof, for the work described as follows:

WHEREAS, Principal is required to furnish a bond in connection with the Contract, guaranteeing the faithful performance thereof;

NOW, THEREFORE, we, the undersigned Principal and _____ as Surety are held and firmly bound unto the District in the sum of _____ dollars (\$ _____), to be paid to the District or its successors and assigns; for which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that if Principal, or its heirs, executors, administrators, successors, or assigns approved by the District, shall promptly and faithfully perform the covenants, conditions, and agreements of the Contract during the original term and any extensions thereof as may be granted by the District, with or without notice to Surety, and during the period of any guarantees or warranties required under the Contract, and shall also promptly and faithfully perform all the covenants, conditions, and agreements of any alteration of the Contract made as therein provided, notice of which alterations to Surety being hereby waived, on Principal's part to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify, defend, protect, and hold harmless the District as stipulated in the Contract, then this obligation shall become and be null and void; otherwise it shall be and remain in full force and effect.

No extension of time, change, alteration, modification, or addition to the Contract, or of the work required there under, shall release or exonerate Surety on this bond or in any way affect the obligation of this bond; and Surety does hereby waive notice of any such extension of time, change, alteration, modification, or addition.

Whenever Principal shall be and declared by the District to be in default under the Contract, Surety shall promptly remedy the default, or shall promptly:

1. Undertake through its agents or independent contractors, reasonably acceptable to the District, to complete the Contract in accordance with its terms and conditions and to pay and perform all obligations of Principal under the Contract, including without limitation, all obligations with respect to warranties, guarantees, and the payment of liquidated damages, or, at Surety's election, or, if required by the District, to pay the penal sum.
2. Obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and, upon determination by the District of the lowest responsible bidder, arrange for a contract between such bidder and the District and make available as work progresses (even though there should be a default or a succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the Contract Sum, and to pay and perform all obligations of Principal under the Contract, including, without limitation, all obligations with respect to warranties, guarantees, and the payment of liquidated damages; but, in any event, Surety's total obligations hereunder shall not exceed the amount set forth in the third paragraph hereof. The term "balance of the

Contract Sum," as used in this paragraph, shall mean the total amount payable by the District to the Principal under the Contract and any amendments thereto, less the amount paid by the District to Principal.

Surety's obligations hereunder are independent of the obligations of any other surety for the performance of the Contract, and suit may be brought against Surety and such other sureties, jointly and severally, or against any one or more of them, or against less than all of them without impairing the District' rights against the others.

No right of action shall accrue on this bond to or for the use of any person or corporation other than the District or its successors or assigns.

Surety may join in any arbitration proceedings brought under the Contract and shall be bound by any arbitration award.

In the event suit is brought upon this bond by the District, Surety shall pay reasonable attorney's fees and costs incurred by the District in such suit.

Correspondence or claims relating to this bond shall be sent to Surety at the address set forth below.

IN WITNESS WHEREOF, we have hereunto set our hands this ____ day of _____, 20____.

Principal: _____ Surety: _____
(Name of Firm) (Name of Firm)

By: _____ By: _____
(Signature) (Signature)

(Printed Name) (Printed Name)

Title: _____ Title: _____

Address for Notices:

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

LABOR AND MATERIAL PAYMENT BOND (100% of Contract Price)

(Note: Contractor must use this form, NOT a surety company form.)

KNOW ALL PERSONS BY THESE PRESENTS that we, _____ as Principal, and _____ as Surety _____ are held and firmly bound unto **SAN DIEGO UNIFIED SCHOOL DISTRICT** hereinafter "the Obligee", in the penal sum of _____ Dollars (\$ _____) in lawful money of the United States, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT:

WHEREAS, the Obligee, by resolution of its Board of Trustees passed on _____, 20____, has awarded to the Principal a Contract for the Work described as: _____

WHEREAS, the Principal, on or about _____, 20____, entered into a Contract with the Obligee for performance of the Work, the Agreement and all other Contract Documents set forth therein are incorporated herein and made a part hereof by this reference which contract is by this reference made a part hereof.

WHEREAS, by the terms of the Contract Documents, the Principal is required to furnish a bond for the prompt, full and faithful payment to any Claimant, as hereinafter defined, for all labor materials or services used, or reasonably required for use, in the performance of the Work.

NOW THEREFORE, if the Principal shall promptly, fully and faithfully make payment to any Claimant for all labor, materials or services used or reasonably required for use in the performance of the Work then this obligation shall be void; otherwise, it shall be, and remain, in full force and effect.

The term "Claimant" shall refer to any person, corporation, partnership, proprietorship or other entity including without limitation, all persons and entities described in California Civil Code §§8004, 9100, (and generally Civil Code §8000 et seq., 9000 et seq.) providing or furnishing labor, materials or services used or reasonably required for use in the performance of the Work under the Contract Documents, without regard for whether such labor, materials or services were sold, leased or rented. This Bond shall inure to the benefit of all Claimants so as to give them, or their assigns and successors, a right of action upon this Bond.

In the event suit is brought on this Bond by any Claimant for amounts due such Claimant for labor, materials or services provided or furnished by such Claimant, the Surety shall pay for the same and reasonable attorney's fees pursuant to California Civil Code §§8150, 9550 (and generally Civil Code §8000 et seq., 9000 et seq.).

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, deletion, addition, or any other modification to the terms of the Contract Documents, the Work to be performed thereunder, the Specifications or the Drawings, or any other portion of the Contract Documents, shall in any way limit, restrict or otherwise affect its obligations under this Bond; the Surety hereby waives notice from the Obligee of any such change, extension of time, alteration, deletion, addition or other modification to the Contract Documents, the Work to be performed under the Contract Documents, the Drawings or the Specifications of any other portion of the Contract Documents.

IN WITNESS WHEREOF, the Principal and Surety have executed this instrument this _____ day of _____, 20____ by their duly authorized agent or representative.

Principal

Surety

(Name of Principal)

(Name of Surety)

(Signature of Person with Authority)

(Signature of Person with Authority)

(Print Name)

(Print Name)

(Title)

(Name of California Agent of Surety)

(Address of California Agent of Surety)

(Telephone Number of California Agent of Surety)

By: _____
(Signature of Attorney-in-Fact for Surety)

(Typed or Printed Name)
(Attach Attorney-in-Fact Certificate)

Phn () _____ () _____ Fax
(Area Code Telephone and Fax Number of Surety)

_____ E-Mail

Address for Notices

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

PROJECT STABILIZATION AGREEMENT & LETTER OF ASSENT

Project Stabilization Agreement (PSA): This project is subject to the Project Stabilization Agreement (PSA) adopted by the Board of Education on July 28, 2009 and as subsequently amended. The complete agreement is available for viewing and downloading at www.sandiegounified.org/node/1097. The successful Contractor (and all Subcontractors) will be required to execute a PSA Letter of Assent (LOA), whereby Contractor and Subcontractors agree to conform to all terms and conditions set forth in the PSA.

**PROJECT STABILIZATION AGREEMENT
PRIME CONTRACTOR LETTER OF ASSENT**

TO: **SAN DIEGO UNIFIED SCHOOL DISTRICT**, a California Public School District, acting by and through its Board of Education ("the District").

FROM: _____
(Name of Contractor)

(Address)

(City, State, Zip Code)

(Telephone/Fax)

(Email Address)

(Name(s) of Contractor's Authorized Executive(s))

This is to confirm that my Company agrees to be party to and bound by the San Diego Unified School District Project Stabilization Agreement – School Construction Major Rehabilitation Funded by Propositions S and Z, effective July 28, 2009 and as subsequently amended, as such Agreement may from time to time be amended by the negotiating parties or interpreted pursuant to its terms. Such obligation to be a party and bound by this Agreement shall extend to all work covered by the Agreement undertaken by this Company on the Project pursuant to **CZ19-0082-42 – Request for Sealed Proposal for Preconstruction Services at Pacific Beach Middle School Whole Site Modernization Project (Lease-Leaseback)** and this Company shall require all of its subcontractors and others covered by the PSA of whatever tier to be similarly bound for all work within the scope of the Agreement by signing and furnishing to the District's Contract Compliance Office an identical Letter of Assent prior to their commencement of work.

Executed By: _____
(Signature of Company Officer) (Date)

(Typed or Printed Name) (Title)

ELECTRONIC SIGNATURE ACKNOWLEDGEMENT & AGREEMENT

This Agreement governs the rights, duties, and responsibilities relating to the use of an electronic signature for Contract management with San Diego Unified School District ("District") through an electronic system established and maintained by the District.

1. Under the Uniform Electronic Transactions Act (California Civil Code sections 1633.1-1633.17), I agree to conduct transactions relating to the Contract by use of an electronic signature, which is an electronic mark that is held to the same standard as a legally binding equivalent of my handwritten signature. **I further agree that, for the purposes of authorizing, approving, and authenticating records, information, and transactions relating to the Contract, my electronic signature has the full force and effect of a signature affixed by hand to a paper document. I agree that the transactions I conduct electronically relating to the Contract shall be binding upon me.**
2. I agree that my electronic signature will be valid from date of issuance until it is revoked or terminated under this Agreement. I understand that the District may suspend, terminate, or revoke my electronic signature in its reasonable discretion.
3. I will use my electronic signature to establish my identity and sign electronic documents and forms relating to the Contract. I am solely responsible for protecting my electronic signature. If I suspect or discover that my electronic signature has been stolen, lost, used by an unauthorized party, or otherwise compromised, then I will immediately notify the Construction Manager Director or his/her designee and request that my electronic signature be revoked. I will then immediately cease all use of my electronic signature. I agree to keep my electronic signature secret and secure by taking reasonable security measures to prevent it from being lost, modified, or otherwise compromised, and to prevent unauthorized disclosure of, access to, or use of it or of any media on which information about it is stored.
4. I will immediately request that my electronic signature be revoked if I discover or suspect that it has been or is in danger of being lost, disclosed, compromised or subjected to unauthorized use in any way.
5. If I have requested that my electronic signature be revoked, if I am notified that someone has requested that my electronic signature be suspended, terminated, or revoked, or if I suspect or discover that it has been or may be compromised or subjected to unauthorized use in any way, I will immediately cease using my electronic signature. I will also immediately cease using my electronic signature upon termination of employment or termination of this Agreement.
6. I will not enter into an electronic signature for any person other than myself, unless I am designated in writing, as a proxy for such person relating to the Contract.

Please print or type your first and last name

Date

Please provide your email address

I understand that by checking this box constitutes a legal signature confirming that I acknowledge and warrant the truthfulness of the information provided in this document. Please sign within the box below.

DIVISION 1

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**EXHIBIT J
TO
MASTER FACILITIES LEASE
SUPPLEMENTARY CONDITIONS**

- 1. **INDEMNITY (See Article 17 of Facilities Lease)**
- 2. **INSURANCE (See Article 16 of Facilities Lease)**
- 3. **DISTRICT REPRESENTATIVE**

The District Representative’s for all work shall be:

TBD
Construction Manager
4860 Ruffner Street
San Diego, CA 92111-1522
(XXX) XXX-XXXX

- 4. **HAZARDOUS MATERIALS TRAINING (See Exhibit I: Hazardous Materials Certification)**

Prior to commencing work, the Contractor shall provide training for all applicable Contractor employees regarding all Hazardous Substances with which the Contractor’s employees may encounter during the course of the contract. The District’s Safety Coordinator shall provide the substance inventory, if any, to the Contractor, for the work area involved, prior to the Contractor’s employees beginning work on District premises. Contractor shall provide the District’s Representative with appropriate documentation evidencing that Contractor’s employees have received the appropriate hazardous materials training and information.

- 5. **EMPLOYEE FINGERPRINT VERIFICATION; BARRIERS; EMPLOYEE SURVEILLANCE; MEGAN’S LAW (See Exhibit I: Criminal Background / Fingerprinting Certification)**

- 6. **PROJECT STARTING AND COMPLETION DATES – CONTRACT TIME**

Construction Services for Pacific Beach Middle School Whole Site Modernization (Lease-Leaseback) shall start per individual Notice to Proceeds (NTPs), which is incorporated by reference into the contract, shall progress continuously, and be substantially completed no later than as follows:

Stage 1: Preconstruction Services	February 26 2019 – December 2019
Stage 2: Phase 1 Construction	January 2020 – May 2021
Stage 2: Phase 2 Construction	May 2021 – March 2022
Stage 2: Phase 3 Construction	March 2022 - June 2022
Stage 2: Phase 4 Construction	June 2022 – June 2023

- 7. **STANDARD AND MODIFIED WORK WEEK**

A standard work week is defined as Monday through Friday. A standard work day is defined as eight (8) hours worked between the hours of 7:00 a.m. and 7:00 p.m. during a standard work week, as defined in California Labor Code sections 1810 through 1815.

In order to minimize disruption to the teaching environment, the Contractor may be required, at the District's discretion, to have his employees work a modified work week. A modified work week is defined as any forty (40) hour week *other than a standard work week*.

If the Contractor is required to work a modified work week, the work will be performed at *straight time*. No overtime compensation will be authorized, or paid, by the District for a modified work week schedule. See section 17.5.2 of the General Conditions.

8. LOCATOR SERVICES

The Contractor is responsible for locating all existing utility lines on the work site prior to beginning work, and shall not rely on District provided drawings for their location. In addition, the Contractor is responsible for the procurement and payment of any and all locator services necessary to locate existing utility lines.

9. INVOICING AND PAYMENTS

Original invoices shall be submitted to:

San Diego Unified School District
Physical Plant Operations Center
Attn: Catherine Bendixen
4860 Ruffner Street
San Diego, CA 92111-1522

Each invoice/progress payment request must reference the assigned contract number, school name, project description, and name of District representative.

In the event that adjustments are made to the progress payment request, due to stop notices, Labor Compliance issues or backcharges, the Contractor must re-invoice for the amounts deducted.

Contractor must invoice for his retention at the end of the project in order for the release of retention funds to occur.

10. POST AWARD CONTRACT ADMINISTRATION

All post award correspondence, including requests for subcontractor substitutions, preliminary notices and insurance renewals and updates shall be sent to:

San Diego Unified School District
Contracts Compliance Office
Attn: Linda Weekly, Contract Specialist
4860 Ruffner Street
San Diego, CA 92111
PH: 858-637-6229
FAX: 858-496-1953

11. LIQUIDATED DAMAGES (See Article 12.2.4 of Facilities Lease)

12. LIQUIDATED DAMAGES FOR DELAYED SUBMITTALS

The per diem assessment of Liquidated Damages for Contractor's delayed submission of Submittals pursuant to Article 8.1 of the General Conditions is **\$200** per day.

13. ENVIRONMENTAL SAFETY AND HEALTH REQUIREMENTS

Very specific requirements related to environmental, safety and health is outlined in General Conditions Article 12. These requirements include mandatory written programs and daily safety

meetings, performance and job hazard analysis, minimum training requirements and minimum personal protection equipment required on the job. All bidders are advised to read Article 12 as compliance is mandatory.

14. NOTICES PURSUANT TO ARTICLE 18.9

Notices pursuant to Article 18.9 of the General Conditions should be addressed to:

Director of Construction
San Diego Unified School District
4860 Ruffner Street
San Diego, CA 92111

15. RISK OF LOSS ON CONTRACTOR

The Contractor shall assume the risk of any and all types of loss and damage to the work or any part thereof, to adjoining property, or to materials or things employed in doing the work, or stored on site, until the District has accepted completion of the project. The District, however, will not assume the risk of any loss or damage to materials and things employed by the Contractor in doing the work. The Contractor with due diligence and dispatch, shall replace or repair, at his own expense the work lost or damaged.

16. CONTRACT DOCUMENTS

Pursuant to Article 2.1.5 in the General Conditions, the District shall furnish the Contractor, free of charge, 10 copies of the Drawings and Contract Documents upon award of the contract.

17. ADJUSTMENT TO CONTRACT PRICE

Pursuant to Article 10.4.3 of the General Conditions, the percentage limits allowed for cost mark-ups on overhead, general conditions costs, and profits associated with the change are listed on "Attachment 1" of the General Conditions which is an example of the form to be used for payment for any extra, additional, or deleted work.

18. CONTRACTOR SITE CHECK-IN

Contractor's superintendent is required to check-in at the main office every day that a work crew is on site and classes are in session. A special sign-in sheet will be provided for this purpose.

19. EMPLOYEE IDENTIFICATION BADGES

All Contractor's and their subcontractor's employees who will be working on-site must wear an identification badge at all times. The badge must have a photo of the employee, their name, and the name of the company they work for on the front face, clearly and legibly displayed.

20. KEYS ISSUED FOR CONSTRUCTION

The Contractor may be issued school site master keys, including gate keys, only upon written authorization from the District. Specific terms of site access shall be requested in writing. The request shall be evaluated as to the need for access and the methods available to provide access without issuing keys. Keys shall be authorized only when no other reasonable means of access is available. The Contractor shall be required to sign the District's Master Key Responsibility Agreement form. This form authorizes the District to deduct funds, up to \$60,000, from available contract amounts, if keys are lost or misused. The cost of restoring security to the area(s) compromised by the theft, loss or misuse of keys may require re-keying for one or more buildings and costs could be extensive. The holder of the keys to any school site assumes responsibility for the safekeeping of the keys and their use. Keys must not be modified, duplicated, loaned or made

available to others. All lost or stolen keys must be reported immediately through the appropriate District representative. All keys must be returned to the District Authorized Lock Shop Representative on or before the end of the defined 30-day punch list period following the achievement of Substantial Completion. Written confirmation from the District Authorized lock Shop Representative is required before Final payment is made by the District. The return of District issued keys are part of the Final Payment Article 7.4.2. (ix) General Conditions of the Contract obligations. The Contractor may be requested to post a bond or deposit as collateral until the keys are returned. Any Contract Time delay or additional Contract Price expense caused by or due to the theft, loss or misuse of District issued keys shall be to the account of the Contractor.

21. PUBLIC CONTRACT CODE SECTION 3006 CERTIFICATION (See Exhibit I: Roofing Certification)

22. PROJECT GEOTECHNICAL REPORT

A geotechnical report has been prepared for this project and is available for information and reference only from the Facilities Management Department. Copies can be obtained from Robert Morriz at the Facilities Management Office, 4860 Ruffner Street, San Diego, CA 92111. The report, in its entirety, is not part of the Contract Documents. The geological boring logs and boring site location plan are a part of the Contract Documents (See Appendix A of the Technical Specifications). The opinions expressed in the report are those of the geotechnical engineer and represent interpretations of the subsurface soil conditions, texts, and results of the analyses conducted by the geotechnical engineer. The District (Owner) will not be responsible for interpretations or conclusions drawn from this data by the Contractor.