

**Alameda Unified School District**

**Pool Improvements**

**Encinal High School**  
210 Central Avenue  
Alameda, CA 94501

**Lease Leaseback Contract**  
between the  
Alameda Unified School District  
and  
Western Water Features, Inc.

**23 June 2015**

#### FACILITIES LEASE

This facilities lease ("Facilities Lease"), dated as of June 24, 2015 ("Effective Date"), is made and entered into by and between and **Western Water Features, Inc.**, a California company duly organized and existing under the laws of the State of California, as sublessor ("Contractor"), and **Alameda Unified School District**, a school district duly organized and validly existing under the laws of the State of California, as sublessee ("District") (together, the "Parties").

#### RECITALS

**WHEREAS**, the District currently owns a parcel of land located at 210 Central Avenue, Alameda, CA 94501, known as **Encinal High School**, 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 demolition of and improvements to an existing Pool Facility at Encinal High School in Alameda ("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 has retained **Quattrocchi Kwok Architects** ("Architect") to prepare plans and specifications for the Project ("Plans and Specifications") which have been approved by the California Division of the State Architect ("DSA"); and

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

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

**WHEREAS**, the District is authorized under Section 17406 of the Education Code of the State of California to lease the Project Site 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 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 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 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 Facilities Lease and all those conditions precedent do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the Parties hereto are now duly authorized to execute and enter into this Facilities Lease; and

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

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

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

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

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

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

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

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

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

- 1.6.1. Liens for general and valorem taxes and assessments, if any, not then delinquent, or which the District may permit to remain unpaid;
- 1.6.2. The Project Site lease;
- 1.6.3. This Facilities Lease,
- 1.6.4. Easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions or restrictions which exist of record as of the date of this Facilities Lease.
- 1.6.5. Easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions or restrictions established following the date of recordation of this Facilities Lease and to which Contractor and the District consent in writing which will not impair or impede the operation of the Project Site; and

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

**2.1. Exhibit A: Description of the School Site:** The descriptions 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 Project Cost and Other Project Cost, Funding, and Payment Provisions:** A detailed description of the Guaranteed Project Cost and the provisions related to the payment of that amount to the Contractor.

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

**2.5. Exhibit E: Memorandum of Commencement Date:** The Memorandum which will memorialize the commencement and expiration dates of the Term.

**2.6. Exhibit F: Construction Schedule:** 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 shall include activities including:

- 2.6.1. Mobilization,
- 2.6.2. Preparation of submittals,
- 2.6.3. Specified review periods,
- 2.6.4. Procurement items,
- 2.6.5. Fabrication items,
- 2.6.6. Milestones, and
- 2.6.7. All detailed construction activities.

**2.7. Exhibit G: Schedule of Values**

~~**2.8. Exhibit H: Agreement For Preliminary Services (If used)**~~

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

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

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

### **3. Lease of Project and Project Site.**

**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 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 Facilities Lease and its fee estate as lessor under the Site Lease. Contractor shall continue to have and hold a leasehold estate in the Project Site pursuant to the Site Lease throughout the term thereof and the term of this Facilities Lease.

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

**3.4. Occupied School Site.** The Contractor acknowledges that portions 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 K**.

**3.5. 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.

**3.6. No Work During 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 including, without limitation, not performing any Work when students at the School Site are taking State-required tests. Refer to the testing schedule as indicated in **Exhibit K**.

**4. Term.**

**4.1. Facilities Lease is Legally Binding.** This Facilities Lease is legally binding on the Parties upon execution by the Parties and the District Board's approval of this Facilities Lease. The **Term** of this Facilities Lease for the purposes of District's obligation to make Lease Payments shall commence on the date of Project Completion, as defined in Exhibit D to this Facilities Lease and shall terminate six (6) months after the Commencement Date (the "Term"):

**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 Facilities Lease that exist upon execution of this 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 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 Facilities Lease as permitted herein, or
- 4.3.3. Consummation of the District's purchase option pursuant to the Guaranteed Project Cost and Other Project Cost, Funding, and Payment Provisions indicated in **Exhibit C** ("Guaranteed Project Cost Provisions").
- 4.3.4. A third-party taking of the Project under Eminent Domain, only if the Term is ended as indicated more specifically herein.
- 4.3.5. Damage or destruction of the Project, only if the Term is ended as indicated more specifically herein.

**5. Payment.** In consideration for the lease of the 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 Project Cost Provisions indicated in **Exhibit C**.

**6. Termination; Lease Terminable Only As Set Forth Herein.**

**6.1.** Except as otherwise expressly provided in this Facilities Lease, this Facilities Lease shall not terminate, nor shall District have any right to terminate this Facilities Lease or be entitled to the abatement of any all necessary payments pursuant to the Guaranteed Project Cost 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 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 Project Cost Provisions indicated in **Exhibit C** shall continue to be payable in all events, and the obligations of the District hereunder shall continue unaffected unless the requirement to pay or perform the same shall be terminated or modified pursuant to an express provision of this Facilities Lease.

**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 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 Facilities Lease, notwithstanding the bankruptcy, insolvency, reorganization, composition, readjustment, liquidation, dissolution, winding-up or other proceeding affecting Contractor or any assignee of Contractor in any such proceeding, and notwithstanding any action with respect to this Facilities Lease which may be taken by any trustee or receiver of Contractor or of any assignee of Contractor in any such proceeding or by any court in any such proceeding. Following Project Completion, except as otherwise expressly provided in this Facilities Lease, District waives all rights now or hereafter conferred by law to quit, terminate or surrender this Facilities Lease or the Project or any part thereof.

**6.4.** District acknowledges that Contractor may assign an interest in some or all of the necessary payments pursuant to the Guaranteed Project Cost 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.** The District in its sole discretion may terminate for convenience this Facilities Lease upon three (3) days written notice to the Contractor. In case of a termination for convenience, the Contractor shall have no claims against the District except the actual portion of the Guaranteed Project Cost expended for labor, materials, and services performed that is unpaid and can be documented through timesheets, invoices, receipts, or otherwise, through the date of termination, plus necessary and reasonable documented demobilization costs.

## **7. Title.**

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

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

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

**7.4.** If the District exercises its Purchase Option pursuant the Guaranteed Project Cost Provisions indicated in **Exhibit C** or if District makes all necessary payments under the Guaranteed Project Cost Provisions indicated in **Exhibit C**, all right, title and interest of Contractor, its assigns and successors in interest in and to the Project and the Project Site 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 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 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 Facilities Lease, and to perform all of its duties and obligations hereunder, and has duly authorized the execution of this Facilities Lease.

**9.3. No Violations.** Neither the execution and delivery of this Facilities Lease nor the Site Lease, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the District is now a party or by which the District is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the District, or upon the Project Site, 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 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 Facilities Lease remains in effect, the District will not seek to exercise the power of eminent domain with respect to the Project so as to cause a full or partial termination of this Facilities Lease.

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 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 Facilities Lease and the Site Lease; is possessed of full power to lease, lease back, and

hold real and personal property and has duly authorized the execution and delivery of all of the aforesaid agreements.

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

**10.3. No Violations.** Neither the execution and delivery of this Facilities Lease and the Site Lease, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which Contractor is now a party or by which Contractor is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of Contractor, or upon the Project Site, 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 Facilities Lease.

**10.6. No Encumbrances.** Contractor shall not pledge any District payments of any kind, related to the Site Lease, this Facilities Lease, or in any way derived from the Project Site, and shall not mortgage or encumber the Project Site, except as may be specifically permitted pursuant to the provisions of this 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. Construction Of Project**

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

### **11.2. Construction of Project.**

11.2.1. 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.

11.2.2. **Contract Time / Construction Schedule.** It hereby understood and agreed that assuming the District issues a Notice to Proceed on or before       TBD       District and Contractor may also approve additional changes in the Construction Schedule. District shall have beneficial

occupancy on or before \_\_\_\_TBD\_\_\_\_ and Project Completion shall be on or before \_\_\_\_TBD\_\_\_\_. The time period between the Notice to Proceed and Completion shall be the total Contract time ("Contract Time"). The Construction shall be performed pursuant to the construction schedule, attached hereto as **Exhibit F** ("Construction Schedule"). The Construction Schedule must be approved by the District prior to execution of this Facilities Lease.

11.2.3. **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 execution of this Facilities Lease.

11.2.4. **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, Contractor agrees that it shall pay to the District, as the District's exclusive remedy for Contractor's delay, the sum of **Two Thousand Five Hundred Dollars (\$2,500) per day** as liquidated damages for each and every day's delay beyond the Contract Time.

11.2.4.1. It is hereby understood and agreed that the liquidated damages daily amount is not a penalty.

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

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

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

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

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

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

11.2.8.1. Contractor shall comply with the registration and compliance monitoring provisions of Labor Code section 1771.4, including furnishing its CPRs to the Labor Commissioner of California and complying with any applicable enforcement by the Department of Industrial Relations. Labor Code section 1771.1(a) states the following:

"A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the

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

11.2.8.2. 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 Agreement. 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.

11.2.8.3. 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.

**12. 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 Facilities Lease.

**13. 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.

**14. Taxes and Other Impositions.** All ad valorem real property taxes, special taxes, possessory interest taxes, bonds and special lien assessments or other impositions of any kind with respect to the Project, the 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 Facilities Lease or the Site Lease, District shall pay such possessory interest tax directly, if possible, or shall reimburse Contractor, its successors and assigns for the full amount thereof within thirty (30) days after presentation of proof of payment by Contractor.

## **15. Insurance**

**15.1. Contractor’s Insurance.** The Contractor shall comply with the insurance requirements as indicated herein.

15.1.1. **Commercial General Liability and Automobile Liability Insurance.** Contractor shall procure and maintain, during the life of the Project, Commercial General Liability Insurance and Automobile Liability Insurance that shall protect Contractor, District, and the State, from all claims for bodily injury, property damage, personal injury, death, advertising injury, and medical payments arising from operations under the Project. Contractor shall ensure that Products Liability and Completed Operations coverage, Fire Damage Liability, and Any auto including owned and non-

owned, are included within the above policies and at the required limits, or Contractor shall procure and maintain these coverages separately.

**15.1.2. Umbrella Liability Insurance**

15.1.2.1. Contractor may procure and maintain, during the life of the Project, an Umbrella Liability Insurance Policy to meet the policy limit requirements of the required policies if Contractor's underlying policy limits are less than required.

15.1.2.2. There shall be no gap between the per occurrence amount of any underlying policy and the start of the coverage under the Umbrella Liability Insurance Policy. Any Umbrella Liability Insurance Policy shall protect Contractor, District, and the State, in amounts and including the provisions and requirements for Commercial General Liability and Automobile Liability and Employers' Liability Insurance.

15.1.3. **Subcontractor:** Contractor shall require its Subcontractor(s), if any, to procure and maintain Commercial General Liability Insurance, Automobile Liability Insurance, and Umbrella Liability Insurance with minimum limits as appropriate and required by the Contractor.

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

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

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

15.1.5. **Contractor's Risk Insurance: Contractor's Risk "All Risk" Insurance.** Contractor shall procure and maintain, during the life of the Project, Contractor's Builders Risk (Course of Construction), or similar first party property coverage acceptable to the District, issued on a replacement cost value basis. The cost shall be consistent with the total replacement cost of all insurable Work of the Project included within the Contract Documents. Coverage is to insure against all risks of accidental physical loss and shall include without limitation the perils of vandalism and/or malicious mischief (both without any limitation regarding vacancy or occupancy), sprinkler leakage, civil authority, sonic disturbance, earthquake, flood, collapse, wind, fire, lightning, and smoke. Coverage shall include debris removal, demolition, increased costs due to enforcement of all applicable ordinances and/or laws in the repair and replacement of damaged and undamaged portions of the property, and reasonable costs for the Architect's and engineering services and expenses required as a result of any insured loss upon the Work and Project, including completed Work and Work in progress, to the full insurable value thereof. The deductible for this insurance shall be paid by Contractor.



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

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

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

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

15.1.7.2.1. A clause stating:

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

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

15.1.7.3. All endorsements, certificates and insurance policies shall state that District, its Board members, employees and agents, and the State of California, are named additional insureds under all policies except Workers' Compensation Insurance, Professional Liability Insurance, and Employers' Liability Insurance.

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

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

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

15.1.7.7. All of Contractor's insurance shall be with insurance companies with a Best rating of no less than **A: VIII.** Contractor shall provide documentation to the District demonstrating this rating.

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

<b>Commercial General Liability</b>	Combined Single Limit	\$2,000,000
	General Aggregate	\$5,000,000
	Product Liability and Completed Operations	\$2,000,000
<b>Automobile Liability – Any Auto</b>	Combined Single Limit	\$2,000,000
	General Aggregate	\$5,000,000
<b>Workers Compensation</b>		Statutory limits pursuant to State law
<b>Employers' Liability</b>		\$2,000,000
<b>Contractors Risk (Course of Construction)</b>		Issued for the value and scope of Work indicated herein.
<b>Excess Liability</b>		\$5,000,000
<b>Property of Others</b>	Combined Single Limit	Issued for the value and scope of Work stored off-site.
	General Aggregate	
<b>Professional Liability, If required by the District and either:</b> — the premium is approved by the District, or — by each subconsultant and/or designer of documents produced by Contractor.		\$1,000,000 per occurrence and annual aggregate

## 15.2. District's Insurance.

- 15.2.1. **Rental Interruption Insurance.** District shall at all times from and after District's acceptance of the Project, carry and maintain in force for the benefit of District and Contractor, as their interests may appear, rental interruption insurance to cover loss, total or partial, of the use of the Project due to damage or destruction, in an amount at least equal to the maximum estimated Lease Payments payable under this Facilities Lease during the current or any future twelve (12) month period. This insurance may be maintained as part of or in conjunction with any other insurance coverage carried by the District, and such insurance may be maintained in whole or in part in the form of participation by the District in a joint powers agency or other program providing pooled insurance. This insurance may not be maintained in the form of self-insurance. The proceeds of this insurance shall be paid to the Contractor in lieu of the Lease Payments that would otherwise be due and owing during this period.
- 15.2.2. **Property Insurance.** District shall at all times from and after District's acceptance of the Project, carry and maintain in force a policy of property insurance for 100% of the insurable replacement value with no coinsurance penalty, on the Project Site and the Project, together with all improvements thereon, under a standard "all risk" contract insuring against loss or damage. Contractor shall be named as additional insureds or co-insureds thereon by way of endorsement. District shall not be relieved from the obligation of supplying any additional funds for replacement of the Project and the improvements thereon in the event of destruction or damage where insurance does not cover replacement costs. District shall have the right to procure the required insurance through a joint powers agency or to self-insure against such losses or portion thereof as is deemed prudent by District.
- 15.2.3. **Commercial General Liability Insurance.** District shall at all times from and after District's acceptance of the Project, carry and maintain in force a policy of commercial general liability

insurance policy of \$2,000,000. Contractor shall be named as an additional insured or co-insured thereon by way of endorsement. District shall have the right to procure the required insurance through a joint powers agency or to self-insure against such losses or portion thereof as is deemed prudent by District.

## **16. Indemnification.**

**16.1. Contractor's Indemnity Obligation.** The Contractor shall indemnify, defend with legal counsel reasonably acceptable to the District, keep and hold harmless the District, and their respective board members, officers, representatives, and employees, in both individual and official capacities ("Indemnitees"), against all suits, claims, damages, losses, and expenses, caused by, arising out of, resulting from, or incidental to, the performance of the Work under this Contract by the Contractor or its Subcontractors to the full extent allowed by the laws of the State of California, and not to any extent that would render these provisions void or unenforceable, including, without limitation, any such suit, claim, damage, loss, or expense attributable to, without limitation, bodily injury, sickness, disease, death, alleged patent violation or copyright infringement, or to injury to or destruction of tangible property (including damage to the Work itself not covered by Contractor's and/or District's insurance policy(s) and including the loss of use resulting therefrom), except to the extent caused by the negligence or willful misconduct of the Indemnitees. This agreement and obligation of the Contractor shall not be construed to negate, abridge, or otherwise reduce any right or obligation of indemnity that would otherwise exist as to any party or person described herein. This indemnification, defense, and hold harmless obligation includes any failure or alleged failure by Contractor to comply with any provision of law or the Contract Documents, including, without limitation, any stop notice actions, stop payment notice actions, or liens by the California Department of Labor Standards Enforcement.

16.1.1. The Contractor shall give prompt notice to the District in the event of any injury (including death), loss, or damage included herein. Without limitation of the provisions herein, if the Contractor's agreement to indemnify, defend, and hold harmless the Indemnitees as provided herein against liability for damage arising out of bodily injury to persons or damage to property caused by or resulting from the negligence of any of the Indemnitees shall to any extent be or be determined to be void or unenforceable, it is the intention of the Parties that these circumstances shall not otherwise affect the validity or enforceability of the Contractor's agreement to indemnify, defend, and hold harmless the rest of the Indemnitees, as provided herein, and in the case of any such suits, claims, damages, losses, or expenses caused in part by the default, negligence, or act or omission of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, and in part by any of the Indemnitees, the Contractor shall be and remain fully liable on its agreements and obligations herein to the full extent permitted by law.

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

**16.2. 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 (1) if those claims, damages, expenses or liabilities relate to District's status as a sublessee under this Facilities Lease; (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 (3) only if those claims, damages, expenses or liabilities are unrelated to District's obligations to pay the Guaranteed Project Cost.

## **17. Eminent Domain.**

**17.1. 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.

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

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

**17.2. Total Taking Prior to Project Delivery.** If all of the Project and the 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.

**17.3. 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:

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

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

**18. 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 Project Cost Provisions indicated in **Exhibit C** that are then due or past due or any remaining and succeeding principal payments pursuant to the Guaranteed Project Cost Provisions indicated in **Exhibit C** for the remainder of the original Term. The Contractor shall still be due any funds, payments, or disbursements from the District's rental interruption insurance to pay for the amounts that would otherwise have been due and owing from the District under **Exhibit C**.

## **19. Abatement.**

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

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

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

19.3.1. Repair the Project to full use;

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

19.3.3. Exercise the District's purchase option as indicated in the Guaranteed Project Cost Provisions indicated in **Exhibit C** to this Facilities Lease.

**19.4.** 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.

## **20. Access**

**20.1. By Contractor.** Contractor shall have the right at all reasonable times to enter upon the Project Site to construct the Project pursuant to this Facilities Lease. Following the acceptance of the Project by District, Contractor may enter the Project at reasonable times with advance notice and arrangement with District for purposes of making any repairs required to be made by Contractor.

**20.2. 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.

## **21. Assignment, Subleasing**

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

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

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

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

## **22. Events Of Default of District**

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

- 22.1.1. Failure by the District to pay payments required pursuant to the Guaranteed Project Cost Provisions indicated in **Exhibit C**, and the continuation of such failure for a period of forty-five (45) days.
- 22.1.2. Failure by the District to perform any material covenant, condition or agreement in this Facilities Lease and that failure continues for a period of forty-five (45) days after Contractor provides District with written notice specifying that failure and requesting that the failure be remedied; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, Contractor shall not unreasonably withhold its consent to an extension of such time if corrective action is instituted by the District within the applicable period and diligently pursued until the default is corrected.

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

- 22.2.1. Contractor may rescind its leaseback of the Project Site to the District under this 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:

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

- 22.2.1.2. 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.

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

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

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

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

**22.3. 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 Project Cost Provisions indicated in **Exhibit C** and those amounts shall be payable to Contractor at the time and in the manner as therein provided.

**22.4. No Remedy Exclusive.** No remedy herein conferred upon or reserved to Contractor is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Facilities Lease or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any Default shall impair any such right or power or shall be construed to be a

waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle Contractor to exercise any remedy reserved herein, it shall be necessary to give notice, as indicated in this Facilities Lease and by law.

## **23. Events Of Default of Contractor**

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

23.1.1.1. 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;

23.1.1.2. 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 a receiver should be appointed on account of its insolvency;

23.1.1.3. Contractor persistently disregards applicable law as indicated in **Exhibit D**, or otherwise be in violation of **Exhibit D**.

23.1.2. Failure by the Contractor to perform any material covenant, condition or agreement in this Facilities Lease and that failure continues for a period of forty-five (45) days after 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.

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

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

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

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

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

**24. 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:

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



**24.2.** 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.

**24.3.** If notice is given by depositing same in United States mail, enclosed in a sealed envelope, it shall be considered delivered three (3) days after date deposited, as indicated by the postmarked date.

**24.4.** If notice is given by registered or certified mail with postage prepaid, return receipt requested, it shall be considered delivered on the day the notice is signed for

**If to District:**

Alameda Unified School District  
2060 Challenger Drive  
Alameda, CA 94501  
Attention: Sean McPhetridge, Ed., D., Superintendent\_  
Telephone: (510) 337-7047  
Facsimile: (510) 337-7024

**If to Contractor:**

Western Water Features, Inc.  
5088 Hillsdale Circle  
El Dorado Hills, CA 95762  
Attention: Dan Parkes  
Telephone: (916) 939-1600  
Facsimile: (916) 939-1671

**With a copy to:**

Orbach Huff Suarez & Henderson  
1901 Harrison Street, Suite 1630  
Oakland, CA 94612  
Attention: Kimble R. Cook  
Telephone: (510) 999-7908  
Facsimile: (510) 999-7918

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

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

**26. No Additional Waiver Implied by One Waiver.** In the event any agreement contained in this Facilities Lease should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

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

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

**29. Net-Net-Net Lease.** This Facilities Lease shall be deemed and construed to be a "net-net-net lease" and the District hereby agrees that all payments it makes pursuant to the Guaranteed Project Cost Provisions indicated in **Exhibit C** shall be an absolute net return to Contractor, free and clear of any expenses, charges or set-offs.

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

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

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

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

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

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

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

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

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

**39. Force Majeure.** A party shall be excused from the performance of any obligation imposed in this 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 non-performance will not be a default hereunder or a grounds for termination of this Facilities Lease.

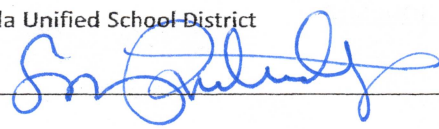
**40. Interpretation.** None of the Parties hereto, nor their respective counsel, shall be deemed the drafters of this Facilities Lease for purposes of construing the provisions thereof. The language in all parts of this Facilities Lease shall in all cases be construed according to its fair meaning,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

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

**ACCEPTED AND AGREED** on the date indicated below:

Dated: 6/24, 2015

Alameda Unified School District

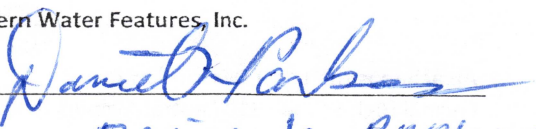
By: 

Print Name: Sean McPhetridge, Ed., D.,

Print Title: Superintendent

Dated: JUNE 24<sup>TH</sup>, 2015

Western Water Features, Inc.

By: 

Print Name: DANIEL K. PARKES

Print Title: PRESIDENT

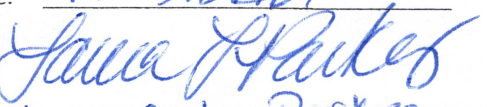
By:   
LAURA L. PARKES  
Sec. OF Corp.

EXHIBIT A

DESCRIPTION OF SCHOOL SITE

Attached is the Legal Description for:

Encinal High School, 210 Central Avenue, Alameda, CA 94501

Real Property in the City of Alameda, County of Alameda, State of California, described as follows:

D E S C R I P T I O N

All that certain real property situated in the City of Alameda, County of Alameda, State of California described as follows:

PARCEL ONE:

ALL THAT certain tract of tide land known as and being Lots 13 and 20 in Section 10, in Township 2 south, in Range 4 west of the Mount Diablo Meridian.

EXCEPTING THEREFROM the following portions:

THAT PORTION granted for use as a public street to City of Alameda, a municipal corporation, by Instrument, dated January 21, 1927, recorded November 9, 1944 in Map Book 4627, of Official Records, at Page 166.

THAT PORTION granted for use as a public street to the City of Alameda, dated July 23, 1952 and recorded August 22, 1952 in Book 6809 at Page 453, Official Records of Alameda County.

THAT PORTION granted to Pan Pacific Development Co., Inc., by Deed recorded February 10, 1971 on Reel 2784, at Image 698, Official Records of Alameda County.

PARCEL TWO:

BLOCK 5, as shown on the Map of Tract 3105, being a Subdivision of Blocks 4 and 5 of Tract 3011 Ballena Bay Community, Alameda, California, filed February 26, 1970, in Book 63 of Maps, Pages 79 through 82, inclusive, Alameda County Records.

PARCEL THREE:

A NON-EXCLUSIVE easement for ingress and egress over that certain 40 foot private roadway "B" as shown on the Map of Tract 3105, being a subdivision of Blocks 4 and 5 of Tract 3011 Ballena Bay Community, Alameda, California, filed February 26, 1970, in Book 63 of Maps, Pages 79 through 82, inclusive, Alameda County Records.

PARCEL FOUR:

AN EASEMENT for ingress and egress over the entire parcel of land granted to Pan Pacific Development Co., Inc., as reserved by the School District in Deed recorded February 10, 1971 on Reel 2784 at Image 698, Official Records of Alameda County.

Commonly known as: 210 Central Avenue  
Alameda County Account No. 74-1310-1-2 & 74-1312-1

# CALIFORNIA ACKNOWLEDGMENT CERTIFICATE

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy or validity of that document.

State of California

County of Alameda

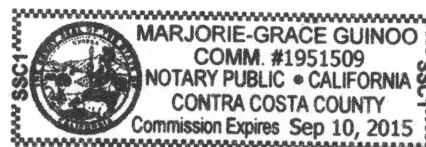
On 06.24.2015 before me Marjorie-Grace Guinoo -Notary Public, personally appeared,  
DANIEL K. PARKES AND LAURA L. PARKES

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledge to me that ~~he/she/they~~ executed the same in ~~his/her/their~~ authorized capacity(ies), and that by ~~his/her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and seal.

Marjorie Grace Guinoo (Seal)



Title of Document:

CONTRACT

Total Number of Pages including Attachments: \_\_\_\_\_

Notary Commission Expiration Date: 09.10.2015

Notary Commission Number: 1951509

EXHIBIT B

DESCRIPTION OF PROJECT SITE

Attached is:

- The Legal Description for a portion of the School Site and
- The Description of the Project that is subject to the Site Lease and the Facilities Lease and upon which Contractor will construct the Project.

Reference Drawings and Specifications entitled:

Attached is Sheet A-1.0, Site Plan-Area of Work

Summary of Work

Table of Contents for Specifications

List of Drawings



- ALL NEW WORK SHALL BE ACCESSIBLE. ALL NEW WALKWAYS SHALL BE CONCRETE. ALL EXISTING MATERIALS NOT OTHERWISE NOTED SHALL BE CONCRETE.
- CONCRETE SHALL HAVE MIN. '18" PER FOOT AWAY FROM BUILDINGS.
- EXTERIOR DOOR LANDINGS SHALL SLOPE 1/4" PER FOOT MAX. AWAY FROM BUILDING FOR DRAINAGE.
- REFER TO CIVIL ENGINEERING DWGS. FOR SIDEWALK GRADES, PARKING AND PEDESTRIAN SITE SIGNAGE SHALL COMPLY WITH CIRC SECTIONS 1117.01 & 1117.04.
- PEDESTRIAN GATES SHALL COMPLY WITH CIRC 1117.05 & 1117.06.
- PEDESTRIAN GATES SHALL COMPLY WITH CIRC 1008.2 & 11308.2.
- PEDESTRIAN GATES SHALL BE FREE PATH OF TRAVEL.
- PEDESTRIAN GATES SHALL INDICATE BARRIER FREE PATH OF TRAVEL.

Function of Space	Area	Occupant Load Factor	Occupant Load
Swimming Pool Area	9025 s.f.	50	181 Occupants
Life Training Pool Area	1800 s.f.	50	36 Occupants
Deck Area	13015 s.f.	15	868 Occupants
Swimming Center	2134 s.f.	50	43 Occupants
Mechanical Equipment	981 s.f.	300	3,243 Occupants
			1,021 Occupants

mon per occupant x 1051 = 210.1 inches minimum required

72 inches x 3  
216 inches

Total width provided =

the biers required at exit gates

Alameda Unified School District

(F) BUILDING

(B) BOYS' STUDENT TOILET

(S) STAFF TOILET

(G) GIRLS' STUDENT TOILET

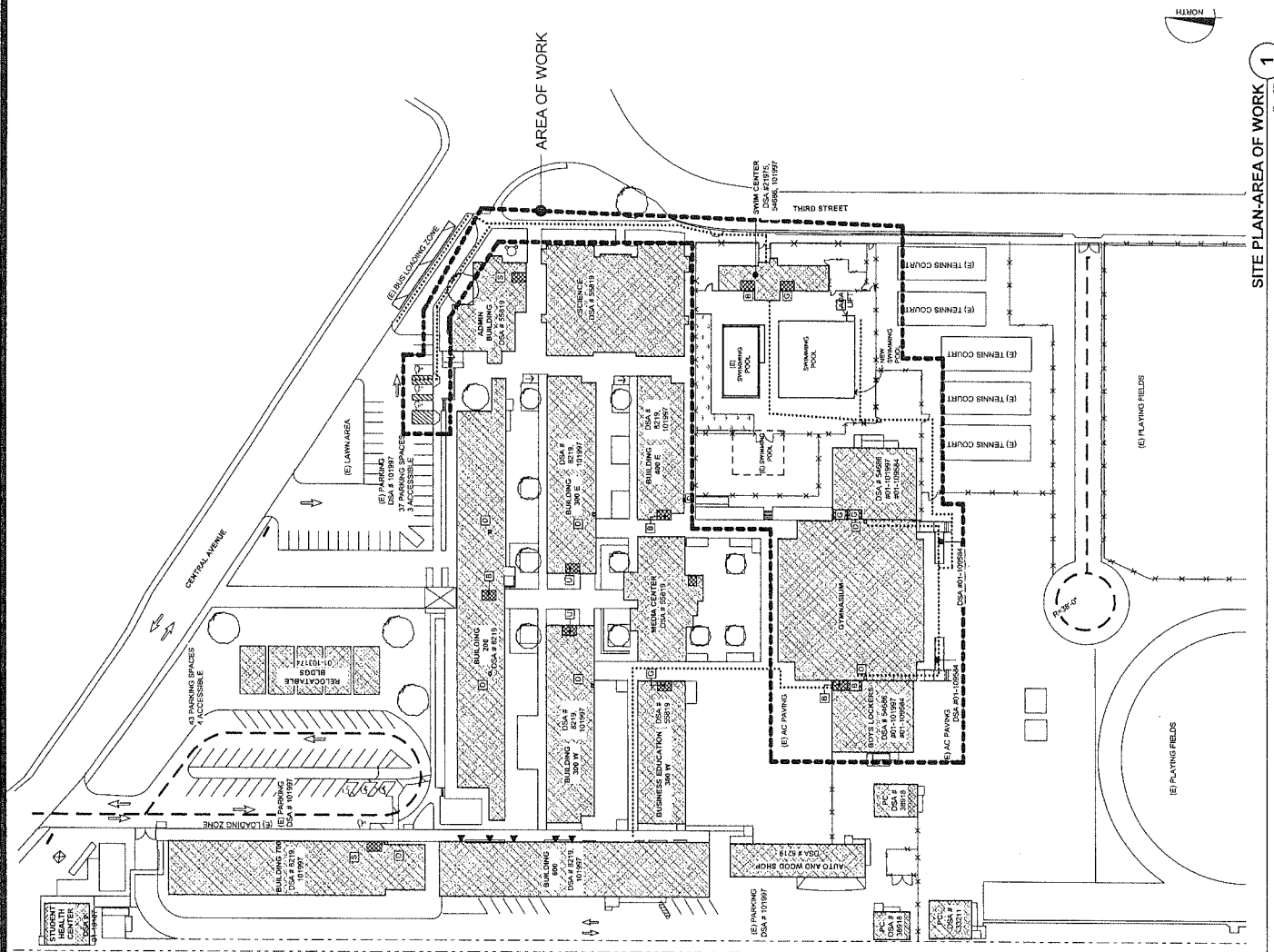
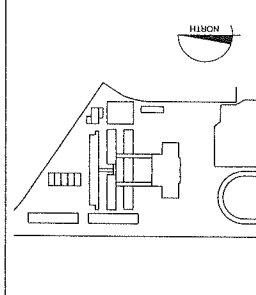
(U) UNISEX STUDENT TOILET

(D) DRINKING FOUNTAIN

(E) DRINKING FOUNTAIN

—

## A-1.0



1 SITE PLAN-AREA OF WORK



## **EXHIBIT B**

### **SUMMARY OF WORK**

As shown on the Contract Documents prepared by Quattrocchi-Kwok Architects and briefly described as:

The project consists of improvements to an existing Pool Facility.

These improvements include:

Demolition of the existing Diving Pool

Renovation of the existing Training Pool

Demolition and replacement of the existing Swimming Pool

Demolition and replacement of the existing pool decks, deck drainage and underground piping

New Pool Mechanical Equipment and appurtenances

Renovation to the existing Boys and Girls Locker Rooms in the Gym to provide ADA compliance for the restrooms, lockers and signage

Renovation to the existing Swim Center to allow ADA compliant access to and through the building to the pool deck

Limited modifications to existing sidewalks to provide ADA compliant path of travel from existing onsite parking to the Swim Center

New fencing and gates

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NOT USED

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NOT USED

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NOT USED

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

**GUARANTEED PROJECT COST 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) to the District as consideration for the Site Lease.

2. **Guaranteed Project Cost.** Pursuant to the Facilities Lease, Contractor will cause the Project to be constructed for **Two Million-One Hundred Fifty-Five Thousand, Five Hundred Forty-Three Dollars (\$2,155,543.00)**, ("Guaranteed Project Cost"). 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 Project Cost. District shall pay the Guaranteed Project Cost to Contractor in the form of Tenant Improvement Payments and Lease Payments as indicated herein. The Guaranteed Project Cost includes the following components and as further detailed herein:

**2.1. Cost to Perform Work.**

2.1.1. **Subcontract Costs.** Payments made by the Contractor to Subcontractors, which payments shall be made in accordance with the requirements of the Contract Documents.

2.1.2. **Contractor-Performed Work.** Costs incurred by the Contractor for self-performed work.

2.1.3. **Allowances.** These amount(s) shall be part of the cost to perform the work and it is expected that the Contractor shall include all Allowance amount(s) when it establishes its Fee. Contractor shall be permitted to charge only its direct costs to perform the work, as indicated through documentation approved to the District. Contractor shall not include in its charge(s) under a particular allowance the coordination, supervision, bond costs, overhead and profit, installation and all indirect costs associated with performing the work of each allowance. These amounts

2.1.3.1. The Allowances for this Project are the following: **N/A**

Scope	Amount
Unforeseen Underground Site Conditions	\$_____ .00
	\$_____ .00
	\$_____ .00
	\$_____ .00
<b>Total</b>	<b>\$_____ .00</b>

2.2. **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 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.

**2.3. 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.

Any unused allowance or unused portion thereof shall be deducted from the Cost of the Work. The amount to deduct shall be calculated using the steps in the "Changes in the Work" provisions of **Exhibit "D"** to the Facilities Lease including the Deductive Change Order provisions therein.

**2.4. Contingency.**

2.4.1. **N/A**

**2.5. Bonds and Insurance.**

**2.6. Overhead and Profit.**

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

**3.1. Tenant Improvement Payments.** Prior to the District's taking delivery or occupancy of the Project, the District shall pay to Contractor **One Million- Nine Hundred Thirty-Nine Thousand Nine Hundred Eighty-Eight Dollars and Seventy Cents (\$1,939,988.70)** ("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.

**3.2. Lease Payments.** After the Parties execute the Memorandum of Commencement Date, attached to the Facilities Lease as **Exhibit "E,"** the District shall pay to Contractor **Two Hundred Fifteen Thousand Five Hundred Fifty-Four Dollars and Thirty Cents (\$215,554.30)** ("Lease Payment(s)"), as indicated below.

3.2.1. The Lease Payments 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.

3.2.2. The District represents that the total annual Lease Payment 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.

3.2.3. **Fair Rental Value.** District and Contractor have agreed and determined that the total Lease Payments 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.

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

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

3.2.4.2. Lease Payments 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.

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

3.2.4.4. The District further covenants to 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 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 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.

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

3.2.5. The Lease Payment Amount shall be paid pursuant to the following structure and the annual interest rate shall be at or below the then current Prime Rate as published in the Wall Street Journal plus **Two percent (2%)**:

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)
__ days after NOC filed	<b>\$35,925.72</b>		
__ days after NOC filed	<b>\$35,925.72</b>		
__ days after NOC filed	<b>\$35,925.72</b>		
__ days after NOC filed	<b>\$35,925.72</b>		
__ days after NOC filed	<b>\$35,925.72</b>		
__ days after NOC filed	<b>\$35,925.72</b>		

3.2.6. **Financed Portion of Lease Payments.** The District does not at this time believe it will need the Contractor to finance a portion of the Lease Payments. The District and the Contractor have agreed that the District may request at a future time that the Contractor agree to convert a portion of the Tenant Improvement Payments into Lease Payments and revise the Lease Payment schedule. If the District makes this request, the District and the Contractor agree to negotiate in good faith regarding whether Contractor can provide that financing, the amount of that financing, and the terms of that financing, which, if agreed to, shall be memorialized in a written amendment to the Facilities Lease and approved by the Parties.

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

#### **4. Changes to Guaranteed Project Cost.**

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

**4.2.** The Parties acknowledge that the Guaranteed Project Cost is based on the Construction Documents, including the plans, and specifications, as identified in **Exhibit "B"** to the Facilities Lease.

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

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

#### **5. District's Purchase Option**

**5.1.** If the District is not then in uncured Default hereunder, the District shall have the option to purchase not less than all of the Project in its "as-is, where-is" condition and terminate this Facilities Lease and Site Lease by paying the total remaining unpaid Lease Payments as of the date the option is exercised ("Option Price").

**5.2.** District shall provide Contractor no less than three (3) days' prior written notice that District is exercising its option to purchase the Project as set forth above on a specific date ("Option Date"). If the District exercises this option, the District shall pay directly to Contractor the Option Price on or prior to the Option Date and Contractor shall at that time deliver to District all reasonably necessary documents in recordable form to terminate this Facilities Lease and the Site Lease. District may record all such documents at District's cost and expense.

**5.3.** Under no circumstances can the first Option Date be on or before thirty-five (35) days after the Contractor completes the Project and the District accepts the Project.

**6. ~~Agreement for Preliminary Services ("PSA").~~** The Parties acknowledge that Contractor performed preliminary services related to the Project under a PSA.

EXHIBIT "D"  
TO  
FACILITIES LEASE

GENERAL CONSTRUCTION PROVISIONS

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This Exhibit D constitutes the "General Construction Provisions" that govern the overall construction and Project Completion by Contractor.

## **1. CONTRACT TERMS AND DEFINITIONS**

### **1.1. Definitions**

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

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

**1.1.2. Allowance:** Amount(s) included in the Guaranteed Project Cost that the Parties agree shall be used, if used at all, to pay for the specific cost or construction of the specific scope of work identified with that amount of money. By agreeing to an Allowance amount, the Parties agree (1) the specific scope of Work or cost may not be necessary; (2) the cost to perform the specific scope of Work cannot be determined on the Effective Date; (3) is a reasonable estimate of the cost to do the specific scope of Work.

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

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

**1.1.5. Beneficial Occupancy:** Occupancy of the Project by the District for its intended purpose and which produces relatively little interference with the Contractor in completing construction.

**1.1.6. Change Order:** A written order to the Contractor authorizing an addition to, deletion from, or revision in the Work, and/or authorizing an adjustment in the Guaranteed Project Cost or Contract Time. If a Change Order is required to be approved by DSA, the District may call it a Construction Change Document.

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

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

**1.1.9. Construction Schedule:** The progress schedule of construction of the Project as provided by Contractor and approved by District.

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



- 1.1.10.1. Site Lease
- 1.1.10.2. Facilities Lease, with all of its Exhibits
- 1.1.10.3. These General Construction Provisions
- 1.1.10.4. Noncollusion Affidavit
- 1.1.10.5. Workers' Compensation Certification
- 1.1.10.6. Prevailing Wage Certification
- 1.1.10.7. Disabled Veterans Business Enterprise Participation Certification
- 1.1.10.8. Drug-Free Workplace Certification
- 1.1.10.9. Tobacco-Free Environment Certification
- 1.1.10.10. Lead-Based Paint Certification
- 1.1.10.11. Hazardous Materials Certification
- 1.1.10.12. Imported Materials Certification
- 1.1.10.13. Criminal Background Investigation/Fingerprinting Certification
- 1.1.10.14. Roofing Contract Financial Interest Certification
- 1.1.10.15. Storm Water Pollution Prevention Plan
- 1.1.10.16. Performance Bond
- 1.1.10.17. Payment Bond (Contractor's Labor & Material Bond)
- 1.1.10.18. All Division 1 Documents, which shall only supplement these General Construction Provisions, but shall not control if their provisions contradict these Construction Provisions
- 1.1.10.19. All Plans, Technical Specifications, and Drawings
- 1.1.10.20. Any and all addenda to any of the above documents
- 1.1.10.21. Any and all change orders or written modifications to the above documents if approved in writing by the District

**1.1.11. Contract Time:** The time period stated in the Facilities Lease for Project Completion.

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

**1.1.13. Day(s):** Unless otherwise designated, day(s) means calendar day(s).

**1.1.14. Contractor (or "Contractor"):** The entity identified in the Facilities Lease as contracting to perform the Work to be done under this Contract, or the legal representative of such a person or persons.

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

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

- 1.1.15.2. Direct the Construction Manager or the Architect to communicate with or direct the Contractor on matters for which the Contract Documents indicate the District will communicate with or direct the Contractor.

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

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

**1.1.18. Guaranteed Project Cost (or "Contract Price" or "GPC" or "Guaranteed Maximum Price" or "GMP"):** The total monies payable to the Contractor under the terms and conditions of the Contract Documents.

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

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

**1.1.21. Project:** The planned undertaking as provided for in the Contract Documents.

**1.1.22. Project Completion:** Where the Work to construct the Project is 100% complete, including all punch list items. Final DSA approval of the Project is not required for Project Completion.

**1.1.23. Project Inspector (or "Inspector" or "IOR"):** The individual(s) retained by the District in accordance with title 24 of the California Code of Regulations to monitor and inspect the Project.

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

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

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

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

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

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

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

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

**1.1.32. Site:** The Project site as shown on the Drawings.

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

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

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

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

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

## **1.2. Laws Concerning The Contract**

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

## **1.3. No Oral Agreements**

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

## **1.4. No Assignment**

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

## **1.5. Notice And Service Thereof**

Any notice from one party to the other or otherwise under Contract shall be in writing and shall be dated and signed by the party giving notice or by a duly authorized representative of that party. Any notice shall not be effective for any purpose whatsoever unless served as indicated in the Facilities Lease.

#### **1.6. No Waiver**

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

#### **1.7. Substitutions For Specified Items**

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

**1.7.2.** Requests for substitutions must be done by the successful firm at the time the successful firm submits its GPC.

**1.7.3.** Requests for substitutions after award of the Contract are discouraged and can only be done with approval of the District, in its sole discretion.

**1.7.4.** Whenever in the Plans and Specifications any materials, process, or article is indicated or specified by grade, patent, or proprietary name, or by name of manufacturer, that Plans and Specifications shall be deemed to be followed by the words "or equal." Contractor may, unless otherwise stated, offer any material, process, or article that shall be substantially equal or better in every respect to that so indicated or specified.

**1.7.4.1.** If the material, process, or article offered by Contractor is not, in the opinion of the District, substantially equal or better in every respect to that specified, then Contractor shall furnish the material, process, or article specified in the Plans and Specifications without any additional compensation or change order.

**1.7.4.2.** This provision shall not be applicable with respect to any material, product, thing or service for which District made findings and gave notice in accordance with Public Contract Code section 3400(b); therefore, Contractor shall not be entitled to request a substitution with respect to those materials, products or services.

**1.7.5.** A request for a substitution shall be in writing and shall include:

**1.7.5.1.** All variations of the proposed substitute from the material specified including, but not limited to, principles of operation, materials, or construction finish, thickness or gauge of materials, dimensions, weight, and tolerances;

**1.7.5.2.** Available maintenance, repair or replacement services;

**1.7.5.3.** Increases or decreases in operating, maintenance, repair, replacement, and spare parts costs;

**1.7.5.4.** Whether or not acceptance of the substitute will require other changes in the Work (or in work performed by the District or others under Contract with the District); and

**1.7.5.5.** The time impact on any part of the Work resulting directly or indirectly from acceptance of the proposed substitute.

**1.7.6.** No substitutions shall be made until approved, in writing, by the District. The burden of proof as to equality of any material, process, or article shall rest with Contractor. The Contractor warrants that if substitutes are approved:

**1.7.6.1.** The proposed substitute is equal or superior in all respects to that specified, and that such proposed substitute is suitable and fit for the intended purpose and will perform adequately the function and achieve the results called for by the general design and the Contract Documents;

**1.7.6.2.** The Contractor provides the same warranties and guarantees for the substitute that would be provided for that specified;

**1.7.6.3.** The Contractor shall be fully responsible for the installation of the substitute and any changes in the Work required, either directly or indirectly, because of the acceptance of such substitute, with no increase in Contract Price or Contract Time. Incidental changes or extra component parts required to accommodate the substitute will be made by the Contractor without a change in the Contract Price or Contract Time;

**1.7.6.4.** The Contractor shall be responsible for any re-design costs occasioned by District's acceptance and/or approval of any substitute; and

**1.7.6.5.** The Contractor shall, in the event that a substitute is less costly than that specified, credit the District with one hundred percent (100%) of the net difference between the substitute and the originally specified material. In this event, the Contractor agrees to execute a deductive Change Order to reflect that credit.

**1.7.7.** In the event Contractor furnishes a material, process, or article more expensive than that specified, the difference in the cost of that material, process, or article so furnished shall be borne by Contractor.

**1.7.8.** In no event shall the District be liable for any increase in GPC or Contract Time due to any claimed delay in the evaluation of any proposed substitute or in the acceptance or rejection of any proposed substitute.

**1.7.9.** If the District approves a substitution after the award of the Contract, the District shall memorialize that approval in a Change Order or other applicable Contract modification process.

## **1.8. Materials and Work**

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

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

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

**1.8.4.** For all materials and equipment specified or indicated in the Drawings, the Contractor shall provide all labor, materials, equipment, and services necessary for complete assemblies and complete working systems, functioning as intended, including incidental items not indicated on Drawings, nor mentioned in the Specifications, that can legitimately and reasonably be inferred to belong to the Work described, or be necessary in good practice to provide a complete assembly or system. In all instances, material and equipment shall be installed in strict accordance with each manufacturer's most recent published recommendations and specifications.

**1.8.5.** Contractor shall, after award of Contract by District and after relevant submittals have been approved, place orders for materials and/or equipment as specified so that delivery of same may be made without delays to the Work. Contractor shall, upon demand from District, present documentary evidence showing that orders have been placed.

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

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

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

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

**1.8.10.** Contractor certifies that it shall comply with the recycled product requirements of Public Contract Code section 22150, et seq., including, without limitation, section 22154 which states, "All businesses shall certify in writing to the contracting officer, or his or her representative, the minimum, if not exact, percentage of postconsumer material in the products, materials, goods, or supplies being offered or sold to any local public entity."

## **2. [RESERVED]**

### **3. ARCHITECT**

**3.1.** The Architect shall represent the District during the Project and will observe the progress and quality of the Work on behalf of the District. Architect shall have the authority to act on behalf of District to the extent expressly provided in the Contract Documents and to the extent determined by District. Architect shall have authority to reject materials, workmanship, and/or the Work whenever rejection may be necessary, in Architect's reasonable opinion, to insure the proper execution of the Contract.

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

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

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

### **4. CONSTRUCTION MANAGER**

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

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

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

### **5. INSPECTOR, INSPECTIONS, AND TESTS**

#### **5.1. Project Inspector**

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

**5.1.2.** No Work shall be carried on except with the knowledge and under the inspection of the Project Inspector(s). The Project Inspector(s) shall have free access to any or all parts of Work at any time. Contractor shall furnish Project Inspector(s) reasonable opportunities for obtaining such information as may be necessary to keep Project Inspector(s) fully informed respecting progress and manner of work and

character of materials. Inspection of Work shall not relieve Contractor from an obligation to fulfill this Contract. Project Inspector(s) and the DSA are authorized to stop work whenever the Contractor and/or its Subcontractor(s) are not complying with the Contract Documents. Any work stoppage by the Project Inspector(s) and/or DSA shall be without liability to the District. Contractor shall instruct its Subcontractors and employees accordingly.

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

**5.1.4.** Contractor acknowledges that the DSA inspection, approval and certification process for projects was revised in 2012-2013 and that Contractor must comply with the requirements of the most recent versions of DSA document PR 13-01. Below are provisions of this document from 2012-2013: PR 13-01 (Procedure: Construction Oversight Process) - Duties of Contractor related to the use of "Project Inspection Card" (Form DSA 152).

**5.1.4.1.** The Contractor shall carefully study the DSA approved documents and shall plan a schedule of operations well ahead of time.

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

**5.1.4.3.** Verify that forms DSA 152 are issued for the project prior to the commencement of construction.

**5.1.4.4.** Meet with the design team, the Laboratory of Record and the Project Inspector to mutually communicate and understand the testing and inspection program and the methods of communication appropriate for the project.

**5.1.4.5.** Notify the Project Inspector, in writing, of the commencement of construction of each and every aspect of the work at least 48 hours in advance by submitting form DSA 156 (or other agreed upon written documents) to the Project Inspector.

**5.1.4.6.** Notify the Project Inspector of the completion of construction of each and every aspect of the work by submitting form DSA 156 (or other agreed upon written documents) to the Project Inspector.

**5.1.4.7.** Consider the relationship of the signed off blocks and sections of the form DSA 152 and the commencement of subsequent work. Until the Project Inspector has signed off applicable blocks and sections of the form DSA 152, the Contractor may be prohibited from proceeding with subsequent construction activities that cover up the unapproved work. Any subsequent construction activities, that cover up the unapproved work, will be subject to a "Stop Work Order" from the DSA or the District and are subject to removal and remediation if found to be in non-compliance with the DSA approved construction documents.

## **5.2. Tests and Inspections**

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

**5.2.2.** The District will select an independent testing laboratory to conduct the tests. Selection of the materials required to be tested shall be by the laboratory or the District's representative and not by the



Contractor. The Contractor shall notify the District's representative a sufficient time in advance of its readiness for required observation or inspection.

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

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

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

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

If the Contractor performs Work outside the Inspector's regular working hours or requests the Inspector to perform inspections off Site, costs of any inspections required outside regular working hours or off Site shall be borne by the Contractor and may be invoiced to the Contractor by the District or the District may deduct those expenses from the next Tenant Improvement Payment.

## **6. CONTRACTOR**

Contractor shall construct the Work for the Contract price including any adjustment(s) to the Guaranteed Project Cost pursuant to provisions herein regarding changes to the Guaranteed Project Cost. Except as otherwise indicated herein, Contractor shall provide and pay for all labor, materials, equipment, permits, fees, licenses, facilities, transportation, taxes, and services necessary for the proper execution and Project Completion..

### **6.1. Status of Contractor**

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

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

### **6.2. Contractor's Supervision**

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

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

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

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

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

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

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

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

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

### 6.3. Duty to Provide Fit Workers