

**Alameda Unified School District  
2060 Challenger Drive  
Alameda, California 94501**

**November 14, 2017**

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**REQUEST TO PREQUALIFY AND FOR STATEMENT OF QUALIFICATIONS FOR  
PRELIMINARY AND CONSTRUCTION SERVICES (LEASE-LEASEBACK)**

The Alameda Unified School District (“**District**”) is requesting submission of:

- A prequalification questionnaire (“**Prequalification Questionnaire(s)**”), if contractor is not currently prequalified with the District, and
- A statement of qualifications (“**SOQ(s)**”) (together, “**Response(s)**”), from qualified firms, partnerships, corporations, associations, persons, or professional organizations (“**Contractor(s)**” or “**Firm(s)**”) to construct improvements to certain District schools, as further described in this Request for Qualifications. (“**Projects**”) pursuant to the lease leaseback structure (Education Code section 17406, et seq.)
- Contractors that intend to submit a Response must:
  - Be prequalified with the District;
  - Be insured;
  - Hold a Class B Contractors License, which is current, valid, and in good standing with the California Contractor's State License Board; and

**RFP.** The District is also requesting submission of a proposal (“**RFP**”) from qualified firms, partnerships, corporations, associations, persons, or professional organizations (“**Contractor(s)**” or “**Firm(s)**”) to perform preliminary services and construction services for the project identified in **Attachment 1. (“Project Description”)** pursuant to a lease-leaseback structure. (Education Code section 17406.) (“**Proposal**”) (together with RFQ “**RFQ/P**”)

**Pool.** The District intends to create a pool of qualified Contractors from which, in addition to the RFP described herein, proposals on certain other projects may be solicited. A list of prospective future projects are identified in **Attachment 2.**

**Responses.** Interested Contractors are invited to submit a Response as described below,

- **Prequalification Questionnaires must be completed** by the date indicated in the RFQ Schedule.
- **Mechanical, Electrical and Plumbing (“MEP”) Subcontractors must complete a Prequalification Application** by the date indicated in the RFQ Schedule. The District highly recommends all Contractors’ MEP subcontractors complete the Prequalification Application as soon as possible to expedite the District’s evaluation.
- **SOQs must be received** by the date indicated in the RFQ/P Schedule. with one (1) original and five (5) copies of requested materials as well as a digital copy on a thumb drive, to:

**Alameda School District  
Attn: Robbie Lyng,  
Director of Maintenance, Operations & Facilities  
2060 Challenger Drive  
Alameda, California 94501  
Telephone: 510-337-7090**

**Questions regarding this RFQ may be directed to Robbie Lyng 510-337-7090**

**Contractors and subcontractors are directed to not contact any other person regarding this RFQ. Contractors or subcontractors that contact any other person regarding this RFQ or attempt to visit any Project site shall be**

**disqualified.**

**RFQ/P Addenda.** If the District issues addenda to this RFQ/P, Contractors are solely responsible for and must acknowledge receipt of addenda either in the Contractor's SOQ if it pertains to the RFQ or in the Proposal if it pertains to the RFP. Failure to acknowledge and respond to any addenda issued by the District may, in the District's sole discretion, render the Contractor's SOQ/Proposal to be deemed non-responsive and may be rejected.

**RFQ/P Schedule.** The District has set the following RFQ/P Schedule that all Contractors must adhere to. The District reserves the right to modify this RFQ/P Schedule and will issue an addendum if it modifies this RFQ/P Schedule.

Event / Occurrence	Date / Deadline
District Issues RFQ/P	November 14, 2017
Deadline for Contractors to submit questions regarding this RFQ/P	November 29, 2017
District to respond to Contractors' questions regarding this RFQ/P	December 1, 2017
Deadline for Contractors to complete Prequalification Questionnaires	December 6, 2017
Deadline for MEP subcontractors to be prequalified	December 6, 2017
Deadline for Contractors to submit SOQ and Proposal	December 11, 2017
District to notify Contractors of qualification status	December 15, 2017
Interviews with short-listed qualified Contractors regarding proposals.	December 18 -19, 2017
Award of contract for Project	December 22, 2017

Thank you for your interest in working with the Alameda Unified School District.

1. **General Information.**

- 1.1. **General Services.** The District invites qualified Contractors to submit a Response related to its ability to provide the Services, as more fully indicated herein. Contractors must have extensive experience with the Office of Public School Construction ("OPSC"), the Uniform Building Code ("UBC"), Title 24 of the California Code of Regulations, and the Division of the State Architect ("DSA"). Contractors must have extensive experience in the construction of public school facilities, working with public school district representatives, working with architects, contractors and other school facility related consultants, and establishing project scope, project budgets, and bidding procedures under both the Public Contract Code's formal bidding process and under alternative construction delivery methods.
- 1.2. **Lease-Leaseback Structure.** The Project may be funded from various sources, and any agreement reached will conform to the statutory framework for the lease-leaseback delivery method. (Education Code section 17406, et seq.) The Contractor will be responsible for financing a portion of the construction of the Project. During construction, the District shall pay tenant improvement payments. Once the Project is complete, the Contractor shall lease the facilities constructed back to the District for a pre-determined monthly lease payment amount and lease period.
- 1.3. **Scope of Services.** The selected Contractor for each Project must be willing and able to, in good faith, propose to construct the Project listed in **Attachment 1**, including the subcontractor procurement process detailed in **Attachment 6 ("Subcontractor Procurement Process")**.
- 1.4. **Skilled Workforce.** Within the Agreement is the statutory requirement that the successful Contractor and its Subcontractors at every tier use a skilled and trained workforce at minimum percentages, as defined in Public Contract Code section 2601, to perform all Work on the Project that falls within an apprenticeable occupation in the building and construction trades. **The successful Contractor will also be required to comply with all of the requirements in the Project Labor Agreement between the District and the Alameda County Trade Council, a copy of which is Attachment 7 to this RFQ.**

2. **Prequalification.**

- 2.1. **Contractor Prequalification.** All Contractors must submit by the date indicated in this RFQ Schedule, the Prequalification Questionnaire attached hereto as **Attachment 4**, by all Contractors not currently prequalified with the District. The Prequalification Application is related to a contractor's ability to provide the Services as indicated herein and must be maintained for the duration of the time frame for the Project identified in this RFQ. (Public Contract Code section 20111.6.) The Contractor's Prequalification Application shall be scored according to **Attachment 5 ("District's Prequalification Scoring for Contractors and Subcontractors")** attached hereto.
- 2.2. **Mechanical, Electrical and Plumbing Subcontractors Prequalification.** All mechanical, electrical and plumbing subcontractors that hold a C-4, C-7, C-10, C-16, C-20, C-34, C-36, C-38, C-42, C-43, and/or C-46 California Contractors' License(s) ("**MEP subcontractors**") that the Contractor intends to use on the Project **must** complete the Prequalification Application attached hereto as **Attachment 4** by the date indicated in this RFQ, if an MEP subcontractor is not currently prequalified with the District. The Prequalification Application is related to the MEP subcontractor's ability to provide the Services as indicated herein and must be maintained for the duration of the time frame for the Project identified in this RFQ/P. (Public Contract Code section 20111.6.) The District highly recommends all Contractors' MEP subcontractors complete the Prequalification Application as soon as possible to expedite the District's evaluation. The

Subcontractor's Prequalification Application shall be scored according to **Attachment 4** ("**District's Prequalification Scoring for Contractors and Subcontractors**") attached hereto.

3. **Contractors' SOQs.** Contractors' SOQs must be concise, well-organized, and consecutively numbered on each page and must include the following information, using the following outline structure, except as may be otherwise directed. The Contractors' SOQ shall **be no longer than seventy-five (75) single sided pages, on 8½" x 11" paper**, inclusive of résumés, forms, and pictures, and tabbed according to the numbering system reflected below. Each Contractor's SOQ must demonstrate Contractor's qualifications, and shall include the following items and information:
- 3.1. **Letter of Interest.** A dated Letter of Interest must be submitted, including the legal name of the Contractor, address, telephone, emails, and the name, title, and signature of the person authorized to submit the SOQ on behalf of the Contractor. The Letter of Interest should provide a brief statement of the Contractor's experience indicating the unique background and qualities of the Contractor, its personnel, and what will make the Contractor a good fit for work in the District.
  - 3.2. **Table of Contents.** A table of contents of the material contained in the SOQ must follow the letter of interest.
  - 3.3. **Executive Summary.** An executive summary that outlines the Contractor's philosophy, along with a brief summary of the Contractor's qualifications.
  - 3.4. **Proposed Personnel/Contractor Team.** Include resumes of key personnel who would be performing Services for the District. Specifically, define the role of each person and outline his or her individual experience and responsibilities. Indicate personnel who will serve as primary contact(s) for the District. Indicate each person's availability to provide the Services.
  - 3.5. **Contractor's History.** Provide a brief history of the Contractor, and, if a joint venture, of each participating entity.
  - 3.6. **Contractor's Approach to Work.** Describe how the Contractor intends to work with the District's administration officials to perform the Services, including assistant superintendents, facilities directors, teachers and site principals, to develop management techniques and responses related to the unique challenges of the District's educational program requirements.
  - 3.7. **Letters of References.** Include letters of reference or testimonials, if available. Contractor should limit letters of references or testimonials to no more than ten (10).
  - 3.8. **Professional Development.** Indicate ongoing commitment to professional education of staff, total number of permanent employees, and any other data that may assist the District in understanding Contractor's qualifications and expertise.
  - 3.9. **Schedule.** Discuss the Contractor's ability to prepare and meet achievable construction schedules for lease-leaseback projects, Contractor's schedule management procedures, and how the Contractor has successfully handled potential delays.
  - 3.10. **Budget.** Discuss the Contractor's ability to manage costs and stay within budgets on comparable projects.
  - 3.11. **Cost Savings / Value Engineering.** The District is seeking a Contractor that has direct experience and/or can demonstrate an aptitude to "value engineer" or analyze a project's plans, components, and features, and find more efficient and cost-effective methods or alternatives.



Describe your Contractor's suggestions, recommendations, alternatives or other valuation determinations that the Contractor could implement on the Projects.

**3.12. Contractor's Current Work Commitments/Project Limitations.**

- 3.12.1. Specify the current and projected workload of Contractor. If applicable, provide a statement of all recent, current, or anticipated contractual obligations that relate in any way to similar work for the District that may have a potential to impede Contractor's ability to provide the Services described herein to the District.
- 3.12.2. Indicate Contractor's limitation or Surety restrictions related to the size of Project that Contractor can contract for and can effectively perform.

**3.13. Additional Data.** Provide additional information about the Contractor as it may relate to Contractor's SOQ.

**3.14. Conflicts of Interest.** If applicable, provide a statement of any recent, current, or anticipated contractual obligations that relate in any way to similar work, the Projects, or the District that may have a potential to conflict with Contractor's ability to provide the Services described herein to the District. Contractors cannot submit, propose, bid, contract, subcontract, consult, or have any other economic interests in the Project to which the Contractor may provide Services. The Contractor selected to provide the Services and any subsidiary, parent, holding company or affiliate of the selected Contractor, may not perform any construction work or submit a bid for the Project.

**3.15. Cost Proposal. (Respond to this section only if you are submitting a Proposal)** The plans and specifications for the Project have not yet been approved by the Division State Architect ("DSA"). Therefore, the Project will be awarded based upon the Contractor's cost of performing services rather than a lump sum bid. When DSA has approved the plans and specifications, a guaranteed maximum price shall be finalized for the Project.

3.15.1. **Contractor's Cost of Performing Services.** Please complete the worksheet attached hereto as **Attachment 1**.

3.15.2. **Construction Schedule.** Please provide a preliminary construction schedule for the Project, indicating all critical path items and durations for scopes of work.

3.15.3. **Schedule of Values.** Please provide a preliminary schedule of values for the Project.

3.15.4. **Cost Savings / Value Engineering.** Please provide recommendations to the District to maintain or reduce the established budget. The District is seeking "value engineering" and analyses of the Project's plans, components, systems and features, to find more efficiency, cost-savings, or other value to the District.

**3.16. Agreement Form.** The District intends to use the Lease-Leaseback Agreement forms attached hereto as **Attachment 3** to this RFQ/P ("**Agreement**"). If a Contractor has any comments or objections to the Agreement attached as hereto as **Attachment 3** to this RFQ/P, it shall provide those comments or objections in its SOQ. **PLEASE NOTE: The District will not consider any substantive changes to the form of Agreement if they are not submitted at or before the time the SOQ is due.**

4. **District's Evaluation / Best Value Selection Process.** The District shall evaluate Firms' Responses based on a best value determination process

4.1. **Criteria for Best Value Selection Process.** The District wishes to retain Contractors that have the financial strength, management and expertise to deliver a Project within a proposed schedule and within an established budget. The District reserves the right to choose any Contractor for any Project. The Contractor will be selected based on qualifications and demonstrated competence that include relevant experience with California public school construction, with State of California's School Facilities Program, and a proven track record for cost-efficient and timely construction projects.

4.2. **Scoring.** The following table indicates how the District will score steps 1 – 4. Steps 1-3 pertain to qualifying for the pool. Scoring in step 4 is reset and does not include score for steps 1-3. The scoring and criteria for all steps are included in **Attachment 5** to this RFQ/P. Only Firms that receive the minimum qualification points as required at each step will move to the next step.

<b>STEP 1: Scoring of Prequalification Questionnaire</b>	<b>Minimum qualification points required in STEP 1 for Firms to proceed to STEP 2:</b>  (Total maximum possible points at the end of STEP 1 is <u>135</u> .)	<b><u>100</u></b>
<b>The District will only go to STEPS 2 &amp; 3 for Firms with the required minimum score after STEP 1.</b>		
<b>STEP 2: Scoring of Proposal</b>	<b>Minimum qualification points required in STEP 2 and STEP 3 <u>COMBINED</u> for Firms to qualify for pool:</b>  (Total combined maximum possible points at the end of STEPS 2 & 3 is <u>310</u> .)	<b><u>250</u></b>
<b>STEP 3: Scoring of References</b>		
<b>The District will only interview those Firms that have qualified for the pool based upon their score on steps 1-3 and who are interested in submitting a Proposal. The interviews will be based upon the proposals submitted.</b>		
<b>STEP 4: Scoring of Interviews</b>	<b>Minimum qualification points required in STEP 4 to be considered for the Project.</b>  (Total maximum possible points from the interview is <u>140</u> .)	<b><u>100</u></b>

4.3. **Notification.** The District will notify Firms of their status after each Step. Firms that do not receive the required minimum qualification points from STEP 2, may request in writing a debriefing, which will be restricted to no more than two (2) persons from the Firm to have a discussion with the District staff regarding that Firm's Response. All debriefings will take place via a conference call or an in-person meeting, at the District's sole discretion.

4.4. During the evaluation of the Responses, contact shall only be through the individual identified in the RFQ. Firms shall neither contact nor lobby evaluators during the evaluation process. Attempts by a Firm to contact and/or influence the District may result in disqualification of that Firm.

4.5. The District reserves the right to contract with any Contractor responding to this RFQ/P for the

Project, to reject any Response as non-responsive, and not to contract with any Contractor for the Services described herein. The District makes no representation that participation in the RFQ/P process will lead to an award of contract or any consideration whatsoever. The District reserves the right to seek Responses from or to contract with any Contractor not participating in this process. The District shall in no event be responsible for the cost of preparing any SOQ. The District reserves the right to adjust the structure of the Project(s) and to request a successful Contractor provide initial pricing information, fee(s) for preliminary services, general conditions, partial construction services, etc., by Project and by a phase within a Project.

- 4.6.** All SOQs will become the property of the District and subject to the California Public Records Act, Government Code sections 6250, et seq. Those elements in an SOQ that are trade secrets as that term is defined in Civil Code section 3426.1(d) or otherwise exempt by law from disclosure and which are prominently marked as "TRADE SECRET," "CONFIDENTIAL," or "PROPRIETARY" may not be subject to disclosure. The District shall not be liable or responsible for the disclosure of any such records including, without limitation, those so marked if disclosure is deemed to be required by law or by an order of the Court. A Contractor that indiscriminately identifies all or most of its SOQ as exempt from disclosure without justification may be deemed non-responsive. In the event the District is required to defend an action on a Public Records Act request for any of the contents of an SOQ marked "Confidential," "Proprietary," or "Trade Secret," the Contractor agrees, by submission of its SOQ, to defend and indemnify the District from all costs and expenses, including attorneys' fees, in any action or liability arising under the Public Records Act.

**Attachment 1**

**PROJECTS FOR WHICH THE DISTRICT IS ACCEPTING PROPOSALS**

If you are submitting a Proposal on either of the Projects listed below, for each project, please provide the requested information below.

**PADEN ELEMENTARY SCHOOL MODERNIZATION:**

- **CONSTRUCTION COST ESTIMATE: \$4,079,250.** Based on this estimate, please provide the requested percentages where indicated. (Estimate includes site work, cost escalation and construction contingency.)

THIS PROJECT INCLUDES THE FOLLOWING SCOPE OF WORK:

- MODERNIZATION OF ONE TWO-STORY CLASSROOM BUILDING: INCLUDES SELECTIVE DEMOLITION, NEW DUAL GLAZED INSULATED WINDOWS, MANUAL WINDOW SHADES, WINDOW SHADES & ASSOCIATED ELECTRICAL WORK, LIGHTING, FINISHES, EXTERIOR SUNSHADES, INTERIOR & EXTERIOR PATCH / REPAIR AND PAINTING AT NEW WORK.
- RESTROOM UPGRADES AT ONE CLASSROOM BUILDING: ACCESSIBILITY UPGRADES AT SEVERAL RESTROOMS, AND MECHANICAL UPGRADES AT RESTROOMS.
- PARTIAL MODERNIZATION OF SITE: INCLUDES SELECTIVE DEMOLITION, AND NEW CONCRETE FLATWORK TO PROVIDE INCREASED ACCESSIBILITY.

Item	Amount
<b>General Conditions</b> (identify in sufficient detail for evaluation, including <u>all</u> components that Contractor will include as General Conditions and not as part of subcontractors' scope of other direct costs of work.)	\$ _____
<b>Staffing which would be part of General Conditions</b>	
Project Executive (hourly rate)	\$ _____
Project Manager (hourly rate)	\$ _____
Project Superintendent (hourly rate)	\$ _____
Project Engineer (hourly rate)	\$ _____
<b>Mark-up on Subcontractor work.</b>	_____ %
<b>Mark-up on self-performed work.</b>	_____ %
<b>Fee / overhead &amp; profit</b> (as a percentage of direct costs)	_____ %
<b>Bond &amp; insurance cost</b> (as a percentage of direct costs)	_____ %
<b>Other costs</b> (identify in sufficient detail for evaluation, either as a lump sum or a percentage of direct costs)	\$ ____ or ____ %

**EDISON ELEMENTARY SCHOOL MODERNIZATION:**

**CONSTRUCTION COST ESTIMATE: \$7,056,000.** Based on this estimate, please provide the requested percentages where indicated. (Estimate includes site work, cost escalation and construction contingency.)

THIS PROJECT INCLUDES THE FOLLOWING SCOPE OF WORK:

- MODERNIZATION OF LIBRARY & ADMINISTRATION BUILDINGS: INCLUDES SELECTIVE DEMOLITION, NEW PARTIAL SLAB, INTERIOR WALLS, UNDERGROUND UTILITIES, MECHANICAL SYSTEMS, PLUMBING SYSTEMS & FIXTURES, LIGHTING, FIRE & SECURITY ALARM, CASEWORK, FINISHES, AND SIGNAGE.
- WINDOW REPLACEMENT AT 5 BUILDINGS & SUNSHADE CANOPIES AT NEW WINDOWS OF 3 BUILDINGS.
- REPLACEMENT MULTI-OCCUPANCY TOILET ROOM REQUIRING NEW UNDERGROUND UTILITIES, MODERNIZED SINGLE OCCUPANCY TOILET ROOM, & ADDITION OF ONE SINGLE OCCUPANCY TOILET ROOM AT LIBRARY BUILDING.
- ADDITION OF TWO SINGLE OCCUPANCY TOILET ROOMS AT ADMINISTRATION BUILDING.
- PARTIAL MODERNIZATION OF SITE: INCLUDES SELECTIVE DEMOLITION, NEW PUBLIC ACCESS CONTROL FENCING TO PROVIDE INCREASED CAMPUS SECURITY, AND NEW CONC. FLATWORK TO PROVIDE INCREASED ACCESSIBILITY, ONE NEW & ONE
- RELOCATED ACCESSIBLE HI/LO DRINKING FOUNTAINS.
- FOUR NEW PC PRE-APPROVED SHADE STRUCTURES AT EAST SIDE OF BUILDING

Item	Amount
<b>General Conditions</b> (identify in sufficient detail for evaluation, including <u>all</u> components that Contractor will include as General Conditions and not as part of subcontractors' scope of other direct costs of work.)	\$ _____
<b>Staffing which would be part of General Conditions</b>	
Project Executive (hourly rate)	\$ _____
Project Manager (hourly rate)	\$ _____
Project Superintendent (hourly rate)	\$ _____
Project Engineer (hourly rate)	\$ _____
<b>Mark-up on Subcontractor work.</b>	_____ %
<b>Mark-up on self-performed work.</b>	_____ %
<b>Fee / overhead &amp; profit</b> (as a percentage of direct costs)	_____ %
<b>Bond &amp; insurance cost</b> (as a percentage of direct costs)	_____ %
<b>Other costs</b> (identify in sufficient detail for evaluation, either as a lump sum or a percentage of direct costs)	\$ ____ or ____ %

Attachment 2

OTHER PROJECTS FOR WHICH QUALIFIED MEMBERS OF THE POOL WILL BE CONSIDERED

INSERT LIST OF PROJECTS HERE

FORM OF AGREEMENT

# Implementation Plan B-June 10<sup>th</sup> – Middle Schools

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## School Site Specific Improvements

<b>MIDDLE SCHOOLS</b>
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<u>Lincoln Middle School</u>	<u>Growth: -76</u>	<u>Net Clsrm Chg: 0</u>	<u>\$6.7 M</u>
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- Modernize one science and one computer lab
- Technology, communication & safety/security
- Critical mechanical, electrical, roofing and accessibility improvements

<u>Wood Middle School</u>	<u>Growth: 4</u>	<u>Net Clsrm Chg: 0</u>	<u>\$4.5 M</u>
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- New three classroom STEAM (science, technology, engineering, art and math) building
- Remove portables
- Technology, communication & safety/security
- Critical mechanical, electrical, roofing and accessibility improvements

# Implementation Plan B-June 10<sup>th</sup> – Elementary Schools

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## School Site Specific Improvements

<b>ELEMENTARY SCHOOLS</b>
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<u>Bay Farm Elem School</u>	<u>Growth: 97</u>	<u>Net Clsrm Chg: 4</u>	<u>\$6.3 M</u>
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- New four classroom building
- Technology, communication & safety/security
- Critical mechanical, electrical and accessibility improvements

<u>Earhart Elem School</u>	<u>Growth: 43</u>	<u>Net Clsrm Chg: 2</u>	<u>\$6.3 M</u>
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- New six classroom building
- Remove four portables
- Technology, communication & safety/security
- Critical mechanical, electrical and accessibility improvements



# Implementation Plan B-June 10<sup>th</sup> – Elementary Schools

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## School Site Specific Improvements

<b>ELEMENTARY SCHOOLS</b>
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<u>Edison Elem School</u>	<u>Growth: 24</u>	<u>Net Clsrm Chg: 1</u>	<u>\$6.4 M</u>
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- Comprehensive classrooms modernization
- One new classroom
- Technology, communication & safety/security
- Critical mechanical, electrical and accessibility improvements

<u>Franklin Elem School</u>	<u>Growth: 24</u>	<u>Net Clsrm Chg: 1</u>	<u>\$3.7 M</u>
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- One reconfigured science classroom
- Three new kindergarten classrooms
- Remove two modular and portable classrooms
- Technology, communication & safety/security
- Critical mechanical, electrical and accessibility improvements

# Implementation Plan B-June 10<sup>th</sup> – Elementary Schools

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## School Site Specific Improvements

<b>ELEMENTARY SCHOOLS</b>
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<u>Haight Elem School</u>	<u>Growth: 51</u>	<u>Net Clsrm Chg: 2</u>	<u>\$4.3 M</u>
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- Reconfigure east wing into one new science classroom and four kindergarten classrooms
- Build two new classrooms
- Technology, communication & safety/security
- Critical mechanical, electrical and accessibility improvements

<u>Lum Elem School</u>	<u>Growth: 103</u>	<u>Net Clsrm Chg: 4</u>	<u>\$6.5 M</u>
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- Build one new science classroom
- Build three new kindergarten classrooms
- Technology, communication & safety/security
- Critical mechanical, electrical and accessibility improvements

<u>Maya Lin School</u>	<u>Growth: 41</u>	<u>Net Clsrm Chg: 0</u>	<u>\$4.9 M</u>
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- Modernize two existing kindergarten classrooms
- Comprehensive window replacement
- Technology, communication & safety/security
- Critical mechanical, electrical and accessibility improvements

# Implementation Plan B-June 10<sup>th</sup> – Elementary Schools

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## School Site Specific Improvements

<b>ELEMENTARY SCHOOLS</b>
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<u>Otis Elem School</u>	<u>Growth: 104</u>	<u>Net Clsrm Chg: 4</u>	<u>\$6.4 M</u>
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- Modernize two existing kindergarten classrooms
- Build six new classrooms, remove two portables
- Technology, communication & safety/security
- Critical mechanical, electrical and accessibility improvements

<u>Paden Elem School</u>	<u>Growth: -5</u>	<u>Net Clsrm Chg: 0</u>	<u>\$3.7 M</u>
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- Reconfigure one new science classroom
- Modernize existing classrooms
- Technology, communication & safety/security
- Critical mechanical, electrical and accessibility improvements

<u>Ruby Bridges Elem School</u>	<u>Growth: -43</u>	<u>Net Clsrm Chg: 0</u>	<u>\$1.3 M</u>
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- Reconfigure one existing classroom into one science classroom
- Technology, communication & safety/security
- Critical mechanical, electrical and accessibility improvements

# Implementation Plan B-June 10<sup>th</sup> – Charter Schools

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## School Site Specific Improvements

<b>CHARTER SCHOOLS</b>
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<u>ACLC/Nea at Woodstock</u>	<u>Growth: n/a</u>	<u>Net Clsrm Chg: 0</u>	<u>\$2.3 M</u>
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- Technology, communication & safety/security
- Critical mechanical, electrical and accessibility improvements

<u>Academy of Alameda</u>	<u>Growth: n/a</u>	<u>Net Clsrm Chg: 0</u>	<u>\$1.4 M</u>
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- Technology, communication & safety/security
- Critical mechanical, electrical and accessibility improvements

# Implementation Plan B-June 10<sup>th</sup> – High Schools

## School Site Specific Improvements – Pending future approval

### HIGH SCHOOLS

<u>Alameda High School</u>	Growth: 195	Net Clsrm Chg: 8	\$44.0 M
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- Structural Rehab of all Historic Alameda HS buildings
- Comprehensive restoration of Historic Alameda HS and Technical Arts buildings
- Create 9 fully modernized science classrooms in HAHS East Wing
- Renovate HAHS Central Avenue façade
- Remove debris fence from HAHS buildings
- Technology, communication & safety/security
- Critical mechanical, electrical, roofing and accessibility improvements

<u>Encinal High School</u>	Growth: 286	Net Clsrm Chg: 12	\$39.5 M
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- Complete classroom reconfiguration of 100/200 wings
- Build two new 2 story 400 classroom wings for growth
- Complete science classrooms modernization/reconfiguration
- Modernize 600 wing and restrooms throughout campus
- Modernize existing Gym Locker Rooms
- Science and computer lab modernization at Library/Media Center
- Technology, communication & safety/security
- Critical mechanical, electrical, roofing and accessibility improvements

High Schools on hold pending Board future decisions and actions for scope of work.

# Implementation Plan B-June 10<sup>th</sup> – High Schools

## School Site Specific Improvements – Pending future approval

### HIGH SCHOOLS

<u>ASTI High School</u>	<u>Growth: 14</u>	<u>Net Clsrm Chg: 1</u>	<u>\$1.0 M</u>
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- Expand into and modernize current College of Alameda portable classroom
- Toilet room improvements
- Technology, communication & safety/security
- Critical mechanical, electrical, roofing and accessibility improvements

<u>WCDC/Island High School</u>	<u>Growth: -9</u>	<u>Net Clsrm Chg: 0</u>	<u>\$5.7 M</u>
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- Comprehensive classrooms modernization
- Reconfigure existing space into two career technical education (CTE) type classrooms
- Technology, communication & safety/security
- Critical mechanical, electrical, roofing and accessibility improvements

High School on hold pending Board future decisions and actions for scope of work.

Attachment 3

LEASE LEASEBACK AGREEMENT

**[ATTACH HERE THE LLB CONTRACT DOCUMENTS]**

FORM OF AGREEMENT

## MASTER SITE LEASE

This master site lease ("**Master Site Lease**"), dated [Month] [Day], 2017 for reference purposes only, is made and entered into by and between the **Alameda Unified School District**, a school district duly organized and validly existing under the laws of the State of California, as lessor ("**District**"), and [Contractor], a California company duly organized and existing under the laws of the State of California, as lessee ("**Contractor**") (together, the "**Parties**").

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

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

**WHEREAS**, the District desires to provide for the \_\_\_\_\_ ("**Project**"); and

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

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

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

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

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

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

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

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



1. **Definitions.** Unless the context clearly otherwise requires, all words and phrases defined in the Master Facilities Lease shall have the same meaning in this Master Site Lease.
2. **Exhibits.** The following Exhibits are attached to and by reference incorporated and made a part of this Master Site Lease.
  - 2.1. **Exhibit A:** Descriptions of the School Site
  - 2.2. **Exhibit B:** Descriptions of the Project Site and Descriptions of the Project
3. **Lease of the Project Site.** The District hereby leases to the Contractor, and the Contractor hereby leases from the District, the Project Site, subject only to Permitted Encumbrances, in accordance with the provisions of this Master Site Lease, to have and to hold for the term of this Master Site Lease. This Master Site Lease shall only take effect if the Master Facilities Lease is executed by the District and Contractor within three (3) days of execution of this Master Site Lease.
  - 3.1. **Work in Phases.** If the Work of the Project is to be performed in phases, then the only areas bound by the terms of this Master Facilities Lease are:
    - 3.1.1. As indicated to be within specific phases of the Project; and
    - 3.1.2. For which portions of the Lease Payments are still owing.
4. **Leaseback of the Project Site.** The Parties agree that the Project Site will be leased back to the District pursuant to the Master Facilities Lease for the term thereof.
5. **Term.** The term of this Master Site Lease shall commence as of the **Effective Date**, which is the date upon which the District's Board approves this Master Site Lease and the Parties execute the same, and shall terminate on the last day of the Term of the Master Facilities Lease, provided the District has paid to the Contractor, or its assignee, all payments which may be due under the Master Facilities Lease, and provided this Master Site Lease has not been terminated pursuant to the termination provisions of the Master Facilities Lease.
6. **Payment.** In consideration for the lease of the Project Site 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 Master Site Lease.
7. **Termination**
  - 7.1. **Termination Due to Default by Contractor.** If Contractor defaults pursuant to the provisions of the Master Facilities Lease and the District terminates the Master Facilities Lease pursuant to the Master Facilities Lease provisions allowing termination, then the Contractor shall be deemed to be in default of this Master Site Lease and this Master Site Lease shall also terminate at the same time as the Master Facilities Lease.
  - 7.2. **Termination for Convenience of the District.** The District may at any time, in its sole and exclusive discretion, by written notice to the Contractor, terminate this Master Site Lease, in whole or in part, when it is in the interest of, or for the convenience of, the District; provided, however, that such termination for the District's convenience shall be deemed to also include the District's termination of the Master Facilities Lease in accordance with the terms and conditions set forth therein.
8. **Title to School Site.** During the term of this Master Site Lease, the District shall hold fee title to the School Site, including the Project Site, and nothing in this Master Site Lease or the Master Facilities Lease shall change, in any way, the District's ownership interest in the School Site.

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

government authority or administrative agency which will materially adversely affect the ability of District to perform its obligations under this Master Site Lease.

**15.6. Condemnation Proceedings.**

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

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

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

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

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

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

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

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

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

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

**17. Insurance and Indemnity.** The Contractor and the District shall comply with the insurance requirements and the indemnity requirements as indicated in the Master Facilities Lease.

- 18. Assignment and Subleasing.** This Master Site Lease may be assigned and/or the Project Site subleased, as a whole or in part, by the Contractor only upon the prior written consent of the District to such assignment or sublease, which shall not be unreasonably withheld.
- 19. Restrictions on District.** The District agrees that it will not mortgage, sell, encumber, assign, transfer or convey the Project Site or any portion thereof during the term of this Master Site Lease in any way that would interfere with or diminish Contractor's interests indicated in this Master Site Lease.
- 20. Liens and Further Encumbrances.** Contractor agrees to keep the Project Site and every part thereof free and clear of any and all encumbrances and/or liens, including without limitation, pledges, charges, encumbrances, claims, mechanic liens and/or other liens for or arising out of or in connection with work or labor done, services performed, or materials or appliances used or furnished for or in connection with the Project Site or the Project. Pursuant to the Master 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, California 94501  
 Telephone: 510-337-7090  
 ATTN: Robbie Lyng, Director, Maintenance, Operations  
 & Facilities

**If to Contractor:**

\_\_\_\_\_, Inc.  
 \_\_\_\_\_ Avenue  
 \_\_\_\_\_, CA \_\_\_\_\_  
 ATTN: \_\_\_\_\_

**With a copy to:**  
 Orbach Huff Suarez & Henderson LLP  
 1901 Harrison Street, Ste.1630  
 Oakland, CA 94611  
 Attention: Glenn Gould, Esq.

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

- 22. Binding Effect.** This Master Site Lease shall inure to the benefit of and shall be binding upon the Contractor and the District and their respective successors and assigns.
- 23. No Additional Waiver Implied by One Waiver.** In the event any agreement contained in this Master Site Lease should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive future compliance with any term hereof or any other breach hereunder.
- 24. Severability.** In the event any provision of this Master Site Lease shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision

hereof, unless elimination of such invalid provision materially alters the rights and obligations embodied in this Master Site Lease or the Master Facilities Lease.

- 25. Amendments, Changes and Modifications.** Except as to the termination rights of both Parties as indicated in the Master Facilities Lease, this Master Site Lease may not be amended, changed, modified, altered or terminated without the written agreement of both Parties hereto.
- 26. Obligations Absolute.** The Contractor agrees that the obligations of the Contractor are absolute and unconditional and not subject to any charges or setoffs against the District whatsoever.
- 27. Execution in Counterparts.** This Master Site Lease may be executed in several counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.
- 28. Contractor and District Representatives.** Whenever under the provisions of this Master Site Lease approval by the Contractor or the District is required, or the Contractor or the District is required to take some action at the request of the other, such approval or such request shall be given for the Contractor by the Contractor Representative and for the District by the District Representative, and any party hereto shall be authorized to rely upon any such approval or request.
- 29. Applicable Law.** This Master Site Lease shall be governed by and construed in accordance with the laws of the State of California, and venue shall be in the County within which the School Site is located.
- 30. No Attorney's Fees.** If either party brings an action or proceeding involving the School Site or to enforce the terms of this Master Site Lease or to declare rights hereunder, each party shall bear the cost of its own attorneys' fees.
- 31. Captions.** The captions or headings in this Master Site Lease are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Master Site Lease.
- 32. Prior Agreements.** This Master Site Lease and the corresponding Master Facilities Lease collectively contain all of the agreements of the Parties hereto with respect to any matter covered or mentioned in this Master Site Lease and no prior agreements or understanding pertaining to any such matter shall be effective for any purpose.
- 33. Further Assurances.** Parties shall promptly execute and deliver all documents and instruments reasonably requested to give effect to the provisions of this Master Site Lease.
- 34. Recitals Incorporated.** The Recitals set forth at the beginning of this Master Site Lease are hereby incorporated into its terms and provisions by this reference.
- 35. Time of the Essence.** Time is of the essence with respect to each of the terms, covenants, and conditions of this Master Site Lease.
- 36. Force Majeure.** A party shall be excused from the performance of any obligation imposed in this Master Site Lease and the exhibits hereto for any period and to the extent that a party is prevented from performing such obligation, in whole or in part, as a result of delays caused by the other party or third parties, a governmental agency or entity, an act of God, war, terrorism, civil disturbance, forces of nature, fire, flood, earthquake, strikes or lockouts, and such nonperformance will not be a default hereunder or a grounds for termination of this Master Site Lease.
- 37. Interpretation.** None of the Parties hereto, nor their respective counsel, shall be deemed the drafters of this Master Site Lease or the Master Facilities Lease for purposes of construing the provisions of each. The language in all parts of this Master Site Lease shall in all cases be construed according to its fair meaning, not

strictly for or against any of the Parties hereto.

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

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

Dated: \_\_\_\_\_, 2017

Dated: \_\_\_\_\_, 2017

**Alameda Unified School District**

**[Contractor Name]**

By: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Title: \_\_\_\_\_

Print Title: \_\_\_\_\_

EXHIBIT A  
TO  
MASTER SITE LEASE

DESCRIPTION OF SCHOOL SITE

[Insert screen-shot of School Site]

FORM OF AGREEMENT

EXHIBIT B  
TO  
MASTER SITE LEASE

DESCRIPTION OF PROJECT SITE  
AND  
DESCRIPTIONS OF THE PROJECT AT SCHOOL SITE

PROJECT SITE DESCRIPTION:

Attached is a site diagram for the portions of [NAME] School Site that is subject to the Master Site Lease and the Master Facilities Lease and upon which Contractor will construct the Project.

[Describe Project Site]

PROJECT DESCRIPTION:

[EXAMPLE]: \_\_\_\_\_ Project consists of \_\_\_\_\_ phases. Phase \_\_\_\_\_ is demolition of \_\_\_\_\_ . Phase \_\_\_\_\_ is the Construction of \_\_\_\_\_

[Describe Project]



## MASTER FACILITIES LEASE

This master facilities lease ("**Master Facilities Lease**"), dated [Month] [Day], 2017 for reference purposes only, is made and entered into by and between [Contractor Name] ("**Contractor**"), a California company duly organized and existing under the laws of the State of California, as sublessor, and **Alameda Unified School District**, a school district duly organized and validly existing under the laws of the State of California, as sublessee ("**District**") (together, the "**Parties**").

## RECITALS

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

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

**WHEREAS**, the District desires to provide for the construction of the \_\_\_\_\_ ("**Project**"); and

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

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

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

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

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

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

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

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

enter into this Master Facilities Lease; and

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

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

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

**1.1. "Contractor" or "Lessor"** means [Contractor Name], a corporation, organized and existing under the laws of the State of California, and its successors and assigns.

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

**1.3. "Contract, 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:

- 1.1.1.1.** Master Site Lease
- 1.1.1.2.** Master Facilities Lease, with all of its Exhibits
- 1.1.1.3.** General Construction Provisions
- 1.1.1.4.** Special Construction Provisions
- 1.1.1.5.** Noncollusion Declaration
- 1.1.1.6.** Iran Contracting Act Certification
- 1.1.1.7.** Workers' Compensation Certification
- 1.1.1.8.** Prevailing Wage Certification
- 1.1.1.9.** Disabled Veterans Business Enterprise Participation Certification
- 1.1.1.10.** Drug-Free Workplace Certification
- 1.1.1.11.** Tobacco-Free Environment Certification
- 1.1.1.12.** Lead-Based Paint Certification
- 1.1.1.13.** Hazardous Materials Certification
- 1.1.1.14.** Imported Materials Certification
- 1.1.1.15.** Criminal Background Investigation/Fingerprinting Certification
- 1.1.1.16.** Roofing Contract Financial Interest Certification
- 1.1.1.17.** Storm Water Pollution Prevention Plan
- 1.1.1.18.** Performance Bond
- 1.1.1.19.** Payment Bond (Contractor's Labor & Material Bond)
- 1.1.1.20.** All Plans, Specifications, and Drawings
- 1.1.1.21.** Any and all addenda to any of the above documents
- 1.1.1.22.** Any and all change orders or written modifications to the above documents if approved in writing by the District.

**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 designee, or any other person authorized by the Board of Education of the District to act on behalf of the District under or with respect to this Master Facilities Lease.

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

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

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

**2.1. Exhibit A: Description of the School Site**

**2.2. Exhibit B: Description of the Project Site and Description of the Project**

**2.3. Exhibit C: Guaranteed Project Cost and Other Project Cost, Funding, and Payment Provisions for the Leased Project Site**

**2.4. Exhibit D: General Construction Provisions**

**2.5. Exhibit E: Memorandum of Commencement Date for the Facilities Lease for the Leased Project Site**

**2.6. Exhibit F: Project Schedule**

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

**2.8. Exhibit H: Not Used**

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

**2.10. Exhibit J: Division 1 Documents**

**2.11. Exhibit K: Special Construction Provisions**

**2.12. Exhibit L: Project Labor Agreement**

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

**3.1.** Contractor hereby leases the Project and the Project Site to the District, and the District hereby leases said Project and Project Site from Contractor upon the terms and conditions set forth in this Master Facilities Lease.

**3.2.** The leasing by Contractor to the District of the Project Site shall not affect or result in a merger of the District's leasehold estate pursuant to this Master Facilities Lease and its fee estate as lessor under the Master Site Lease. Contractor shall continue to have and hold a leasehold estate in the Project Site pursuant to the Master Site Lease throughout the term thereof and the term of this Master Facilities Lease.

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

**3.4. No Disruption to Educational Activities**

**3.4.1. Occupied School Site. [IF APPLICABLE]** The Contractor acknowledges that portions of the Project Site shall, at all times, be occupied by the District as an operating school. The Parties have agreed to a plan and process whereby the Contractor's activities shall be kept separate from the operating school even though the operating school is within the Project Site. The specifics of the plan and process are as indicated in **Exhibit K**.

**3.4.2. Work During Instructional Time. [IF APPLICABLE]** Contractor affirms that Work may be performed during ongoing instruction in or near existing facilities. If so, Contractor agrees to cooperate to the best of its ability to minimize disruption to the school site.

**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 are taking State-required tests as set forth in the Special Construction Provisions (**Exhibit K**).

**4. Term.**

**4.1. Master Facilities Lease is Legally Binding.** This Master Facilities Lease is legally binding on the Parties upon execution by the Parties and the District Board's approval of this Master Facilities Lease ("**Effective Date**"). The Term of this Master Facilities Lease for the purposes of District's obligation to make Lease Payments shall commence on the date of Final Completion of the Project as defined in **Exhibit D** to this Master Facilities Lease ("**Commencement Date**") and shall terminate **twelve (12) months** after the Commencement Date (the "**Term**"), subject to the District's right to purchase the Project as set forth in the attached **Exhibit C**.

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

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

**6. Termination.**

**6.1.** Except as otherwise expressly provided in this Master Facilities Lease, this Master Facilities Lease shall not terminate.

**6.2. Termination for Convenience of the District.** The District may at any time, in its sole and exclusive discretion, by written notice to the Contractor, terminate the Master Facilities Lease or the Contractor's performance of the Master Facilities Lease, in whole or in part, when it is in the interest of, or for the convenience of, the District. In such case, the Contractor shall be entitled to payment for: (i) Work actually performed and in place as of the effective date of such termination for convenience of the District, with a reasonable allowance for profit and overhead on such Work, and (ii) reasonable termination expenses for reasonable protection of Work in place and suitable storage and protection of materials and equipment delivered to the site of the Work but not yet incorporated into the Work, provided that such payments exclusive of termination expenses shall not exceed the Guaranteed Project Cost as reduced by payments previously made to the Contractor and as further reduced by the value of the Work as not yet completed. The Contractor shall not be entitled to profit and overhead on Work which was not performed as of the effective date of the termination for convenience of the District or for any other damages, direct or indirect, which the Contractor or anyone claiming through the Contractor alleges resulted from the District's election to terminate under this paragraph 6.4 or where a termination for default has been converted to a termination for convenience pursuant to the provisions of Article 15.1.7 of the General Construction Provisions (**Exhibit D**). The District may, in its sole discretion, elect to have subcontracts assigned pursuant to Article 15.1.4 of the General Construction Provisions after exercising the right hereunder to terminate for the District's convenience.

**7. Title.**

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

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

**7.3.** Subject to and in accordance with Article 8.3.8 of the General Construction Provisions, title to the Project and the Project Site shall be transferred to and vested in the District hereunder without the necessity for any further instrument of transfer; provided, however, that Contractor agrees to execute any instrument requested by District to memorialize the termination of this Master Facilities Lease and transfer of title to the Project.

**8. Quiet Enjoyment.** Upon District's possession of the Project, Contractor shall thereafter provide the District with quiet use and enjoyment of the Project and Project Site, and the District shall during the Term peaceably and quietly have and hold and enjoy the Project and Project Site, without suit, trouble or hindrance from Contractor, except as otherwise may be set forth in this Master Facilities Lease. Contractor will, at the request of the District and at Contractor's cost, join in any legal action in which the District asserts its right to such possession and enjoyment to the extent Contractor may lawfully do so. Notwithstanding the foregoing, Contractor shall have the right to inspect the Project and the Project Site as provided herein.

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

**9.1. Due Organization and Existence.** The District is a school district, duly organized and existing under the Constitution and laws of the State of California.

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

**9.3. No Violations.** Neither the execution and delivery of this Master Facilities Lease nor the Master Site

Lease, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the District is now a party or by which the District is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the District, or upon the Project Site, except Permitted Encumbrances.

**9.4. CEQA Compliance.** The District has complied with all requirements imposed upon it by the California Environmental Quality Act (Public Resource Code Section 21000 *et seq.* ("**CEQA**") in connection with the Project, and no further environmental review of the Project is necessary pursuant to CEQA before the construction of the Project may commence. Contractor shall comply with all applicable mitigation measures, if any, adopted by any public agency with respect to this Project pursuant to the California Environmental Quality Act. (Public Resources Code section 21000 *et. seq.*).

**9.5. No Litigation.** Except for a validation action related to this transaction that the District may file, there is no pending or, to the knowledge of District, threatened action or proceeding before any court or federal, state, municipal, or other government authority or administrative agency which will materially adversely affect the ability of District to perform its obligations under this Master Facilities Lease.

**9.6. Condemnation Proceedings.**

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

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

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

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

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

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

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

**10.6. No Encumbrances.** Contractor shall not pledge any District payments of any kind, related to the Master Site Lease, this Master Facilities Lease, or in any way derived from the Project Site, and shall not mortgage or encumber the Project Site.

**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, or
- 10.7.2. After dismissal and final resolution of any and all disputes between the Parties and/or any third-party claims related, in any way, to the Project.

Contractor shall give District sixty (60) days written notice prior to dissolving or terminating the legal existence of Contractor.

## **11. Preliminary Services**

**11.1.** The terms and conditions pertaining to the performance of preliminary services, if any, under this Facilities Lease, are set forth in **Exhibit H** to this Facilities Lease. To the extent any terms and conditions set forth therein conflict with terms and conditions in the body of the Facilities Lease, the terms and conditions contained in **Exhibit H** shall control regarding the performance of preliminary services.

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

## **12. Construction of Project**

**12.1.1. Construction of Project.** The Contractor agrees to cause the Project to be developed, constructed, and installed in accordance with the terms hereof and the General Construction Provisions set forth in **Exhibit D** and the Special Construction Provisions set forth in **Exhibit K**, including those things reasonably inferable in the General Construction Provisions and Special 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 Contract Documents.

**12.1.2. Contract Time.** The Work shall be commenced on the date stated in the District's Notice to Proceed; the Contractor shall achieve Substantial Completion of the Work within the Contract Time set forth in the Contract.

**12.1.3. Liquidated Damages:** Time is of the essence for all work Contractor must perform to obtain Project Completion. If the Contractor fails to achieve Substantial Completion of the Work within the Contract Time, or fails to achieve a Milestone as set forth in the Special Construction Provisions (**Exhibit K**), the Contractor shall be subject to Liquidated Damages in accordance with the Contract.

**12.1.4. 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.

**12.1.5. 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 adjusted as a Change pursuant to the provisions of **Exhibit D**.

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

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

12.1.7.1. 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."

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

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

**13. Maintenance.** Following delivery of possession of the entirety of the Project by Contractor to District, the repair, improvement, replacement and maintenance of the Project and the Project Site shall be at the sole cost and expense and the sole responsibility of the District, subject only to all warranties against defects in materials and workmanship of Contractor as provided in **Exhibit D**. The District shall pay for or otherwise arrange for the payment of the cost of the repair and replacement of the Project resulting from ordinary wear and tear. The District waives the benefits of subsections 1 and 2 of Section 1932 of the California Civil Code, but such waiver shall not limit any of the rights of the District under the terms of this Master Facilities Lease.

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

**15. Taxes and Other Impositions.** All ad valorem real property taxes, special taxes, possessory interest taxes, bonds and special lien assessments or other impositions of any kind with respect to the Project, the Project Site and the improvements thereon, charged to or imposed upon either Contractor or the District or their respective interests or estates in the Project, shall at all times be paid by District. In the event any possessory interest tax is levied on Contractor, its successors and assigns, by virtue of this Master Facilities Lease or the Master Site Lease,



District shall pay such possessory interest tax directly, if possible, or shall reimburse Contractor, its successors and assigns for the full amount thereof within thirty (30) days after presentation of proof of payment by Contractor.

## **16. Insurance**

**16.1. Contractor's Insurance.** The Contractor shall comply with the insurance requirements as set forth in the General Construction Provisions (**Exhibit D**) and the Special Construction Provisions (**Exhibit K**).

## **17. Indemnification.**

**17.1. Contractor's Indemnity Obligations.** The Contractor's indemnity obligations are set forth in the General Construction Provisions (**Exhibit D**).

**17.2. District's Indemnity Obligations.**

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 Master Facilities Lease, only:

17.2.1.1. If those claims, damages, expenses or liabilities relate to District's status as a sublessee under this Master 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. 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 Master Site Lease and/or the Master Facilities Lease.

## **18. Eminent Domain.**

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

18.1.1. The financial interest of Contractor shall be limited to the amount of principal payments pursuant to the Guaranteed Project Cost Provisions set forth 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 set forth in **Exhibit C** for the remainder of the original Term.

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

**18.2. Total Taking Prior to Project Delivery.** If all of the Project and the Project Site is taken permanently under the power of eminent domain and the Contractor is still performing the Work of the Project and has not yet delivered possession of the entirety 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 reasonable value of Work Contractor has performed on the Project, including overhead and profit for such Work performed and in place, subject to documentation reasonably satisfactory to the District.

**18.3. Partial Taking.** If, following delivery of possession of the entirety of the Project by Contractor to

District, less than all of the Project and the Project Site is taken permanently, or if all of the Project and the Project Site or any part thereof is taken temporarily, under the power of eminent domain:

- 18.3.1. This Master Facilities Lease shall continue in full force and effect and shall not be terminated by virtue of that partial taking and the Parties waive the benefit of any law to the contrary, and
- 18.3.2. There shall be a partial abatement of any principal payments pursuant to the Guaranteed Project Cost Provisions set forth 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 division of the net proceeds of any eminent domain award and a corresponding reduction in the payments required pursuant to the Guaranteed Project Cost Provisions set forth in **Exhibit C**.

**19. Damage and Destruction.** If, following delivery of possession of the entirety 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 set forth in **Exhibit C** that are then due or past due or any remaining and succeeding principal payments pursuant to the Guaranteed Project Cost Provisions set forth in **Exhibit C** for the remainder of the original Term. The Contractor shall 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 Master Facilities Lease. The Term shall cease at that time.

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

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

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

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

## **21. Access**

**21.1. By Contractor.** Contractor shall have the right at all reasonable times to enter upon the Project Site

to construct the Project pursuant to this Master Facilities Lease. Following the acceptance of the Project by District, Contractor may enter the Project at reasonable times with advance notice and arrangement with District for purposes of making any repairs required to be made by Contractor.

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

## **22. Assignment, Subleasing**

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

- 22.1.1. This Master Facilities Lease and the obligation of the District to make the payments required pursuant to the Guaranteed 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.

**22.2. Assignment by Contractor.** Contractor may assign its right, title and interest in this Master Facilities Lease, in whole or in part to one or more assignees, only after the written consent of District, which District will not unreasonably withhold. No assignment shall be effective against the District unless and until the District has consented in writing. Notwithstanding anything to contrary contained in this Master Facilities Lease, no consent from the District shall be required in connection with any assignment by Contractor to a lender for purposes of financing the Project as long as there are no additional costs to the District.

**23. 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:

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

**23.2.** 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 Avenue  
Alameda CA 94501  
510-337-7911  
Attention: Robbie Lyng, Director Maintenance,  
Facilities & Operations

**If to Contractor:**

\_\_\_\_\_, Inc.  
\_\_\_\_\_ Avenue  
\_\_\_\_\_, CA \_\_\_\_\_  
ATTN: \_\_\_\_\_

**With a copy to:**

Orbach Huff Suarez & Henderson LLP  
1901 Harrison Street, Ste.1630  
Oakland, CA 94611  
Attention: Glenn Gould, Esq.

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

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

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

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

**27. Amendments, Changes and Modifications.** Except as to the termination rights of both Parties as indicated herein and to the provisions of **Exhibit D** General Construction Provisions and **Exhibit K** Special Construction Provisions, this Master Facilities Lease may not be amended, changed, modified, altered or terminated without the written agreement of both Parties hereto.

**28. Net-Net-Net Lease.** This Master Facilities Lease shall be deemed and construed to be a “net-net-net lease” and the District hereby agrees that all payments it makes pursuant to the Guaranteed 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.

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

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

**31. Applicable Law.** This Master Facilities Lease shall be governed by and construed in accordance with the laws of the State of California, and venue in the County within which the Project is located.

**32. No Attorney's Fees.** If either party brings an action or proceeding involving the Property or to enforce the terms of this Master Facilities Lease or to declare rights hereunder, each party shall bear the cost of its own attorneys’ fees.

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

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

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

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

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

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

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

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

Dated: \_\_\_\_\_, 2017

Dated: \_\_\_\_\_, 2017

**Alameda Unified School District**

**[Contractor Name]**

By: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Title: \_\_\_\_\_

Print Title: \_\_\_\_\_

EXHIBIT A  
TO  
MASTER FACILITIES LEASE

SCHOOL SITE

[Insert screen-shot of School Site]

FORM OF AGREEMENT

EXHIBIT B  
TO  
MASTER FACILITIES LEASE

DESCRIPTION OF PROJECT SITE  
AND  
DESCRIPTION OF THE PROJECT AT SCHOOL SITE

PROJECT SITE DESCRIPTION:

Attached is a site diagram for the portions of [NAME] School Site that is subject to the Master Site Lease and the Master Facilities Lease and upon which Contractor will construct the Project.

[Describe Project Site]

PROJECT DESCRIPTION:

[EXAMPLE]: \_\_\_\_\_ Project consists of \_\_\_\_\_ phases. Phase \_\_\_\_\_ is demolition of \_\_\_\_\_ . Phase \_\_\_\_\_ is the Construction of \_\_\_\_\_

[Describe Project]

EXHIBIT C  
TO  
MASTER FACILITIES LEASE

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

1. **Preliminary Services Payments**

N/A

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.

3. **Guaranteed Project Cost (or Guaranteed Maximum Price).** Pursuant to the Master Facilities Lease, Contractor will cause the Project to be constructed for [Spell Out] Dollars (\$Numeric), (“Guaranteed Project Cost” or “GPC” or “Guaranteed Maximum Price” or “GMP”). Except as indicated herein for modifications to the Project approved by the District, Contractor will not seek additional compensation from District in excess of the Guaranteed Project Cost. District shall pay the Guaranteed Project Cost to Contractor in the form of Tenant Improvement Payments and Lease Payments as indicated herein. The Guaranteed Project Cost includes the following components and as further detailed herein:

3.1. **Cost to Perform Work.**

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

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

3.2. **General Conditions.** The fixed amount to be paid be for all costs for labor, equipment and materials for the items identified therein which are necessary for the proper management of the Project, and shall include all costs paid or incurred by the Contractor for insurance (except for general liability insurance), permits, taxes, and all contributions, assessments and benefits, holidays, vacations, retirement benefits, and incentives, whether required by law or collective bargaining agreements or otherwise paid or provided by Contractor to its employees.

3.3. **Fees.** All fees, assessments and charges that are required to be paid to other agencies or entities to permit, authorize or entitle construction, reconstruction or completion of the Project.

3.4. **Allowances.** [IDENTIFY SPECIFIC SCOPES AND AMOUNTS.]

3.5. **Bonds and Insurance.**

3.6. **Overhead and Profit.**

3.7. **Contingency.** [OPTIONAL. TERMS AND AMOUNT TO BE NEGOTIATED.] A Contingency of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) is included in the Guaranteed Project Cost and may be used in the District’s sole discretion. If the District chooses to utilize all or a portion of the Contingency, the District shall notify the Contractor in writing in accordance with **Exhibit D** to the Master Facilities Lease. The unused portion of the Contingency 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 **[Spell Out] Dollars (\$Numeric)** ("Tenant Improvement Payments"), based on the amount of Work satisfactorily performed and approved by the District less the total amount to be paid as Lease Payments and pursuant to the provisions in **Exhibit D** to the Master Facilities Lease.

**4.2. Lease Payments Plus Interest.** After the Parties execute the Memorandum of Commencement Date, attached to the Master Facilities Lease as **Exhibit E**, the District shall pay to Contractor **[Spell Out] Dollars (\$Numeric)** ("Lease Payments") plus interest, as indicated below.

4.2.1. The Lease Payments plus interest shall be consideration for the District's rental, use, and occupancy of the Project and the Project Site and shall be made in equal monthly installments for the duration of the Term, subject to the District's right to purchase the Project pursuant to section 5 herein.

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

4.2.3. **Fair Rental Value.** District and Contractor have agreed and determined that the total Lease Payments plus interest constitute adequate consideration for the Master 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 Master Facilities Lease and Master Site Lease, the uses and purposes which may be served by the Project and the benefits therefrom which will accrue to the District and the general public.

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

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

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

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

4.2.4.4. The District further covenants to in good faith make all necessary appropriations (including any supplemental appropriations) from any source of legally available funds of the District for the actual amount of Lease Payments plus interest that come due and payable during the period covered by each such budget. Contractor acknowledges that the District has not pledged the full faith and credit of the District, State of California or any state agency or state department to the payment of Lease Payments plus interest or any other payments due hereunder. The covenants on the part of District contained in this Master 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 Master Facilities Lease agreed to be carried out and performed by the District.

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

4.2.5. The Lease Payment Amount shall be paid pursuant to the following structure and the annual interest rate shall be at **[Spell out] Percent (Numeric%)**:

Date of Payment	(A) Total Lease Payment	(B) Total Interest Due on Lease Payment	Total Lease Payment plus interest due by District to Contractor (A + B)
30 Days after execution of Memorandum of Commencement	\$Numeric Lease Payments/12	\$	\$
30 days thereafter	\$Numeric Lease Payments/12	\$	\$
30 days thereafter	\$Numeric Lease Payments/12	\$	\$
30 days thereafter	\$Numeric Lease Payments/12	\$	\$
30 days thereafter	\$Numeric Lease Payments/12	\$	\$
30 days thereafter	\$Numeric Lease Payments/12	\$	\$
30 days thereafter	\$Numeric Lease Payments/12	\$	\$
30 days thereafter	\$Numeric Lease Payments/12	\$	\$
30 days thereafter	\$Numeric Lease Payments/12	\$	\$
30 days thereafter	\$Numeric Lease Payments/12	\$	\$
30 days thereafter	\$Numeric Lease Payments/12	\$	\$
30 days thereafter	\$Numeric Lease Payments/12	\$	\$
<b>Total</b>	<b>\$Numeric Sum</b>	<b>\$</b>	<b>\$</b>

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 adjusted pursuant to **Exhibit D** to the Master Facilities Lease. The Parties agree that the Lease Payments will be adjusted upon Final Completion of the Project to account for adjustments made to the Guaranteed Project Cost pursuant to the terms and conditions of **Exhibit D** General Construction Provisions.

## 5. District's Purchase Option.

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

5.2. District shall provide Contractor no less than fourteen (14) days' prior written notice that District is exercising its option to purchase the Project as set forth above on a specific date ("Option Date"). If the District exercises this option, the District shall pay directly to Contractor the Option Price on or prior to the

Option Date and Contractor shall at that time deliver to District all reasonably necessary documents to terminate this Master Facilities Lease and the Master Site Lease.

**5.3.** Under no circumstances can the Option Date be on or before thirty-five (35) days after the Contractor achieves Final Completion of the Project.

**6. Changes to Guaranteed Project Cost.**

**6.1.** As indicated in the Master 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.

**6.2.** The Parties acknowledge that the Guaranteed Project Cost is based on the Construction Documents, including the Plans and Specifications.

**6.3. 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 may be entitled to an extension of Contract Time in accordance with the provisions of Article 7.4 of **Exhibit D** General Construction Provisions, if requested in writing before the approval of the cost savings.

**6.4. Insurance and Bond Reimbursements.** At Project Final 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.

EXHIBIT D  
TO  
MASTER FACILITIES LEASE

GENERAL CONSTRUCTION PROVISIONS

FORM OF AGREEMENT

EXHIBIT E  
TO  
MASTER FACILITIES LEASE

MEMORANDUM OF COMMENCEMENT DATE

**[TO BE ENTERED INTO AFTER CONSTRUCTION IS COMPLETE TO COMMENCE THE LEASE TERM – DO THIS AFTER PROJECT FINAL COMPLETION]**

This MEMORANDUM OF COMMENCEMENT DATE is dated \_\_\_\_\_, 20\_\_\_\_, and is made by and between **[Contractor Name]** ("Contractor"), as Lessor, and the **Alameda Unified School District** ("District"), as Lessee.

1. Contractor and District have previously entered into a Master Facilities Lease dated as of \_\_\_\_\_, 20\_\_\_\_, (the "Lease") for the leasing by Contractor to District of the Project Site and Project in \_\_\_\_\_, CA, referenced in the Lease.

2. District hereby confirms the following:

A. That the Contractor has achieved Final Completion of the all construction of the Project required to be performed pursuant to the Master Facilities Lease;

B. That District has entered into possession of the Project and now occupies same; and

C. That the term of the Master Facilities Lease commenced on \_\_\_\_\_, 20\_\_\_\_, and will expire at 11:59 P.M. on \_\_\_\_\_, 20\_\_\_\_.

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

Dated: \_\_\_\_\_, 20\_\_\_\_

Dated: \_\_\_\_\_, 20\_\_\_\_

**Alameda Unified School District**

**[Contractor Name]**

By: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Title: \_\_\_\_\_

Print Title: \_\_\_\_\_

**EXHIBIT F  
TO  
MASTER FACILITIES LEASE**

**PROJECT SCHEDULE**

FORM OF AGREEMENT

**EXHIBIT G  
TO  
MASTER FACILITIES LEASE**

**SCHEDULE OF VALUES**

FORM OF AGREEMENT

EXHIBIT H  
TO  
MASTER FACILITIES LEASE

[Not Used]

FORM OF AGREEMENT



**EXHIBIT I  
TO  
MASTER FACILITIES LEASE**

**CERTIFICATES AND BONDS TO LEASE-LEASEBACK DOCUMENTS**

FORM OF AGREEMENT

**NONCOLLUSION DECLARATION**  
**Public Contract Code § 7106**

TO BE EXECUTED BY CONTRACTOR

The undersigned declares:

I am the \_\_\_\_\_ **[PRINT YOUR TITLE]**

of \_\_\_\_\_ **[PRINT FIRM NAME]**

the party making the foregoing Contract.

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

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

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

Date: \_\_\_\_\_

Proper Name of Contractor: \_\_\_\_\_

City, State: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

**(ATTACH NOTARIAL ACKNOWLEDGMENT FOR THE ABOVE SIGNATURE)**

**IRAN CONTRACTING ACT CERTIFICATION (Public Contract Code § 2204)**

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

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

- ☐ 1. Contractor's total Guaranteed Project Cost is less than one million dollars (\$1,000,000).

**OR**

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

**OR**

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

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

Date: \_\_\_\_\_

Proper Name of Contractor: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

**WORKERS' COMPENSATION CERTIFICATION**

Labor Code section 3700 in relevant part provides:

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

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

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

Date: \_\_\_\_\_

Proper Name of Contractor: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

(In accordance with Article 5 - commencing at section 1860, chapter 1, part 7, division 2 of the Labor Code, the above certificate must be signed and filed with the awarding body prior to performing any Work under the Contract.)

**PREVAILING WAGE AND  
RELATED LABOR REQUIREMENTS CERTIFICATION**

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

Date: \_\_\_\_\_

Proper Name of Contractor: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

**DISABLED VETERAN BUSINESS ENTERPRISE**  
**PARTICIPATION CERTIFICATION**

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

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

# DVBE PARTICIPATION REPORT

Contractor Name: \_\_\_\_\_ Date: \_\_\_\_\_

Project Name: \_\_\_\_\_ Project Number: \_\_\_\_\_

DVBE Firm Name	Trade / Portion of Work	Subcontract/ Contract Value
Add more sheets as needed to include all information for each DVBE		

Does the cumulative dollar value of these DVBE contracts meet or exceed the participation goal of three percent (3%) of the final Guaranteed Project Cost, as adjusted by all change orders?

YES \_\_\_\_\_ NO \_\_\_\_\_

If your response is "NO", please attach to this report a detailed description of the reasons for your firm did not achieve the participation goal of three percent (3%) of the final Guaranteed Project Cost.

I certify and declare under penalty of perjury under the laws of the State of California that all the foregoing information is complete, true, and correct.

Date: \_\_\_\_\_

Proper Name of Contractor: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

### **DRUG-FREE WORKPLACE CERTIFICATION**

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

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

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

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

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

I also understand that if the District determines that I have either (a) made a false certification herein, or (b) violated this certification by failing to carry out the requirements of section 8355, that the Contract awarded herein is subject to termination, suspension of payments, or both. I further understand that, should I violate the terms of the Drug-Free Workplace Act of 1990, I may be subject to debarment in accordance with the requirements of section 8350 et seq.

I acknowledge that I am aware of the provisions of Government Code section 8350 et seq. and hereby certify that I will adhere to the requirements of the Drug-Free Workplace Act of 1990.

Date: \_\_\_\_\_

Proper Name of Contractor: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

**TOBACCO-FREE ENVIRONMENT CERTIFICATION**

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

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

Date: \_\_\_\_\_

Proper Name of Contractor: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_



### **HAZARDOUS MATERIALS CERTIFICATION**

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

Date: \_\_\_\_\_

Proper Name of Contractor: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

## **LEAD-BASED MATERIALS CERTIFICATION**

This certification provides notice to the Contractor that:

- (1) The Contractor's work may disturb lead-containing building materials.
- (2) The Contractor must notify the District if any work may result in the disturbance of lead-containing building materials.

### **1. Lead as a Health Hazard**

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

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

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

### **2. Overview of California Law**

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

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

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

The OSHA Regulations apply to all construction work where a contractor's employee may be occupationally exposed to lead. The OSHA Regulations contain specific and detailed requirements imposed on contractors subject to that regulation. The OSHA Regulations define construction work as work for construction, alteration, and/or repair, including painting and decorating. It includes, but is not limited to, the following:

- a. Demolition or salvage of structures where lead or materials containing lead are present;
- b. Removal or encapsulation of materials containing lead;

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

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

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

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

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

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

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

### **4. Contractor's Liability**

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

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

It shall be the responsibility of the Contractor to properly dispose of any and all waste products, including, but not limited to, paint chips, any collected residue, or any other visual material that may occur from the prepping of any painted surface. It will be the responsibility of the Contractor to provide the proper disposal of any hazardous

waste by a certified hazardous waste hauler. This company shall be registered with the Department of Transportation (DOT) and shall be able to issue a current manifest number upon transporting any hazardous material from any School Site within the District.

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

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

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

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

Date: \_\_\_\_\_

Proper Name of Contractor: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

### **IMPORTED MATERIALS CERTIFICATION**

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

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

Certification of:	<input type="checkbox"/> Delivery Firm/Transporter	<input type="checkbox"/> Supplier	<input type="checkbox"/> Manufacturer
	<input type="checkbox"/> Wholesaler	<input type="checkbox"/> Broker	<input type="checkbox"/> Retailer
	<input type="checkbox"/> Distributor	<input type="checkbox"/> Other _____	
Type of Entity:	<input type="checkbox"/> Corporation	<input type="checkbox"/> General Partnership	
	<input type="checkbox"/> Limited Partnership	<input type="checkbox"/> Limited Liability Company	
	<input type="checkbox"/> Sole Proprietorship	<input type="checkbox"/> Other _____	

Name of firm ("Firm"): \_\_\_\_\_

Mailing address: \_\_\_\_\_

Addresses of branch office used for this Project: \_\_\_\_\_

If subsidiary, name and address of parent company: \_\_\_\_\_

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

Date: \_\_\_\_\_

Proper Name of Contractor: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

**CRIMINAL BACKGROUND INVESTIGATION / FINGERPRINTING CERTIFICATION**

The undersigned does hereby certify to the governing board of the District that (1) he/she is a representative of the Contractor, (2) he/she is familiar with the facts herein certified, (3) he/she is authorized and qualified to execute this certificate on behalf of Contractor; and (4) that the following is true and correct:

1. **Education Code.** Contractor has taken at least one of the following actions with respect to the Project (check all that apply):

\_\_\_\_\_ The Contractor has complied with the fingerprinting requirements of Education Code section 45125.1 with respect to all Contractor's employees and all of its subcontractors' employees who may have contact with District pupils in the course of providing services pursuant to the Contract, and the California Department of Justice has determined that none of those employees has been convicted of a felony, as that term is defined in Education Code section 45122.1. A complete and accurate list of Contractor's employees and of all of its subcontractors' employees who may come in contact with District pupils during the course and scope of the Contract is attached hereto; and/or

\_\_\_\_\_ Pursuant to Education Code section 45125.2, Contractor has installed or will install, prior to commencement of work, a physical barrier at the Project Site, that will limit contact between Contractor's employees and District pupils at all times; and/or

\_\_\_\_\_ Pursuant to Education Code section 45125.2, Contractor certifies that all employees will be under the continual supervision of, and monitored by, an employee of the Contractor who the California Department of Justice has ascertained has not been convicted of a violent or serious felony. The name and title of the employee who will be supervising Contractor's employees and its subcontractors' employees is: **Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

\_\_\_\_\_ The Work on the Contract is at an unoccupied School Site and no employee and/or subcontractor or supplier of any tier of Contract shall come in contact with the District pupils.

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

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

Date: \_\_\_\_\_

Proper Name of Contractor: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

I, \_\_\_\_\_, \_\_\_\_\_  
Name Name of Contractor

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

Furthermore, I \_\_\_\_\_, \_\_\_\_\_  
Name Name of Contractor

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

I, \_\_\_\_\_, \_\_\_\_\_  
Name Name of Contractor

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

Name of firm ("Firm"): \_\_\_\_\_

Mailing address: \_\_\_\_\_

Address of branch office used for this Project: \_\_\_\_\_

If subsidiary, name and address of parent company: \_\_\_\_\_

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

Date: \_\_\_\_\_

Proper Name of Contractor: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

**PERFORMANCE BOND (100% of Guaranteed Project Cost)**  
**(Note: Contractor must use this form, NOT a surety company form.)**

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

**THE CONDITION OF THIS OBLIGATION IS SUCH THAT:**

**WHEREAS**, the Obligee, by resolution of its Board of Education has awarded to the Principal a Contract for the Work described as **Malibu Middle High School Campus Improvements Phase 3 Project**.

**WHEREAS**, the Principal, has entered into a Contract with the Obligee for performance of the Work; the Contract and all of its terms and conditions set forth therein are incorporated herein and made a part hereof by this reference.

**WHEREAS**, by the terms of the Contract, the Principal is required to furnish a bond ensuring the Principal's prompt, full and faithful performance of the Work of the Contract Documents.

**NOW THEREFORE**, if the Principal shall promptly, fully and faithfully perform each and all of the obligations and things to be done and performed by the Principal in strict accordance with the terms of the Contract as said Contract may be modified or amended from time to time; and if the Principal shall indemnify and save harmless the Obligee and all of its officers, agents and employees from any and all losses, liability and damages, claims, judgments, stop notices, costs, and fees of every description, whether imposed by law or equity, which may be incurred by the Obligee by reason of the failure or default on the part of the Principal in the performance of any or all of the terms or the obligations of the Contract, including all modifications and amendments thereto, and any warranties or guarantees required thereunder; then this obligation shall be void; otherwise, it shall be, and remain, in full force and effect.

In the event the Principal is declared by the Obligee to be in breach or default in the performance of the Contract, then, after written notice from the Obligee to the Surety, as provided for herein, the Surety shall either remedy the default or breach of the Principal or shall take charge of the Work of the Contract and complete the Contract with a Contractor other than the Principal at its own expense; provided, however, that the procedure by which the Surety undertakes to discharge its obligations under this Bond shall be subject to the advance written approval of the Obligee.

If the Surety does not proceed to cure or remedy the Principal's default(s) of its performance of the Contract with reasonable promptness, the Surety shall be deemed to be in default on this Bond twenty-one (21) calendar days after receipt of a written notice from Obligee to the Surety demanding that the Surety perform its obligations under this Bond, and the Obligee shall be entitled to enforce any remedy available to Obligee.

Within twenty-one (21) calendar days of Obligee's written notice to the Surety of the failure of performance of the Contract by the Principal, it shall be the duty of the Surety to give to the Obligee an unequivocal notice in writing of the Surety's election to remedy the default(s) of the Principal promptly, or to promptly arrange for performance of the Contract, time being of essence to this Bond. In arranging for such performance of the Contract, Surety shall not elect to contract with the Principal for the completion of the Work of the Project without the prior written consent of Obligee, which consent will not be unreasonably withheld. In said Notice of Election, the Surety shall state the date of commencement of its cure or remedy of the Principal's default(s) or its performance of the Contract. The Surety's obligations for cure or remedy, include but are not limited to: correction of defective or incomplete work and completion of the Contract, additional legal, design professional and delay costs arising from



Surety's actions or failure to act; and liquidated damages, or if no liquidated damages are specified in the Contract, actual damages caused by delayed performance or non-performance by the Principal. The Surety shall give prompt written notice to the Obligor upon completion of the cure or remedy of the Principal's default(s) of its performance of the Contract.

In the event the Surety shall fail to issue its Notice of Election to Obligor within the time provided for herein above, the Obligor may thereafter cause the cure or remedy of the Principal's failure of performance or default or to complete the Work. The Principal and the Surety shall be each jointly and severally liable to the Obligor for all damages and costs sustained by the Obligor as a result of the Principal's failure of performance under the Contract Documents or default in its performance of obligations thereunder, including without limitation the costs of cure or completion exceeding the then remaining balance of the Guaranteed Project Cost; provided that the Surety's liability hereunder for the costs of performance, damages and other costs sustained by the Obligor upon the Principal's failure of performance under or default under the Contract Documents shall be limited to the penal sum hereof, the amount of which shall be increased to include the amount of any Changes to the Work which increase the Guaranteed Project Cost.

The Surety, for value received, hereby consents, stipulates and agrees absolutely and unconditionally that no change, adjustment, alteration, deletion, addition or modification to the terms of the Contract or Contract Documents, including but not limited to Contract Time or Guaranteed Project Cost, or the Work to be performed thereunder, shall in any way release, limit, restrict, or otherwise affect the obligations of the Surety under this Bond. Surety waives notice of any change, adjustment, alteration, deletion, addition or modification to the terms of the Contract or the Contract Documents, including but not limited to the Contract Time or Guaranteed Project Cost, or the Work to be performed thereunder and agrees to automatically adjust the penal sum of this Bond to reflect any adjustments of the Contract Time or Guaranteed Project Cost which increase the Guaranteed Project Cost. The Surety unconditionally and absolutely waives its entitlement, if any, to the benefits of California Civil Code §2845 concerning any security held by the District. The Surety also agrees that it shall not be exonerated or released from the obligations of this Bond, either by total exoneration or pro tanto, by any overpayment or underpayment made by the Obligor under the Contract. The Surety agrees that none of the aforementioned changes, adjustments, alterations, deletions, additions, modifications or actions shall in any way affect its obligations on this Bond, and it does hereby waive notice of any such changes, adjustments, alterations, deletions, additions, modifications or actions.

Principal and Surety agree that if Obligor is required to engage the services of an attorney in connection with enforcement of this Bond, each shall pay Obligor's costs and reasonable attorney's fees incurred, with or without suit, in addition to the above penal sum.

The guarantees contained in this Bond survive Final Completion of the Work called for in the Contract Documents with respect to the obligations and liabilities of the Principal, which survive Final Completion of the Work. The obligations of Surety hereunder shall continue so long as any obligation of the Principal remains. Nothing herein shall limit the Obligor's rights or the Principal's or Surety's obligations under the Contract, law or equity, including without limitation California Code of Civil Procedure section 337.15.

**Any claims under this bond may be addressed to the Surety at the following address. This cannot be the Contractor's broker for this bond, but must be an employee of the Surety or the Surety's legal counsel:**

\_\_\_\_\_

\_\_\_\_\_

Attention: \_\_\_\_\_

Telephone No.: (\_\_\_\_) \_\_\_\_ - \_\_\_\_\_

Fax No.: ( ) -

E-mail Address: \_\_\_\_\_

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

**Principal**

\_\_\_\_\_  
(Name of Principal)

\_\_\_\_\_  
(Signature of Person with Authority)

\_\_\_\_\_  
(Print Name)

**Surety**

\_\_\_\_\_  
(Name of Surety)

\_\_\_\_\_  
(Signature of Person with Authority)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Name of California Agent of Surety)

\_\_\_\_\_  
(Address of California Agent of Surety)

\_\_\_\_\_  
(Telephone Number of California Agent of Surety)

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

**PAYMENT BOND -- Contractor's Labor & Material Bond (100% of Guaranteed Project Cost)**  
**(Note: Contractor must use this form, NOT a surety company form.)**

**Civil Code § 9554**

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

**THE CONDITION OF THIS OBLIGATION IS SUCH THAT:**

**WHEREAS**, the Obligee, by resolution of its Board of Education has awarded to the Principal a Contract for the Work described as **Malibu Middle High School Campus Improvements Phase 3 Project**.

**WHEREAS**, the Principal, has entered into a Contract with the Obligee for performance of the Work; the Contract and all of its terms and conditions set forth therein are incorporated herein by this reference and made a part hereof.

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

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

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

In the event that suit is brought on this Bond by any Claimant for amounts due such Claimant for labor, materials or services provided or furnished by such Claimant, the Surety shall pay for the same and reasonable attorneys' fees pursuant to California Civil Code section 9564.

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

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

**Principal**

\_\_\_\_\_  
(Name of Principal)

\_\_\_\_\_  
(Signature of Person with Authority)

\_\_\_\_\_  
(Print Name)

**Surety**

\_\_\_\_\_  
(Name of Surety)

\_\_\_\_\_  
(Signature of Person with Authority)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Name of California Agent of Surety)

\_\_\_\_\_  
(Address of California Agent of Surety)

\_\_\_\_\_  
(Telephone Number of California Agent of Surety)

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

**EXHIBIT J  
TO  
MASTER FACILITIES LEASE**

**DIVISION 1 DOCUMENTS**

FORM OF AGREEMENT

**EXHIBIT K  
TO  
MASTER FACILITIES LEASE**

**SPECIAL CONSTRUCTION PROVISIONS**

**1. Contract Time; Liquidated Damages.**

**1.1 Contract Time.** The Contract Time for the Contractor's Substantial Completion of the Work is \_\_\_\_\_ (\_\_\_\_) calendar days after the date for commencement of the Work as set forth in the Notice to Proceed issued by or on behalf of the District to the Contractor.

**1.2 Liquidated Damages.**

**1.2.1 Delayed Substantial Completion.** Pursuant to Article 7 of the General Construction Provisions, the Contractor shall be liable to the District for Liquidated Damages for failure to achieve Substantial Completion of the Work within the Contract Time, including adjustments thereto in accordance with the Contract Documents. **Liquidated Damages shall be at the rate of \_\_\_\_\_ Thousand Dollars (\$\_\_\_\_\_) per day until Substantial Completion of the Work is achieved.**

**1.2.2 Delayed Milestone(s).** Pursuant to Article 7 of the General Construction Provisions, the Contractor shall be liable to the District for Liquidated Damages for failure to achieve one or more Milestones as specified by the Contract Documents, including adjustments thereto in accordance with the Contract Documents.

**[Identify one or more Milestones, e.g., phasing, Final Completion, etc. – duplicate this section for each Milestone and specify amount of LD's for each Milestone]:**

Liquidated Damages for delayed Milestone No. \_\_\_\_ shall be at the rate of \_\_\_\_\_ Thousand Dollars (\$\_\_\_\_\_) per day until the Work is achieved.

Liquidated Damages for delayed Milestone No. \_\_\_\_ shall be at the rate of \_\_\_\_\_ Thousand Dollars (\$\_\_\_\_\_) per day until the Work is achieved.

**1.2.3 Cumulative Assessment of Liquidated Damages.** If the Contractor fails to achieve a Milestone or fails to achieve Substantial Completion of the Work within the Contract Time, as adjusted pursuant to the Contract, the Contractor shall be subject to assessment and withholding of Liquidated Damages in the amounts set forth above for each such portion of the Work which is not timely delivered or completed within the time allocated for each portion of the Work, such amounts to accrue cumulatively until each such event is achieved in accordance with the Contract Documents.

**1.2.4 District Withhold of Liquidated Damages; Performance Bond Surety.** If the Contractor is subject to Liquidated Damages for delayed completion of one or more Milestones and/or delayed Substantial Completion, the District may withhold such Liquidated Damages from the Guaranteed Project Cost then or thereafter due the Contractor. If the Liquidated Damages exceed the then remaining balance of the Guaranteed Project Cost, the Contractor and the Surety issuing the Performance Bond shall be jointly and severally liable to the District for such amounts.

**2. Mark-Ups on Changes to the Work.** In the event of Changes to the Work, pursuant to Article 9 of the General Construction Provisions, the mark-up for all overhead (including home and field office overhead), general conditions costs and profit, shall not exceed the percentage of allowable direct actual costs for performance of

the Change as set forth below. For the portion of any Change performed by Subcontractors of any tier, the percentage mark-up on allowable actual direct labor and materials costs incurred by all Subcontractors of any tier shall be Ten Percent (10%). In addition, for the portion of any Change performed by a Subcontractor of any tier, the Contractor may add an amount equal to Five Percent (5%) of the allowable actual direct labor and materials costs of Subcontractors performing the Change. For the portion of any Change performed by the Contractor's own forces, the mark-up on the allowable actual direct labor and materials costs of such portion of a Change shall be Fifteen Percent (15%). In addition, the mark-up shall include the actual, direct cost of the bond for such Change, not to exceed One Percent (1.0%) of the direct, actual costs of the performance of the Change. In the event the Change is deductive, the District shall receive a credit equal to the value of the direct actual costs of the Work of the deductive Change plus Ten Percent (10%) of such direct actual costs for all general conditions, overhead (including home and field office overhead), profit and bond, which Ten Percent (10%) is inclusive of all general conditions, overhead (including home and field office overhead), profit and bond for the Contractor and all Subcontractors of every tier.

### 3. Insurance; Subcontractors' Bonding.

**3.1 Contractor's Insurance.** Pursuant to Article 6 of the General Construction Provisions, the Contractor shall obtain and maintain the following insurance coverage, with minimum coverage amounts as set forth below:

<b>Comprehensive General Liability Insurance:</b>	
Per Occurrence	\$2,000,000
Aggregate	\$5,000,000
<b>Automobile Liability Insurance:</b>	<b>\$2,000,000</b>
Workers Compensation Insurance	Statutory Limits

**3.2 Insurance Primary.** Certificates of insurance shall clearly state that the District is named as additional insured under the policy described and that such insurance policy shall be primary to any insurance or self-insurance maintained by the District.

**3.3 Subcontractors' Insurance.** Contractor is required to have all subcontractors insured to the minimum coverage amounts as set forth below:

<b>Comprehensive General Liability Insurance:</b>	
Per Occurrence	\$1,000,000
Aggregate	\$2,000,000
<b>Automobile Liability Insurance:</b>	<b>\$1,000,000</b>
Workers Compensation Insurance	Statutory Limits

### 3.4 Builder's Risk Insurance.

The District shall provide Builder's Risk coverage for the full insurable value of the Work up to \$50,000,000. The District may or may not include coverage for the perils of earthquakes within the scope of coverage under the Builders Risk Insurance Policy. The Contractor shall be responsible for any deductible or self-insured retention amount for each and every covered loss. The foregoing notwithstanding, the risk of damage to the Work due to the perils covered by the Builder's Risk Insurance, as well as any other hazard which might result in damage to the Work, is that of the Contractor and the Surety, and no claims for such damage or hazard shall be recognized by the District (other than to the extent the damage is a covered loss under the Builder's Risk Insurance Policy), nor will such loss or damage excuse the complete and satisfactory performance of the Contract by the Contractor.

**3.5 Subcontractors' Bonding.** In addition to the Performance and Payment Bonds required of the Contractor per Article 6.10 of the General Construction Provisions, Contractor shall require Performance and Payment Bonds of all subcontractors performing work in excess of \$250,000. Upon request, the Contractor shall furnish

the District with a copy of such bonds.

4. **Security.** In addition to the security requirements set forth elsewhere in the Contract, the Contractor must adhere to the following:

**4.1 Keys.** The Contractor's site supervisor of the Work will be issued a key for that site at the beginning of the Work. The key must not be duplicated, and the Contractor is responsible for returning the key to the District when the Work at the site is complete. The Contractor may be charged \$1,000.00 per key, for any key not returned to the District at the completion of the Work. If a "Master Key" is issued to the Contractor and not returned, Contractor shall be responsible for the cost to re-key the school.

**4.2 Locked Door Policy.** No building, room or site gate shall be left unsecured for any period of time when not occupied by the Contractor and/or after the Contractor's daily work hours.

**4.3 Security Guard.** Contractor shall provide a security guard located on the Project Site during non-working hours.

5. **Hours of work.** All construction and delivery activities shall be restricted to the hours of 7:00 a.m. to 6:00 p.m. Monday through Friday and from 9:00 a.m. to 5:00 p.m. on Saturdays, or as otherwise modified or amended.

6. **Rain Days.** For purposes of Article 7.4.1. of the General Construction Provisions, \_\_\_\_\_ (\_\_\_\_) Rain Days are expected during the Contract Time. The Contractor's Construction Schedule prepared pursuant to Article 7 of the General Construction Provisions shall incorporate the number of expected Rain Days set forth above and there shall be no adjustments to the Contract Time on account of unusually severe weather conditions resulting from rain until the anticipated number of Rain Days are exceeded. Rain Days shall only be allocated to Contractor's Construction Schedule where such Rain Days directly and adversely impact critical path activities as depicted in the Approved Construction Schedule or the most recent update Approved Construction Schedule relative to the date(s) of such Rain Days.

7. **Project Manager.** The District's Project Manager is \_\_\_\_\_, attention: \_\_\_\_\_, whose offices are located at \_\_\_\_\_. Phone: \_\_\_\_\_ FAX: \_\_\_\_\_ email: \_\_\_\_\_. All project correspondence shall be routed through the Project Manager, unless otherwise directed.

8. **Project Labor Agreement.** This Contract is subject to the District's Project Labor Agreement ("PLA") which is attached to the Master Facilities Lease as **Exhibit L**. The PLA provides that as a condition of accepting a bid, the Contractor will abide by the terms and conditions of the PLA relating to, among other things, hiring practices, wage and rate benefits, union representation, union recognition, hours of work, overtime shifts, holidays, grievances, disputes, safety and working conditions. The PLA also provides that there will be no strikes, labor shutdown or slowdown, and no lockout. The Contractor and all Subcontractors are required to abide by the terms and conditions of the PLA and execution of this Contract constitutes a covenant to do so.



FORM OF AGREEMENT

EXHIBIT L  
TO  
MASTER FACILITIES LEASE  
PROJECT LABOR AGREEMENT

FORM OF AGREEMENT

**Attachment 4**

**PREQUALIFICATION QUESTIONNAIRE**

<b>CONTRACTOR (OR "FIRM") INFORMATION</b>			
Contractor's company name:			
Address:			
Telephone:			
Mobile telephone:			
E-mail:			
Years in business under current company name:			
Years at the above address:			
Types of work performed with own forces:			
Gross revenue of the Firm for the past three (3) years:			
\$		\$	
<b>Submit an audited or reviewed financial statement for the past two (2) full fiscal years. A letter verifying availability of a line of credit may also be attached; however, it will be considered as supplemental information only, and is not a substitute for the required financial statement.</b>			
Name of license holder exactly as on file with the California State License Board:			
License classification(s):			
License Number(s):			
License expiration date(s):			
<b>Department of Industrial Relations registration number (Per Labor Code section 1725.5):</b>			
Number of years license holder has held the listed license(s):			
Number of years Contractor has done business in California under contractor's license law:			
Number of years Contractor has done business in California under <b>current</b> Contractor's license:			
Has your Firm changed name(s) or license number(s) in the past five (5) years? ( Y / N ). If "yes", explain on a separate signed sheet, including the reason for the change.			
Has there been any change in ownership of the Firm at any time in the past five (5) years? <b>NOTE:</b> A corporation whose shares are publicly traded is not required to answer this question. ( Y / N ). If "yes", explain on a separate signed sheet, including the reason for the change.			
Is the Firm a subsidiary, parent, holding company, or affiliate of another construction firm? <b>NOTE:</b> Include information about other firms if one firm owns ten percent (10%) or more of another, or if an owner, partner, or officer of your Firm holds a similar position in another firm. ( Y / N ). If "yes", explain on a separate signed sheet, the name of the related company(ies) and the percent ownership.			
Indicate the form of Contractor's firm (type of business entity):			
<div style="margin-left: 20px;"> <input type="checkbox"/> Individual  <input type="checkbox"/> Sole Proprietorship  <input type="checkbox"/> Partnership  <input type="checkbox"/> Limited Partnership  <input type="checkbox"/> Corporation, State: _____  <input type="checkbox"/> Limited Liability Company </div>			

☐ Joint Venture  
☐ Other: \_\_\_\_\_

List the following for each corporation officer, general partner, limited partner, owner, etc. (as applicable) for the Contractor's type of entity. For joint ventures, include this information for each entity in the joint venture and the percent ownership of each joint venture. Attach all additional information on separate signed sheets as needed.

Name	Position	Years with Co.	% Ownership

Identify every construction firm, contractor and/or construction management firm that the Contractor or any person listed above has been associated with (as officer, general partner, limited partner, owner, RMO, RME etc.) at any time during the **past five (5) years** ("Associated Firm"). Include all additional references and/or information on separate signed sheets. NOTE: For this question, "owner" and "partner" refers to ownership of ten percent (10%) or more of the business, or ten percent (10%) or more of its stock if the business is a corporation. include all additional information on separate signed sheets as needed.

Name of Person at Associated Firm	Name of Associated Firm	Contractor's License No. of Associated Firm	Dates of Person's Participation with Associated Firm

## CONTRACTOR'S BONDING COMPANY (SURETY) INFORMATION

Name(s) of bonding company(ies) your Firm has utilized over the past five (5) years (not broker or agency):

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Address(es) of those bonding company(ies):

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Number of years Contractor has been with those bonding company/surety:

--	--	--

Name of broker/agent:

\_\_\_\_\_

Address of broker/agent:
Telephone number of broker/agent:
E-mail of broker/agent:
Contractor's total current bonding capacity: \$

<b>CONTRACTOR'S INSURANCE INFORMATION</b>
---

Name of insurance company(ies) your Firm has utilized over the past five (5) years (not broker or agency):
--


Address of those insurance company(ies):
--


"Best" rating(s) for those insurance company(ies):
--

--	--	--

Number of years Contractor has been with those insurance company(ies):
--

--	--	--

Name of broker/agent:
-----------------------

Address of broker/agent:
--------------------------

Telephone number of broker/agent:
-----------------------------------

E-mail of broker/agent:
-------------------------

Contractor's current insurance limits for the following types of coverage:
--


Commercial General Liability	Combined Single Limit (per occurrence)	\$
	Combined Single Limit (aggregate)	\$
Product Liability & Completed Operations	(aggregate)	\$
	(per occurrence)	\$
Automobile Liability – Any Auto	Combined Single Limit (aggregate)	\$
Automobile Liability – Any Auto	Combined Single Limit (per occurrence)	\$
Employers' Liability		\$
Builder's Risk (Course of Construction)		

Workers' Compensation Experience Modification Rate for the past five (5) premium years:
---

(1) Current year:	(2)	(3)
	(4)	(5)

## QUESTIONS

### Pass/Fail Questions (Essential Criteria)

1.	<p>Has your Firm contracted for and completed construction of a minimum of:</p> <ul style="list-style-type: none"> <li><b>\$5 million per year for the last five (5) years</b> of K-12 public schools either new construction or modernization under the State School Building Program administered by the Office of Public School Construction?</li> </ul> <p style="text-align: right;">(Please circle one).</p> <p><b>NOTE:</b> You <u>must</u> list these projects in the "Contractor Project References" Section.</p>	<u>YES</u> <u>NO</u> NO = cannot prequalify
2.	<p>Does your Firm currently hold all contractors license(s) necessary to perform the work and have those license(s) been consistently active for at least <b>ten (10) years</b> without revocation or suspension?</p> <p style="text-align: right;">(Please circle one).</p>	<u>YES</u> <u>NO</u> NO = cannot prequalify
3.	<p>Has your Firm or an Associated Firm been found non-responsible, debarred, disqualified, forbidden, or otherwise prohibited from performing work and/or bidding on work for any public agency within California within the past <b>ten (10) years</b>?</p> <p style="text-align: right;">(Please circle one).</p>	<u>YES</u> <u>NO</u> YES = cannot prequalify
4.	<p>Has your Firm or an Associated Firm defaulted on a contract or been terminated for cause by any public agency on any project within California within the past <b>ten (10) years</b> and, if so and if challenged, has that default or termination been upheld by a court or an arbitrator? (Please circle one).</p>	<u>YES</u> <u>NO</u> YES = cannot prequalify
5.	<p>Has your Firm or an Associated Firm or any of their owners or officers been convicted of a crime under federal, state, or local law involving:</p> <p style="margin-left: 20px;">(1) Bidding for, awarding of, or performance of a contract with a public entity;</p> <p style="margin-left: 20px;">(2) Making a false claim(s) to any public entity; or</p> <p style="margin-left: 20px;">(3) Fraud, theft, or other act of dishonesty,</p> <p>to any contracting party within the past <b>ten (10) years</b>? (Please circle one).</p>	<u>YES</u> <u>NO</u> YES = cannot prequalify
6.	<p>Has a performance bond surety for your Firm or a performance bond surety for an Associated Firm had to:</p> <p style="margin-left: 20px;">(1) Take over or complete a project,</p> <p style="margin-left: 20px;">(2) Supervise the work of a project, or</p> <p style="margin-left: 20px;">(3) Pay amounts to third parties,</p> <p>related to construction activities of your Firm or an Associated Firm within the past <b>ten (10) years</b>? (Please circle one).</p>	<u>YES</u> <u>NO</u> YES = cannot prequalify
7.	<p>Has your Firm's Workers' Compensation Experience Modification Rating averaged more than 1.25 over the past five (5) premium years? (Please circle one).</p> <p>Attach proof of Worker's Compensation Experience Mod Rating for the last 5 years.</p>	<u>YES</u> <u>NO</u> YES = cannot prequalify
<div style="display: flex; align-items: center; justify-content: center;">  <div> <p><b>If you answered:</b></p> <p><b>"NO" to questions 1-2 or</b></p> <p><b>"YES" to questions 3-7, then STOP.</b></p> <p><b>You are not eligible for prequalification at this time.</b></p> </div> </div>		

## Scored Questions

1.	<p>Has your Firm paid liquidated damages pursuant to a contract for a project with either a public or private owner within the past <b>ten (10) years</b>? (Please circle one).</p> <p>If YES, explain and indicate on separate signed sheet(s) the project name(s), damages(s), and date(s).</p>	<u>YES</u> <u>NO</u>
2.	<p>Has your Firm paid a premium of more than one percent (1.5%) for a performance and payment bond on any project(s) within the past <b>ten (10) years</b>? (Please circle one).</p> <p>If YES, explain and indicate on separate signed sheet(s) the project name(s), the premium amount(s), and date(s).</p>	<u>YES</u> <u>NO</u>
3.	<p>Has any insurer had to pay amounts to third parties that were in any way related to construction activities of your Firm within the past five (5) years? (Please circle one).</p> <p>If YES, explain and indicate on separate signed sheet(s) the project name(s), the amount(s) paid, and date(s).</p>	<u>YES</u> <u>NO</u>
4.	<p>Has there been a period when your Firm had employees but was without workers' compensation insurance or state-approved self-insurance within the past five (5) years? (Please circle one).</p> <p>If YES, explain and indicate on separate signed sheet(s) the reason(s) for not having this insurance and the applicable date(s).</p>	<u>YES</u> <u>NO</u>
5.	<p>Has your Firm declared bankruptcy or been placed in receivership within the past <b>ten (10) years</b>? (Please circle one).</p> <p>If YES, explain and indicate on separate signed sheet(s) the type of bankruptcy, the Firm's current recovery plan, and the applicable date(s).</p>	<u>YES</u> <u>NO</u>
6.	<p>Has your Firm been denied bond coverage by a surety company, or has there been a period of time when your Firm had no surety bond in place during a public construction project when one was required within the past <b>ten (10) years</b>? (Please circle one).</p> <p>If YES, provide details on a separate signed sheet indicating the date(s) when your Firm was denied coverage and the name of the company or companies which denied coverage; and the period(s) during which you had no surety bond in place.</p>	<u>YES</u> <u>NO</u>
7.	<p>Has a project owner, general contractor, architect, or construction manager filed claim(s) in an amount exceeding \$50,000 against your Firm, or has your Firm filed claim(s) in an amount exceeding \$50,000 against a project owner, general contractor, architect, or construction manager in the past <b>ten (10) years</b>?</p> <p>If YES, explain and indicate on separate signed sheet(s) the project name(s), claim(s) and the date(s) of claim(s).</p>	<u>YES</u> <u>NO</u>
8.	<p>Has your Firm or an Associated Firm been cited and/or assessed any penalties for non-compliance with state and/or federal laws and/or regulations, including public bidding requirements and Labor Code violations, within the past <b>ten (10) years</b>?</p> <p>If "YES," indicate on separate signed sheet(s) the project name(s), violation(s), and date(s) of citation(s) and/or assessment(s).</p>	<u>YES</u> <u>NO</u>
9.	<p>Has your Firm been cited and/or assessed penalties by the Environmental Protection Agency, any air quality management district, any regional water quality control board, or any other environmental agency within the past <b>ten (10) years</b>?</p> <p>If "yes," indicate on separate signed sheet(s) the project name(s), violation(s), and date(s) of citation.</p>	<u>YES</u> <u>NO</u>

10.	Has CAL OSHA and/or federal Occupational Safety and Health Administration cited and assessed penalties against your Firm, including any “serious,” “willful” or “repeat” violations of safety or health regulations within the past <b>ten (10) years</b> ?  If “yes,” indicate on separate signed sheet(s) the project name(s), violation(s), and date(s) of citation. If the citation was appealed and a decision has been issued, state the case number and the date of the decision.	YES NO
11.	Has your Firm been required to pay either back wages or penalties for its failure to comply with California’s prevailing wage laws, with California’s apprenticeship laws or regulations, or with federal Davis-Bacon prevailing wage laws within the past <b>ten (10) years</b> ?  If “yes,” indicate on separate signed sheet(s) the project name(s), the nature of the violation(s), the name and owner of the project(s), the number of employees who were initially underpaid and the amount of back wages and penalties that your Firm was required to pay.	YES NO
12.	Does your Firm require <b>weekly</b> , documented safety meetings to be held for construction employees and field supervisors during the course of a project?	YES NO
13.	Provide the name, address and telephone number of the apprenticeship program (approved by the California Apprenticeship Council) from whom you intend to request the dispatch of apprentices to your Firm for use on any public work project for which you are awarded a contract by the District.	



## CONTRACTOR PROJECT REFERENCES

List **ALL** projects in which your Firm has participated as the prime contractor during the past **five (5) years** with a Firm contract value of more than **\$3,000,000**.

- You may limit your response to the **thirty (30)** most-recently completed projects, but you **must** include at least the **four (4)** most recent California K-12 public school projects with a contract value of more than **\$3,000,000** performed by your Firm.
- Include all information indicated below on separate signed sheets as necessary, and explain or clarify any response as necessary

Project name/identification:
Project address/location:
Project owner, contact person, and telephone:
Project architect name and telephone number:
If contractor was a subcontractor on the project, name of general contractor and telephone number:
Indicate if the project was under lease-leaseback, design-build, design-bid-build or other delivery structure:
Scope of work:
Original completion date:
Date completed:
Initial contract value (as of time of bid award):
Final contract value:

### CERTIFICATION

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct:

Date: \_\_\_\_\_

Proper Name of Contractor: \_\_\_\_\_

Signature: \_\_\_\_\_

By: \_\_\_\_\_ (Print Name)

Title: \_\_\_\_\_

**Attachment 5**

**SCORING FOR BEST VALUE SELECTION PROCESS**

**STEP 1 – PREQUALIFICATION SCORING**

1. **Confirm Firm has passing answers for the “Pass/Fail Questions.”**
2. **Confirm Firm has submitted the required financial statements.** If not, notify Firm in writing that its Proposal is non-responsive for failing to include the required financial statements.
3. **Score the “Evaluated Questions.”**

Topic/Question	Scoring & Max. Poss. Score		Score
1. Suspended or Revoked License		5	
2. Disbarred/Disqualified from Government Agency/Public Works Projects		5	
3. Denied as Non-Responsible Bidder		5	
4. Claim Against Firm		5	
5. Claim Against Owner		5	
6. Contract Termination for Cause		5	
7. Liable in Civil Suit		5	
8. Convicted of a Crime Related to Construction		5	
9. Convicted of Fraud		5	
10. Denied or Lapse of Bond Coverage within Last Five Years		5	
11. Workman’s Compensation Lapse within Last Five Years		5	
12. Years in Business		5	
13. Current Bankruptcy		5	
14. Bankruptcy within Last Five Years		5	
15. Liquidated Damages within Last Five Years		5	
16. Insurance Refusal to Renew within Last Five Years		5	
17. More Than Three (3) Stop Payment Notices per Contract within Last Three Years		5	
18. Stop Payment Notices Resulting in Claim Against Payment Bond		5	
19. Required to Pay a Premium < 1%		5	
20. CAL OSHA Violations within Last Five Years = Serious, Willful or Repeat		5	

21. Federal OSHA Violations within Last Five Years		5	
22. EPA, Air Quality or Regional Water Quality Control Board Penalties with Last Five Years		5	
23. Safety Meetings		5	
24. Experience Modification Rate		5	
25. Required to Pay Back Wages (States Prevailing Wages)		5	
26. Required to Pay Back Wages (Federal = Davis-Bacon Prevailing Wages)		5	
27. Apprentice Violations		5	
<b>Total Score</b>		<b>135</b>	

## **STEP 2 – PROPOSAL SCORING**

The following scoring will be used in evaluating the Firm's Proposal responses to the following criteria, which will be determined by review all portions of the Proposal, including the "Content of Proposals" section of the RFQ/RFP and the "Contractor Project References" section of the Prequalification Questionnaire.

<b>Item</b>	<b>Description</b>	<b>Maximum Qualification Points</b>	<b>Firm's Qualification Points</b>
1. Personnel / Subconsultants	Firm's team members, especially team leaders, demonstrate applicable experience and expertise to perform Services in response to District's needs.	40	
2. Approach to Work	Firm demonstrates how it intends to work with the District and develop management techniques related to the District's educational program requirements.	40	
3. LLB Projects	Firm demonstrates past experience and expertise with LLB process.	10	
4. Preliminary Services	Firm demonstrates past experience and expertise to perform all Preliminary Services.	[N/A]	
5. Cost Savings / Value Engineering	Firm demonstrates past experience and expertise to perform value engineering services for the Projects.	10	
6. Budget	Firm demonstrates past experience and expertise to manage costs and stay within budgets on LLB projects.	20	
7. Schedule	Firm demonstrates ability on LLB projects to prepare and meet achievable construction schedules schedule management procedures, and successful handling of potential delays.	20	
8. Political Environment	Firm demonstrates experience managing projects within political environments including facilitation of community involvement in the construction process.	5	
9. Local Outreach	Firm demonstrates knowledge and understanding of the local environment and describes local outreach plan including local trade Contractors.	5	
10. Local Community	Firm demonstrates involvement in community and efforts at community outreach.	5	
11. Environmental	Firm indicates its past experience performing in an environmentally responsible manner.	5	
12. Firm Education	Firm describes its commitment to ongoing professional education.	5	
13. Conflict of Interest	Any potential or actual conflict of interest.	5	
14. Current Work Commitments	Firm describes current and projected workload.	5	
15. Additional Information	Strength of additional information provided by Firm.	5	
	<b>Total Score MINIMUM POINTS</b>	<b>180</b>	

### **STEP 3 – REFERENCES SCORING**

1. Contact references from the Firm's response to the "**Contractor Project References**" section of the Prequalification Questionnaire and scores those responses.
2. Fill out the information in Section I of the Qualification Evaluation – Reference Form and then call or email the contact person.
3. Ask the questions in Section II of the Qualification Evaluation – Reference Form. Ensure that you obtain the information regarding whether the Firm's performance in that area was "unsatisfactory," "below average," "average" or "above average." Assign the corresponding score for each answer in Section III.
4. Complete Section III of the Qualification Evaluation – Reference Form with the information received during the call or from email.
5. Use a separate Qualification Evaluation – Reference Form for each call or email.
6. Make three (3) complete reference calls or send emails for each Firm.
7. Enter the "Total Score for This Project" of all the Qualification Evaluation – Reference Forms for that Firm into an "Averaging" Worksheet.

<b>Sample "Averaging" Worksheet for 3 reference calls/emails per Firm – See next page</b>	
"Total Score for This Project" from first call/email	
"Total Score for This Project" from second call/email	
"Total Score for This Project" from third call/email	
<b>Total</b>	
<b>Total divided by three (÷ 3)</b> <b>[DIVIDE SCORE BY NUMBER OF CALLS/EMAILS]</b> This is the score for the Firm for the References Step in the evaluation process.	

### **STEP 3 – REFERENCES SCORING (CONTINUED)**

#### **References – Qualification Evaluation Form**

##### **Section I - General Project Information**

Name of Firm:	Total Contract Costs:
	Contract Start/End Dates:
Project Title:	Actual Completion Date:
Scope of Work:	
Name of Public Agency:	Telephone Number of Contact Person:
Name of Contact Person:	Date and Time of Interview of Contact Person:
Architect Firm:	Principal Architect in Charge of Project:

##### **Section II – Telephone Interview Questions**

1. **Quality of Work.** Were there quality-related problems on the project? Were these problems attributable to the Firm? Was the Firm cooperative in trying to resolve problems? If not, provide specific examples. **Please rate the Firm with respect to quality of work as either unsatisfactory, below average, average, or above average.**

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2. **Scheduling.** Rate the Firm's performance with regard to adhering to project schedules. Did the Firm meet the project schedule? If not, was the delay attributable to the Firm? **Please rate the Firm with respect to scheduling as either unsatisfactory, below average, average, or above average.**

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3. **Subcontractor (Project) Management.** Rate the Firm's ability to manage and coordinate subcontractors (if no subcontractors, rate the Firm's overall project management). Was the Firm able to effectively resolve problems? If not, provide specific examples. **Please rate the Firm with respect to project management as either unsatisfactory, below average, average, or above average.**

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4. **Change Orders.** Rate the Firm's performance with regard to change orders and extras. Did the Firm unreasonably claim change orders or extras? Were the Firm's prices on change orders and extras reasonable? If not, provide specific examples. **Please rate the Firm with respect to change orders as either unsatisfactory, below average, average, or above average.**

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5. **Working Relationships.** Rate the Firm's working relationships with other parties (i.e. owner, designer, subcontractors, etc.). Did the Firm relate to other parties in a professional manner? If not, provide specific examples. **Please rate the Firm with respect to working relationships as either unsatisfactory, below average, average, or above average.**

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6. **Responsiveness.** Rate the Firm's responsiveness to telephone calls, emails, meetings, requests for action, etc. Did the Firm respond to inquiries promptly and substantively? If not, provide specific examples. **Please rate the Firm with respect to responsiveness as either unsatisfactory, below average, average, or above average.**

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7. **On-Site Firm Staff.** Rate the Firm's on-site staff relating to their management of the site, communication and interaction with owner's staff, and familiarity with project scope and status. **Please rate the Firm's on-site staff as either unsatisfactory, below average, average, or above average.**

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8. **Paperwork Processing.** Rate the Firm's performance in completing and submitting required project paperwork (i.e. submittals, drawings, requisitions, payrolls, etc.). Did the Firm submit the required paperwork promptly and in proper form? If not, provide specific examples. **Please rate the Firm with respect to paperwork processing as either unsatisfactory, below average, average, or above average.**

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9. **Value Engineering.** Rate the Firm's performance in analyzing designed building features, systems, equipment, and material selections for the purpose of achieving essential functions at the lowest life cycle cost consistent with required performance, quality, reliability, and safety. **Please rate the Firm with respect to providing value engineering services as either unsatisfactory, below average, average, or above average.**

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### Section III - Numerical Rating

If the contact person rates the Firm unsatisfactory in any area, please attempt to provide written comments in Section II to explain the rating(s) assigned.

Firm's Name: \_\_\_\_\_

	Unsatisfactory	Below Average	Average	Above Average	Rating
1. Quality of Work	0	5	15	20	
2. Scheduling	0	5	10	15	
3. Subcontractor (Project) Mgt.	0	5	10	15	
4. Change Orders	0	5	10	15	
5. Working Relationship	0	5	10	15	
6. Responsiveness	0	5	10	15	
7. On-Site Staff	0	5	10	15	
8. Paperwork Processing	0	2	5	10	
9. Value Engineering	0	2	5	10	
Total Score for This Project					



#### **STEP 4 – INTERVIEW SCORING**

Firms which qualify for the pool and submit proposals for the Projects identified in Attachment 1 shall be interviewed. The subject matter for the interview will be at the District's discretion but shall include, at a minimum, the following topics.

Item	Maximum Qualification Points	Qualification Points
1. <b>Current Project:</b> Firm's articulation of how it will construct the Project, its ideas related to constructability, and other construction-specific ideas, concerns, or related issues (i.e. schedules, budgets, subcontractor selection, etc.). Explain your Firm's philosophy and approach regarding apportioning contingency when providing a guaranteed maximum price for a project.	45	
2. <b>Past Projects/Experience:</b> Firm's articulation of Firm's history, education, and background; Firm's experiences working with similar, past projects; issues faced and how addressed (i.e. claims, bonding/surety involvement, owner relations, citations, etc.); and questions, concerns, and highlights from Proposal.	35	
3. <b>Overall Ability and General Suitability.</b> Firm's articulation of its overall skills, ability to complete the Project, and general suitability for the District's purposes (i.e. implementation of District policies and procedures, compliance with District Programs, political atmosphere, additional information, etc.)	30	
4. <b>Personnel/Leadership:</b> Firm's articulation of its Project-designated personnel, leadership, subcontractor relations, apprenticeship program, etc.	30	
SUBTOTAL QUALIFICATION POINTS FROM STEP 4	140	

## Attachment 6

### SUBCONTRACTOR PROCUREMENT PROCESS

**Bidding for Subcontractor Work.** This RFP and each RFP that is subsequently issued by the District shall require each Contractor to prequalify some or all subcontractors and to comply with the requirements for the procurement of Subcontractors set forth in Education Code section 17406 and as further detailed in each RFP. The Subcontractor procurement process will be adapted by the District as needed for each Project. The Subcontractor procurement process may be one or a combination of the following processes:

- **One Step Process of Low-Bid or Best-Value or Combination of Both.** The RFP may ask for a lump-sum cost for the project and the District will select the Contractor on a low-bid basis, a best-value basis, or a combination of both. All Contractors' subcontractors in excess of one-half of one percent of that lump sum cost shall be identified in the Contractors' proposals and shall be afforded the protections of the Subletting and Subcontracting Fair Practices Act. (Public Contract Code § 4100, et seq.)
- **Two-Step Process of Low Bid or Best Value or Combination of Both.**
  - Step 1.** The RFP may ask Contractors to provide (1) some initial pricing information (e.g., fee for preliminary services, general conditions, partial construction services, etc.) and (2) some subcontractors be identified in the proposal. The District will select the Contractor on a low-bid basis, a best-value basis, or a combination of both.
  - Step 2.** The selected Contractor, when directed later by the District, shall provide a final lump sum guaranteed project cost. At that time, the District will inform the Contractor whether the Contractor will award the subcontracts on a low-bid basis, a best-value basis, or a combination of both. Also at that time, the successful Contractor shall provide notice of bidding for all remaining subcontractors "in accordance with the publication requirements applicable to the District's competitive selection process." **The District intends to work with the successful Contractor for each Project to issue an advertisement to solicit Subcontractors in compliance with statutory requirements and the District's process.**

**Best-Value Process for Subcontractor Selection.** If the District directs the selected Contractor to award some or all of its subcontracts on a best value basis, the Contractor shall utilize the following best value criteria and process:

<b>Best Value Criteria for Subcontractors</b>	<b>Required Response for a Subcontractor to Qualify</b>
<b>1.</b> Has the subcontractor performed at least two (2) subcontracts for at least 90% of the value of the current subcontract?	<b>Yes</b>
<b>2.</b> Has the subcontractor been found non-responsible, debarred, disqualified, forbidden, or otherwise prohibited from performing work and/or bidding on work for any public agency within California within the past five (5) years?	<b>No</b>
<b>3.</b> Has the subcontractor defaulted on a contract, been substituted off a project after beginning performance, or been terminated for cause by any prime Contractor or public agency on any project within California during the past five (5) years and has that default, substitution or termination been upheld by a court or an arbitrator?	<b>No</b>
<b>4.</b> Has the subcontractor paid liquidated damages pursuant to a contract for a project with either a public or private owner within the past five (5) years?	<b>No</b>
<b>5.</b> Has the subcontractor's Workers' Compensation Experience Modification Rate exceeded 1.5 at any time for the past five (5) premium years?	<b>No</b>

<p>6. Has the subcontractor failed in its performance of a contract with the Contractor during the past five (5) years and does the Contractor have documentation to support that failed performance? (If so, and if the Contractor does not wish to subcontract with that subcontractor and if it provides to the District with that documentation, the District shall, at its reasonable discretion, permit Contractor to list and contract with the next lowest subcontractor for the project.)</p>	<p><b>No</b></p>
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**Attachment 7**

**PROJECT LABOR AGREEMENT**

FORM OF AGREEMENT

# **ALAMEDA UNIFIED SCHOOL DISTRICT PROJECT LABOR AGREEMENT**

## **PREAMBLE**

The purpose of this Agreement is to promote efficiency of construction operations during the Alameda Unified School District Measure I New Construction and Modernization Projects ("Projects") as defined herein, and to provide for peaceful settlement of labor disputes and grievances without strikes or lockouts, thereby promoting the public interest in assuring the timely and economical completion of the Projects, while also helping to increase training and employment opportunities for the District's students in the construction trades through apprenticeship and pre-apprentice programs as the students graduate from the District's schools.

The relevant skilled work force requirements described in Education Code section 17407.5 as that statute relates to the commitment that a skilled and trained workforce will be used to perform the Project(s), is deemed to have been established by any Contractor becoming a signatory to this Agreement.

## **RECITALS**

**WHEREAS**, the timely and successful completion of the Projects is of the utmost importance to the Alameda Unified School District ("District") to meet the educational needs of the District's students and to avoid increased costs resulting from delays in construction; and

**WHEREAS**, large numbers of workers of various skills will be required in the performance of the construction work, including those to be represented by the unions affiliated with the Building and Construction Trades Council of Alameda County ("Unions") and any other labor organization which is signatory to this Agreement employed by contractors and subcontractors who are signatory to this Agreement; and

**WHEREAS**, it is recognized that on projects of this magnitude with multiple contractors and bargaining units on the job site at the same time over an extended period of time, the potential for work disruption is substantial without an overriding commitment to maintain continuity of work; and

**WHEREAS**, the interests of the general public, the District, the Unions and Contractor/Employer(s) would be best served if the construction work proceeded in an orderly manner without disruption because of strikes, sympathy strikes, work stoppages, picketing, lockouts, slowdowns or other interferences with work; and

**WHEREAS**, the Contractor/Employers and the Unions desire to mutually establish and stabilize wages, hours and working conditions for the workers employed on the Projects by the Contractor/Employer(s), and further, to encourage close cooperation among the Contractor/Employer(s) and the Union(s) to the end that a satisfactory, continuous and harmonious relationship will exist among the parties to this Agreement; and

**WHEREAS**, the Agreement is not intended to replace, interfere, abrogate, diminish or modify existing local or national collective bargaining Agreements in effect during the duration of the Projects, insofar as a legally binding Agreement exists between the Contractor/Employer(s) and the affected Union(s) except to the extent that the provisions of this Agreement are inconsistent with said collective bargaining Agreements, in which event, the provisions of this Agreement shall prevail; and

**WHEREAS**, the contracts for construction work on the Projects will be awarded in accordance with the applicable provisions of the Public Contract Code, Education Code and other applicable California law; and

**WHEREAS**, the funding for the construction of the Projects will come from Measure I, passed by the Alameda residents, and paid for by the Measure I special tax on the properties owned by Alameda residents, in contrast to typical California school projects, which are funded through a balance of local and State funds; and

**WHEREAS**, the District has the absolute right to select the lowest responsive and responsible bidder for the award of the construction contracts on the Projects, or to reject all bid proposals, or to use other legal project delivery methodologies; and

**WHEREAS**, the District places high priority upon the development of comprehensive programs for the recruitment, training and employment of local area residents and has identified the need to prepare its students for lifelong careers and continuing education, recognizing the ability of local apprenticeship programs to provide meaningful and sustainable careers in the building and construction industry; and

**WHEREAS**, the parties signatory to this Agreement pledge their full good faith and trust to work towards a mutually satisfactory completion of the Projects;

**NOW, THEREFORE**, it is agreed between and among the parties hereto, as follows:

#### **ARTICLE 1. DEFINITIONS**

1.1 "Agreement" means this Project Labor Agreement.

1.2 "District" means the Alameda Unified School District, its employees, agents, and administrative staff under its Superintendent.

1.3 "Completion" of work on a project means that point at which the District has determined that the work to construct the project is in all respects 100% complete and that all contract drawings, warranties, certificates, manuals and data have been submitted and training completed in accordance with the contract documents. Division of State Architect approval is not required for a determining that a project is complete.

1.4 "Contractor/Employer(s)" means any individual, firm, partnership or corporation, or combination thereof, including joint ventures, which is an independent business enterprise, and their successors and assigns, that enters into a contract with the District not excluded in this



Agreement with respect to the construction of any part of the Projects under contract terms and conditions approved by the District and which incorporate the Agreement, and any of its contractors or subcontractors of any tier.

1.5 "Construction Contracts" means the public works contracts including design-bid, design-build, lease-leaseback or other contracts not excluded in this Agreement which will be signed by the District and which are necessary to complete the Projects.

1.6 "Projects" is defined to include all phases of the construction of new facilities and demolition, upgrading and repair to all existing facilities covered in construction contracts executed by the District and that are covered by this Agreement in Section 2.2.

1.7 "Union" or "Unions" means the Building and Construction Trades Council of Alameda County, AFL-CIO ("Council") and any affiliated labor organization signatory to this Agreement, acting in their own behalf and on behalf of their respective affiliates and member organizations whose names are subscribed hereto and who have through their officers executed this Agreement ("Signatory Unions").

1.8 "Project Manager" means the person(s) or business entity(ies) designated by the District to oversee all phases of construction on the Projects and to oversee the implementation of this Agreement and who works under the guidance of the District's Authorized Representative.

1.9 "Facilities Officer" means the Facilities Officer for the Alameda Unified School District.

1.10 "Master Agreement" or "Schedule A" means the Master Collective Bargaining Agreement of each craft Union signatory hereto.

1.11 "Alameda Resident" for purposes of this Agreement means any individual who at any time during the Projects' construction can certify through a utility bill, or other similar means acceptable to the parties to this Agreement, that the individual resided within either the boundaries of the Alameda Unified School District or the Alameda City Limits both on the date of such certification and the effective date of this Agreement.

1.12 "District Graduate" is a person who has graduated from the Alameda Unified School District.

1.13 "First Period Apprentice" is a first period apprentice who is enrolled in a State of California approved apprenticeship program that is a joint labor-management apprentice program.

1.14 "General Contractor" means the entity with overall project schedule responsibility, such as a General Contractor, Construction Manager, Lease-Leaseback Developer, Prime Contractor, Design Build entity, etc.

1.15 "Allocated" regarding project funding means the point in time in which a project is defined enough to where a preliminary budget is created and established in the Measure I program budget tracking system managed by the Program Manager.

**ARTICLE 2.**  
**SCOPE OF AGREEMENT**

2.1 Parties: The Agreement shall apply and is limited to all Contractors/Employer(s) performing construction contracts on the Projects, the District and the Building and Construction Trades Council of Alameda County, AFL-CIO ("Council") and any affiliated labor organization signatory to this Agreement, acting in their own behalf and on behalf of their respective affiliates and member organizations whose names are subscribed hereto and who have through their officers executed this Agreement ("Signatory Unions"). It is agreed that liability under this Agreement is several and not joint.

2.2 Project Description:

2.2.1 The District will apply the Agreement as a contract specification to the award of construction contracts identified by the District as Measure I Projects, funded in whole or in part by Measure I General Obligation bonds, and which were let for bid after the date of this Agreement. Construction projects include those that provide for the construction of new facilities, the demolition of facilities or the renovation of current facilities.

2.2.2 Excluded Work. However, the Parties acknowledge that the District may exclude, at its discretion, up to five percent (5%) of Measure I Project proceeds for smaller or deferred maintenance construction projects. It is also understood that no single craft's work shall be disproportionality affected by this exclusion. The Unions agree that they will not undertake any strike or work stoppage against a contractor performing work at a District site under this provision. Either Party to the Agreement can call to meet and confer regarding the implementation of this section 2.2.2.

2.3 Project Labor Disputes. All project labor disputes involving the application or interpretation of a Master Agreement to which a signatory Contractor/Employer(s) and a signatory Union are parties shall be resolved pursuant to the resolution procedures of the Master Agreement. All disputes relating to the interpretation or application of the Project Labor Agreement shall be subject to resolution by the grievance arbitration procedure set forth in Article 13.

2.4 Covered Work:

2.4.1 This Agreement covers, without limitation, all on-site construction, demolition, alteration, installation, improvement, painting or repair of buildings, structures, landscaping, temporary fencing and other works and related activities for the Projects that is within the craft jurisdiction of one of the Unions and that is part of the Projects, including, without limitation to the following examples, geotechnical and exploratory drilling, temporary HVAC, pipelines, (including those in linear corridors built to serve the project), pumps, pump stations and modular furniture installation, site preparation, survey work, demolition of existing structures and all construction, demolition or improvements required to be performed as a condition of approval by any public agency. This scope of work includes all soils and materials testing and inspection where such testing and inspection is a classification in which a prevailing wage determination has been published.



2.4.2 This Agreement shall apply to any start-up, calibration, commissioning, performance testing, repair, maintenance, operational revisions to systems and/or subsystems performed on Covered Work after Project Completion unless the covered work is performed by District Employees.

2.4.3 The Projects include work necessary for the Projects and/or in temporary yards or areas adjacent to or dedicated to the Projects, and at any batch plant(s) constructed or used solely to supply materials to the Projects, This Agreement covers all on-site fabrication work over which the District, Contractor(s) or subcontractor(s) possess the right of control (including work done for the Projects in any temporary yard or area established for the Projects.) Additionally, this Agreement covers any off-site work, including fabrication necessary for the Project defined herein, that is covered by a current Schedule "A" Agreement or local addenda to a National Agreement of the applicable Union(s) that is in effect as of the execution date of this Agreement.

2.4.4 The furnishing of supplies, equipment or materials which are stockpiled for later use shall in no case be considered subcontracting. Construction trucking work, such as the delivery of ready-mix, asphalt, aggregate, sand or other fill material which are directly incorporated into the construction process as well as the off-hauling of debris and excess fill, material and/or mud, shall be covered by the terms and conditions of this Agreement, to the fullest extent provided by law and by prevailing wage determinations of the California Department of Industrial Relations ("DIR"). Employers, including brokers, of persons providing construction trucking work shall be required to provide certified payroll records, as required to the District within ten (10) days of written request or as required by the DIR and California law.

2.4.5 The on-site installation or application of all items shall be performed by the craft having jurisdiction over such work; provided, however, it is recognized that installation of specialty items which may be furnished by the District or a Contractor shall be performed by construction persons employed under this Agreement who may be directed by other personnel in a supervisory role; provided, however, in limited circumstances requiring special knowledge of the particular item(s), may be performed by construction persons of the vendor or other companies where necessary to protect a manufacturer's warranty. All work of a specialty nature to be performed by the employees of a vendor or equipment manufacturer necessary to protect the warranty on such equipment shall be identified and discussed at the Pre-job meeting as provided in Article 5 of this Agreement. The issue of whether it is necessary to use construction persons of the vendor or other companies to protect the manufacturer's warranty shall be subject to the grievance and arbitration clause of this Agreement.

2.4.6 It is agreed that the District shall require all Contractors of whatever tier who have been awarded contracts for work covered by this Agreement, to accept and be bound by the terms and conditions of this Project Agreement by executing the **Letter of Assent (Attachment A)** prior to commencing work. The District shall assure compliance with this Agreement by the Contractors. It is further agreed that, where there is a conflict, the terms and conditions of this Project Agreement shall supersede and override terms and conditions of any and all other national, area, or local collective bargaining agreements, except that work covered by this Agreement within the following craft jurisdictions shall be performed under the terms of their National Agreements as follows: the NTL Articles of Agreement, the National Stack/Chimney

Agreement, the National Cooling Tower Agreement, and the National Agreement of Elevator Constructors, and any instrument calibration work and loop checking shall be performed under the terms of the UA/IBEW Joint National Agreement for Instrument and Control Technicians, with the exception that Articles IV, XIII and XIV of this Agreement shall apply to such work. It is understood that this, together with the MLAs, is a self-contained, stand alone, Agreement and that by virtue of having become bound to this Project Agreement, neither the District

2.5 **Exclusions.** The following shall be excluded from the scope of this Agreement.

2.5.1 Work performed by public utilities is not intended to be covered by this Agreement even if such work is funded all or in part by local bond funds.

2.5.2 The Excluded Work identified in section 2.2.2 of this Agreement.

2.5.3 Work, independent of job-site construction work contracts, performed by the District related to the purchase or lease of specialized equipment and work performed by District personnel.

2.5.4 Information Technology and Data Processing Equipment, Materials and Supplies purchased by the District using Measure I Project proceeds.

2.5.5 All employees of the design team or other consultants to the District not performing craft or manual labor within the scope of this Agreement.

2.5.6 Off-site maintenance of leased equipment and onsite supervision of such work.

2.5.7 The Agreement shall not apply to a Contractor/Employer's non-craft executives, managerial employees, engineering employees and supervisors (except those covered by existing building and construction trades collective bargaining Agreements), and office and clerical employees. This Agreement shall not apply to Professional Services so long as the work performed is not subject to Prevailing Wage classifications.

2.5.8 The District shall not be required to comply with this Agreement for any work performed with its own forces as permitted by the Public Contract Code and Education Code.

### **ARTICLE 3. EFFECT OF AGREEMENT**

3.1 By executing the Agreement, the Unions and the District agree to be bound by each and all of the provisions of the Agreement.

3.2 By accepting the award under a Construction Contract for the Projects, whether as contractor or subcontractor, the Contractor/Employer agrees to be bound by each and every provision of the Agreement and agrees that it will evidence its acceptance prior to the commencement of work by executing the Letter of Assent in the form attached hereto as Addendum A.



3.3 At the time that any Contractor/Employer enters into a subcontract with any subcontractor providing for the performance of the Construction Contract, the Contractor/Employer(s) shall provide a copy of this Agreement, as it may from time to time be modified, to said subcontractor and shall require the subcontractor as a part of accepting an award of a construction subcontract to agree in writing to be bound by each and every provision of this Agreement prior to the commencement of work. This Agreement shall only be binding on the signatory parties hereto and shall not apply to the parents, affiliates, subsidiaries, or other ventures of any such party.

#### **ARTICLE 4.**

##### **WORK STOPPAGES, STRIKES, SYMPATHY STRIKES AND LOCKOUTS**

4.1 The Unions, District and Contractor/Employers covered by the Agreement agree that for the duration of the Projects:

4.1.1 There shall be no strikes, sympathy strikes, work stoppages, picketing, hand billing or otherwise advising the public that a labor dispute exists, or slowdowns of any kind, for any reason, by the Unions or employees employed on the Projects, at the job site of the Projects or at any other facility or construction project of District because of a dispute on the Projects. Disputes arising between the Unions and Contractor/Employers on other District projects are not governed by the terms of the Agreement or this Article.

4.1.2 As to employees employed on the Projects, there shall be no lockout of any kind by a Contractor/Employer covered by the Agreement.

4.1.3 If a Master Agreement expires before the Contractor/Employer completes the performance of the Construction Contract the Union agrees that it will not strike the Contractor/Employer on said contract for work covered under this Agreement and the Union and the Contractor/Employer agree that the expired Master Agreement shall continue in full force and effect for work covered under this Agreement until a new or modified Master Agreement is reached. If the new or modified Master Agreement provides that any terms of the Master Agreement shall be retroactive, the Contractor/Employer agrees to comply with any retroactive terms of the new or modified master collective bargaining Agreement which are applicable to employees who were employed on the projects during the interim with retroactive payment due within seven (7) days of the effective date of the modified Master Agreement.

4.1.4 In the case of nonpayment of wages and trust fund contributions on the Projects, the Union shall give the District and the Contractor/Employer(s) three (3) business day notice of the intent when nonpayment of trust funds has occurred and **three (3) business days'** notice when nonpayment of wages has occurred or when paychecks being tendered to a financial institution normally recognized to honor such paychecks will not honor such paycheck as a result of insufficient funds, of the intent to withhold labor from the Contractor/Employer(s)' or their subcontractor's workforce, during which time the Contractor/Employer shall have the opportunity to correct the default. In this instance, a Union's withholding of labor (but not picketing) from an Contractor/Employer who has failed to pay his/its fringe benefit contributions or failed to meet his/its weekly payroll shall not be considered a violation of this Article. If the District contends that any Union has violated this Article, it will notify in writing (including email)

the Secretary-Treasurer/Business Manager/Senior Executive of the Council and the Senior Executive of the Union, setting forth the facts alleged to violate the Article, prior to instituting the expedited arbitration procedure set forth below. The Council will immediately use his/her best efforts to cause the cessation of any violation of this Article within 24 hours and the leadership of the Union will immediately inform the membership of their obligations under this Article. If, after the expiration of the 24-hour period, the District continues to contend that a Union has violated this article, the District institute the expedited arbitration procedure set forth below. The leadership of the Union will immediately inform the membership of their obligations under this Article.

4.2 Expedited Arbitration: Any party to this Agreement shall institute the following procedure, prior to invoking any other action at law or equity, when a breach of this Article is alleged to have occurred:

4.2.1 A party invoking this procedure shall notify Robert Hirsch, as the permanent arbitrator, or Barry Winograd, as the alternate arbitrator under this procedure. In the event that the permanent arbitrator is unavailable at any time, the alternate will be contacted. If neither is available, then a selection shall be made from the list of arbitrators in Article XIII.. Notice to the arbitrator shall be by the most expeditious means available, with notices by facsimile, email or telephone to the District and the party alleged to be in violation, and to the Council of Alameda County and the involved local Union if a Union is alleged to be in violation.

4.2.2 Upon receipt of said notice, the District shall contact the designated arbitrator, named above or the alternate who will attempt to convene a hearing within twenty-four (24) hours if it is contended the violation still exists. The Arbitrator shall notify the parties by facsimile, email or telephone of the place and time for the hearing. Said hearing shall be completed in one session, which, with appropriate recesses at the arbitrator's discretion, shall not exceed twenty-four (24) hours unless otherwise agreed upon by all parties. A failure of any party to attend said hearings shall not delay the hearing of evidence or the issuance of any award by the arbitrator.

4.2.3 The sole issue at the hearing shall be whether or not a violation of Article 4, Section 4.1 of the Agreement has occurred. The arbitrator shall have no authority to consider any matter of justification, explanation or mitigation of such violation or to award damages, which issue is reserved for court proceedings, if any. The award shall be issued in writing within three (3) hours after the close of the hearing, and may be issued without a written opinion. If any party desires a written opinion, one shall be issued within fifteen (15) days, but its issuance shall not delay compliance with or enforcement of the award. The arbitrator may order cessation of the violation of this Article and other appropriate relief and such award shall be served on all parties by hand or registered mail upon issuance. Should a party found in violation of this Article fail to comply with an Arbitrator's award to cease the violation, the party in violation shall pay to the affected party as liquidated damages the sum of ten thousand dollars (\$10,000.00) per shift for which it failed to comply, or portion thereof, until such violation is ceased. The Arbitrator shall retain jurisdiction to resolve any disputes regarding the liquidated damages claimed under this section.



4.2.4 Such award may be enforced by any Court of competent jurisdiction upon the filing of this Agreement and all other relevant documents referred to above in the following manner. Written notice of the filing of such enforcement proceedings shall be given to the other party. In the proceeding to obtain a temporary order enforcing the arbitrator's award as issued under Section 4.2(4) of this Article, all parties waive the right to a hearing and agree that such proceedings may be ex parte. Such Agreement does not waive any party's right to participate in a hearing for a final order of enforcement. The Court's order or orders enforcing the arbitrator's award shall be served on all parties by hand or delivered by certified mail.

4.2.5 Any rights created by statute or law governing arbitration proceedings inconsistent with the above procedure or which interfere with compliance are waived by the parties.

4.2.6 The fees and expenses of the arbitrator shall be divided equally between the parties.

4.2.7 If, after final order by any Court of competent jurisdiction, the offending party continues to breach the terms of Article 4 of this Agreement, the non-offending party shall have the option to recover monetary damages associated with the breaching party's failure to comply with the Agreement and court order, including but not limited to delay damages and escalation costs.

#### **ARTICLE 5. PRE-CONSTRUCTION CONFERENCE**

5.1 Timing: The Project Manager shall convene and conduct a pre-job conference with representatives of all involved Contractors/Employers, who shall be prepared to announce craft assignments and to discuss in detail the scope of work and other issues as set forth below, and the Unions, at a location mutually agreeable to the applicable Council at least 21 calendar days prior to:

5.1.1 The commencement of any Project Work, and

5.1.2 The commencement of Project Work on each subsequently awarded construction contract.

5.2 The conference shall be attended by a representative of each participating Contractor and each affected Union and the Council and District may attend at their discretion.

5.2 The pre-job conference shall include but not be limited to the following subjects:

5.2.1 A listing of each Contractor's scope of work;

5.2.2 The craft assignments;

5.2.3 The estimated number of craft workers required to perform the work;

5.2.4 Transportation arrangements;

5.2.5 The estimated start and completion dates of the work; and

5.2.6 Discussion of pre-fabricated materials.

5.3 Review Meetings: In order to ensure the terms of the PLA are being fulfilled and all concerns pertaining to the Agency, the Unions, and the Contractors are addressed, the Project Manager, General Contractor and Secretary Treasurer of the Council or designated representatives thereof shall meet on a periodic basis during the term of construction.

#### **ARTICLE 6. NO DISCRIMINATION**

The Contractor/Employer(s) and Union(s) agree not to engage in any form of discrimination on the ground or because of race, color, creed, national origin, ancestry, age, sex, sexual orientation, disability or Acquired Immune Deficiency Syndrome or AIDS Related Condition (AIDS/ARC), or any other basis made illegal by law against any employee, or applicant for employment, on the Projects.

#### **ARTICLE 7. UNION SECURITY**

7.1 The Contractor/Employer(s) recognize the Union(s) as the sole bargaining representative of all craft employees working within the scope of this Agreement.

7.2 All employees who are employed by the Contractor/Employer(s) on the Projects shall, as a condition of employment, on or before the eighth (8th) day of consecutive or cumulative employment on a Construction Contract subject to this Agreement, be responsible for the payment of the applicable monthly working dues and any associated fees uniformly required for union membership in the local union which is signatory to this Agreement. Further, there is nothing in this Agreement that would prevent non-union employees from joining the local union.

7.3 Authorized representatives of the Union(s) shall have access to the Projects whenever work covered by this Agreement is being, has been or will be performed on the Projects.

#### **ARTICLE 8. REFERRAL**

8.1 The Union(s) shall be the primary source of all craft labor employed on the Projects. However, in the event that a Contractor/Employer has his/her own Core workforce, the Contractor/Employer(s) may request by name, and the local shall honor, referral of persons who demonstrate the following qualifications:

8.1.1 possess any license required by state or federal law for the Project work to be performed;

8.1.2 have worked a total of at least one thousand five hundred (1,500) hours in the construction craft during the prior three (3) years;

8.1.3 were on the Contractor/Employer(s)' active payroll for at least sixty (60) out of the one hundred (100) calendar days prior to the contract award;

8.1.4 have the ability to perform safely the basic functions of the applicable trade.

8.2 The Union will refer to such Contractor/Employer(s) one journeyman employee from the hiring hall out-of-work list for the affected trade or craft, and will then refer one of such Contractor/Employer(s)' "core" employees as a journeyman and shall repeat the process, one and one, until such Contractor/Employer(s) crew requirements are met or until such Contractor has hired five (5) "core" employees, whichever occurs first. Thereafter, all additional employees in the affected trade or craft shall be hired exclusively from the hiring hall out-of-work list(s). For the duration of the Contractor/Employer(s)' work the ratio shall be maintained and when the Contractor/Employer(s)' workforce is reduced, employees shall be reduced in reverse order beginning with the core worker and in the same ratio of core employees to hiring hall referrals as was applied in the initial hiring. Contractor/Employer(s) signatory to a Local, Regional, and/or National collective bargaining Agreements with Union(s) signatory hereto shall be bound to use the hiring hall provisions contained in the Master Agreement of the affected Union(s), and nothing in the referral provisions of this Agreement shall be construed to supersede the local hiring hall provisions of the Master Agreement(s).

8.3 Contractor/Employer(s) shall be bound by and utilize the registration facilities and referral systems established or authorized by the signatory Unions. In the event that referral facilities maintained by the Union(s) are unable to fill the requisition of a Contractor/Employer(s) for employees within a forty-eight (48) hour period, weekends and holidays excluded, after such requisition is made by the Contractor/Employer(s), the Contractor/Employer(s) shall be free to obtain work persons from any source. The Contractor/Employer(s) shall immediately notify the appropriate Union of the identity, including name, address, telephone number and social security number, of any such person(s) hired from an alternative source and refer the employee to the hall to comply with Article XII.

8.4 Unions will exert their utmost efforts to recruit sufficient numbers of skilled craft persons to fulfill the requirements of the Contractor/Employer(s),

8.5 Subject to the limitation of applicable law, the parties to this Agreement support the development of increased numbers of skilled construction workers from the residents of the City of Alameda, to meet the needs of the Projects and the requirements of the industry generally. Toward that end, the Unions agree to encourage the referral and utilization, to the extent permitted by law and the hiring hall procedures of the Unions, of qualified Alameda Residents, as journeymen and apprentices on the Projects and entrance into such apprenticeship and training programs as may be operated by the signatory Unions consistent with the applicable Apprenticeship Program's State-approved Standards.



**ARTICLE 9.**  
**WAGE AND BENEFITS**

9.1 All Contractor/Employer(s) agree to pay contributions to the vacation, pension or other form of deferred compensation plan, apprenticeship, worker protection and assistance, and health benefit funds established by the applicable Master Agreement for each hour worked on the Projects in the amounts designated in the Master Agreements of the appropriate local Union.

9.2 By signing this Agreement, the Contractor/Employer(s) adopt and agree to be bound by the written terms of the legally established trust Agreements, as described in 9.1, and which may from time to time be amended, specifying the detailed basis on which payments are to be made into, and benefits paid out of, such trust funds. The Contractors authorize the parties to such local trust agreements to appoint trustees and successor trustees to administer the trust funds and hereby ratify and accept the trustees so appointed as if made by the Contractor(s). The Contractor(s) agrees to execute a Subscription Agreement(s) for Trust Funds when such Trust Fund(s) requires such document(s).

9.3 Wages, Hours, Terms and Conditions of Employment: The wages, hours and other terms and conditions of employment on the Projects shall be governed by the Master Agreement of the respective crafts, copies of which shall be on file with the District upon request, to the extent such Master Agreement is not inconsistent with this Agreement. Where a subject is covered by the Master Agreement and not covered in this Agreement, the Master Collective Bargaining Agreement will prevail. When a subject is covered by both the Master Collective Bargaining Agreement and this Agreement, to the extent there is any inconsistency, this Agreement will prevail.

**ARTICLE 10.**  
**EMPLOYEE GRIEVANCE PROCEDURE**

All disputes involving discipline and/or discharge of employees working on the projects shall be resolved through the grievance and arbitration provision contained in the Master Agreement for the craft of the affected employee. No employee working on the Projects shall be disciplined or dismissed without just cause.

**ARTICLE 11.**  
**COMPLIANCE**

It shall be the responsibility of the Contractor/Employer(s) and Unions to investigate and monitor compliance with the provisions of the Agreement contained in Article 9. Nothing in this Agreement shall be construed to interfere with or supersede the usual and customary legal remedies available to the Unions and/or employee benefit trust funds to collect delinquent trust fund contributions from Employers on the Projects. The District shall monitor and enforce compliance with the prevailing wage requirements of the State and Contractor/Employer(s)' compliance with this Project Labor Agreement.



**ARTICLE 12.**  
**JOINT ADMINISTRATIVE COMMITTEE**

12.1 The parties to this Agreement shall establish a four (4) person Joint Administrative Committee. This Committee shall be comprised of two (2) representative selected by the District and two (2) representatives selected by the Unions. Each representative shall designate an alternate who shall serve in his or her absence for any purpose contemplated by this Agreement.

12.2 The Joint Administrative Committee shall meet as requested by the Parties to review the implementation of the Agreement and the progress of the Projects. Any question regarding the meaning, interpretation, or application of the provisions of this Agreement shall be referred directly to the Joint Administrative Committee for review and recommendation.

**ARTICLE 13.**  
**GRIEVANCE ARBITRATION PROCEDURE**

13.1 All Project labor disputes involving the application or interpretation of the Master Agreement to which a signatory Contractor/Employer and a signatory Union are parties shall be resolved pursuant to the resolution procedures of the Master Collective Bargaining Agreement. All disputes arising out of the meaning, interpretation or application of the provisions of this Agreement shall be settled by means of the procedures set out herein. No grievance shall be recognized unless the grieving party (Local Union or District Council on its own behalf, or on behalf of an employee whom it represents, or a Contractor/Employer on its own behalf) provides notice in writing to the signatory party with whom it has a dispute within ten (10) business days after becoming aware of the dispute but in no event more than thirty (30) business days after it reasonably should have become aware of the event giving rise to the dispute. The time limits in Section 13.1 may be extended by mutual Agreement (oral or written) of the parties.

13.2 Grievances shall be settled according to the following procedures:

- Step 1: Within five (5) business days after the receipt of the written notice of the grievance, the Business Representative of the involved Local Union or District Council, or his/her designee, and the representative of the involved Contractor/Employer shall confer and attempt to resolve the grievance. The Union(s) shall notify its International Union representative(s), which shall advise if it intends on participating in a Step 2 meeting.
- Step 2: In the event that the representatives are unable to resolve the dispute within the five (5) business days after its referral to Step 1, either involved party may submit it within three (3) business days to the Joint Administrative Subcommittee (consisting of one District and one Union representative of the Joint Administrative Committee), which shall meet within five (5) business days after such referral (or such longer time as is mutually agreed upon by all representatives on the Joint Administrative Committee), to confer in an attempt to resolve the grievance. The decision of the Joint Administrative Subcommittee shall be final and binding on all parties. If the dispute

is not resolved within such time five (5) business days after its referral or such longer time as mutually agreed upon, it may be referred within five (5) business days by either party to Step 3.

Step 3: Within five (5) business days after referral of a dispute to Step 3, the parties shall choose a mutually agreed upon arbitrator for final and binding arbitration. If the parties cannot mutually agree on the selection of an arbitrator, the arbitrator shall be selected by the alternate striking method from the following list: (Hirsch, Winograd, Riker, Davis, Engler) The order of striking names from the list of arbitrators shall be determined by a coin toss, the winner of which shall decide whether they wish to strike first or second. Such striking shall take place within three (3) days. If a party does not respond within three (3) days, this means any Arbitrator from the list is acceptable. The decision of the Arbitrator shall be binding on all parties. The Arbitrator shall have no authority to change, amend, add to or detract from any of the provisions of the Agreement. The expense of the Arbitrator shall be borne equally by both parties. The Arbitrator shall arrange for a hearing on the earliest available date from the date of his/her selection. A decision shall be given to the parties within five (5) calendar days after completion of the hearing unless such time is extended by mutual Agreement. A written opinion may be requested by a party from the presiding Arbitrator. The time limits specified in any step of the Grievance Procedure set forth in Section 13.2 may be extended by mutual Agreement of the parties initiated by the written request of one party to the other, at the appropriate step of the Grievance Procedure. However, failure to process a grievance, or failure to respond in writing within the time limits provided above, without a request for an extension of time, shall be deemed a waiver of such grievance without prejudice, or without precedent to the processing of and/or resolution of like or similar grievances or disputes. In order to encourage the resolution of disputes and grievances at Steps 1 and 2 of this Grievance Procedure, the parties agree that such settlements shall not be precedent setting.

13.3 Retention: At the time a grievance is submitted under this Agreement or any Master Agreement, the Union(s) may request that the District withhold and retain an amount from what is due and owing to the Contractor(s) against whom the grievance is filed, sufficient to cover the damages alleged in the grievance, should the Union(s) prevail. The amount shall be retained by the District until such time as the underlying grievance giving rise to the retention is withdrawn, settled, or otherwise resolved, and the retained amount shall be paid to whomever the parties to the grievance shall decide, or to whomever an Arbitrator shall so order.

13.4 Should any of the arbitrators listed in Article 4 or above no longer work as a labor arbitrator, the District and the Council, through the Joint Administrative Committee, shall mutually agree to a replacement.



**ARTICLE 14.**  
**JURISDICTIONAL DISPUTES**

14.1 The assignment of Covered Work will be solely the responsibility of the Employer performing the work involved; and such work assignments will be in accordance with the Plan for the Settlement of Jurisdictional Disputes in the Construction Industry (the "Plan") or any successor Plan.

14.2 All jurisdictional disputes on this Project between or among the Building and Construction Trades Unions and the Employers, parties to this Agreement, shall be settled and adjusted according to the present Plan established by the Building and Construction Trades Department, or any other plan or method of procedure that may be adopted in the future by the Building and Construction Trades Department. Decisions rendered shall be final, binding and conclusive on the Employer and Union parties to this Agreement.

14.3 If a dispute arising under this Article involves the Northern California Carpenters Regional Council or any of its subordinate bodies, an Arbitrator shall be chosen by the procedures specified in Article V, Section 5, of the Plan from a list composed of John Kagel, Thomas Angelo, Robert Hirsch, and Thomas Pagan, and the Arbitrator's hearing on the dispute shall be held at the offices of the California State Building and Construction Trades Council in Sacramento, California, within 14 days of the selection of the Arbitrator. All other procedures shall be as specified in the Plan.

14.4 All jurisdictional disputes shall be resolved without the occurrence of any strike, work stoppage, or slow-down of any nature, and the Employer's assignment shall be adhered to until the dispute is resolved. Individuals violating this Section shall be subject to immediate discharge.

14.5 Each Employer shall conduct a Pre-Job Conference with the Council prior to commencing Covered Work. The Primary Employer and the Owner will be advised in advance of all such conferences and may participate if they wish. Pre-job conferences for different Employers may be held together.

**ARTICLE 15.**  
**MANAGEMENT RIGHTS**

Consistent with the Master Labor Agreements, the Contractor/Employer(s) shall retain full and exclusive authority for the management of their operations, including the right to direct their work force in their sole discretion. No rules, customs or practices shall be permitted or observed which limit or restrict production, or limit or restrict the working efforts of employees except that lawful manning provisions in the Master Agreement shall be recognized.

**ARTICLE 16.**  
**SAVINGS CLAUSE**

16.1 The parties agree that in the event any article, provision, clause, sentence or word of the Agreement is determined to be illegal or void as being in contravention of any applicable law, by a court of competent jurisdiction, the remainder of the Agreement shall remain in full

force and effect. The parties further agree that if any article, provision, clause, sentence or word of the Agreement is determined to be illegal or void, by a court of competent jurisdiction, the parties shall substitute, by mutual Agreement, in its place and stead, an article, provision, clause, sentence or word which will meet the objections to its validity and which will be in accordance with the intent and purpose of the article, provision, clause, sentence or word in question.

16.2 The parties also agree that in the event that a decision of a court of competent jurisdiction materially alters the terms of the Agreement such that the intent of the parties is defeated, then the entire Agreement shall be null and void.

16.3 If a court of competent jurisdiction determines that all or part of the Agreement is invalid and/or enjoins the District from complying with all or part of its provisions and the District accordingly determines that the Agreement will not be required as part of an award to a Contractor/Employer, the unions will no longer be bound by the provisions of Article 4.

#### **ARTICLE 17.**

##### **TERM**

17.1 The Agreement shall be included as a condition of the award of all construction contracts for the Projects.

17.2 This Agreement shall become effective on the day the District ratifies this Agreement and shall continue in full force and effect for a period of five years. The parties may mutually agree in writing to amend, extend or terminate this Agreement at any time.

#### **ARTICLE 18.**

##### **ALAMEDA HIRE REQUIREMENTS**

18.1 The Parties agree to a goal that Alameda Residents, and especially District Graduates, will perform a minimum of 20% of the hours worked, on a craft by craft basis on the Projects. In the event that no Alameda residents or District Graduates are available to fulfill the 20% local hire requirement, the next tier of residents will come from the Green Corridor. This includes, in addition to Alameda, the cities of Albany, Berkeley, El Cerrito, Emeryville, Richmond, Oakland, and San Leandro. The Contractor/Employer(s) shall make good faith efforts to reach this goal through the utilization of the Unions' hiring hall procedures. The Unions shall make good faith efforts in their recruiting and training of District Graduate and Alameda Resident workers and in their hiring hall procedures to facilitate this 20% goal on the Projects.

18.2 Should any of the contractors performing work on the Projects fail to meet this 20% goal and fail to demonstrate "good faith" efforts to do so, through a specific submittal process to be included in their contractual requirements, the contract's 10% retention will be held until such time that this failure is remedied. Acceptable remedies to correct continued failure may include, but not be limited to the following remedies, as determined by the Joint Administrative Committee (as established in Section 12):

18.2.1 Classification as a non-qualified bidder on future District projects;

18.2.2 Commitment, with documentation, to employ District Graduates, or



Green Corridor Residents on non-District projects for a determined number of work hours; and

18.2.3 Bringing in District Graduates and Alameda residents as new apprentices and continuing their employment for up to 12 months.

18.3 A Contractor/Employer(s) who has employed a District Graduate for up to six months preceding the start of the District project for a minimum of at least 100 hours per month and has the ability to perform safely the basic functions of the applicable trade may receive credit for 50% of these hours towards the 20% goal. A Contractor/Employer may also receive credit for 50% of the documented hours performed by District Graduates or Alameda Residents on the Contractor's non-District projects, when such hours are concurrent with the Contractor's work on the Projects.

18.4 The maximum total combined credit that can be applied for in 18.3 is half of the 20%.

18.5 The contractors may use District student intern's hours for credit towards the local hiring goals. Internships for credit may be up to three (3) interns per year at up to 3000 hours per year per intern.

18.6 Should any Contractor/Employer performing work on the Projects exceed the 20% local hire goal as set forth in this Agreement, they shall be acknowledged at the appropriate public, televised school board meeting for their efforts at the completion of their contract scope.

**18.7 Apprenticeship Provision:**

18.7.1 The Prime Contractor and their sub-contractors will be required to hire 1 District Graduate, Alameda Resident or Alameda Student as a first period apprentice for every 5 million dollars of total construction cost. There can be no more than 2 entry-level apprentices credited for each craft, and the general contractor will be able to include entry-level apprentices hired by their subcontractor to meet this requirement. The District will refer names of former students or recent graduates to the Union and Contractors and the Unions will agree to cooperate with the Contractor in furnishing apprentices as requested and the hiring of the apprentices will be in accordance to the Apprenticeship provisions listed in the Master Agreements, and the apprentices shall be properly supervised and paid in accordance with provisions contained within the Master Agreements. The failure of the District to refer names and/or the Union to provide those apprentices upon request will relieve the Prime contractor of this District Graduate/Alameda Resident/Student first period apprentice hiring responsibility.

18.7.2 The General Contractor, or subcontractor who hires such Alameda Resident/Student First Period Apprentices shall be credited with two work hours towards the 20% local work hours, for each hour worked by the first period Alameda Resident/Student apprentices.

18.7.3 The intent of this provision is to work the new apprentices to the full extent permissible by state law and the Master Agreements. Failure of the General Contractor and their subcontractors to maintain qualified apprentices on the job will be subject to Division of Apprenticeship Standards penalties, and further penalties as determined by the Joint Administrative Committee.

18.8 **Career Technical Education Program.** Both the District and the Building Trades agree that an active school to career program in the trades can be a benefit to many Alameda students. The Building Trades and the District agree to collaborate in the development and implementation of the District's Career Technical Education ("CTE") program.

18.9 The Building Trades agree to support the District's CTE programs by doing the following:

18.9.1 Assisting the District's CTE program by:

18.9.2 Providing speakers at least twice a year,

18.9.3 Escorting field trips to existing apprenticeship centers at least three times a year, per the school's schedule,

18.9.4 Mentoring students. Identify at least five individuals who will serve as mentors,

18.9.5 Internships for students. The Unions will explore providing internships. The Unions will assist the program in identifying willing contractors and suppliers to provide additional internships.

18.10 Career Fairs. Agree to actively participate with multiple trade booths in two career fairs per year.

18.11 Actively participate in helping to create and provide hands-on training for, pre-apprenticeship programs set up by the District for adult school and b-tech students. Such participation may begin slowly, but it is envisioned that the trades will spend no less than 100 hours per year in assisting this program.

18.12 Assist in exploring the feasibility of the District students participating in local pre-apprenticeship programs, such as the Cypress-Mandela program. Support the District efforts with this program if a mutual Agreement with such a program can be worked out.

18.13 The parties agree to meet around the implementation of the program at the discretion of the District.

#### **ARTICLE 19. HELMETS TO HARDHATS**

19.1 The parties recognize a desire to facilitate the entry into the Building and Construction Trade Union(s) of Veterans who are interested in careers in the building and construction industry. The parties agree to utilize the services of the Center for Military Recruitment, Assessment and Veteran's Employment (hereinafter "Center") and the Center's "Helmets to Hardhats" program to serve as a resource for preliminary orientation, assessment of construction aptitude, referral to apprenticeship programs or hiring halls, counseling and mentoring, support network, employment opportunities and other needs as identified by the parties

19.2 The Union(s) and Contractor/Employer(s) agree to coordinate with the Center to participate in an integrated database of Veterans interested in working on this Project and of apprenticeship and employment opportunities for this Project. To the extent permitted by law, the Union(s) will give credit to such Veterans for bona fide, provable past experience.

## **ARTICLE 20. MISCELLANEOUS PROVISIONS**

20.1 **Integration.** This Agreement, together with the Schedule A's, is intended by the parties as the final expression of their Agreement with respect to such terms as are included herein and as the complete and exclusive statement of its terms and may not be contradicted by evidence of any prior Agreement or of a contemporaneous oral Agreement, nor explained or supplemented by evidence of consistent additional terms.

20.2 **No Representations or Warranties.** Each of the parties acknowledges no one has made any promise, representation or warranty whatsoever, express or implied, written or oral, not contained herein to induce them to execute this Agreement, and that this Agreement is not executed in reliance upon any such promise, representation or warranty.

20.3 **Modification.** Each of the parties acknowledges and agrees that this Agreement may be amended only by writing and signed by the District and the Council.

20.4 **Interpretation.** Each of the parties acknowledges and agrees that this Agreement is an accord and satisfaction to be construed as whole according to its fair meaning and not in favor of nor against any of the parties as draftsman or otherwise.

20.5 **Forum.** Any action or proceeding seeking any relief under or with respect to this Agreement shall be brought solely in the Superior Court of the State of California for the County of Alameda in accordance with the procedures set forth in this Agreement.

20.6 **Choice of Law.** This Agreement shall be governed by and interpreted under the laws of the State of California and the Federal laws of the United States of America as applicable to instruments, persons, transactions and subject matter which have legal contacts and relationships exclusively within the State of California.

20.7 **No Attorneys Fees.** No party shall be entitled to recover an award of attorneys' fees or costs with respect to any action or proceeding seeking relief under this Agreement.

20.8 **Counterparts.** This Agreement may be executed in counterparts, each of which shall constitute an original of the Agreement. Facsimile or email PDF signature pages transmitted to other parties to this Agreement shall be deemed equivalent to original signatures on counterparts.

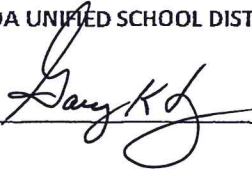
20.9 **Warranty of Authority.** Each of the persons signing this Agreement represents and warrants that such person has been duly authorized to sign this Agreement on behalf of the party indicated, and each of the parties by signing this Agreement warrants and represents that such party is legally authorized and entitled to enter into this Agreement.



20.10 Ratification by Governing Board. This Agreement shall not be binding on the District until it is ratified by the Governing Board at a publicly noticed Governing Board meeting.

ALAMEDA UNIFIED SCHOOL DISTRICT

By: \_\_\_\_\_

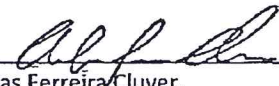


Date: \_\_\_\_\_

02.09.17

BUILDING AND CONSTRUCTION TRADES COUNCIL OF  
ALAMEDA COUNTY, AFL-CIO

By: \_\_\_\_\_

  
Andreas Ferreira Cluver,  
Secretary-Treasurer

Date: \_\_\_\_\_

6/10/16

[Trade signatures follow below]



Addendum A: Agreed To Letter of Assent

[Addressee]  
[Address]  
[City and State]

Re: Alameda Unified School District Measure I New Construction and Modernization Projects,  
Project Labor Agreement.  
Letter of Assent for \_\_\_\_\_  
(Projects Name)

Dear Mr. /Ms. \_\_\_\_\_:

The undersigned party confirms that it agrees to be a party to and bound by the Alameda Unified School District Measure I New Construction and Modernization Projects, Project Labor Agreement as such Agreement may, from time to time, be amended by the parties or interpreted pursuant to its terms.

By executing this Letter of Assent, the undersigned party subscribes to, adopts and agrees to be bound by the written terms of the legally established trust Agreements as set forth in Section 9.1, as they may from time to time be amended, specifying the detailed basis upon which contributions are to be made into, and benefits made out of, such trust funds and ratifies and accepts the trustees appointed by the parties to such trust funds, and agrees to execute a separate Subscription Agreement(s) for Trust Funds when such Trust Fund(s) requires such document(s).

Such obligation to be a party to and bound by this Agreement shall extend to all work covered by said Agreement undertaken by the undersigned party on the Alameda Unified School District Measure I New Construction and Modernization Projects. The undersigned party shall require all of its subcontractors, of whatever tier, to become similarly bound for all their work within the scope of this Agreement by signing an identical Letter of Assent.

This letter shall constitute a subscription Agreement, to the extent of the terms of the letter.

CONTRACTOR/SUBCONTRACTOR: \_\_\_\_\_

Project Contract Number: \_\_\_\_\_

California State License Number: \_\_\_\_\_  
or Motor Carrier (CA) Permit Number \_\_\_\_\_

DIR Public Works Registration # \_\_\_\_\_

Name and Signature of Authorized Person: \_\_\_\_\_

(Print Name)

(Title)

(Signature)

(Date)