

**26.1.        Assignment of Antitrust Actions**

Although this project may not have been formally bid, the following provisions may apply:

**26.1.1.** Section 7103.5(b) of the Public Contract Code states:

In entering into a public works contract or subcontract to supply goods, services, or materials pursuant to a public works contract, the Contractor or subcontractor offers and agrees to assign to the awarding body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. § 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, made and become effective at the time the awarding body tenders final payment to the Contractor, without further acknowledgment by the Parties.

**26.1.2.** Section 4552 of the Government Code states:

In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. § 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder.

**26.1.3.** Section 4553 of the Government Code states:

If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery.

**26.1.4.** Section 4554 of the Government Code states:

Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action.

**26.1.5.** Under this Article, “public purchasing body” is District and “bidder” is Contractor.

**26.2.        Excise Taxes**

If, under Federal Excise Tax Law, any transaction hereunder constitutes a sale on which a Federal Excise Tax is imposed and the sale is exempt from such Federal Excise Tax because it is a sale to a State or Local Government for its exclusive use, District, upon request, will execute documents necessary to show (1) that District is a political subdivision of the State for the purposes of such exemption, and (2) that the sale is for the exclusive use of District. No Federal Excise Tax for such materials shall be included in any Guaranteed Project Cost.

**26.3.      Taxes**

Guaranteed Project Cost is to include any and all applicable sales taxes or other taxes that may be due in accordance with section 7051 of the Revenue and Taxation Code; Regulation 1521 of the State Board of Equalization or any other tax code that may be applicable.

**26.4.      Shipments**

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



**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 **Alten Construction Inc.** ("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 \_\_\_\_\_, **2018**, (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: \_\_\_\_\_, 2018

Dated: \_\_\_\_\_, 2018

**Alameda Unified School District**

**Alten Construction Inc., [Contractor]**

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

Print Name: Robbie Lyng

Print Title: Senior Director of Construction

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

Print Name: Robert Alten

Print Title: President

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

Print Name: Shariq Khan

Print Title: Chief Business Officer



**EXHIBIT F  
TO  
MASTER FACILITIES LEASE**

**PROJECT SCHEDULE**

**EXHIBIT G  
TO  
MASTER FACILITIES LEASE**

**SCHEDULE OF VALUES**

**EXHIBIT H  
TO  
MASTER FACILITIES LEASE**

**TERMS AND CONDITIONS FOR PRELIMINARY SERVICES**

1. **Scope of Contractor's Preliminary Services.** Contractor, as the District's development consultant and authorized representative as contemplated by Business and Professions Code 7040, agrees to perform the services described herein. Contractor shall perform management and coordination services, plan and specification constructability reviews, provide value-engineering reviews and recommendations and other reviews as necessary to verify that the drawings and specifications are clear and reasonably accurate to minimize the need for changes during the construction phase of the project, including but not limited to the following ("Preliminary Services"):

**1.1. General Services.**

- 1.1.1. Contractor shall attend regular meetings during Project development between the Architect, the District, District site personnel, and any other applicable consultants of the District as required to discuss the Project, including budget, scope and schedule.
- 1.1.2. Contractor shall assist Architect with the making of a written record of all meetings, conferences, discussions and decisions made between or among the District, Architect and Contractor.
- 1.1.3. Contractor shall assist the Architect with making formal presentations to the governing board of District.
- 1.1.4. Contractor shall prepare and update the preliminary Project schedule.
- 1.1.5. Contractor shall prepare and update the components of the Guaranteed Project Cost and shall be primarily in control of ensuring that the Project can and is constructed for no more than that amount.
- 1.1.6. Contractor shall assist District with City land use issues;
- 1.1.7. Contractor shall assist District with DSA review, input, and timeframe for same;
- 1.1.8. Contractor shall provide review and comment upon geotechnical / soils investigation and report;
- 1.1.9. Contractor shall provide review and comment upon survey of the Project site;
- 1.1.10. Contractor shall provide review and comment upon any environmental impact report ("EIR") or other required California Environmental Quality Act ("CEQA") documents with District's CEQA consultant.

**1.2. Review of Design Documents.**

- 1.2.1. Contractor shall review Project design and budget with the District and the Architect during the Schematic Design Phase, the Design Development Phase, at 50% Construction Documents



Phase, and at 100% Construction Documents Phase to:

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

### **1.3. Budget of Project Costs.**

- 1.3.1. At each stage of plan review indicated above, Contractor shall update and refine the budget of the Guaranteed Project Cost based on the most recent set of design documents. Contractor shall also advise the District and the Architect if it appears that the total construction costs may exceed the Guaranteed Project Cost established by the District and shall make recommendations for corrective action. Contractor will further provide input to the District and Architect relative to value of construction, means and methods for construction, duration of construction of various building methods and constructability.
- 1.3.2. In each budget of the Guaranteed Project Cost, Contractor shall include values of scopes of work subdivided into component parts in sufficient detail to serve as the basis for progress payments during construction. This budget of the Guaranteed Project Cost shall include, at a minimum, the following information divided into at least the following categories:
  - 1.3.2.1. Overhead and profit;
  - 1.3.2.2. Supervision;
  - 1.3.2.3. General conditions;
  - 1.3.2.4. Layout & Mobilization (not more than 1%)
  - 1.3.2.5. Submittals, samples, shop drawings (not more than 3%);
  - 1.3.2.6. Bonds and insurance (not more than 2%);
  - 1.3.2.7. Close-out documentation (not less than 3%);
  - 1.3.2.8. Demolition;
  - 1.3.2.9. Installation;
  - 1.3.2.10. Rough-in;
  - 1.3.2.11. Finishes;
  - 1.3.2.12. Testing;
  - 1.3.2.13. Punchlist and acceptance.

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

### **1.4. Construction Schedule and Phasing Plan.**

Contractor shall prepare a preconstruction schedule to guide the design team through to bid dates. That schedule shall show the multiphases and interrelations of design, constructability review, and estimating. Contractor shall also prepare a full construction schedule for the Project detailing the phasing and construction activities. Contractor shall further investigate, recommend and prepare a schedule for the District's purchase of materials and equipment requiring long lead time procurement, and coordinate the schedule with the early preparation of portions of the Contract Documents by the Architect.

### **1.5. Construction Planning and Bidding.**

- 1.5.1. Contractor shall prepare and distribute specifications and drawings provided by District to facilitate bidding to Contractor's subcontractors.
- 1.5.2. Contractor shall review the drawings and specifications to eliminate areas of conflict and overlapping in the work to be performed by various subcontractors, and with a view to eliminating change order requests by the Architect or subcontractors.

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

District shall pay for the Contractor's performance of the preliminary services pursuant to the payment provisions indicated in **Exhibit C** to the Facilities Lease.
6. **Schedule of Preliminary Services**

The Contractor shall perform the Preliminary Services pursuant to the schedule indicated in **Exhibit F** to the Facilities Lease.
7. **Preliminary Services Only**

In the event the scope of services provided under this Facilities Lease includes only preliminary services, with the Guaranteed Project Cost for construction services to be determined later, it is mutually agreed that District is under no obligation to amend this agreement to include construction services and at any time may terminate this Facilities Lease pursuant to section 6.2.



**EXHIBIT I  
TO  
MASTER FACILITIES LEASE**

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

**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:      ☐ Delivery Firm/Transporter      ☐ Supplier      ☐ Manufacturer  
                                 ☐ Wholesaler      ☐ Broker      ☐ Retailer  
                                 ☐ Distributor      ☐ Other \_\_\_\_\_

Type of Entity:      ☐ Corporation      ☐ General Partnership  
                                 ☐ Limited Partnership      ☐ Limited Liability Company  
                                 ☐ Sole Proprietorship      ☐ Other \_\_\_\_\_

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

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

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

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

By my signature below, I hereby certify that I am aware of section 25260 of the Health and Safety Code and the sections referenced therein regarding the definition of hazardous material. I further certify on behalf of the Firm that all soils, aggregates, or related materials provided, delivered, and/or supplied or that will be provided, delivered, and/or supplied by this Firm to the Project Site 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 **Henry Haight Elementary School Modernization 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**

**Surety**

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

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

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

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

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

\_\_\_\_\_  
(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 **Henry Haight Elementary School Modernization 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**

**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:

Comprehensive General Liability Insurance:		
Per Occurrence	\$2,000,000	
Aggregate	\$5,000,000	
Automobile Liability Insurance:	\$2,000,000	
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:

Comprehensive General Liability Insurance:		
Per Occurrence	\$1,000,000	
Aggregate	\$2,000,000	
Automobile Liability Insurance:	\$1,000,000	
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.



**EXHIBIT L  
TO  
MASTER FACILITIES LEASE  
PROJECT LABOR AGREEMENT**