

SITE LEASE

This Site lease ("**Site Lease**") dated October 12, 2021 ("**Effective Date**"), is made and entered into by and between the **Alameda Unified School District**, as lessor ("**District**"), and **Lathrop Construction Associates, Inc.**, as lessee ("**Contractor**") (together, the "**Parties**").

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

School Site(s) or Site(s)	Address
ACLC/Nea at Woodstock Site	1900 Third Street, Alameda, CA 94501
Bay Farm School	200 Aughinbaugh Way, Alameda, CA 94501
Earhart Elementary School	400 Packet Landing Road, Alameda, CA 94501

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

WHEREAS, the District desires to provide for the construction of ACLC/Nea Mechanical Modernization & Perimeter Fencing, Bay Farm School New Classroom Building, and Earhart Elementary School Modernization ("**Project(s)**"); and

WHEREAS, the District determines that a portion of the Site(s) are adequate to accommodate the Project, as more particularly described in Exhibit B ("**Project Site(s)**") 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 perform the work of the Project and then lease the Project Site(s) back to the District ("**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(s) to Contractor and by immediately entering into the Facilities Lease under which the Contractor will perform the work of the Project and the 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(s) to Contractor and to have Contractor develop and cause the construction of the Project thereon and lease the Project Site(s) 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(s) from District and to develop and cause the construction of the Project on the Project Site(s), 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, or expressly stated otherwise, all words and phrases defined in the Facilities Lease, and attachments thereto, 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:** Descriptions of the Site(s)
 - 2.2. **Exhibit B:** Descriptions of the Project Site(s) and Descriptions of the Project(s)
3. **Lease of the Project Site(s).** The District hereby leases to the Contractor, and the Contractor hereby leases from the District, the Project Site(s), 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.
 - 3.1. **Work in Phases.** If the Work of the Project is to be performed in phases, then the only areas bound by the terms of this Site Lease are:
 - 3.1.1. As indicated to be within specific phases of the Project and
 - 3.1.2. For which portions of the Lease Payments as provided for in the Facilities Lease are still owing,
4. **Leaseback of the Project Site(s).** The Parties agree that the Project Site(s) 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(s) by the District to the Contractor and for other good and valuable consideration, the Contractor shall pay One Dollar (\$1.00) per year to the District upon execution of this Site Lease until the expiration or early termination of this Site Lease and/or the Facilities Lease.
7. **Termination.** This Site Lease may be terminated only as permitted in the Facilities Lease. If the District terminates the Facilities Lease pursuant to the provisions in the Facilities Lease, then this Site Lease shall also terminate.
8. **Title to Site(s).** During the term of this Site Lease, the District shall hold fee title to the Site(s), including the Project Site(s), and nothing in this Site Lease or the Facilities Lease shall change, in any way, the District's

ownership interest in the Site(s).

9. **Improvements.** Title to all improvements made on the Project Site(s) 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(s) 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(s), and the Contractor shall continue to have a leasehold estate in the Project Site(s) 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(s) at any reasonable time to inspect the same, provided the District follows all safety precautions required by the Contractor.
12. **Quiet Enjoyment.** Subject to any rights the District may have under the Facilities Lease (in the absence of an Event of Default) to possession and enjoyment of the Project Site(s), 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(s) 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(s), it will not commit, suffer or permit any waste on the Project Site(s), and that it will not willfully or knowingly use or permit the use of the Project Site(s) 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(s) 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(s), 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 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(s) 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(s) 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(s), 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(s) subleased, as a whole or in part, by the Contractor only upon the prior written consent of the District to such assignment or sublease, which shall not be unreasonably withheld.
- 19. Restrictions on District.** The District agrees that it will not mortgage, sell, encumber, assign, transfer or convey the Project Site(s) 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(s) 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(s) 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.

If to District:
Alameda Unified School District
 2060 Challenger Drive
 Alameda, CA 94501
 ATTN: Robbie Lyng

If to Contractor:
Lathrop Construction Associates, Inc.
 4001 Park Road
 Benicia, CA 94510
 ATTN: Anthony Reed

With a copy to:
 Orbach Huff & Henderson LLP
 6210 Stoneridge Mall Rd., Ste. 210
 Pleasanton, CA 94588
 ATTN: Glenn Gould, Esq.

With a copy to:

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. 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.
- 27. 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.
- 28. 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 Site(s) is located.
- 29. Attorney's Fees.** If either party brings an action or proceeding involving the Site(s) 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.
- 30. 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.
- 31. 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.
- 32. Further Assurances.** Parties shall promptly execute and deliver all documents and instruments reasonably requested to give effect to the provisions of this Site Lease.
- 33. Recitals Incorporated.** The Recitals set forth at the beginning of this Site Lease are hereby incorporated into its terms and provisions by this reference.
- 34. Time of the Essence.** Time is of the essence with respect to each of the terms, covenants, and conditions of this Site Lease.
- 35. Force Majeure.** A party shall be excused from the performance of any obligation imposed in this Site Lease as indicated in the Facilities Lease.
- 36. Interpretation.** None of the Parties hereto, nor their respective counsel, shall be deemed the drafters of this Site Lease or the Facilities Lease for purposes of construing the provisions of each. The language in all parts of this Site Lease shall in all cases be construed according to its fair meaning, not strictly for or against any of the Parties hereto.

IN WITNESS WHEREOF, the Parties have accepted and agreed to this Site Lease, as of the Effective Date, and have directed and authorized their respective officers to execute this Site Lease:

Alameda Unified School District

Date: _____

Signature: _____

Print Name: Robbie Lyng

Print Title: Senior Director of Construction

Date: _____

Signature: _____

Print Name: Shariq Khan

Print Title: Chief Business Officer

Date: _____

Signature: _____

Print Name: Jennifer Williams

Print Title: Board President

Lathrop Construction Associates, Inc.

Date: November 1, 2021

Signature: 

Print Name: Anthony D'Amante

Print Title: Executive Vice President

**EXHIBIT A
TO SITE LEASE**

(IDENTICAL TO EXHIBIT A TO THE FACILITIES LEASE)

**EXHIBIT B
TO SITE LEASE**

(IDENTICAL TO EXHIBIT B TO THE FACILITIES LEASE)

FACILITIES LEASE

This Facilities lease ("**Facilities Lease**"), dated October 12, 2021 ("**Effective Date**"), is made and entered into by and between **Lathrop Construction Associates, Inc.**, as , as sublessor ("**Contractor**"), and the **Alameda Unified School District**, as sublessee ("**District**") (together, the "**Parties**").

RECITALS

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

School Site(s) or Site(s)	Address
ACLC/Nea at Woodstock Site	1900 Third Street, Alameda, CA 94501
Bay Farm School	200 Aughinbaugh Way, Alameda, CA 94501
Earhart Elementary School	400 Packet Landing Road, Alameda, CA 94501

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

WHEREAS, the District desires to provide for the construction of ACLC/Nea Mechanical Modernization & Perimeter Fencing, Bay Farm School New Classroom Building, and Earhart Elementary School Modernization ("**Project(s)**"); and

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

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

- Quattrocchi Kwok Architects

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(s) 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(s) to Contractor and to have Contractor develop and construct the Project on the Project Site(s) and to lease back to the District the Project Site(s) 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(s) as lessee and to develop the Project and to have the Project constructed on the Project Site(s) and to lease the Project and the Project Site(s) 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(s) to Contractor and by simultaneously entering into this Facilities Lease under which the District will lease back the Project Site(s) and the Project from Contractor and 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, or unless expressly stated otherwise, 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 **Lathrop Construction Associates, Inc.**, a Corporation, organized and existing under the laws of the State of California, and its successors and assigns.

1.2. "Contractor's Representative" means the Managing Member of Contractor, or any person authorized to act on behalf of Contractor under or with respect to this 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 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(s); 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: Descriptions of the Site(s):** The descriptions of the real property constituting the Site(s).
- 2.2. Exhibit B: Descriptions of The Project Site(s) and Descriptions of the Project(s):** The description of the Project Site(s) and the Project.
- 2.3. Exhibit C: Guaranteed Project Cost and Other Project Cost(s), Funding, and Payment Provisions for Each of the Leased Project Site(s):** A detailed description of the Guaranteed Project Cost and the provisions related to the payment of that amount by the District 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 for the Facilities Lease for Each of the Leased Project Site(s):** The Memorandum which will memorialize the commencement and expiration dates of the Term.
- 2.6. Exhibit F: Construction Schedules for each of the Project Site(s):** The Construction Schedule(s) shall be submitted in computer generated network format and shall be organized by Activity Codes representing the Contractor's intended sequencing of the Work, and with time scaled network diagrams of activities. The Preliminary Construction Schedule(s) shall include activities such as mobilization, preparation of submittals, specified review periods, procurement items, fabrication items, milestones, and all detailed construction activities.
- 2.7. Exhibit G: Schedule(s) of Values for Each of the Project Site(s)**
- 2.8. Exhibit H: Subcontractor Procurement Process**
- 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**
- 2.12. Exhibit L: Agreement for Preliminary Services [IF APPLICABLE]**
- 2.13. Exhibit M: Project Labor Agreement between the District and the Alameda Building and Trades Council dated February 9, 2017.**
- 3. Lease of Project and Project Site(s).**
 - 3.1.** Contractor hereby leases the Project and the Project Site(s) to the District, and the District hereby leases said Project and Project Site(s) 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(s) 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(s) pursuant to the Site Lease throughout the term thereof and the term of this Facilities Lease.
 - 3.3.** As to the Project Site(s), this Facilities Lease shall be deemed and constitute a sublease.

3.4. No Disruption to Educational Activities

[REVISE AS NECESSARY IF THE SITE IS NOT AN ACTIVE SCHOOL SITE]

3.4.1. **Occupied School Site(s).** The Contractor acknowledges that portions of the Project Site(s) 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(s). The specifics of the plan and process are as indicated in **Exhibit K**.

3.4.2. **Work During Instructional Time.** Contractor affirms that Work may be performed during ongoing instruction in existing facilities. If so, Contractor agrees to cooperate to the best of its ability to minimize any disruption to the School Site(s) up to, and including, rescheduling specific work activities, at no additional cost to the District.

3.4.3. **Student Testing.** Contractor shall, at no additional cost to the District and at the District's request, coordinate its Work to not disturb District students when students at the School Site(s) are taking State-required tests. No extensions to the Contract Time shall be accommodated as a result of State-required tests, and Contractor shall account for State-required testing when preparing the Construction Schedule(s).

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 occupancy shall commence after the Parties have satisfied all preconditions for the Parties execution of the Memorandum of Commencement as set forth in "Timing of Lease Payments" in **Exhibit C**, and then on the earlier of the following two (2) events ("**Commencement Date**"), and shall terminate **twelve (12) months** after the Commencement Date (the "**Term**"):

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

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

4.2. On the Commencement Date, the Parties shall execute the Memorandum of Commencement Date 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 Commencement Date of the Term.

4.3. The Parties expressly agree that the District's obligation to make Tenant Improvement Payments for Work performed on the Project arises upon the Effective date of this Facilities Lease, and shall be made pursuant to the "Payment of the Guaranteed Project Cost" Provisions as indicated in **Exhibit C**.

4.4. The Parties expressly agree that the District's obligation to make Lease Payments, notwithstanding the Commencement Date, is conditioned on the Contractor completing and satisfying all conditions indicated in **Exhibit C**, that are required prior to the District being obligated to make the first Lease Payment.

4.5. 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:

4.5.1. An Event of Default by District as defined herein and Contractor's election to terminate this

Facilities Lease as permitted herein, or

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

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

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

5. **Payment.** In consideration for the lease of the Project Site(s) 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 "Payment of the Guaranteed Project Cost" Provisions as indicated in **Exhibit C**.

6. **Termination.**

6.1. **Termination Due to Default of the Contractor.**

6.1.1. The District, in its sole discretion, may terminate the Facilities Lease and/or terminate the Contractor's right to perform the work of the Contract based upon Contractor's default.

6.1.2. Default of Contractor includes, without limitation:

6.1.2.1. Contractor refuses or fails to execute the Work or any separable part thereof with sufficient diligence as will ensure its completion within the time specified or any extension thereof, or

6.1.2.2. Contractor fails to complete said Work within the time specified or any extension thereof, or

6.1.2.3. Contractor persistently fails or refuses to perform Work or provide material of sufficient quality as to be in compliance with Contract Documents; or

6.1.2.4. Contractor files a petition for relief as a debtor, or a petition is filed against the Contractor without its consent, and the petition is not dismissed within sixty (60) days; or

6.1.2.5. Contractor makes a general assignment for the benefit of its creditors, or a receiver is appointed on account of its insolvency; or

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

6.1.2.7. Contractor fails to make prompt payment to Subcontractors, or for material, or for labor; or

6.1.2.8. Contractor persistently disregards laws, or ordinances, or instructions of District; or

6.1.2.9. Contractor fails to supply labor, including that of Subcontractors, that can work in harmony with all other elements of labor employed or to be employed on the Work; or

6.1.2.10. Contractor or its Subcontractor(s) is/are otherwise in breach, default, or in substantial violation of any provision of this Contract.

6.1.3. Upon termination, District may immediately serve written notice of tender upon Surety whereby Surety shall have the right to takeover and perform this Contract only if Surety:

6.1.3.1. Within three (3) days after service upon it of the notice of tender, gives District written notice of Surety's intention to takeover and perform this Contract; and

6.1.3.2. Commences performance of the Contract within seven (7) days from date of serving of its notice to District.

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

6.2. 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 the Site Lease, to:

6.2.1. Take possession of the Project Site(s);

6.2.2. If it deems it appropriate, cause appraisal of the Project Site(s) and a study of the then reasonable uses thereof; and

6.2.3. Relet the Project Site(s).

6.3. Termination of Contractor for Convenience. 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, up to and until the date of termination, plus necessary and reasonable documented demobilization costs. If the District terminates for convenience this Facilities during or after completion of Contractor's performance of the Preliminary Services, the Contractor will be entitled to payment for all undisputed amounts for the performance of Preliminary Services as provided for in **Exhibit C**, but shall not be entitled to any additional compensation.

6.4. Lease Terminable Only as Set Forth Herein. Except as otherwise expressly provided in this Facilities Lease and the "Termination and Suspension and Scope Reduction" section of **Exhibit D** to 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 "Payment of Guaranteed Project Cost" Provisions as 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 "Payment of Guaranteed Project Cost Provisions" as 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.

6.5. 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.

6.6. Following Project Completion, and to the extent applicable, 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.

6.7. District acknowledges that Contractor may assign an interest in some or all of the necessary payments pursuant to the "Payment of Guaranteed Project Cost Provisions" as 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.

7. Title.

7.1. During the Term of this Facilities Lease, the District shall hold fee title to the School Site(s), including the Project Site(s), 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(s) 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 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(s) 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(s) 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(s), 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 will 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, execute and deliver this Facilities Lease; 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(s), except Permitted Encumbrances.

10.4. No Bankruptcy. Contractor is not now and has never 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(s), and shall not mortgage or encumber the Project Site(s), 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.

10.8. COVID-19. Contractor shall comply with all applicable and existing federal, state, and/or local statutes, orders, rules, regulations, ordinances, and/or directives relating to construction site safety in connection with COVID-19, and/or any similar virus or derivative strain. Contractor shall ensure it has supervisor employees onsite that are trained and knowledgeable of all of these requirements to ensure full compliance on Project Site(s).

11. Preliminary Services [IF APPLICABLE]

11.1. The terms and conditions pertaining to the performance of Preliminary Services, if any, under this Facilities Lease, are set forth in the Agreement for Preliminary Services (**Exhibit L**) to this Facilities Lease. To the extent any terms and conditions set forth therein conflict with terms and conditions in the body of the Facilities Lease, the terms and conditions contained in **Exhibit L** shall control regarding the performance of Preliminary Services.

11.2. The payment provisions for the Preliminary Services, if any, under this Facilities Lease, are set forth in **Exhibit C** and **Exhibit L** to this Facilities Lease.

11.3. Notwithstanding any provision contained in this Facilities Lease, Contractor shall not be required to perform any Preliminary Services for which a contractor is required to be licensed pursuant to Article 5 (commencing with Section 7065) of Chapter 9, Division 3 of the Business and Professions Code and for which DSA approval is required unless and until the District receives DSA approval for the Project.

12. Construction of Project

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

12.2. Construction of Project.

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

12.2.2. Contract Time / Construction Schedule.

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

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

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

12.2.4. **Liquidated Damages:** Time is of the essence for all work Contractor must perform to obtain Project Completion. It is hereby understood and agreed that it is and will be difficult and/or impossible to ascertain and determine the actual damage that the District will sustain in the event of and by reason of Contractor's delay; therefore, pursuant to Government Code section 53069.85 and Public Contract Code section 7203, Contractor shall forfeit and pay to District the following sum(s) as liquidated damages ("**Liquidated Damages**"): **Two Thousand Dollars (\$2,000) per day** as liquidated damages for each and every day's delay beyond the Contract Time for each School Site(s).

12.2.4.1. **[USE IF PROJECT INVOLVES MULTIPLE SCHOOL SITES]** Each portion of the Liquidated Damages shall be calculated cumulatively. For example, if two of the School Site(s) are delayed as indicated here, the daily liquidated damage amount is two times (2x) the daily rate; three of the School Site(s), three times (3x), etc.

12.2.4.2. It is hereby understood and agreed that neither the total cumulative Liquidate Damages amount nor any portion of the Liquidated Damage amount are penalties.

12.2.4.3. In the event any portion of the liquidated damages is not paid to the District, the District may deduct that amount from any money due or that may become due the Contractor under this Facilities Lease. The District's right to assess liquidated damages is as indicated herein and in the **Exhibit D**. Contractor and Surety shall be liable for and pay to District the entire amount of Liquidated Damages including any portion that exceeds the amount of the Contract Price then held, retained or controlled by District.

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

- 12.2.5. **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.
- 12.2.6. **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 change in the Work pursuant to the provisions of **Exhibit D**.
- 12.2.7. Contractor shall cooperate with the District's efforts to obtain State funding for the Project by complying with any State requirements as reasonably requested by the District.
- 12.2.8. **Compliance Monitoring and Enforcement by the Department of Industrial Relations.**

12.2.8.1. District hereby provides notice of the requirements described in Labor Code section 1771.1, subdivision (a), which states the following:

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

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

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

12.2.9. **Project Labor Agreement.** Contractor understands that Contractor and its subcontractors will be required to comply with all of the requirements in the Project Labor Agreement between the District and the Alameda Building and Trades Council dated February 9, 2017, a copy of which is attached as **Exhibit M** to this Facilities Lease.

13. Maintenance. Following delivery of possession of the Project by Contractor to District, the repair, improvement, replacement and maintenance of the Project and the Project Site(s) 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.

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

15. Taxes and Other Impositions. All ad valorem real property taxes, special taxes, possessory interest taxes, bonds and special lien assessments or other impositions of any kind with respect to the Project, the Project Site(s) 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.

16. Insurance

16.1. Contractor's Insurance. The Contractor shall comply with the insurance requirements as indicated herein.

16.1.1. **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.

16.1.2. Umbrella Liability Insurance

16.1.2.1. 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.

16.1.2.2. 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.

16.1.3. **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 agreed to by the District's risk manager.

16.1.4. Workers' Compensation and Employers' Liability Insurance

16.1.4.1. 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.

16.2. 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.

16.2.1. 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.

16.2.2. Professional Liability Insurance. 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.

16.2.3. Property of Others Insurance (if not expressly stated as part of above insurance policies). If equipment and material are stored off-site and are in the Contractor's possession, the Contractor shall procure and maintain, during the storage of equipment and material, insurance coverage acceptable to the District that shall protect Contractor and District from all claims for Project equipment and materials stored off-site that is lost, stolen, or damaged. The District shall be named as a loss payee for this insurance coverage. The insurance coverage shall include a "loss payable endorsement" stating that all amounts payable will be paid as a joint-check to the Contractor and District. If approved in advance by District, this required insurance may be obtained by an "Employee Theft Protection Insurance Policy" or an "Employee Theft Protection Bond."

16.2.4. Proof of Insurance and Other Requirements: Endorsements and Certificates

16.2.4.1. 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.

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

16.2.4.2.1. 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."

16.2.4.2.2. 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.

16.2.4.3. 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. After the Project has reached Completion, the Contractor need only retain the named additional insureds on the Completed Operations Policy.

16.2.4.4. 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).

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

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

16.2.4.7. All of Contractor's insurance shall be with **ADMITTED** insurance companies with an A.M. Best rating of no less than **A: VII**. Contractor shall provide documentation to the District demonstrating this rating.

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

Commercial General Liability	Combined Single Limit	\$2,000,000
	General Aggregate	\$4,000,000
	Product Liability and Completed Operations	\$2,000,000
Automobile Liability – Any Auto	Combined Single Limit NO General Aggregate	\$2,000,000
Workers Compensation		Statutory limits pursuant to State law
Employers' Liability		\$3,000,000

Contractors Risk (Course of Construction)		Issued for the value and scope of Work indicated herein, until the Project has reached Completion
Excess Liability		\$5,000,000
Property of Others	Combined Single Limit General Aggregate	Issued for the value and scope of Work stored off-site.
Professional Liability, if required by the District and either: - 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

16.3. District's Insurance.

16.3.1. Upon the execution of the Memorandum of Commencement, the District will include the facilities constructed as part of the Project to be thereafter a facility that the District is leasing and that will thereafter be covered by the insurance program in which the District currently participates. If requested by Contractor, District shall provide portions of the District's current insurance documents for the following. At the Contractor's request, District shall request the District's insurance administrator to include Contractor as an additional covered party on those policies, but the District will not ensure that the District's insurance administrator will agree to the request:

- 16.3.1.1. Property Program Liability Coverage
- 16.3.1.2. Interruption of Business / Extra Expense and Rental Value Coverage

17. Indemnification.

17.1. Contractor's Indemnity Obligation. The Contractor shall indemnify, defend with legal counsel reasonably acceptable to the District, protect 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, subcontractor procurement/selection, 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 any Indemnatee. 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.

17.1.1. 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. The Parties agree that if any Court finds that any part of this agreement to indemnify, defend, and hold harmless the Indemnitees to be void or unenforceable, then that that portion found to be void or unenforceable shall be severed to the fullest extent permitted by law from the remainder of this agreement to indemnify, defend and hold harmless, and the remainder of the agreement to indemnify, defend and hold harmless shall remain in full force and effect.

- 17.1.2. 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.

17.2. District's Indemnity Obligation.

- 17.2.1. District shall indemnify, but shall not be obligated to defend, Contractor from and against any claims, damages, expenses or liabilities connected with this Facilities Lease, only:

17.2.1.1. If those claims, damages, expenses or liabilities relate to District's status as a sublessee under this Facilities Lease;

17.2.1.2. To the extent that those claims, damages, expenses or liabilities arise from the negligence or willful acts or omissions of District, its officers, agents or employees; and

17.2.1.3. If those claims, damages, expenses or liabilities are unrelated to District's obligations to pay the Guaranteed Project Cost.

- 17.2.2. After the Commencement Date, the District shall also indemnify and defend Contractor from and against any claims, damages, expenses or liabilities including third-party tort or contract claims that arise from the District's use of the Facilities and that are not caused by the Contractor's Work on the Project or are not covered by Contractor's warranty(s) or guarantee(s) and.

- 17.2.3. Under no circumstances does the District's indemnity obligation herein include any obligation to indemnify the Contractor from any claims, damages, expenses or liabilities connected in any way with a third-party's challenge to the validity of the Site Lease and/or the Facilities Lease.

- 17.3. The Parties understand and acknowledge that the indemnity obligations stated herein may be mutual, comparative or contributory depending on the facts of specific circumstances.

18. Eminent Domain.

- 18.1. **Total Taking After Project Delivery.** If, following delivery of possession of the Project by Contractor to District, all of the Project and the Project Site(s) is taken permanently under the power of eminent domain, the Term shall cease as of the day possession shall be so taken.

- 18.1.1. The financial interest of Contractor shall be limited to the amount of principal payments

pursuant to the Guaranteed 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.

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

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

18.3. Partial Taking. If, following delivery of possession of the Project by Contractor to District, less than all of the Project and the Project Site(s) is taken permanently, or if all of the Project and the Project Site(s) or any part thereof is taken temporarily, under the power of eminent domain:

18.3.1. 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

18.3.2. 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

19. Damage and Destruction. If, following delivery of possession of the Project by Contractor to District, the Project is totally or partially destroyed due to fire, acts of vandalism, flood, storm, earthquake, Acts of God, or other casualty beyond the control of either party hereto, the Term shall end and District shall 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**.

20. Abatement.

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

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

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

20.3.1. Repair the Project to full use;

20.3.2. Replace the Project, at the District's sole cost and expense, with property of equal or greater value of 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

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

21. Access

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

21.2. **By District.** The District shall have the right to enter upon the Project Site(s) at all times. District shall comply with all safety precautions and procedures required by Contractor.

22. Assignment, Subleasing

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

22.1.1. This 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

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

22.2. **Assignment by Contractor.** Contractor may assign its right, title and interest in this 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.

23. Events of Default of District

23.1. **Events of Default by District Defined.** The following shall be "Events of Default" of the District under this 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:

23.1.1. Failure by the District to pay payments required pursuant to the "Payment of the Guaranteed Project Cost" Provisions as indicated in **Exhibit C**, and the continuation of such failure for a period of forty-five (45) days.

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

District with written notice specifying that failure and requesting that the failure be remedied; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, Contractor shall not unreasonably withhold its consent to an extension of such time if corrective action is instituted by the District within the applicable period and diligently pursued until the default is corrected.

23.2. Remedies on District's Default. If there has been an Event of Default on the District's part, the Contractor may exercise any and all remedies available pursuant to law or granted pursuant to this 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.

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

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

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

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

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

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

23.2.3. 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(s) 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(s) shall vest in Contractor as indicated herein.

23.3. District's Continuing Obligation. Unless there has been damage, destruction, a Taking as described above, or the Contractor is in Default as indicated herein, the District shall continue to remain liable for the payments required pursuant to the Guaranteed 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.

23.4. No Remedy Exclusive. No remedy herein conferred upon or reserved to Contractor is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this 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.

24. Events of Default of Contractor

24.1. Events of Default by Contractor Defined. The following shall be “Events of Default” of the Contractor under this 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:

24.1.1. Contractor unreasonably refuses or fails to prosecute the work on the Project with such reasonable diligence as will accomplish Project Completion within the Contract Time or any extension thereof;

24.1.2. Prior to Project Completion, Contractor is adjudged a bankrupt, or files for bankruptcy, or if it should make a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of its insolvency;

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

24.1.4. Failure by the Contractor to perform any material covenant, condition or agreement in this Facilities Lease and that failure continues for a period of seven (7) days after District provides Contractor with written notice specifying that failure and requesting that the failure be remedied; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, District shall not unreasonably withhold its consent to an extension of such time if corrective action is instituted by the Contractor within the applicable period and diligently pursued until the default is corrected.

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

24.2.1. If District terminates the Site Lease and the Facilities Lease pursuant to this section, the Project Site(s) and any improvements built upon the Project Site(s) shall vest in District upon termination of the 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.

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

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

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

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

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

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

If to District:
Alameda Unified School District
2060 Challenger Drive
Alameda, CA 94501
ATTN: Robbie Lyng

If to Contractor:
Lathrop Construction Associates, Inc.
4001 Park Rd.
Benicia, CA 94510
ATTN: Anthony Reed

With a copy to:
Orbach Huff & Henderson LLP
6210 Stoneridge Mall Rd., Ste. 210
Pleasanton, CA 94588
ATTN: Glenn Gould

With a copy to:

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

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

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

28. Severability. In the event any provision of this 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.

29. 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.

30. 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.

31. 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.

32. 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.

33. 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(s) is located.

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

35. Captions. The captions or headings in this 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.

36. 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.

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

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

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

40. Force Majeure.

40.1. A party shall be excused from the performance of any obligation imposed in the Contract for any period and to the extent that a party is prevented from performing those obligation(s), in whole or in part, as a result of delays caused by acts of God; acts of a public enemy; fires; floods; windstorms; tornadoes; earthquakes; wars; riots; insurrections; epidemics; pandemics; quarantine restrictions; strikes; lockouts; fuel shortages; freight embargoes; and Adverse Weather that satisfies the requirements herein ("**Force Majeure Events**").

40.2. A Force Majeure Event will not be a basis for a default hereunder or a grounds for termination of the Contract.

40.3. COVID-19. Contractor agrees that the Contract Time is based on the Contractor's full compliance with all applicable and existing federal, state, and/or local statutes, orders, rules, regulations, ordinances, and/or directives relating to construction site safety in connection with COVID-19, and/or any similar virus or derivative strain. Therefore, any delay associated with COVID-19, or any derivative or similar strain thereof, or any federal, state, or local order relating thereto, shall not be considered a Force Majeure Event unless it materially increases the Contract Time and Contractor has issued a PCO and the District has issued a Change Order pursuant to the "Changes in the Work" provisions in **Exhibit D**. If the Parties cannot in good faith and reasonably agree to an increase in the Contract Time, the Parties agree that dispute will be resolved pursuant to the Claims Resolution Process in **Exhibit D**.

41. 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 accepted and agreed to this Facilities Lease, as of the Effective Date, and have directed and authorized their respective officers to execute this Facilities Lease:

Alameda Unified School District

Date: _____

Signature: _____

Print Name: Robbie Lyng

Print Title: Senior Director of Construction

Date: _____

Signature: _____

Print Name: Shariq Khan

Print Title: Chief Business Officer

Date: _____

Signature: _____

Print Name: Jennifer Williams

Print Title: Board President

Lathrop Construction Associates, Inc.

Date: November 1, 2021

Signature:  _____

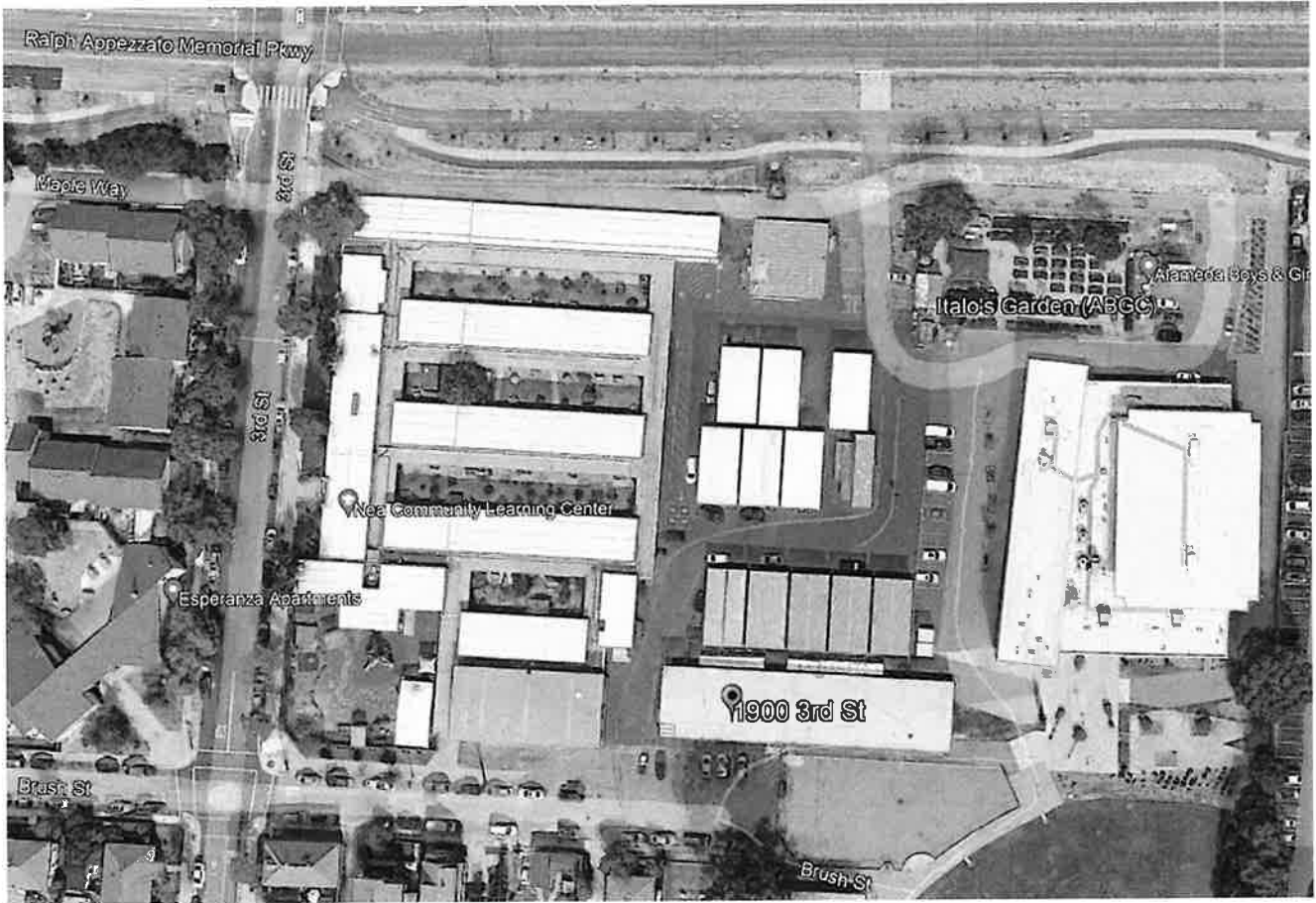
Print Name: Anthony D'Amante

Print Title: Executive Vice President

**EXHIBIT A
TO FACILITIES LEASE**

DESCRIPTION OF DISTRICT SITE(S)

ACLC/NEA (Woodstock Site)
1900 Third St., Alameda CA 94501



Bay Farm School
200 Aughinbaugh Way, Alameda, CA 94501



Earhart Elementary School
400 Packet Landing Rd., Alameda, CA 94501



**EXHIBIT B
TO FACILITIES LEASE**

**DESCRIPTION OF PROJECT SITE(S)
AND
DESCRIPTIONS OF THE PROJECTS AT SCHOOL SITE(S)**

**[INCLUDE IF CONTRACTOR PERFORMS PRELIMINARY SERVICES AND PARTIES AMEND FOR GPC]
CONTRACTOR SHALL NOT BEGIN WORK ON THE CONSTRUCTION PHASE OF THE PROJECT UNTIL THE PARTIES
HAVE AMENDED THE AGREEMENT TO INCLUDE A GUARANTEED PROJECT COST, AND THE DISTRICT HAS ISSUED
A NOTICE TO PROCEED FOR CONSTRUCTION TO THE CONTRACTOR.**

PROJECT SITE(S) DESCRIPTION:

Attached is a site diagram for the portions of School Site(s) that are subject to the Site Lease and the Facilities Lease and upon which Contractor will construct the Project(s).

[TBD]

PROJECT(S) DESCRIPTION:

- **ACLC/NEA at Woodstock Site Mechanical Modernization & Fencing**
 - There are two scopes of work with two different DSA approvals on this campus .
 - Replace existing mechanical unit at existing administration building (Bldg A), 6 classroom building (Bldgs B, C, D, F, G, H, and I), and the Multi-use Building (Bldg C).
 - Perimeter fencing and Modernization project involves installation of new security fencing around the perimeter of the site and modernization of the fire alarm and door hardware at existing buildings.
- **Bay Farm School New Classroom Building and Related Site Work**
 - Project includes construction of a new one-story classroom building with four (4) classrooms and a new outdoor courtyard, removal of existing portable classrooms at the rear of the campus, relocation of existing bike parking corral, and replacement of existing asphalt paving.
- **Earhart Elementary School Modernization**
 - Major Modernization at Bldg 4 – restroom modernization and flooring, new lighting , plumbing upgrades, gutter replacement, repair exterior siding at playground , misc. modernization
 - Minor Modernization at Bldgs 1-3, MPR, and Admin
 - Portables Modernization for PC1-4 and PC 8 – new siding, white boards
 - Campus Wide – replace all water urinals and exhaust fans, interior/exterior painting, new exterior/interior lighting, new building signage, roller shades, new drinking fountains

**EXHIBIT C
TO
FACILITIES LEASE**

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

1. Preliminary Services Payments. [IF APPLICABLE] The terms and conditions pertaining to the payment for Preliminary Services, if any, under the Facilities Lease, are set forth in the Agreement for Preliminary Services (**Exhibit L** to the Facilities Lease).

2. Site Lease Payments. As indicated in the Site Lease, Contractor shall pay One Dollar (\$1.00) per year to the District as consideration for the Site Lease until the expiration or early termination of the Site Lease and/or the Facilities Lease.

3. Guaranteed Project Cost (or Guaranteed Maximum Price). Pursuant to the Facilities Lease, Contractor will cause the Project to be constructed for TBD Dollars (\$), ("**Guaranteed Project Cost**" or "**GPC**" or "**Guaranteed Maximum Price**" or "**GMP**"). Except as indicated herein for modifications to the Project approved by the District pursuant to **Exhibit D**, or by written amendment, 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 plus Interest as indicated herein. The Guaranteed Project Cost includes the following components and as further detailed herein:

3.1. Cost to Perform Work.

3.1.1. Subcontract Costs. Payments made by the Contractor to Subcontractors, which payments shall be made in accordance with the requirements of the Contract Documents. The final, contracted-for amount between the Contractor and each Subcontractor shall be the exact amount that is put into the final GPC, after all leveling between trades and subcontractors and without any added allowances or contingencies, unless specifically identified and approved, in advance, by the District.

3.1.2. Contractor-Performed Work. Costs incurred by the Contractor for self-performed work, if approved in advance by the District and procured pursuant to the Contract Documents.

3.2. General Conditions. The fixed amount to be paid 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 (except for insurance); all fees, permits, 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; 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.

3.3. Bonds and Insurance.

3.4. Overhead and Profit.

3.5. Contingency.

[OPTIONAL. AMOUNTS OF THE CONTINGENCY ARE TO BE NEGOTIATED AT THE TIME THE GUARANTEED PROJECT COST IS SET.]

3.5.1. A contingency of _____ Dollars (\$) ("Contingency") is included in the Guaranteed Project Cost and may be used at the Contractor's request only upon obtaining the District's prior written approval. Prior to requesting the payment for any portion of the Contingency, Contractor must submit to the District a written request for the Contractor's use of the Contingency that shall include a description of the requested use of the Contingency and why it is necessary to complete the Project with sufficient detail and, if necessary, substantiation enabling the District to determine that the proposed use of the Contingency covers one of the items below. The Contingency shall only be for the following items:

3.5.1.1. Scope gaps;

3.5.1.2. Costs to address unforeseen safety items not contemplated by the Parties at the time of the execution of the Contract;

3.5.1.3. Construction associated with the refinement of incomplete design information within the Plans and Specifications that could have been identified and corrected prior to the District's issuance of the solicitation for this Project as part of a reasonable constructability review of the Documents on which the Guaranteed Project Cost is based; provided that the incomplete design information could not have been identified by Contractor's constructability review during Preliminary Phase, if any constructability review was performed by Contractor;

3.5.1.4. Damage that has occurred between trades during construction, excluding (a) costs of repairing or correcting Work damaged or improperly executed by workers, (b) work that was improperly or incorrectly performed by Contractor or its subcontractors or suppliers, or (c) damage that is covered by Contractor's or Subcontractor's insurance, excluding the District's insurance; or

3.5.1.5. Other items requested by the Contractor if approved by the District and in the District's sole discretion.

3.5.2. The Contingency shall only be used:

3.5.2.1. Upon Contractor demonstrating that the item was not otherwise in its or its Subcontractors' pricing for the Project; and

3.5.2.2. Only if the cost of the Work is not recoverable by Contractor from any other available funding source, including, without limitation, from others, by insurance or otherwise.

3.5.3. Contractor shall prepare documents for its use of Contingency through the "Changes in the Work" section of **Exhibit D**. Any PCO shall identify that Contractor shall be compensated out of the Contingency. The Contractor is entitled to mark-up its pricing in the same structure it can for a Change Order (see the "Format for Proposed Change Order" section in **Exhibit D**) when it uses the Contingency, but only if the Contractor did not include the Contingency amount when it priced its Fee, bonds and insurance, overhead or profit to establish the GPC. Contractor shall prepare an updated Schedule of Values that includes a line item for the Work approved by the District in connection with the PCO.

3.5.4. If Contractor depletes the Contingency, any costs for items referenced in this "Contingency" section shall be at the Contractor's sole expense.

3.5.5. The unused portion of the Contingency shall be retained by the District at the end of the Project.

3.6. Allowances. [IDENTIFY SPECIFIC SCOPES AND AMOUNTS.]. Allowances, as indicated below _____ Dollars (\$) ("Allowance(s)") are included in the Guaranteed Project Cost and may be used at the Contractor's request only upon obtaining the District's prior written approval.

[LIST ANY, IF APPLICABLE]

Allowance to _____ [LIST SCOPE OF ALLOWANCE, IF APPLICABLE]	\$ _____ [LIST AMOUNT OF ALLOWANCE]
Allowance to _____ [LIST SCOPE OF ALLOWANCE, IF APPLICABLE]	\$ _____ [LIST AMOUNT OF ALLOWANCE]
Allowance to _____ [LIST SCOPE OF ALLOWANCE, IF APPLICABLE]	\$ _____ [LIST AMOUNT OF ALLOWANCE]

3.6.1. Prior to requesting the payment for any use of an Allowance, Contractor must submit to the District a written request for the Allowance that shall include a description of the requested use of the Allowance and why it is necessary to complete the Project.

3.6.2. Contractor shall prepare documents for its use of an Allowance through the "Changes in the Work" section of **Exhibit D**. Any PCO shall identify that Contractor shall be compensated out of an Allowance. The Contractor is entitled to mark-up its pricing in the same structure it can for a Change Order (see the "Format for Proposed Change Order" section in **Exhibit D**) when it uses an Allowance, but only if the Contractor did not include the Allowances amount when it priced its Fee, bonds and insurance, overhead or profit to establish the GPC. Contractor shall prepare an updated Schedule of Values that includes a line item for the Work approved by the District in connection with the PCO.

3.6.3. The unused portion of the Allowances shall be retained by the District at the end of the Project.

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

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

4.2. Lease Payments Plus Interest. Thirty (30) days after the Parties execute the Memorandum of Commencement Date attached to the Facilities Lease as **Exhibit E** and the Contractor has completed and satisfied the conditions indicated below, the District shall pay to Contractor _____ Dollars (\$) ("Lease Payment(s)") plus interest, as indicated below.

4.2.1. It is the intent of the Parties that the Lease Payments plus interest will be kept from the Contractor's final payment application(s), including payment application(s) seeking payment of any Retention held pursuant to the Contract Documents.

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

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

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

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

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

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

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

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

4.2.5.5. The Contractor cannot, under any circumstances, accelerate the District's payments under the Facilities Lease, but the District may elect to buyout the Facilities Lease as provided for herein.

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

4.2.6.1. The Final Tenant Improvement Payment has been paid;

4.2.6.2. All applicable Retention (less the Lease Payments) has been paid pursuant to the terms of the Contract Documents;

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

4.2.6.4. The Contractor has provided a duly completed and executed "**Unconditional Waiver and**

Release upon Final Payment” compliant with Civil Code section 8138 from all subcontractors of any tier and suppliers that each has been paid all amounts owing to it from the Contractor for all work on the Project.

4.2.7. The Lease Payment Amount shall be paid pursuant to the following structure and the annual interest rate shall be at _____ percent. To the extent that the Term runs into a subsequent calendar year, the interest rate shall not adjust, unless agreed upon by the District in writing.

Date of Payment	(A) Lease Payments	(B) Interest Due on Lease Payment	Lease Payment plus interest due by District to Contractor (A + B)
30 Days after execution of Memorandum of Commencement and the above conditions have been completed and satisfied	1/12 of Lease Payment	\$___	\$___
30 days thereafter	1/12 of Lease Payment	\$___	\$___
30 days thereafter	1/12 of Lease Payment	\$___	\$___
30 days thereafter	1/12 of Lease Payment	\$___	\$___
30 days thereafter	1/12 of Lease Payment	\$___	\$___
30 days thereafter	1/12 of Lease Payment	\$___	\$___
30 days thereafter	1/12 of Lease Payment	\$___	\$___
30 days thereafter	1/12 of Lease Payment	\$___	\$___
30 days thereafter	1/12 of Lease Payment	\$___	\$___
30 days thereafter	1/12 of Lease Payment	\$___	\$___
30 days thereafter	1/12 of Lease Payment	\$___	\$___
30 days thereafter	1/12 of Lease Payment	\$___	\$___
Total	\$___	\$___	\$___

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

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

5. Changes to Guaranteed Project Cost.

5.1. As indicated in the Facilities Lease, the Parties may add or remove specific scopes of work from the Project. Based on these change(s), the Parties may agree to a reduction or increase in the Guaranteed 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. Any change to the Guaranteed Project Cost shall not affect the Lease Payments, nor the interest rate, unless expressly agreed upon by the District in writing.

5.2. The Parties acknowledge that the Guaranteed Project Cost is based on the Construction Documents, including the Plans and Specifications, as identified in **Exhibit J** to the Facilities Lease.

5.3. Cost Savings. Contractor shall work cooperatively with Architect, subcontractors and District, in good faith, to identify appropriate opportunities to reduce Project costs and promote cost savings. Any identified cost savings from the Guaranteed 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.

5.4. Insurance and Bond Reimbursements. At Project Completion, Contractor shall require reimbursement from its insurance brokers and/or insurers and its bond brokers and/or sureties, all portions of Contractor's bond premiums, either paid or to be paid, that are not at-risk due to a reduction in the Guaranteed 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.

6. Future Buyout of Facilities Lease. The District may choose to buyout the Lease Payments in a lump sum during the term of the Facilities Lease. The Parties agree that any buyout will be memorialized in writing and serve to terminate the Site Lease and the Facilities Lease and will reduce the interest owed based on the time of the buyout. Under no circumstances can this buyout occur until at least sixty (60) days after Project Completion or the Execution of the Memorandum of Commencement Date, whichever is later. In no event shall any buyout increase the total amount of Lease Payment amounts, plus interest in excess of the amounts included in the Project's Guaranteed Project Cost.

**EXHIBIT D
TO
FACILITIES LEASE**

GENERAL CONSTRUCTION PROVISIONS

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This Exhibit D constitutes the "General Construction Provisions" (sometimes called the "General Conditions") 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 Site(s).

1.1.2. Allowance(s): Amount(s) that are within the GPC that, if used at all, will be to pay for the cost or construction of a scope of work identified at the time the Allowance is utilized.

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. Completion (or "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.

1.1.8. Construction Manager (or "Project 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 Declaration
- 1.1.10.5. Certifications to be Completed by Contractor
- 1.1.10.6. Disabled Veterans Business Enterprise Participation Certification
- 1.1.10.7. Criminal Background Investigation/Fingerprinting Certification
- 1.1.10.8. Roofing Contract Financial Interest Certification
- 1.1.10.9. Performance Bond
- 1.1.10.10. Payment Bond (Contractor's Labor & Material Bond)
- 1.1.10.11. All Division 1 Documents, which shall only supplement these General Construction Provisions, but shall not control if their provisions contradict these Construction Provisions
- 1.1.10.12. All Plans, Technical Specifications, and Drawings
- 1.1.10.13. Any and all addenda to any of the above documents
- 1.1.10.14. 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. Contractor (or "Contractor"): The licensed person, entity, or entities identified in the Facilities Lease as contracting to perform the Work to be done under this Contract.

1.1.13. 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.

1.1.14. Day(s): Unless otherwise designated, day(s) means calendar day(s). "**Business Days**" shall mean days except Saturday, Sunday, a day that is federally-recognized holiday, or a day that is a California-recognized holiday

1.1.15. Defective or Nonconforming Work. Defective or nonconforming Work is any Work which is unsatisfactory, faulty or deficient by: (a) not conforming to the requirements of the Contract Documents; (b) not conforming to the standards of workmanship of the applicable trade; (c) not being in compliance with the requirements of any inspection, reference, standard, test, or approval required by the Contract Documents; or (d) not conforming with applicable codes or regulations; or (e) damage to Work occurring prior to Completion.

1.1.16. 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,

1.1.16.1. 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

1.1.16.2. 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.

1.1.17. 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.

1.1.18. DSA: Division of the State Architect.

1.1.19. Force Account Directive: A process that may be used when the District and the Contractor

cannot agree on a price for a specific scope of work or before Contractor prepares a price for the scope of work, Contractor performs on a time and materials basis.

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

1.1.21. 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.

1.1.22. 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.

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

1.1.24. 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.

1.1.25. Program Manager: The individual, partnership, corporation, joint venture, or any combination thereof, or its authorized representative, named as such by the District. If no Program 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.

1.1.26. 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.

1.1.27. 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.

1.1.28. 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.

1.1.29. 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”).

1.1.30. 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.

1.1.31. 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.

1.1.32. 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.

1.1.33. Site: The Project Site(s) as shown on the Drawings.

1.1.34. 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.

1.1.35. Standard of Care. Contractor shall perform all of its Services, including all due diligence tasks, constructability reviews, value engineering recommendations and Preliminary Services, pursuant to the standard of care of a contractor performing similar tasks for California school districts, which shall not include any design, architectural, or engineering responsibility for the Project.

1.1.36. 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.

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

1.1.38. 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.

1.1.39. Terms. The term "provide" means "provide complete in place" or to "furnish and install" such item. Unless otherwise provided in the Contract Documents, the terms "approved;" "directed;" "satisfactory;" "accepted;" "acceptable;" "proper;" "required;" "necessary" and "equal" shall mean as approved, directed, satisfactory, accepted, acceptable, proper, required, necessary and equal, in the opinion of the District. The term "typical" as used in the Drawings shall require the installation or furnishing of such item(s) of the Work designated as "typical" in all other areas similarly marked as "typical"; Work in such other areas shall conform to that shown as "typical" or as reasonably inferable therefrom.

1.1.40. Unilateral Change Order: 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 Unilateral Change Order is NOT a Construction Change Document (which is defined above as a Change Order that DSA must approve).**

1.1.41. 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 become 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

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.

1.8. 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. COVID-19. Contractor shall comply with all applicable and existing federal, state, and/or local statutes, orders, rules, regulations, ordinances, and/or directives relating to construction site safety in connection with COVID-19, and/or any similar virus or derivative strain including, without limitation, providing personal protective equipment ("PPE") to its employees and to ensure that its subcontractors provide PPE equipment to its employees to prevent the spread of COVID-19 or any other similar virus or derivative strain at the Project Site(s). Contractor shall ensure it has supervisor employees onsite that are trained and knowledgeable of all of these requirements to ensure full compliance on Project Site(s).

1.8.3. 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.

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

1.8.5. 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.

1.8.6. 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. Failure of Contractor to comply with this provision shall not be a basis for an extension to the Contract Time.

1.8.7. 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.

1.8.8. 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.

1.8.9. 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.

1.8.10. 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.

1.8.11. Storage of Items Off-Site. The District may request that Contractor procure and store off-site certain equipment, supplies, and or materials. In addition, the Contractor may request that it be permitted to procure and store off-site certain equipment, supplies, and or materials. In either case, and

before the District issues payment for those item(s), the Contractor shall comply with the insurance and/or bond requirements herein related to the storage of off-site items that the District has paid for and that the Contractor remains in possession of.

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. Limitations on Project Inspector Authority. The Project Inspector does not have authority to interpret the Contract Documents or to modify the Work depicted in the Contract Documents. No Work inconsistent with the Contract Documents shall be performed solely on the basis of the direction of the Project Inspector, and the Contractor shall be liable to the District for the consequences of all Work performed on such basis.

5.1.5. In addition to the requirements in the Contract Documents related to cooperation with and authority of the DSA Project Inspector(s) for the Project, Contractor must comply with the requirements of the most recent versions of DSA document PR 13-01. Below are provisions of this document from PR 13-01 (rev 08/21/17).

5.1.5.1. The contractor shall carefully study the DSA-approved documents and shall plan a schedule of operations well ahead of time.

5.1.5.2. 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.

5.1.5.3. Verify that DSA 152 and, when applicable, DSA 152-IPI forms were issued for the project prior to the commencement of construction.

5.1.5.4. Meet with the design team, the Laboratory of Record and the project inspector to mutually communicate and understand the structural/material and fire/life safety testing and inspection program, and the methods of communication appropriate for the project.

5.1.5.5. Notify the project inspector and, when applicable, in-plant inspector, in writing, of the commencement of construction of each and every aspect of the work at least 48 hours in advance by submitting Commencement/Completion of Work Notification (form DSA 156), or other agreed-upon written documents, to the project inspector.

5.1.5.6. Notify the project inspector and, when applicable, the in-plant 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.

5.1.5.7. 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 DSA or the school district (see IR A-13 for additional information), and are subject to removal and remediation if found to be in noncompliance with the DSA-approved construction documents.

5.1.5.8. Submit the final verified report. All prime contractors are required to submit final Contractor Verified Reports (form DSA 6-C).

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. If the Contract Documents, laws, ordinances or any public authority with jurisdiction over the Work requires the Work, or any portion thereof, to be specially tested, inspected or approved, the Contractor shall give the Architect, the Construction Manager and the Project Inspector written notice of the readiness of such Work for observation, testing or inspection at least seventy-two (72) hours prior to the time for the conducting of such test, inspection or observation. If inspection, testing or observation is by authority other than the District, the Contractor shall inform the Project Inspector and the Construction Manager not less than seventy-two (72) hours prior to the date fixed for such inspection, test or observation. The Contractor shall not cover up any portion of the Work subject to tests, inspections or observations prior to the completion and satisfaction of the requirements of such test, inspection or observation. In the event that any portion of the Work subject to tests, inspection or approval shall be covered up by Contractor prior to completion and satisfaction of the requirements of such tests, inspection or approval, Contractor shall be responsible for the uncovering of such portion of the Work as is necessary for performing such tests, inspection or approval without adjustment of the Contract Price or the Contract Time on account thereof.

5.2.3. 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.

5.2.4. 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.

5.2.5. 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.

5.2.6. 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, over a period of more than eight (8) hours per day by any single person, on weekends/holidays or requests the Inspector to perform inspections off Site, then the costs of any inspections required outside regular working hours, over a period of more than eight (8) hours per day by any single person, on weekends/holidays 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 the 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 Construction 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 / Required Personnel

6.3.1. Contractor and Subcontractor(s) shall at all times enforce strict discipline and good order among their employees and shall not employ or work any unfit person or anyone not skilled in work assigned to that person. It shall be the responsibility of Contractor to ensure compliance with this requirement. District may require Contractor to permanently remove unfit persons from Project Site(s).

6.3.2. COVID-19. Contractor shall ensure that all its employees and employees of its subcontractors shall comply with all applicable and existing federal, state, and/or local statutes, orders, rules, regulations, ordinances, and/or directives relating to construction site safety in connection with COVID-19, and/or any similar virus or derivative strain.

6.3.3. Any person in the employ of Contractor or Subcontractor(s) whom District may deem incompetent or unfit shall be excluded from working on the Project and shall not again be employed on the Project except with the prior written consent of District.

6.3.4. The Contractor shall furnish labor that can work in harmony with all other elements of labor employed or to be employed in the Work.

6.3.5. If Contractor intends to make any change in the name or legal nature of the Contractor's entity, Contractor must first notify the District. The District shall determine if Contractor's intended change is permissible while performing this Contract.

6.3.6. All persons working for Contractor and Subcontractor(s) shall refrain from using profane or vulgar language, or any other language that is inappropriate on the job site.

6.3.7. The Contractor shall employ a full-time superintendent and necessary assistants who shall have complete authority to represent and act on behalf on the Contractor on all matters pertaining to the Work. The superintendent shall be competent and have a minimum of five (5) years experience in construction supervision on projects of similar scale and complexity. The superintendent shall be satisfactory to the District and, if not satisfactory, shall be replaced by the Contractor with one that is acceptable. The superintendent shall not be changed without the written consent of the District unless the superintendent ceases to be employed by the Contractor.

6.3.8. The Contractor shall employ a competent estimator and necessary assistants, or contract for sufficient services of an estimating consultant and to process proposed change orders. The estimator shall have a minimum of five (5) years experience in estimating. The estimator shall be satisfactory to the District and, if not satisfactory, shall be replaced by the Contractor with one that is acceptable. The estimator shall not be changed without the written consent of the District unless the estimator ceases to be employed by the Contractor. The Contractor shall submit PCO's requested by the District within fourteen (14) calendar days.

6.3.9. The Contractor shall employ a competent scheduler and necessary assistants, or contract for sufficient services of a scheduling consultant. The scheduler shall have a minimum of five (5) years' experience in scheduling. The scheduler shall be satisfactory to the District and, if not satisfactory, shall be replaced by the Contractor with one that is acceptable. The scheduler shall not be changed without the written consent of the District unless the scheduler ceases to be employed by the Contractor.

6.3.10. Contractor shall at all times enforce strict discipline and good order among Contractor's employees, and shall not employ on the Project any unfit person or anyone not skilled in the task assigned.

6.3.11. If Contractor or any Subcontractor on the Project site fails to comply with any provision of paragraph 6.4, the District may have the offending person(s) immediately removed from the site, and such person(s) shall be replaced within three (3) days, at no additional expense to the District. Contractor, on behalf of it and its subcontractors, hereby waives any claim that the provisions of this paragraph or the enforcement thereof interferes, or has the potential to interfere, with its right to control the means and methods of its performance and duties under this Contract.

6.4. Prohibition on Harassment

6.4.1. In addition to the non-discrimination requirements in the Contract Documents, the Contractor and all Subcontractors must comply with these provisions prohibiting harassment at the Site.

6.4.2. The District is committed to providing a campus and workplace free of sexual harassment and harassment based on factors such as race, color religion, national origin, ancestry, age, medical condition, marital status, disability or veteran status. Harassment includes without limitation, verbal, physical or visual conduct which creates an intimidating, offensive or hostile environment such as racial slurs; ethnic jokes; posting of offensive statements, posters or cartoons or similar conduct. Sexual harassment includes without limitation the solicitation of sexual favors, unwelcome sexual advances, or other verbal,

visual or physical conduct of a sexual nature.

6.4.3. Contractor shall take all reasonable steps to prevent harassment from occurring, including without limitation affirmatively raising the subject of harassment among its employees, expressing strong disapproval of any form of harassment, developing appropriate sanctions, informing employees of their right to raise and how to raise the issue of harassment and informing complainants of the outcome of an investigation into a harassment claim.

6.4.4. Contractor shall not permit any person, whether employed by Contractor or a Subcontractor or any other person or entity, performing any Work at or about the Site to engage in any prohibited form of harassment. Any person performing or providing Work on or about the Site engaging in a prohibited form of harassment directed to any student, faculty member or staff of the District or directed to any other person on or about the Site shall be subject to immediate removal and shall be prohibited thereafter from providing or performing any portion of the Work. Upon the District's receipt of any notice or complaint that any person employed directly or indirectly by Contractor on any Subcontractor in performing or providing the Work has engaged in a prohibited form of harassment, the District will promptly undertake an investigation of such notice or complaint. In the event that the District, after such investigation, reasonably determines that a prohibited form of harassment has occurred, the District shall promptly notify the Contractor of the same and direct that the person engaging in such conduct be immediately removed from the Site. Unless the District's determination that a prohibited form of harassment has occurred is grossly negligent or without reasonable cause, District shall have no liability for directing the removal of any person determined to have engaged in a prohibited form of harassment nor shall the Contract Price or the Contract Time be adjusted on account thereof. The indemnity provisions of the Contract Documents apply to any assertion by any person dismissed from performing or providing work at the direction of the District pursuant to this provision; or (ii) the assertion by any person that any person directly or indirectly under the employment or direction of the Contractor has engaged in a prohibited form of harassment directed to or affecting such person. The obligations of the Contractor and the Surety under the preceding sentence are in addition to, and not in lieu of, any other obligation of defense, indemnity and hold harmless whether arising under the Contract Documents, at law or otherwise; these obligations survive completion of the Work or the termination of the Contract.

6.5. Conferences and Meetings.

6.5.1. In addition to the conference and meeting requirements in the Specifications, Contractor's supervisory personnel for the Work and the Contractor's management personnel shall attend all required meetings as required by the Contract Documents or as requested by the District. The Contractor's personnel participating in conferences and meetings relating to the Work shall be authorized to act on behalf of the Contractor and to bind the Contractor. The Contractor is solely responsible for arranging for the attendance by Subcontractors and Material Suppliers at meetings and conferences relating to the Work as necessary, appropriate or as requested by the District.

6.5.2. Preconstruction Conference. The Contractor's representatives (and representatives of Subcontractors as requested by the District) shall attend a preconstruction conference at such time and place as designated by the District. The preconstruction conference will generally address the requirements of the Work and Contract Documents, and to establish construction procedures. Subject matters of the preconstruction conference will include as appropriate: (a) administrative matters, including an overview of the respective responsibilities of the District, Architect, Construction Manager, Contractor, Subcontractors, Project Inspector, and others performing any part of the Work or services relating to the Work; (b) Submittals; (c) Changes; (d) employment practices, including Certified Payroll preparation and submission and prevailing wage rate responsibilities of the Contractor and Subcontractors; (e) Progress Schedule development and maintenance; (f) development of Schedule of Values and payment procedures; (g) implementation of BIM, if applicable; (h) communication procedures,

including the handling of Requests for Information; (i) emergency and safety procedures; (j) Site visitor policies; (k) conduct of Contractor/Subcontractor personnel at the Site; and (l) Completion, Punchlist and closeout procedures.

6.5.3. Progress Meetings. Progress meetings will be conducted on regular intervals (weekly unless otherwise expressly indicated elsewhere in the Contract Documents). The Contractor's representatives and representatives of Subcontractors (as requested by the District) shall attend progress meetings. Progress Meetings will be chaired by the District or the Construction Manager and will generally include as agenda items: Site safety, field issues, coordination of Work, construction progress and impacts to timely Completion, if any. The purposes of the progress meetings include: a formal and regular forum for discussion of the status and progress of the Work by all Project participants, a review of progress or resolution of previously raised issues and action items assigned to the Project participants, and reviews of the Progress schedule and submittals. Contractor shall prepare and submit at each progress meeting a three (3) week look-ahead schedule identifying all planned activities for the next three (3) weeks and any deviations from activities in the current Construction Schedule.

6.5.4. Special Meetings. As deemed necessary or appropriate by the District, special meetings will be conducted with the participation of the Contractor, Subcontractors and other Project participants as requested by the District.

6.5.5. Minutes of Meetings. following conclusion of the preconstruction conference, progress meetings and special meetings, the Architect or the Construction Manager will prepare and distribute minutes reflecting the items addressed and actions taken at a meeting or conference. Unless the Contractor notifies the Architect and the Construction Manager in writing of objections or corrections to minutes prepared hereunder within five (5) days of the date of distribution of the minutes, the minutes as distributed shall constitute the official record of the meeting or conference. No objections or corrections of any Subcontractor or Material Supplier shall be submitted directly to the Architect or the Construction Manager; such objections or corrections shall be submitted to the Architect and the Construction Manager through the Contractor. If the Contractor timely interposes objections or notes corrections, the resolution of such matters shall be addressed at the next scheduled progress meeting.

6.6. Purchase of Materials and Equipment

6.6.1. The Contractor is required to order and obtain materials and equipment sufficiently in advance of its Work at no additional cost or advance payment from District to assure that there will be no delays.

6.6.2. Off-Site Storage of Materials and Equipment Only Upon District's Written Consent. Contractor shall not store materials and/or equipment off site without first obtaining the District's express, written consent. If Contractor receives District's consent to store materials and/or equipment off site ("Stored Materials"), Contractor shall comply with all of the following:

6.6.2.1. Property of Others Insurance. Contractor shall procure and maintain, during the entire time Stored Materials are in off-site storage, insurance coverage acceptable to the District that shall protect Contractor and District from all claims for Stored Materials that are lost, stolen, or damaged. The District shall be named as a loss payee for this insurance coverage. The insurance coverage shall include a "loss payable endorsement" stating that all amounts payable will be paid as a joint-check to the Contractor and District. If approved in advance by District, this required insurance may be obtained by an "Employee Theft Protection Insurance Policy" or an "Employee Theft Protection Bond."

6.6.2.2. Payment for Stored Materials. District shall only make payment to Contractor for Stored Materials if agreed upon in advance, in writing, by the District and provided that Contractor submits

an itemized list of all Stored Materials with Contractor's Application for Payment. Contractor's itemized list of all Stored Materials shall be supported by all of the following:

6.6.2.2.1. Itemized breakdown of the Stored Materials for the purpose of requesting partial payment, identifying the serial numbers and exact storage location of each piece of equipment and material; and

6.6.2.2.2. Verified invoices for the Stored Materials; and

6.6.2.2.3. Original copy of Property of Others Insurance, Employee Theft Protection Insurance Policy, or an Employee Theft Protection Bond based on the type of insurance required by the District. These documents shall include certificates and endorsements stating the coverage and that the District is a loss payee or obligee, as appropriate.

The Contractor is required to order, obtain, and store materials and equipment sufficiently in advance of its Work at no additional cost or advance payment from District to assure that there will be no delays.

6.7. Documents on Work

6.7.1. Contractor shall at all times keep on the Work Site, or at another location as the District may authorize in writing, one legible copy of all Contract Documents, including Addenda Change Orders, Unilateral Change Orders, Construction Change Documents, and titles 19 and 24 of the California Code of Regulations, the specified edition(s) of the Uniform Building Code, all approved Drawings, Plans, Schedules, and Specifications, and all codes referred to in the Specifications, and made part thereof. These documents shall be kept in good order and available to District, Construction Manager, Architect, Architect's representatives, the Project Inspector(s), and all authorities having jurisdiction. Contractor shall be acquainted with and comply with the provisions of these titles as they relate to this Project. (See particularly the duties of Contractor, title 24, part 1, California Code of Regulations, § 4-343.) Contractor shall also be acquainted with and comply with all California Code of Regulations provisions relating to conditions on this Project, particularly titles 8 and 17. Contractor shall coordinate with Architect and Construction Manager and shall submit its verified report(s) according to the requirements of title 24.

6.7.2. Daily Job Reports.

6.7.2.1. Contractor shall maintain, at a minimum, at least one (1) set of Daily Job Reports on the Project. These must be prepared by the Contractor's employee(s) who are present on Site, and must include, at a minimum, the following information:

6.7.2.1.1. A detailed description of all Work performed by the Contractor and Subcontractor(s) on that day.

6.7.2.1.2. A summary of all other pertinent events and/or occurrences on that day.

6.7.2.1.3. The weather conditions on that day.

6.7.2.1.4. A list of all Subcontractor(s) working on that day,

6.7.2.1.5. A list of each Contractor employee working on that day and the total hours worked for each employee.

6.7.2.1.6. A complete list of all major equipment on Site that day, whether in use or not.

6.7.2.1.7. All complete list of all materials, supplies, and equipment delivered on that day.

6.7.2.1.8. A complete list of all inspections and tests performed on that day.

6.7.2.2. On or before 8:00 A.M. each day, Contractor shall provide a copy of the previous day's Daily Job Report to the District or the District's Construction Manager.

6.8. Preservation of Records

The District shall have the right to examine and audit all Daily Job Reports or other Project records of Contractor's project manager(s), project superintendent(s), and/or project foreperson(s), all certified payroll records and/or related documents including, without limitation, payroll, payment, timekeeping and tracking documents; all books, estimates, records, contracts, documents, cost data, subcontract job cost reports, and other data of the Contractor, any Subcontractor, and/or supplier, including computations and projections related to estimating, negotiating, pricing, or performing the Work or Contract modification, in order to evaluate the accuracy, completeness, and currency of the cost, manpower, coordination, supervision, or pricing data at no additional cost to the District. These documents may be duplicative and/or be in addition to any documents held in escrow by the District. The Contractor shall make available at all reasonable times the materials described in this paragraph for the examination, audit, or reproduction until three (3) years after final payment under this Contract. Notwithstanding the provisions above, Contractor shall provide any records requested by any governmental agency, if available, after the time set forth above.

6.9. Integration of Work

6.9.1. Contractor shall do all cutting, fitting, patching, and preparation of Work as required to make its several parts come together properly, to fit it to receive or be received by work of other contractors, and to coordinate tolerances to various pieces of work, showing upon, or reasonably implied by, the Drawings and Specifications for the completed structure, and shall conform them as District and/or Architect may direct.

6.9.2. All cost caused by defective or ill-timed Work shall be borne by Contractor, inclusive of repair work.

6.9.3. Contractor shall not endanger any work performed by it or anyone else by cutting, excavating, or otherwise altering work and shall not cut or alter work of any other contractor except with consent of District.

6.10. Obtaining Licenses

Except for DSA fees or charges, Contractor shall secure and pay for all of its required licenses, and certificates necessary for prosecution of Work before the date of the commencement of the Work or before the licenses, and certificates are legally required to continue the Work without interruption. The Contractor shall obtain and pay, only when legally required, for all licenses and certificates required to be obtained from or issued by any authority having jurisdiction over any part of the Work included in the Contract. All final permits and certificates shall be delivered to District before demand is made for final payment.

6.11. Work to Comply With Applicable Laws and Regulations

6.11.1. Contractor shall give all notices and comply with the following specific laws, ordinances, rules, and regulations and all other applicable laws, ordinances, rules, and regulations bearing on conduct of Work as indicated and specified, including but not limited to the appropriate statutes and administrative code sections. If Contractor observes that Drawings and Specifications are at variance therewith, or should Contractor become aware of the development of conditions not covered by Contract Documents that will result in finished Work being at variance therewith, Contractor shall promptly notify District in writing and any changes deemed necessary by District shall be made as provided in Contract for changes in Work.

6.11.1.1. National Electrical Safety Code, U. S. Department of Commerce

6.11.1.2. National Board of Fire Underwriters' Regulations

- 6.11.1.3. Uniform Building Code, latest addition, and the California Code of Regulations, title 24, including amendments
- 6.11.1.4. Manual of Accident Prevention in Construction, latest edition, published by A.G.C. of America
- 6.11.1.5. Industrial Accident Commission's Safety Orders, State of California
- 6.11.1.6. Regulations of the State Fire Marshall (title 19, California Code of Regulations) and Pertinent Local Fire Safety Codes
- 6.11.1.7. Americans with Disabilities Act
- 6.11.1.8. Education Code of the State of California
- 6.11.1.9. Government Code of the State of California
- 6.11.1.10. Labor Code of the State of California, division 2, part 7, Public Works and Public Agencies
- 6.11.1.11. Public Contract Code of the State of California
- 6.11.1.12. California Art Preservation Act
- 6.11.1.13. U. S. Copyright Act
- 6.11.1.14. U. S. Visual Artists Rights Act

6.11.2. 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.)

6.11.3. If Contractor performs any Work that it knew, or through exercise of reasonable care should have known, to be contrary to any applicable laws, ordinance, rules, or regulations, Contractor shall bear all costs arising therefrom.

6.11.4. Where Specifications or Drawings state that materials, processes, or procedures must be approved by the DSA, State Fire Marshall, or other body or agency, Contractor shall be responsible for satisfying requirements of such bodies or agencies.

6.12. Safety/Protection of Persons and Property

6.12.1. Contractor will be solely and completely responsible for conditions of the Work Site, including safety of all persons and property during performance of the Work. This requirement will apply continuously and not be limited to normal working hours.

6.12.2. COVID-19. Contractor is responsible for complying with all applicable and existing federal, state, and/or local statutes, orders, rules, regulations, ordinances, and/or directives relating to construction site safety in connection with COVID-19, and/or any similar virus or derivative strain. Contractor shall ensure it has supervisor employees onsite that are trained and knowledgeable of all of these requirements to ensure full compliance on Project Site(s).

6.12.3. The wearing of hard hats will be mandatory at all times for all personnel on Site. Contractor shall supply sufficient hard hats to properly equip all employees and visitors.

6.12.4. Any construction review of the Contractor's performance is not intended to include review of the adequacy of the Contractor's safety measures in, on, or near the Work Site.

6.12.5. Implementation and maintenance of safety programs shall be the sole responsibility of the Contractor.

6.12.6. The Contractor shall furnish to the District a copy of the Contractor's safety plan within the time frame indicated in the Contract Documents and specifically adapted for the Project.

6.12.7. Contractor shall be responsible for all damages to persons or property that occur as a result of its fault or negligence in connection with the prosecution of this Contract and shall take all necessary measures and be responsible for the proper care, Project Completion and final acceptance by District. Contractor shall not be responsible for damage to the Work caused by "acts of God" as defined in Public Contract Code section 7105.

6.12.8. Contractor shall take, and require Subcontractors to take, all necessary precautions for safety of workers on the Project and shall comply with all applicable federal, state, local, and other safety laws, standards, orders, rules, regulations, and building codes to prevent accidents or injury to persons on, about, or adjacent to premises where Work is being performed and to provide a safe and healthful place of employment. Contractor shall furnish, erect, and properly maintain at all times, all necessary safety devices, safeguards, construction canopies, signs, nets, barriers, lights, and watchmen for protection of workers and the public and shall post danger signs warning against hazards created by such features in the course of construction.

6.12.9. Hazards Control – Contractor shall store volatile wastes in covered metal containers and remove them from the Site regularly, which shall be daily when appropriate for the type of hazardous wastes to be removed. Contractor shall prevent accumulation of wastes that create hazardous conditions. Contractor shall provide adequate ventilation during use of volatile or noxious substances.

6.12.10. Contractor shall designate a responsible member of its organization on the Project, whose duty shall be to post information regarding protection and obligations of workers and other notices required under occupational safety and health laws, to comply with reporting and other occupational safety requirements, and to protect the life, safety, and health of workers. Name and position of person so designated shall be reported to District by Contractor.

6.12.11. Contractor shall correct any violations of safety laws, rules, orders, standards, or regulations. Upon the issuance of a citation or notice of violation by the Division of Occupational Safety and Health, Contractor shall correct such violation promptly.

6.12.12. Storm Water Permits. Contractor shall comply with any District storm water requirements that are approved by the District and applicable to the Project, at no additional cost to the District.

6.12.12.1. Contractor shall perform the Work of the Project related to being the District's Qualified SWPPP (Storm Water Pollution Prevention Plan) Practitioner ("QSP").

6.12.12.2. As the District's QSP, Contractor shall be responsible for storm water and non-storm water visual observations, sampling, and analysis per the District's SWPPP.

6.12.12.3. Contractor shall strictly follow the requirements to implement all the provisions of the SWPPP including, without limitation, preparation of monitoring and recording reports and providing those to the District.

6.12.12.4. Contractor's indemnity obligations as indicated in the Facilities Lease are applicable to any damages, penalties, fees, charges, or related expenses assessed or charged to the District by any water boards or agencies with jurisdiction related to compliance with the Storm Water Permits.

6.12.13. In an emergency affecting safety of life or of work or of adjoining property, Contractor, without special instruction or authorization, shall act, at its discretion, to prevent such threatened loss or injury. Any compensation claimed by Contractor on account of emergency work shall be determined by agreement.

6.12.14. All salvage materials will become the property of the Contractor and shall be removed from the Site unless otherwise called for in the Contract Documents. However, the District reserves the right to designate certain items of value that shall be turned over to the District unless otherwise directed by District.

6.12.15. All connections to public utilities and/or existing on-site services shall be made and maintained in such a manner as to not interfere with the continuing use of same by the District during the entire progress of the Work.

6.12.16. Contractor shall provide such heat, covering, and enclosures as are necessary to protect all Work, materials, equipment, appliances, and tools against damage by weather conditions, such as extreme heat, cold, rain, snow, dry winds, flooding, or dampness.

6.12.17. The Contractor shall protect and preserve the Work from all damage or accident, providing any temporary roofs, window and door coverings, boxing, or other construction as required by the District. The Contractor shall be responsible for existing structures, walks, roads, trees, landscaping, and/or improvements in working areas; and shall provide adequate protection therefore. If temporary removal is necessary of any of the above items, or damage occurs due to the Work, the Contractor shall replace same at his expense with same kind, quality, and size of Work or item damaged. This shall include any adjoining property of the District and others.

6.12.18. Contractor shall take adequate precautions to protect existing roads, sidewalks, curbs, pavements, utilities, adjoining property, and structures (including, without limitation, protection from settlement or loss of lateral support), and to avoid damage thereto, and repair any damage thereto caused by construction operations of the Contractor.

6.12.19. Contractor shall confine apparatus, the storage of materials, and the operations of workers to limits indicated by law, ordinances, permits, or directions of District, Construction Manager or Architect, and shall not interfere with the Work or unreasonably encumber Premises or overload any structure with materials. Contractor shall enforce all instructions of District and Architect regarding signs, advertising, fires, and smoking, and require that all workers comply with all regulations while on Project Site(s).

6.12.20. Contractor, Contractor's employees, Subcontractors, Subcontractors' employees, or any person associated with the Work shall conduct themselves in a manner appropriate for a School Site(s). No verbal or physical contact with neighbors, students, and faculty, profanity, or inappropriate attire or behavior will be permitted. District may require Contractor to permanently remove non-complying persons from Project Site(s).

6.12.21. Contractor shall take care to prevent disturbing or covering any survey markers, monuments, or other devices marking property boundaries or corners. If such markers are disturbed, Contractor shall have a civil engineer, registered as a professional engineer in California, replace them at no cost to District.

6.12.22. In the event that the Contractor enters into any agreement with owners of any adjacent property to enter upon the adjacent property for the purpose of performing the Work, Contractor shall fully indemnify, defend, and hold harmless each person, entity, firm, or agency that owns or has any interest in adjacent property. The form and content of the agreement of indemnification shall be approved by the District prior to the commencement of any Work on or about the adjacent property. The Contractor shall also indemnify the District as provided in the indemnification provision herein. These provisions shall be in addition to any other requirements of the owners of the adjacent property.

6.12.23. Photos, Videos and Use of Drones. Contractor may photograph or video the progress of the

Work and shall provide all of those photos and videos to the District at the District's request. Contractor may utilize drones or similar aerial equipment to photograph, video or monitor the progress of the Work and for security purposes, but Contractor must comply with all legal requirements of the Federal government, the State of California, and the County and City in which the Project is located, applicable to the use of drones or similar aerial equipment. In addition, Contractor shall ensure that no photographs, videos or digital recordings of any kind are taken of District students or staff.

6.13. Working Evenings and Weekends

Contractor may be required to work evenings and/or weekends at no additional cost to the District. Contractor shall give the District seventy-two (72) hours notice prior to performing any evening and/or weekend work. Contractor shall perform all evening and/or weekend work only upon District's approval and in compliance with all applicable rules, regulations, laws, and local ordinances including, without limitation, all noise and light limitations. Contractor shall reimburse the District for any Inspector charges necessitated by the Contractor's evening, weekend and/or legal holiday work, unless the District has agreed to be responsible for such costs at the District's expense in advance of the evening and/or weekend work.

6.14. Noise and Dust Control

6.14.1. In addition to the noise control, dust control and related requirements in the Specifications, Contractor shall control the noise and dust at the Site as indicated here.

6.14.2. Noise Control. The Contractor shall install noise reducing devices on construction equipment. Contractor shall comply with the requirements of the city and county having jurisdiction with regard to noise ordinances governing construction sites and activities. Construction equipment noise at the Site shall be limited as required by applicable law, rule or regulation. If classes are in session at any point during the progress of the Work, and, in the District's reasonable discretion, the noise from any Work disrupts or disturbs the students or faculty or the normal operation of the school at the Site, at the District's request, the Contractor shall schedule the performance of that Work around normal school hours or make other arrangements so that the Work does not cause disruption or disturbance. In no event shall those arrangements result in adjustment of the Contract Price or the Contract Time.

6.14.3. Dust Control. The Contractor shall be fully and solely responsible for maintaining and upkeeping all areas of the Site and adjoining areas, outdoors and indoors, free from flying debris, grinding powder, sawdust, dirt and dust as well as any other product, product waste or work waste, that by becoming airborne may cause respiratory inconveniences to persons, particularly to students and District personnel. Additionally, the Contractor shall take specific care to avoid deposits of airborne dust or airborne elements. Those protection devices, systems or methods shall be in accordance with the regulations set forth by the EPA and OSHA, and other applicable law, rule or regulation. Additionally, the Contractor shall be responsible to regularly and routinely clean up and remove any and all deposits of dust and other elements. Damage and/or any liability derived from the Contractor's failure to comply with these requirements shall be exclusively at the cost of the Contractor, including, without limitation, any and all penalties that may be incurred for violations of applicable law, rule or regulation, and any amounts expended by the District to pay such damages shall be due and payable to the District on demand. Contractor shall replace any damages property or part thereof and professionally clean any and all items that become covered or partially covered to any degree by dust or other airborne elements. If classes are in session at any point during the progress of Work, and, in the District's reasonable discretion, flying debris, grinding powder, sawdust, dirt or dust from any Work disrupts or disturbs the students or faculty or the normal operation of the school, at the District's request, the Contractor shall schedule the performance of all that Work around normal school hours and make other arrangements so that the Work does not cause disruption or disturbance. In no event shall those arrangements result in

adjustment of the Contract Price or the Contract Time.

6.14.4. Contractor Failure to Comply. If the Contractor fails to comply with the requirements for dust control, noise control, or any other maintenance or clean up requirement of the Contract Documents, the District, Architect, Project Inspector, or Construction Manager shall notify the Contractor in writing and the Contractor shall take immediate action. Should the Contractor fail to respond with immediate and responsive action and not later than twenty-four (24) hours from that notification, the District shall have the absolute right to proceed as it may deem necessary to remedy such matter. Any and all costs incurred by the District in connection with those actions shall be the sole responsibility of, and be borne by, the Contractor; the District may deduct those amounts from the Contract Price then or thereafter due the Contractor.

6.15. Cleaning Up

6.15.1. The Contractor shall provide all services, labor, materials, and equipment necessary for protecting the Work, all school occupants, furnishings, equipment, and building structure from damage until Project Completion and final acceptance by District. Dust barriers shall be provided to isolate dust and dirt from construction operations. Upon Project Completion, Contractor shall clean to the original state any areas beyond the Work area that become dust laden as a result of the Work. The Contractor must erect the necessary warning signs and barricades to ensure the safety of all school occupants. The Contractor at all times must maintain good housekeeping practices to reduce the risk of fire damage and must make a fire extinguisher, fire blanket, and/or fire watch, as applicable, available at each location where cutting, braising, soldering, and/or welding is being performed or where there is an increased risk of fire.

6.15.2. Contractor at all times shall keep Site free from debris such as waste, rubbish, and excess materials and equipment caused by the Work. Contractor shall not leave debris under, in, or about the Premises, but shall promptly remove same from the Premises on a daily basis. If Contractor fails to clean up, District may do so and the cost thereof shall be charged to Contractor. If Contract is for work on an existing facility, Contractor shall also perform specific clean-up on or about the Premises upon request by the District as it deems necessary for the continuing education process. Contractor shall comply with all related provisions of the Specifications.

6.15.3. If the Construction Manager, Architect, or District observes the accumulation of trash and debris, the District will give the Contractor a 24-hour written notice to mitigate the condition.

6.15.4. Should the Contractor fail to perform the required clean-up, or should the clean-up be deemed unsatisfactory by the District, the District will then perform the clean-up. All cost associated with the clean-up work (including all travel, payroll burden, and costs for supervision) will be deducted from the Guaranteed Project Cost, or District may withhold those amounts from payment(s) to Contractor.

7. SUBCONTRACTORS

7.1. Contractor shall provide the District with information for all of Contractor's Subcontracts and Subcontractors.

7.2. No contractual relationship exists between the District and any Subcontractor, supplier, or sub-subcontractor by reason of this Contract.

7.3. Bidding for Subcontractor Work

7.3.1. CONTRACTOR SHALL SOLICIT AND PROCURE SUBCONTRACTORS PURSUANT TO THE

SUBCONTRACTOR PROCUREMENT PROCESS ATTACHED TO THE FACILITIES LEASE AS EXHIBIT H.

7.3.2. Contractor agrees and acknowledges that the Subcontractor Procurement Process is integral to the Parties negotiating in good faith to agree upon a GMP. If Contractor fails to comply with any of its obligations to procure Subcontractors in the Contract Documents, it will be considered a material breach and Default of the Facilities Lease, and the District shall have the right to terminate the Facilities Lease.

7.4. Contractor agrees to bind every Subcontractor by terms of Contract as far as those terms are applicable to Subcontractor's work. If Contractor shall subcontract any part of this Contract, Contractor shall be as fully responsible to District for acts and omissions of any Subcontractor and of persons either directly or indirectly employed by any Subcontractor, as it is for acts and omissions of persons directly employed by Contractor. The divisions or sections of the Specifications are not intended to control the Contractor in dividing the Work among Subcontractors or limit the work performed by any trade.

7.5. District's consent to, or approval of, or failure to object to, any Subcontractor under this Contract shall not in any way relieve Contractor of any obligations under this Contract and no such consent shall be deemed to waive any provisions of this Contract.

7.6. Contractor is directed to familiarize itself with sections 1720 through 1861 of the Labor Code of the State of California, as regards the payment of prevailing wages and related issues, and to comply with all applicable requirements therein all including, without limitation, section 1775 and the Contractor's and Subcontractors' obligations and liability for violations of prevailing wage law and other applicable laws. Prevailing wage rates are on file with the District and are available to any interested party on request or at www.dir.ca.gov/oprl/statistics_and_databases.html.

7.7. The Contractor shall be responsible for the coordination of the trades, Subcontractors, sub-subcontractors, and material or equipment suppliers working on the Project.

7.8. Contractor is solely responsible for settling any differences between the Contractor and its Subcontractor(s) or between Subcontractors.

7.9. Contractor must include in all of its subcontracts the assignment provisions as indicated in the Termination section of these General Construction Provisions.

8. OTHER CONTRACTS/CONTRACTORS

8.1. District reserves the right to let other contracts, and/or to perform work with its own forces, in connection with other portions of the Project or other construction or operations at or about the Site. Contractor shall afford other contractors reasonable opportunity for introduction and storage of their materials and execution of their work and shall properly coordinate and connect Contractor's Work with the work of other contractors.

8.2. In addition to Contractor's obligation to protect its own Work, Contractor shall protect the work of any other contractor that Contractor encounters while working on the Site.

8.3. If any part of Contractor's Work depends for proper execution or results upon work of District or any other contractor, the Contractor shall inspect and promptly report to the District in writing before proceeding with its Work any defects in District's or any other contractor's work that render Contractor's Work unsuitable for proper execution and results. Contractor shall be held accountable for damages to District for District's or any other contractor's work that Contractor failed to inspect or should have inspected. Contractor's failure to inspect and report shall constitute Contractor's acceptance of all District's or any other contractor's work as fit and proper for reception of Contractor's Work, except as to defects that may develop in District's or any other

contractor's work after execution of Contractor's Work.

8.4. To ensure proper execution of its subsequent work, Contractor shall measure and inspect work already in place and shall at once report to the District in writing any discrepancy between that executed work and the Contract Documents.

8.5. Contractor shall ascertain to its own satisfaction the scope of the Project and nature of District's or any other contracts that have been or may be awarded by District in prosecution of the Project to the end that Contractor may perform this Contract in light of the other contracts, if any.

8.6. Nothing herein contained shall be interpreted as granting to Contractor exclusive occupancy of the Site, the Premises, or of the Project. Contractor shall not cause any unnecessary hindrance or delay to the use and/or school operation(s) of the Premises and/or to District or any other contractor working on the Project. If simultaneous execution of any contract or school operation is likely to cause interference with performance of Contractor's Contract, Contractor shall coordinate with those contractor(s), person(s), and/or entity(s) and shall notify the District of the resolution.

9. DRAWINGS AND SPECIFICATIONS

9.1. A complete list of all Drawings for the Project is to be found as an index on the Drawings themselves, and/or may be provided to the Contractor and/or in the Table of Contents.

9.2. Materials or Work described in words that so applied have a well known technical or trade meaning shall be deemed to refer to recognized standards, unless noted otherwise.

9.3. Trade Name or Trade Term.

9.3.1. It is not the intention of this Contract to go into detailed descriptions of any materials and/or methods commonly known to the trade under "trade name" or "trade term." The mere mention or notation of "trade name" or "trade term" shall be considered a sufficient notice to Contractor that it will be required to complete the work so named, complete, finished, and operable, with all its appurtenances, according to the best practices of the trade.

9.3.2. The naming of any material and/or equipment shall mean furnishing and installing of same, including all incidental and accessory items thereto and/or labor therefor, as per best practices of the trade(s) involved, unless specifically noted otherwise.

9.3.3. Contract Documents are complementary, and what is called for by one shall be binding as if called for by all. As such, Drawings and Specifications are intended to be fully cooperative and to agree. However, if Contractor observes that Drawings and Specifications are in conflict, Contractor shall promptly notify District and Architect in writing, and any necessary changes shall be made as provided in the Contract Documents.

9.4. Interpretation of Contract Documents/Order of Precedence:

Questions concerning the intent, precedence, or meaning of the Contract Documents, including the Drawings or Specifications, shall be submitted to the District for interpretation. Inconsistencies in the Contract Documents shall be resolved by giving precedence in the following order:

- 9.4.1.** District-approved modifications, beginning with the most recent (if any);
- 9.4.2.** Exhibit K: Revisions to Contract Documents

- 9.4.3. Exhibit D: General Construction Provisions
- 9.4.4. Facilities Lease
- 9.4.5. Site Lease
- 9.4.6. Exhibit C: GPC and Other Project Costs
- 9.4.7. Remaining Exhibits to the Facilities Lease
- 9.4.8. Division 1 Documents (Documents beginning with "01");
- 9.4.9. Division 2 through Division 49 documents (Technical Specifications);
- 9.4.10. Figured dimensions;
- 9.4.11. Large-scale drawings;
- 9.4.12. Small-scale drawings.

In case of conflict, the greater quantity and/or higher standard of workmanship shall apply unless the District expressly in writing (e.g., via a Change Order) accepts a lesser quantity or lower quality of workmanship and the Contract Price is adjusted accordingly. The decision of the District in the matter shall be final.

9.5. Integration / Modification.

The Contract Documents and any documents specifically incorporated by reference are completely integrated as the complete and exclusive statement of the terms of the Agreement. This Facilities Lease and Site Lease supersedes all previous contracts, agreements, and / or communications, both oral and written, and constitutes the entire understanding of the District and Contractor. No extrinsic evidence whatsoever shall be admissible or used to explain or supplement the terms of the Contract, Contract Documents, or any items incorporated by reference. No changes, amendments or alterations shall be effective unless in writing, signed by both Parties, and unless provided otherwise by the Contract Documents.

9.6. Drawings and Specifications are intended to comply with all laws, ordinances, rules, and regulations of constituted authorities having jurisdiction, and where referred to in the Contract Documents, the laws, ordinances, rules, and regulations shall be considered as a part of the Contract within the limits specified. Contractor shall bear all expense of correcting work done contrary to said laws, ordinances, rules, and regulations and for which the Contractor knew or reasonably should have known did not comply with those laws, ordinances, rules, and regulations.

9.7. Ownership of Drawings

All copies of Plans, Drawings, Designs, Specifications, and copies of other incidental architectural and engineering work, or copies of other Contract Documents furnished by District, are the property of District. They are not to be used by Contractor in other work and, with the exception of signed sets of Contract Documents, are to be returned to District on request at completion of Work, or may be used by District as it may require without any additional costs to District. Neither the Contractor nor any Subcontractor, or material or equipment supplier shall own or claim a copyright in the Drawings, Specifications, and other documents prepared by the Architect. District hereby grants the Contractor, Subcontractors, sub-subcontractors, and material or equipment suppliers a limited license to use applicable portions of the Drawings prepared for the Project in the execution of their Work under the Contract Documents.

10. CONTRACTOR'S SUBMITTALS AND SCHEDULES

Contractor's submittals shall comply with the provisions and requirements of the Contract Documents including, without limitation Submittals. No submittal, unless approved in writing by the District as acceptable and complete, shall be a Contract Document.

10.1. Construction Schedule

The Contractor shall prepare a Construction Schedule that complies with the construction schedule attached to the Facilities Lease as **Exhibit F** ("Construction Schedule") and in compliance with the provisions of the **"Construction Schedule – Network Analysis"** provisions indicated in **Exhibit I** and shall provide all schedules and construction progress documentation as required in the Contract Documents.

10.1.1. All items on the Schedule of Values must have a specific completion date on the Construction Schedule, or District has approved the Construction Schedule and the Construction Schedule is fully cost-loaded and resource-loaded, unless waived by the District in writing, and detailed as required by the Contract Documents.

10.1.2. Contractor must provide all schedules both in hard copy and electronically, in a format (e.g., Microsoft Project or Primavera) approved in advance by the District.

10.1.3. The District will review the schedules submitted and the Contractor shall make changes and corrections in the schedules as requested by the District and resubmit the schedules until approved by the District.

10.2. Schedule of Values

The Contractor has provided and the District has approved a Schedule of Values as **Exhibit G** ("Schedule(s) of Values") for all of the Work, which is comprised of quantities and prices of items aggregating the Guaranteed Project Cost and subdivided into component parts. The Schedule of Values includes, at a minimum, the following information and the following structure:

10.2.1. The District expects the Schedule of Values to follow the most current breakdown of scope and categories found in the most recent Construction Specifications Institute ("CSI") MasterFormat documentation. At a minimum, the Contractor must include at least the following categories:

- 10.2.1.1. Overhead and profit;
- 10.2.1.2. Supervision;
- 10.2.1.3. General conditions;
- 10.2.1.4. Layout;
- 10.2.1.5. Mobilization;
- 10.2.1.6. Submittals;
- 10.2.1.7. Bonds and insurance;
- 10.2.1.8. Closeout documentation;
- 10.2.1.9. Demolition;
- 10.2.1.10. Installation;
- 10.2.1.11. Rough-in;
- 10.2.1.12. Finishes;
- 10.2.1.13. Testing;
- 10.2.1.14. Punch list and acceptance.

10.2.2. Divided by each of the following areas:

- 10.2.2.1. Site work;
- 10.2.2.2. By each building and phase;
- 10.2.2.3. By each floor.
- 10.2.2.4. By division of work.

10.2.3. The Schedule of Values shall not provide for values any greater than the following percentages of the Guaranteed Project Cost:

- 10.2.3.1. Mobilization and layout combined to equal not more than 1%;
- 10.2.3.2. Submittals, samples and shop drawings combined to equal not more than 2%;
- 10.2.3.3. Bonds and insurance combined to equal not more than 3%.
- 10.2.3.4. Punchlist and acceptance value combined to equal not less than 1%.
- 10.2.3.5. No item on the Schedule of Value (except noted above) to equal more than 3%.

10.2.4. Closeout Documentation shall have a value in the schedule of values of not less than 5%. The value for Closeout Documentation shall be in addition to and shall not be a part of the Lease Payments.

10.2.5. The Schedule of Values shall not be modified or amended by the Contractor without the prior consent and approval of the District, which may be granted or withheld in the sole discretion of the District. The Schedule of Values shall only be modified by an executed Change Order.

10.2.6. The District shall have the right at any time to revise the Schedule of Values if, in the District's sole opinion, the Schedule of Values does not accurately reflect the value of the Work performed.

10.3. Safety Plan.

Contractor's Safety Plan specifically adapted for the Project. Contractor's Safety Plan shall comply with the following requirements and shall be submitted to the District for information purposes only:

10.3.1. All applicable requirements of California Division of Industrial Safety ("CalOSHA") and/or of the United States Occupational Safety and Health Administration ("OSHA").

10.3.2. All provisions regarding Project safety, including all applicable provisions in these General Construction Provisions.

10.3.3. Contractor's Safety Plan shall be in English and in the language(s) of the Contractor's and its Subcontractors' employees.

10.4. Complete Subcontractor List.

The name, address, telephone number, facsimile number, California State Contractors License number, classification, and monetary value of all Subcontracts for parties furnishing labor, material, or equipment for Project Completion, plus all information required in the Contract Documents. This includes the subcontractor Bid and fully executed Contract.

10.5. Monthly Progress Schedule(s)

10.5.1. Contractor shall provide Monthly Progress Schedule(s) to the District. A Monthly Progress Schedule shall update the approved Construction Schedule or the last Monthly Progress Schedule, showing all work completed and to be completed. The monthly Progress Schedule shall be in a format (e.g., Microsoft Project or Primavera) approved in advance by the District and contain a written narrative of the progress of work that month and any changes, delays, or events that may affect the work. The process for District approval of the Monthly Progress Schedule shall be the same as the process for approval of the Construction Schedule.

10.5.2. Contractor shall also submit Monthly Progress Schedule(s) with all payment applications.

10.6. Safety Data Sheets (SDS) (formerly known as Material Safety Data Sheets, or MSDSs.

Contractor is required to ensure Safety Data Sheets are available in a readily accessible place at the Work Site for any material requiring a Safety Data Sheet per the Federal "Hazard Communication" standard, or employees right to know law. The Contractor is also required to ensure proper labeling on substance brought onto the job site and that any person working with the material or within the general area of the material is informed of the hazards of the substance and follows proper handling and protection procedures. Two additional copies of the Safety Data Sheets shall also be submitted directly to the District.

10.7. Logistics Plan.

Contractor shall provide a staging and logistics plan identifying laydown areas, loading and unloading areas, crane locations, fence locations, temporary utility connections, trailer locations, and emergency evacuation meeting area. This Logistics Plan must be approved by the District prior to the Contractor mobilizing on the Site and shall be updated and revised upon the District's request.

11. SITE ACCESS, CONDITIONS, AND REQUIREMENTS

11.1. Site Investigation

Contractor has made a careful investigation of the Site and is familiar with the requirements of the Contract and has accepted the known existing conditions of the Site.

11.2. Soils Investigation Report & Site Due Diligence

11.2.1. When a soils investigation report obtained from test holes at Site is available, that report shall be available to the Contractor but shall not be a part of this Contract. Any information obtained from that report or any information given on Drawings as to subsurface soil condition or to elevations of existing grades or elevations of underlying rock is approximate only, is not guaranteed, does not form a part of this Contract. Contractor may reasonably rely thereon, however the Districts makes no warranty regarding the completeness or accuracy of any such report or other information regarding subsurface conditions. Contractor acknowledges that it has made visual examination of Site and has made whatever tests Contractor deems appropriate to determine underground condition of soil.

11.2.2. If Contractor encounters subsurface or latent conditions at Site materially differing from those shown on Drawings or indicated in Specifications, or for unknown conditions of an unusual nature that differ materially from those ordinarily encountered in the Work of the character provided for in the Contract Documents, Contractor shall give notice to the District immediately before conditions are disturbed and in no event later than ten (10) days after first observance of the conditions.

11.2.2.1. The District will promptly investigate such conditions and, if they differ materially and cause an increase or decrease in Contractor's cost of, or time required for, performance of any part of the Work, will equitably adjustment the Contract Sum or Contract Time, or both.

11.2.2.2. If the District determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the District will notify Contractor in writing, stating the reasons.

11.2.2.3. If after receiving the response, Contractor still intends to pursue a Claim, it shall provide written notice within ten (10) days after it has received the decision.

11.2.2.4. Conditions will not be qualified as concealed or unknown if they were readily visible or reasonably observable.

11.2.3. Contractor's Diligence. Contractor's agreement to the Contract Price confirms that it has made a careful examination of the Contract Documents, that it has a complete understanding of the nature, extent, and location of Work to be performed and that it expressly represents that it has fully completed the following:

11.2.3.1. Contractor has visited the Project Site(s), and has examined thoroughly and understood the nature and extent of the Contract Documents, Work, Site, locality, actual conditions, as-built conditions, and all local conditions and federal, state and local laws, and regulations that in any manner may affect cost, progress, performance, or furnishing of Work or that relate to any aspect of the means, methods, techniques, sequences, or procedures of construction to be employed by Contractor and safety precautions and programs incident thereto;

11.2.3.2. Contractor has conducted or obtained and has understood all examinations, investigations, explorations, tests, reports, and studies that pertain to the subsurface conditions, as-built conditions, underground facilities, and all other physical conditions at or contiguous to the Site or otherwise that may affect the cost, progress, performance, or furnishing of Work, as Contractor considers necessary for the performance or furnishing of Work at the Guaranteed Project Cost, within the Contract Time, and in accordance with the other terms and conditions of Contract Documents, including specifically the provisions of the General Construction Provisions; and no additional examinations, investigations, explorations, tests, reports, studies, or similar information or data are or will be required by Contractor for such purposes;

11.2.3.3. Contractor has correlated its knowledge and the results of all such observations, examinations, investigations, explorations, tests, reports, and studies with the terms and conditions of the Contract Documents;

11.2.3.4. Contractor has given the District prompt written notice of all conflicts, errors, ambiguities, or discrepancies that it has discovered in or among the Contract Documents and the actual conditions, and the written resolution thereof by the District is acceptable to Contractor;

11.2.3.5. Contractor has made a complete disclosure in writing to the District of all facts bearing upon any possible interest, direct or indirect, that Contractor believes any representative of the District or other officer or employee of the District presently has or will have in this Contract or in the performance thereof or in any portion of the profits thereof;

11.2.3.6. Contractor is charged with all information and knowledge that a reasonable contractor would ascertain from having performed this required work, investigation, research, and analysis. The Guaranteed Project Cost includes entire cost of all work "incidental" to completion of the Work.

11.2.3.7. Conditions Shown on the Contract Documents: Information as to underground conditions, as-built conditions, or other conditions or obstructions, indicated in the Contract Documents, e.g., on Drawings or in Specifications, has been obtained with reasonable care, and has been recorded in good faith. However, District only warrants, and Contractor may only rely, on the accuracy of limited types of information.

11.2.3.7.1. As to above-ground conditions or as-built conditions shown or indicated in the Contract Documents, there is no warranty, express or implied, or any representation express or implied, that such information is correctly shown or indicated. This information is verifiable by independent investigation and Contractor is required to make such verification. Contractor shall rely on the results of its own independent investigation. Contractor shall not rely on District-supplied information regarding above-ground conditions or as-built conditions. Subject to Public Contract Code section 7104, Contractor shall be responsible for all repairs of any utilities

underground damaged by Contractor.

11.2.3.7.2. As to any subsurface condition shown or indicated in the Contract Documents, Contractor may rely only upon the general accuracy of actual reported depths, actual reported character of materials, actual reported soil types, actual reported water conditions, or actual obstructions shown or indicated. District is not responsible for the completeness of such information for preparing a proposal or construction; nor is District responsible in any way for any conclusions or opinions of Contractor drawn from such information; nor is District responsible for subsurface conditions that are not specifically shown (for example, District is not responsible for soil conditions in areas contiguous to areas where a subsurface condition is shown).

11.2.4. Conditions Shown in Reports and Drawings Supplied for Informational Purposes: Reference is made to the document entitled Geotechnical Data (if attached), and the document entitled Existing Conditions (if attached), for identification of:

11.2.4.1. **Subsurface Conditions:** Those reports of explorations and tests of subsurface conditions at or contiguous to the Project Site(s) that have been utilized by Architect in preparing the Contract Documents; and

11.2.4.2. **Physical Conditions:** Those drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Project Site(s) that has been utilized by Architect in preparing the Contract Documents.

11.2.4.3. These reports and drawings are **not** Contract Documents and, except for any "technical" data regarding subsurface conditions specifically identified in Geotechnical Data and Existing Conditions, and underground facilities data, Contractor may not in any manner rely on the information in these reports and drawings. Subject to the foregoing, Contractor must make its own independent investigation of all conditions affecting the Work and must not rely on information provided by District.

11.3. Access to Work

District and its representatives shall at all times have access to Work wherever it is in preparation or progress, including storage and fabrication. Contractor shall provide safe and proper facilities for such access so that District's representatives may perform their functions.

11.4. Layout and Field Engineering

11.4.1. All field engineering required for layout of this Work and establishing grades for earthwork operations shall be furnished by Contractor at its expense. This Work shall be done by a qualified, California-registered civil engineer and/or licensed surveyor (as appropriate) approved in writing by District and Architect.

11.4.2. The Contractor shall be responsible for having ascertained pertinent local conditions such as location, accessibility, and general character of the Site and for having satisfied itself as to the conditions under which the Work is to be performed. District shall not be liable for any claim for allowances because of Contractor's error or negligence in acquainting itself with the conditions at the Site.

11.4.3. Contractor shall protect and preserve established benchmarks and monuments and shall make no changes in locations without the prior written approval of District. Contractor shall replace any benchmarks or monuments that are lost or destroyed subsequent to proper notification of District and

with District's approval.

11.5. Utilities & Sanitary Facilities

Utilities necessary to complete the Work and to completely perform all of the Contractors' obligations shall be obtained by the Contractor without adjustment of the Guaranteed Project Cost. The Contractor shall furnish and install necessary or appropriate temporary distributions of utilities, including utilities furnished by the District. Any such temporary distributions shall be removed by the Contractor upon completion of the Work. The costs of all such utility services, including the installation and removal of temporary distributions thereof, shall be borne by the Contractor and included in the Guaranteed Project Cost. Also refer to other utility requirements as indicated in the Specifications. At all times during Work at the Site, the Contractor shall obtain and maintain temporary sanitary facilities in conformity with applicable law, rule or regulation. The Contractor shall maintain temporary sanitary facilities in a neat and clean manner with sufficient toilet room supplies. Personnel engaged in the Work are not permitted to use toilet facilities at the Site. Also refer to other Sanitary facility requirements as indicated in the Specifications.

11.6. Surveys

Contractor shall provide surveys done by a qualified, California-registered civil engineer and/or licensed surveyor (as appropriate) to determine locations of construction, grading, and site work as required to perform the Work.

11.7. Regional Notification Center

The Contractor, except in an emergency, shall contact the appropriate regional notification center at least two (2) days prior to commencing any excavation if the excavation will be conducted in an area or in a private easement that is known, or reasonably should be known, to contain subsurface installations other than the underground facilities owned or operated by the District, and obtain an inquiry identification number from that notification center. No excavation shall be commenced and/or carried out by the Contractor unless an inquiry identification number has been assigned to the Contractor or any Subcontractor and the Contractor has given the District the identification number. Any damages arising from Contractor's failure to make appropriate notification shall be at the sole risk and expense of the Contractor. Any delays caused by failure to make appropriate notification shall be at the sole risk of the Contractor and shall not be considered for an extension of the Contract time.

11.8. Existing Utility Lines

11.8.1. Pursuant to Government Code section 4215, District assumes the responsibility for removal, relocation, and protection of main or trunk utility lines and facilities located on the construction Site at the time of commencement of construction under this Contract with respect to any such utility facilities that are not identified in the Plans and Specifications. Contractor shall not be assessed for liquidated damages for delay in Project Completion caused by failure of District or the owner of a utility to provide for removal or relocation of such utility facilities.

11.8.2. Locations of existing utilities provided by District shall not be considered exact, but approximate within reasonable margin and shall not relieve Contractor of responsibilities to exercise reasonable care nor costs of repair due to Contractor's failure to do so. District shall compensate Contractor for the costs of locating, repairing damage not due to the failure of Contractor to exercise reasonable care, and removing or relocating such utility facilities not indicated in the Plans and Specifications with reasonable accuracy, and for equipment necessarily idle during such work.

11.8.3. No provision herein shall be construed to preclude assessment against Contractor for any other

delays in Project Completion. Nothing in this Section shall be deemed to require District to indicate the presence of existing service laterals, appurtenances, or other utility lines, with the exception of main or trunk utility lines, whenever the presence of these utilities on the Site of the construction Project can be inferred from the presence of other visible facilities, such as buildings, meter junction boxes, trenches on or adjacent to the Site of the construction.

11.8.4. If Contractor, while performing Work under this Contract, discovers utility facilities not identified by District in Contract Plans and Specifications, Contractor shall immediately, but in no case longer than two (2) Business Days, notify the District and the utility in writing. The cost of repair for damage to above-mentioned visible facilities without prior written notification to the District shall be borne by the Contractor.

11.9. Notification

Contractor understands, acknowledges and agrees that the purpose for prompt notification to the District pursuant to these provisions is to allow the District to investigate the condition(s) so that the District shall have the opportunity to decide how the District desires to proceed as a result of the condition(s). Accordingly, failure of Contractor to promptly notify the District in writing, pursuant to these provisions, shall constitute Contractor's waiver of any claim for damages or delay incurred as a result of the condition(s).

11.10. Hazardous Materials

Contractor shall comply with all provisions and requirements of the Contract Documents related to hazardous materials including, without limitation, certifications related to hazardous materials in the document entitled Certifications to be Completed by Contractor.

11.11. No Signs

Neither the Contractor nor any other person or entity shall display any signs not required by law or the Contract Documents at the Site, fences trailers, offices, or elsewhere on the Site without specific prior written approval of the District.

12. TRENCHES

12.1. Trenches Greater Than Five Feet

Pursuant to Labor Code section 6705, if the Guaranteed Project Cost exceeds \$25,000 and involves the excavation of any trench or trenches five (5) feet or more in depth, the Contractor shall, in advance of excavation, promptly submit to the District and/or a registered civil or structural engineer employed by the District or Architect, a detailed plan showing the design of shoring for protection from the hazard of caving ground during the excavation of such trench or trenches.

12.2. Excavation Safety

If such plan varies from the Shoring System Standards established by the Construction Safety Orders, the plan shall be prepared by a registered civil or structural engineer, but in no case shall such plan be less effective than that required by the Construction Safety Orders. No excavation of such trench or trenches shall be commenced until said plan has been accepted by the District or by the person to whom authority to accept has been delegated by the District.

12.3. No Tort Liability of District

Pursuant to Labor Code section 6705, nothing in this Article shall impose tort liability upon the District or any of its employees.

12.4. No Excavation Without Permits

The Contractor shall not commence any excavation Work until it has secured all necessary permits including the required CAL OSHA excavation/shoring permit. Any permits shall be prominently displayed on the Site prior to the commencement of any excavation.

12.5. Discovery of Hazardous Waste, Unusual Conditions and /or Unforeseen Conditions

12.5.1. Pursuant to Public Contract Code section 7104, if the Work involves digging trenches or other excavations that extend deeper than four feet below the Surface, the Contractor shall immediately, but in no case longer than two (2) Business Days, and before the following conditions are disturbed, notify the District, in writing, of any:

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

12.5.1.2. Subsurface or latent physical conditions at the Site differing from those indicated.

12.5.1.3. Unknown physical conditions at the Site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract.

12.5.2. The District shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in the Contractor's cost of, or the time required for, performance of any part of the Work, shall issue a Change Order under the procedures described herein.

12.5.3. In the event that a dispute arises between District and the Contractor whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Contractor's cost of, or time required for, performance of any part of the Work, the Contractor shall not be excused from any scheduled Completion date provided for by the Contract, but shall proceed with all work to be performed under the Contract. The Contractor shall retain any and all rights provided by the Contract or by law that pertain to the resolution of disputes and protests, which include the requirement that Contractor complies with the notice and PCO provisions of the Contract Documents. Contractor's failure to submit a proposed change order pursuant to the terms of the Contract Documents shall be deemed a waiver of Contractor's right to an adjustment of the GPC of Contract Time.

13. INSURANCE AND BONDS

13.1. Contractor's Insurance

The Contractor shall comply with the insurance requirements as indicated in the Facilities Lease.

13.2. Contract Security - Bonds

13.2.1. Contractor shall furnish two surety bonds issued by a California admitted surety insurer as follows:

13.2.1.1. Performance Bond: A bond in an amount at least equal to one hundred percent (100%) of Contract Price as security for faithful performance of this Contract.

13.2.1.2. Payment Bond: A bond in an amount at least equal to one hundred percent (100%) of the Contract Price as security for payment of persons performing labor and/or furnishing materials in connection with this Contract.

13.2.2. Cost of bonds shall be included in the Guaranteed Project Cost.

13.2.3. All bonds related to this Project shall be on the forms provided in the Contract Documents and shall comply with all requirements of the Contract Documents.

14. WARRANTY/GUARANTEE/INDEMNITY

14.1. Warranty/Guarantee

14.1.1. The Contractor shall obtain and preserve for the benefit of the District, manufacturer's warranties on materials, fixtures, and equipment incorporated into the Work.

14.1.2. In addition to guarantees required elsewhere, Contractor shall, and hereby does guarantee and warrant all Work furnished on the Project against all defects for a period of **ONE (1)** year after the later of the following dates:

14.1.2.1. Project Completion,

14.1.2.2. The final commissioning date for all systems, equipment and components that are within the Project, if any.

At the District's sole option, Contractor shall repair or replace any and all of that Work, together with any other Work that may be displaced in so doing, that may prove defective in workmanship and/or materials within a **ONE (1)** year period from date of Project Completion as defined above without expense whatsoever to District. In the event of failure of Contractor and/or Surety to commence and pursue with diligence said replacements or repairs within ten (10) days after being notified in writing, Contractor and Surety hereby acknowledge and agree that District is authorized to proceed to have defects repaired and made good at expense of Contractor and/or Surety who hereby agree to pay costs and charges therefore immediately on demand.

14.1.3. If, in the opinion of District, defective work creates a dangerous condition or requires immediate correction or attention to prevent further loss to District or to prevent interruption of operations of District, District will attempt to give the notice required above. If Contractor or Surety cannot be contacted or neither complies with District's request for correction within a reasonable time as determined by District, District may, notwithstanding the above provision, proceed to make any and all corrections and/or provide attentions the District believes are necessary. The costs of correction or attention shall be charged against Contractor and Surety of the guarantees provided in this Article or elsewhere in this Contract.

14.1.4. The above provisions do not in any way limit the guarantees on any items for which a longer guarantee is specified or on any items for which a manufacturer gives a guarantee for a longer period. Contractor shall furnish to District all appropriate guarantee or warranty certificates as indicated in the Specifications or upon request by District.

14.1.5. Nothing herein shall limit any other rights or remedies available to District.

14.2. Indemnity

Contractor shall indemnify the District as indicated in the Facilities Lease.

15. TIME

15.1. Computation of Time / Adverse Weather

15.1.1. The Contractor will only be allowed a time extension for Adverse Weather conditions if requested by Contractor and only if all of the following conditions are met:

15.1.1.1. The weather conditions constitute Adverse Weather, as defined herein;

15.1.1.2. Contractor can verify that the Adverse Weather caused delays in excess of five hours of the indicated labor required to complete the scheduled tasks of Work on the day affected by the Adverse Weather;

15.1.1.3. The Contractor's crew is dismissed as a result of the Adverse Weather; and

15.1.1.4. The number of days of delay for the month exceeds the following parameters, or twenty nine (29) days annually. The District and Contractor may negotiate a different minimum number of days or a cumulative number of days for the duration of the Project, which shall be as indicated in **Exhibit K** to the Facilities Lease:

January	<u>7</u>	July	<u>0</u>
February	<u>7</u>	August	<u>0</u>
March	<u>4</u>	September	<u>0</u>
April	<u>3</u>	October	<u>2</u>
May	<u>1</u>	November	<u>2</u>
June	<u>1</u>	December	<u>2</u>

15.1.2. A day-for-day extension will only be allowed for those days in excess of those indicated herein.

15.1.3. The Contract Time has been determined with consideration given to the average climate weather conditions prevailing in the County in which the Project is located.

15.2. Hours of Work

Work shall be performed during regular working hours as permitted by the appropriate governmental agency except that in the event of an emergency, or when required to complete the Work in accordance with job progress, Work may be performed outside of regular working hours with the advance written consent of the District and approval of any required governmental agencies (e.g., the city within which the Project is located). Contractor shall confirm with the governmental agencies what the permitted work hours are for the jurisdiction in which the Project is located.

15.3. Progress and Project Completion

15.3.1. Time of the Essence

Time limits stated in the Contract Documents are of the essence to the Contract. By executing the Facilities Lease, the Contractor confirms that the Contract Time is a reasonable period for

Project Completion.

15.3.2. No Commencement Without Insurance

The Contractor shall not commence operations on the Project or elsewhere prior to the effective date of insurance and bonds. The date of commencement of the Work shall not be changed by the effective date of such insurance. If Contractor commences Work without insurance and bonds, all Work is performed at Contractor's peril and shall not be compensable until and unless Contractor secures bonds and insurance pursuant to the terms of the Contract Documents and subject to District claim for damages.

15.3.3. Sufficient Forces

Contractor and Subcontractors shall continuously furnish sufficient forces to ensure the prosecution of the Work in accordance with the Construction Schedule to obtain Project Completion within the Contract Time.

15.4. Schedule

Contractor shall provide to District, Construction Manager, and Architect a schedule in conformance with the Contract Documents and as required in these General Construction Provisions.

15.5. Expeditious Completion

The Contractor shall proceed expeditiously with adequate forces and shall achieve Completion within the Contract Time.

16. EXTENSIONS OF TIME – LIQUIDATED DAMAGES

16.1. Contractor's Notice of Delay

16.1.1. In addition to the requirements indicated in this subsection, Contractor shall submit any request for an adjustment of the Contract Price or the Contract Time through the Change Order provisions in these General Construction Provisions.

16.1.2. Contractor shall, within **FIVE (5)** calendar days of any delay impacting the critical path in completing the Work, notify District in writing of the causes of the delay including documentation and facts explaining the delay.

16.1.3. Any request by Contractor for an adjustment of the Contract Price or the Contract Time for a delay shall be submitted in accordance with the provisions in the Contract Documents governing changes in Work. When requesting time, requests must be submitted with full justification and documentation. Such justification must be based on the official Construction Schedule as updated at the time of occurrence of the delay or execution of Work related to any changes to the Scope of Work.

16.1.4. Any claim for delay must include the following information as support, without limitation:

16.1.4.1. Duration. The duration of the activity relating to the changes in the Work and the resources (manpower, equipment, material, etc.) required to perform the activities within the stated duration.

16.1.4.2. Logical Ties / Fragnets. Specific logical ties to the Contract Schedule for the proposed changes and/or delay showing the activity/activities in the Construction Schedule that are affected by