

SITE LEASE

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

**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 to be performed on portions of the School Site ("Project"); and

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

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

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

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

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

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

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

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

1. **Definitions.** Unless the context clearly otherwise requires, all words and phrases defined in the Facilities Lease shall have the same meaning in this Site Lease.
2. **Exhibits.** The following Exhibits are attached to and by reference incorporated and made a part of this Site Lease.
  - 2.1. **Exhibit A:** Description of School Site
  - 2.2. **Exhibit B:** Description of Project Site
3. **Lease of the Project Site.** The District hereby leases to the Contractor, and the Contractor hereby leases from the District, the Project Site, subject only to Permitted Encumbrances, in accordance with the provisions of this Site Lease, to have and to hold for the term of this Site Lease. This Site Lease shall only take effect if the Facilities Lease is executed by the District and Contractor within three (3) days of execution of this Site Lease.
4. **Leaseback of the Project Site.** The Parties agree that the Project Site will be leased back to the District pursuant to the Facilities Lease for the term thereof.
5. **Term.** The term of this Site Lease shall commence as of the Effective Date and shall terminate on the last day of the Term of the Facilities Lease, provided the District has paid to the Contractor, or its assignee, all payments which may be due under the Facilities Lease, and provided this Site Lease has not been terminated pursuant to the termination provisions of the Facilities Lease.
6. **Payment.** In consideration for the lease of the Project Site by the District to the Contractor and for other good and valuable consideration, the Contractor shall pay One Dollar (\$1.00) to the District upon execution of this Site Lease.
7. **Termination**
  - 7.1. **Termination upon Purchase of Project.** If the District exercises its option to purchase the Project pursuant to the Facilities Lease, then this Site Lease shall terminate concurrently with the District's buy out and termination of the Facilities Lease.
  - 7.2. **Termination Due to Default by Contractor.** If Contractor defaults pursuant to the provision(s) of the Facilities Lease and the District terminates the Facilities Lease pursuant to the Facilities Lease provision(s) allowing termination, then the Contractor shall be deemed to be in default of this Site Lease and this Site Lease shall also terminate at the same time as the Facilities Lease.
  - 7.3. **Termination Due to Default by District.** If District defaults pursuant to the provision(s) of the Facilities Lease, the Contractor, or its assignee, will have the right, for the then remaining term of this Site Lease, to:
    - 7.3.1. Take possession of the Project Site;
    - 7.3.2. If it deems it appropriate, cause appraisal of the Project Site and a study of the then reasonable uses thereof; and
    - 7.3.3. Re-let the Project Site.
8. **Title to School Site.** During the term of this Site Lease, the District shall hold fee title to the School Site, including the Project Site, and nothing in this Site Lease or the Facilities Lease shall change, in any way, the District's ownership interest in the School Site.
9. **Improvements.** Title to all improvements made on the Project Site during the term hereof shall be held, vest

and transfer pursuant to the terms of the Facilities Lease.

- 10. No Merger.** The leaseback of the Project Site by the Contractor to the District pursuant to the Facilities Lease shall not effect or result in a merger of the estates of the District in the Project Site, and the Contractor shall continue to have a leasehold estate in the Project Site pursuant to this Site Lease throughout the term hereof.
- 11. Right of Entry.** The District reserves the right for any of its duly authorized representatives to enter upon the Project Site at any reasonable time to inspect the same or perform other lawful acts, provided the District follows all safety precautions required by the Contractor.
- 12. Quiet Enjoyment.** Subject to any rights the District may have under the Facilities Lease (in the absence of an Event of Default) to possession and enjoyment of the Project Site, the District hereby covenants and agrees that it will not take any action to prevent the Contractor from having quiet and peaceable possession and enjoyment of the Project Site during the term hereof and will, at the request of the Contractor, to the extent that it may lawfully do so, join in any legal action in which the Contractor asserts its right to such possession and enjoyment.
- 13. Waste.** The Contractor agrees that at all times that it is in possession of the Project Site, it will not commit, suffer or permit any waste on the Project Site, and that it will not willfully or knowingly use or permit the use of the Project Site for any illegal purpose or act.
- 14. Further Assurances and Corrective Instruments.** The Parties shall, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Project Site hereby leased or intended so to be or for carrying out the expressed intention of this Site Lease and the Facilities Lease.
- 15. Representations of the District.** The District represents, covenants and warrants to the Contractor as follows:
  - 15.1. Due Organization and Existence.** The District is a school district, duly organized and existing under the Constitution and laws of the State of California.
  - 15.2. Authorization.** The District has the full power and authority to enter into, to execute and to deliver this Site Lease, and to perform all of its duties and obligations hereunder, and has duly authorized the execution of this Site Lease.
  - 15.3. No Violations.** To the best of the District's actual knowledge, neither the execution and delivery of this Site Lease nor the Facilities Lease, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the District is now a party or by which the District is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the District, or upon the Project Site, except Permitted Encumbrances.
  - 15.4. CEQA Compliance.** The District has complied with all requirements imposed upon it by the California Environmental Quality Act (Public Resource Code Section 21000 *et seq.* ("CEQA")) in connection with the Project, and no further environmental review of the project is necessary pursuant to CEQA before the construction of the Project may commence.
  - 15.5. No Litigation.** To the best of the District's actual knowledge, there is no pending or, to the knowledge of District, threatened action or proceeding before any court or federal, state, municipal, or other government authority or administrative agency which will materially adversely affect the ability of District to perform its obligations under this Site Lease.

**15.6. Condemnation Proceedings.**

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

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

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

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

**15.9. Hazardous Materials.** District is not currently aware of any contamination to the Project Site by Hazardous Materials, except for Hazardous Materials of which District has already informed Contractor. If District becomes aware of any act or circumstance which would change or render this representation incorrect, in whole or in part, District will give immediate written notice of such changed fact or circumstance to Contractor.

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

**16.1. Due Organization and Existence.** The Contractor is a California corporation licensed to provide such services in the state of California, duly organized and existing under the laws of the State of California, has power to enter into this Site Lease and the Facilities Lease; is possessed of full power to lease, leaseback, and hold real and personal property and has duly authorized the execution and delivery of all of the aforesaid agreements.

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

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

**16.4. No Bankruptcy.** Contractor is not now nor has it ever been in bankruptcy or receivership.

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

**17. Insurance and Indemnity.** The Contractor and the District shall comply with the insurance requirements and

the indemnity requirements as indicated in the Facilities Lease.

- 18. Assignment and Subleasing.** This Site Lease may be assigned and/or the Project Site subleased, as a whole or in part, by the Contractor only upon the prior written consent of the District to such assignment or sublease, which shall not be unreasonably withheld.
- 19. Restrictions on District.** The District agrees that it will not mortgage, sell, encumber, assign, transfer or convey the Project Site or any portion thereof during the term of this Site Lease in any way that would interfere with or diminish Contractor's interests indicated in this Site Lease.
- 20. Liens and Further Encumbrances.** Contractor agrees to keep the Project Site and every part thereof free and clear of any and all encumbrances and/or liens, including without limitation, pledges, charges, encumbrances, claims, mechanic liens and/or other liens for or arising out of or in connection with work or labor done, services performed, or materials or appliances used or furnished for or in connection with the Project Site or the Project. Pursuant to the Facilities Lease, Contractor further agrees to pay promptly and fully and discharge any and all claims on which any encumbrance and/or lien may or could be based, and to save and hold District free and harmless from any and all such liens, mortgages, and claims of liens and suits or other proceedings pertaining thereto. This subsection does not apply to Permitted Encumbrances.
- 21. Notices.** All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed to have been received as indicated below and to the parties indicated below
- 21.1.** If notice is given by personal delivery thereof, it shall be considered delivered on the day of delivery.
- 21.2.** If notice is given by overnight delivery service, it shall be considered delivered on (1) day after date deposited, as indicated by the delivery service.
- 21.3.** 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.
- 21.4.** 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:
- 21.5.**

**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

**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

**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

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

22. **Binding Effect.** This Site Lease shall inure to the benefit of and shall be binding upon the Contractor and the District and their respective successors and assigns.
23. **No Additional Waiver Implied by One Waiver.** In the event any agreement contained in this Site Lease should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive future compliance with any term hereof or any other breach hereunder.
24. **Severability.** In the event any provision of this Site Lease shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof, unless elimination of such invalid provision materially alters the rights and obligations embodied in this Site Lease or the Facilities Lease.
25. **Amendments, Changes and Modifications.** Except as to the termination rights of both Parties as indicated in the Facilities Lease, this Site Lease may not be amended, changed, modified, altered or terminated without the written agreement of both Parties hereto.
26. **Obligations Absolute.** The Contractor agrees that the obligations of the Contractor are absolute and unconditional and not subject to any charges or setoffs against the District whatsoever.
27. **Execution in Counterparts.** This Site Lease may be executed in several counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.
28. **Contractor and District Representatives.** Whenever under the provisions of this Site Lease approval by the Contractor or the District is required, or the Contractor or the District is required to take some action at the request of the other, such approval or such request shall be given for the Contractor by the Contractor Representative and for the District by the District Representative, and any party hereto shall be authorized to rely upon any such approval or request.
29. **Applicable Law.** This Site Lease shall be governed by and construed in accordance with the laws of the State of California, and venue shall be in the County within which the School Site is located.
30. **Attorney's Fees.** If either party brings an action or proceeding involving the School Site or to enforce the terms of this Site Lease or to declare rights hereunder, each party shall bear the cost of its own attorneys' fees.
31. **Captions.** The captions or headings in this Site Lease are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Site Lease.
32. **Prior Agreements.** This Site Lease and the corresponding Facilities Lease collectively contain all of the agreements of the Parties hereto with respect to any matter covered or mentioned in this Site Lease and no prior agreements or understanding pertaining to any such matter shall be effective for any purpose.
33. **Further Assurances.** Parties shall promptly execute and deliver all documents and instruments reasonably requested to give effect to the provisions of this Site Lease.
34. **Recitals Incorporated.** The Recitals set forth at the beginning of this Site Lease are hereby incorporated into its terms and provisions by this reference.
35. **Time of the Essence.** Time is of the essence with respect to each of the terms, covenants, and conditions of

this Site Lease.

36. **Force Majeure.** A party shall be excused from the performance of any obligation imposed in this Site Lease and the exhibits hereto for any period and to the extent that a party is prevented from performing such obligation, in whole or in part, as a result of delays caused by the other party or third parties, a governmental agency or entity, an act of God, war, terrorism, civil disturbance, forces of nature, fire, flood, earthquake, strikes or lockouts, and such nonperformance will not be a default hereunder or a grounds for termination of this Site Lease.
37. **Interpretation.** None of the Parties hereto, nor their respective counsel, shall be deemed the drafters of this Site Lease or the Facilities Lease for purposes of construing the provisions of each. The language in all parts of this Site Lease shall in all cases be construed according to its fair meaning, not strictly for or against any of the Parties hereto.

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

ACCEPTED AND AGREED on the date indicated below:

Dated: June 24, 2015

Alameda Unified School District

By: 

Print Name: Sean McPhetridge, Ed., D.

Print Title: Superintendent

Dated: JUNE 24, 2015

Western Water Features, Inc.

By: 

Print Name: DANIEL K. PARKES

Print Title: PRESIDENT


  
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

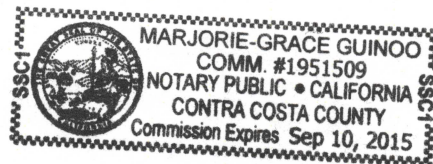
On 06.24.2015 before me Marjorie-Grace Guinoo -Notary Public, personally appeared,  
DANIEL K. PARKES AND LAURA L. PARKES

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 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.

See attached Campus Site Plan, Sheet A-1.1

