

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: 11/19/2018, 2018

Alameda Unified School District

By: 
Print Name: Robbie Lyng
Print Title: Senior Director of Construction

Dated: November 15, 2018

Lathrop Construction Associates, Inc.

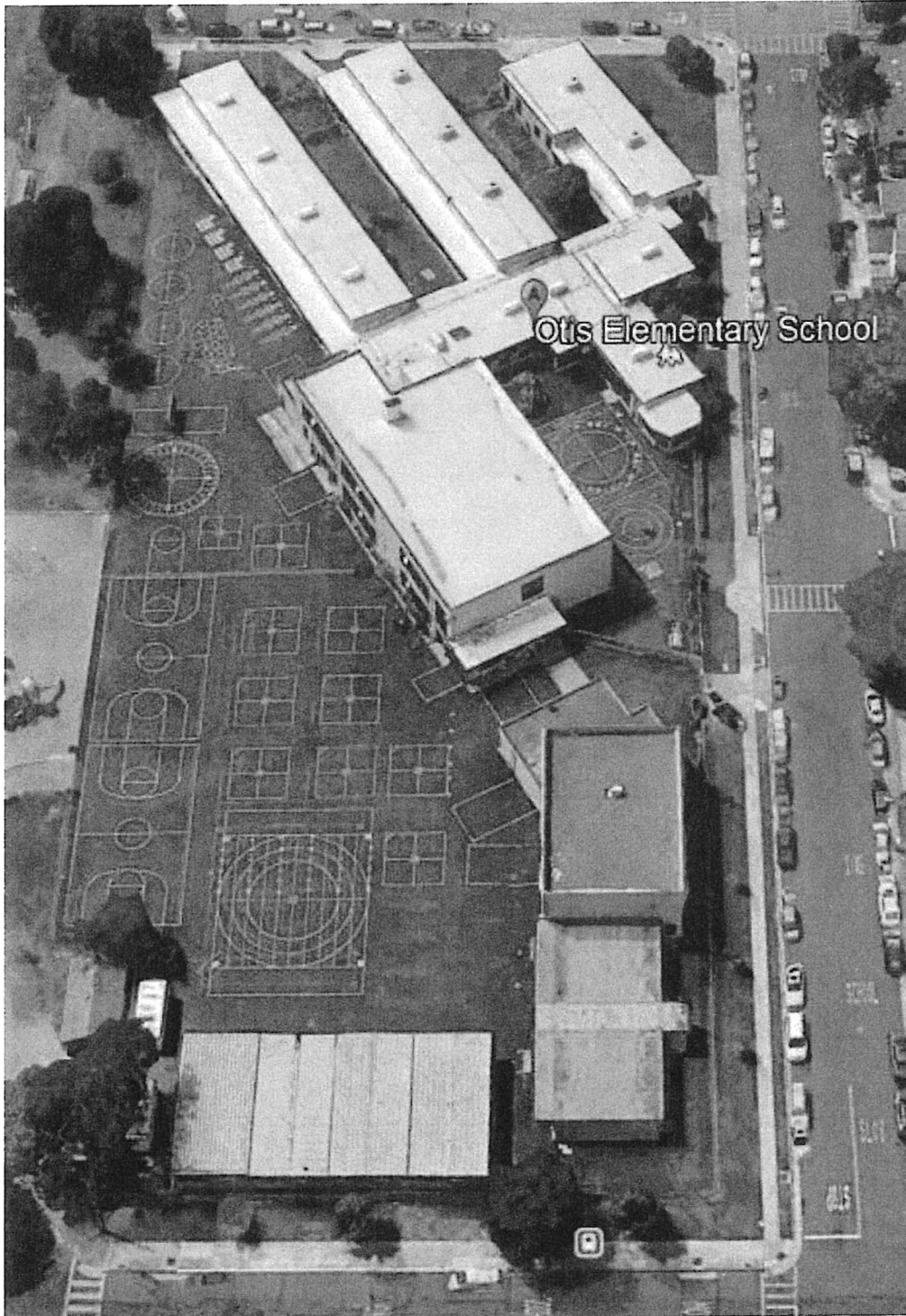
By: 
Print Name: Ricky J. Martellaro
Print Title: President

By: _____
Print Name: Shariq Khan
Print Title: Chief Business Officer

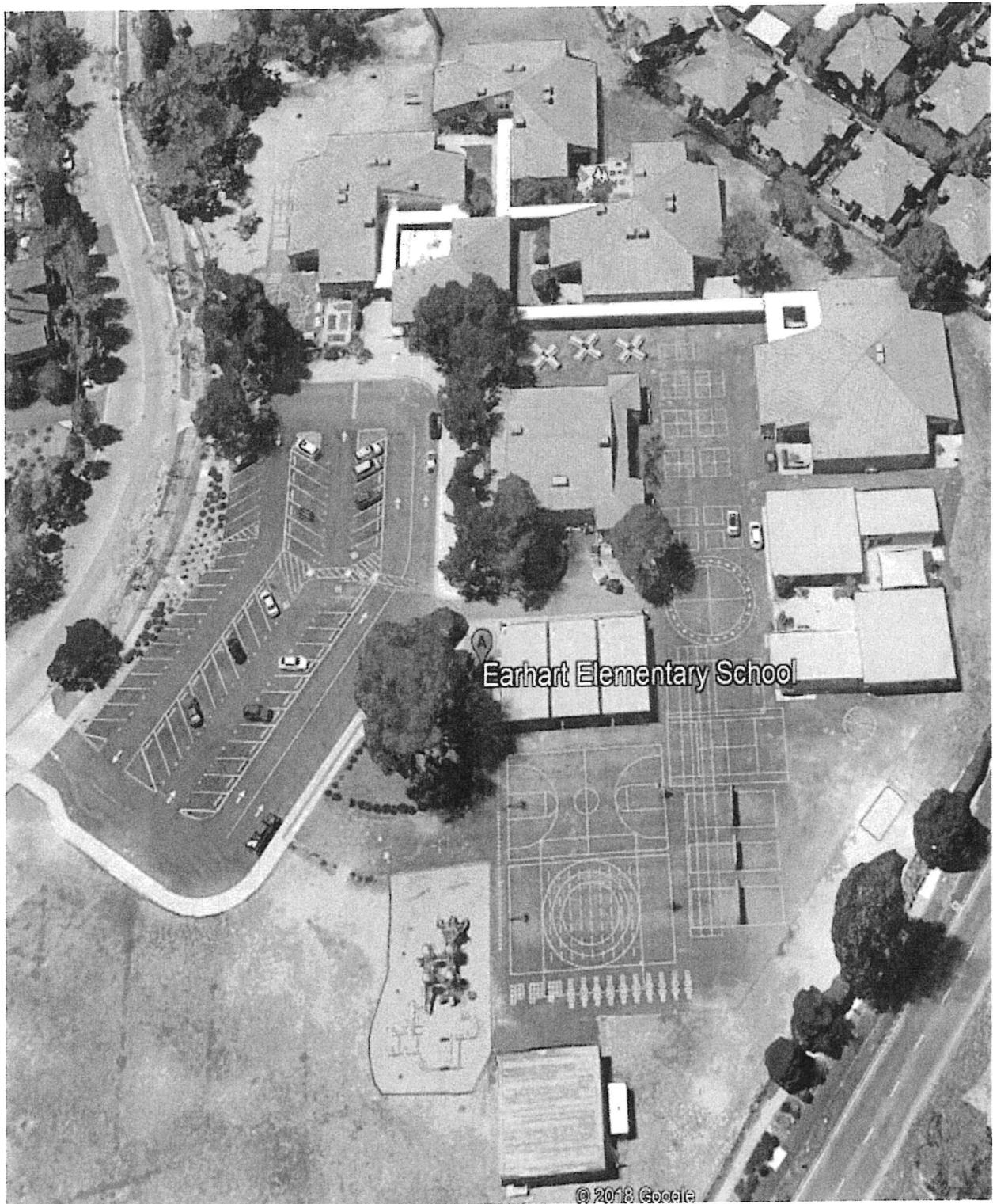
EXHIBIT A
TO
MASTER FACILITIES LEASE

SCHOOL SITE

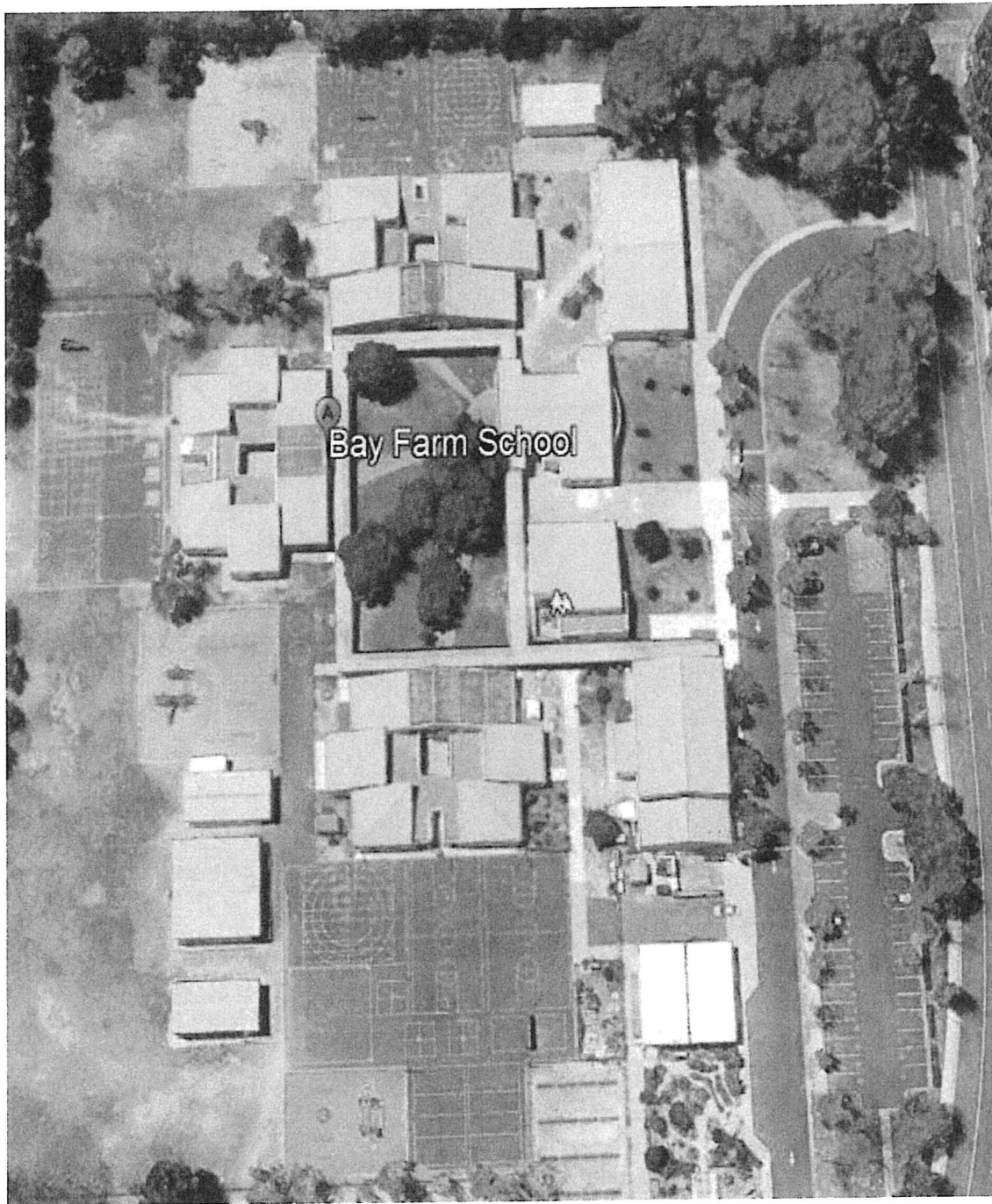
OTIS ELEMENTARY FENCING



EARHART ELEMENTARY FENCING



BAY FARM ELEMENTARY FENCING



**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 the Multi-Campus Fencing Otis, Earhart and Bay Farm Elementary School Site that is subject to the Master Site Lease and the Master Facilities Lease and upon which Contractor will construct the Project.

PROJECT DESCRIPTION:

THIS PROJECT INCLUDES THE FOLLOWING SCOPE OF WORK:

- NEW CHAIN LINK AND ORNAMENTAL IRON FENCING AND GATES AT THREE (3) ELEMENTARY SCHOOL SITES: OTIS, EARHART, AND BAY FARM.
- INCLUDING RELATED ELECTRICAL WORK FOR MOTORIZED ROLLING GATES, AND RELATED MINOR SITE WORK TO FACILITATE FENCING INSTALLATION.

At the time of execution of the Master Site Lease and the Master Facilities Lease, the District is only authorizing the Contractor to perform Preliminary Services. The Parties intend at a later date to amend the Master Site Lease and the Master Facilities Lease to authorize the subsequent phase(s).

**EXHIBIT C
TO
MASTER FACILITIES LEASE**

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

1. Preliminary Services Payments

1.1. If Contractor performs Preliminary Services for the District for the Project(s), the District shall pay to Contractor Five Thousand Dollars (\$5,000) ("**Preliminary Services Payment(s)**"), based on the amount of Work satisfactorily performed and approved by the District pursuant to the scope and provisions in **Exhibit H** to the Facilities Lease and as indicated here:

<u>Job Title</u>	<u>Hourly Rate</u>
Project Manager	\$150
Constructability Reviewer	\$125
Estimator	\$125
Scheduler	\$125

1.2. The Preliminary Services Payment s include all costs and expenses for all time and materials required and expended to provide the specific Preliminary Services including but not limited to the costs of hiring sub-consultants, contractors and other professionals, review of the Project, Plans and Specifications, review and preparation of necessary documentation relating to the development of the Project, all travel-related expenses, as well as for meetings with District and its representatives, long distance telephone charges, copying expenses, salaries of Contractor staff and employees working on the Project, overhead, and any other reasonable expenses incurred by Contractor in performance of the Preliminary Services.

1.3. Each Preliminary Services Payment shall be paid within forth-five (45) days upon submittal to (and verification by) the District of a monthly billing statement showing completion of the billed-for tasks.

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) [TO BE DETERMINED]. 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. One Point Five Percent (1.5%)

3.6. Overhead and Profit. Zero Percent (0%)

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 [TO BE DETERMINED]. 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 [TO BE DETERMINED]. 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	\$__	\$__
Total	\$Numeric Sum	\$__	\$__

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

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EXHIBIT D TO MASTER FACILITIES LEASE GENERAL CONSTRUCTION PROVISIONS

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

1. **CONTRACT TERMS AND DEFINITIONS**

1.1. **Definitions**

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

- 1.1.1. **Adverse Weather:** Shall be only weather that satisfies all of the following conditions: (1) unusually severe precipitation, sleet, snow, hail, heat, or cold conditions in excess of the norm for the location and time of year it occurred, and (2) at the Project.
- 1.1.2. **Allowance(s):** Amount(s) that are within the GPC that, if used at all, will be to pay for the cost or construction of a scope of work identified at the time the Allowance is utilized.
- 1.1.3. **Approval, Approved, and/or Accepted:** Refer to written authorization, unless stated otherwise.
- 1.1.4. **Architect:** The individual, partnership, corporation, joint venture, or any combination thereof, named as Architect, who will have the rights and authority assigned to the Architect in the Contract Documents. The term Architect means the District's Architect on this Project or the Architect's authorized representative.
- 1.1.5. **Beneficial Occupancy:** Occupancy of the Project by the District for its intended purpose and which produces relatively little interference with the Contractor in completing construction.
- 1.1.6. **Change Order:** A written order to the Contractor authorizing an addition to, deletion from, or revision in the Work, and/or authorizing an adjustment in the Guaranteed Project Cost or Contract Time. If a Change Order is required to be approved by DSA, the District may call it a Construction Change Document.
- 1.1.7. **Construction Manager:** (or “Project Manager”) The individual, partnership, corporation, joint venture, or any combination thereof, or its authorized representative, named as such by the District. If no Construction Manager is used on the Project that is the subject of this Contract, then all references to Construction Manager herein shall be read to refer to District.
- 1.1.8. **Construction Schedule:** The progress schedule of construction of the Project as provided by Contractor and approved by District.
- 1.1.9. **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:
 - 1.1.9.1. Master Site Lease
 - 1.1.9.2. Master Facilities Lease, with all of its Exhibits

EXHIBIT D TO MASTER FACILITIES LEASE GENERAL CONSTRUCTION PROVISIONS

- 1.1.9.3. These General Construction Provisions
- 1.1.9.4. Noncollusion Declaration
- 1.1.9.5. Iran Contracting Act Certification
- 1.1.9.6. Workers' Compensation Certification
- 1.1.9.7. Prevailing Wage Certification
- 1.1.9.8. Disabled Veterans Business Enterprise Participation Certification
- 1.1.9.9. Drug-Free Workplace Certification
- 1.1.9.10. Tobacco-Free Environment Certification
- 1.1.9.11. Lead-Based Paint Certification
- 1.1.9.12. Hazardous Materials Certification
- 1.1.9.13. Imported Materials Certification
- 1.1.9.14. Criminal Background Investigation/Fingerprinting Certification
- 1.1.9.15. Roofing Contract Financial Interest Certification
- 1.1.9.16. Storm Water Pollution Prevention Plan
- 1.1.9.17. Performance Bond
- 1.1.9.18. Payment Bond (Contractor's Labor & Material Bond)
- 1.1.9.19. All Division 1 Documents, which shall only supplement these General Construction Provisions, but shall not control if their provisions contradict these Construction Provisions
- 1.1.9.20. All Plans, Technical Specifications, and Drawings
- 1.1.9.21. Any and all addenda to any of the above documents
- 1.1.9.22. Any and all change orders or written modifications to the above documents if approved in writing by the District

- 1.1.10. **Contract Time:** The time period stated in the Master Facilities Lease for Project Completion.
- 1.1.11. **Contractor (or "Contractor"):** The entity identified in the Master Facilities Lease as contracting to perform the Work to be done under this Contract, or the legal representative of such a person or persons.
- 1.1.12. **Daily Job Report(s):** Daily Project reports prepared by the Contractor's employee(s) who are present on Site, which shall include the information required herein.
- 1.1.13. **Day(s):** Unless otherwise designated, day(s) means calendar day(s). **"Business Days"** shall mean days except Saturday, Sunday, a day that is federally-recognized holiday, or a day that is a California-recognized holiday
- 1.1.14. **Defective or Nonconforming Work.** Defective or nonconforming Work is any Work which is unsatisfactory, faulty or deficient by: (a) not conforming to the requirements of the Contract Documents; (b) not conforming to the standards of workmanship of the applicable trade; (c) not being in compliance with the requirements of any inspection, reference, standard, test, or approval required by the Contract Documents; or (d) damage to Work occurring prior to Completion.
- 1.1.15. **District (or "Owner"):** The public agency or the school district for which the Work is performed. The governing board of the District or its designees will act for the District in all matters pertaining to the Contract. The District may, at any time,
 - 1.1.15.1. Direct the Contractor to communicate with or provide notice to the Construction Manager or the Architect on matters for which the Contract Documents indicate the Contractor will communicate with or provide notice to

EXHIBIT D TO MASTER FACILITIES LEASE GENERAL CONSTRUCTION PROVISIONS

the District; and/or

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

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

1.1.17. DSA: Division of the State Architect.

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

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

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

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

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

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

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

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

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

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

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- 1.1.28. Safety Orders:** Written and/or verbal orders for construction issued by the California Division of Industrial Safety ("CalOSHA") or by the United States Occupational Safety and Health Administration ("OSHA").
- 1.1.29. Safety Plan:** Contractor's safety plan specifically adapted for the Project. Contractor's Safety Plan shall comply with all provisions regarding Project safety, including all applicable provisions in these General Construction Provisions.
- 1.1.30. Samples:** Physical examples that illustrate materials, products, equipment, finishes, colors, or workmanship and that, when approved in accordance with the Contract Documents, establish standards by which portions of the Work will be judged.
- 1.1.31. Shop Drawings:** All drawings, prints, diagrams, illustrations, brochures, schedules, and other data that are prepared by the Contractor, a subcontractor, manufacturer, supplier, or distributor, that illustrate how specific portions of the Work shall be fabricated or installed.
- 1.1.32. Site:** The Project Site(s) as shown on the Drawings.
- 1.1.33. Specifications:** That portion of the Contract Documents, Division 1 through Division 49, and all technical sections, and addenda to all of these, if any, consisting of written descriptions and requirements of a technical nature of materials, equipment, construction methods and systems, standards, and workmanship.
- 1.1.34. Subcontractor:** A contractor and/or supplier who is under contract with the Contractor or with any other subcontractor, regardless of tier, to perform a portion of the Work of the Project.
- 1.1.35. Submittal Schedule:** The schedule of submittals as provided by Contractor and approved by District.
- 1.1.36. Surety:** The person, firm, or corporation that executes as surety the Contractor's Performance Bond and Payment Bond, and must be a California admitted surety insurer as defined in the Code of Civil Procedure section 995.120.
- 1.1.37. Terms.** The term "provide" means "provide complete in place" or to "furnish and install" such item. Unless otherwise provided in the Contract Documents, the terms "approved;" "directed;" "satisfactory;" "accepted;" "acceptable;" "proper;" "required;" "necessary" and "equal" shall mean as approved, directed, satisfactory, accepted, acceptable, proper, required, necessary and equal, in the opinion of the District. The term "typical" as used in the Drawings shall require the installation or furnishing of such item(s) of the Work designated as "typical" in all other areas similarly marked as "typical"; Work in such other areas shall conform to that shown as "typical" or as reasonably inferable therefrom.
- 1.1.38. Unilateral Change Order:** A written order prepared and issued by the District, the Construction Manager, and/or the Architect and signed by the District and the Architect, directing a change in the Work. **A Unilateral Change Order is NOT a Construction Change Document (which is defined above as a Change Order that DSA must approve).**
- 1.1.39. Work:** All labor, materials, equipment, components, appliances, supervision,

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coordination, and services required by, or reasonably inferred from, the Contract Documents, that are necessary for Project Completion.

1.2. Laws Concerning The Contract

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

1.3. No Oral Agreements

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

1.4. No Assignment

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

1.5. Notice And Service Thereof

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

1.6. No Waiver

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

1.7. Substitutions For Specified Items

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

1.8. Materials and Work

- 1.8.1.** Except as otherwise specifically stated in this Contract, Contractor shall provide and pay for all materials, labor, tools, equipment, transportation, supervision, temporary constructions of every nature, and all other services, management, and facilities of every nature whatsoever necessary to execute and complete this Contract within the Contract Time.
- 1.8.2.** Unless otherwise specified, all materials shall be new and the best of their respective kinds and grades as noted or specified, and workmanship shall be of good quality.
- 1.8.3.** Materials shall be furnished in ample quantities and at such times as to insure uninterrupted progress of Work and shall be stored properly and protected as required.
- 1.8.4.** For all materials and equipment specified or indicated in the Drawings, the Contractor shall provide all labor, materials, equipment, and services necessary for complete assemblies and complete working systems, functioning as intended, including incidental items not indicated on Drawings, nor mentioned in the Specifications, that can legitimately and reasonably be inferred to belong to the Work described, or be necessary in good practice to provide a complete assembly or system. In all instances, material and equipment shall be installed in strict accordance with each manufacturer's most recent published recommendations and specifications.
- 1.8.5.** Contractor shall, after award of Contract by District and after relevant submittals have been approved, place orders for materials and/or equipment as specified so that delivery of same may be made without delays to the Work. Contractor shall, upon demand from District, present documentary evidence showing that orders have been placed.
- 1.8.6.** District reserves the right but has no obligation, for any neglect in complying with the above instructions, to place orders for such materials and/or equipment as it may deem advisable in order that the Work may be completed at the date specified in the Master Facilities Lease, and all expenses incidental to the procuring of said materials and/or equipment shall be paid for by Contractor or withheld from payment(s) to Contractor.
- 1.8.7.** Contractor warrants good title to all material, supplies, and equipment installed or incorporated in Work and agrees upon Project Completion to deliver the Site to District, together with all improvements and appurtenances constructed or placed thereon by it, and free from any claims, liens, or charges. Contractor further agrees that neither it nor any person, firm, or corporation furnishing any materials or labor for any work covered by the Contract shall have any right to lien any portion of the Premises or any improvement or appurtenance thereon, except that Contractor may install metering devices or other equipment of utility companies or of political subdivision, title to which is commonly retained by utility company or political subdivision. In the event of installation of any such metering device or equipment, Contractor shall advise District as to owner thereof.
- 1.8.8.** Nothing contained in this Article, however, shall defeat or impair the rights of persons furnishing materials or labor under any bond given by Contractor for their protection or any rights under any law permitting such protection or any rights under any law permitting such persons to look to funds due Contractor in hands of District (e.g., stop payment notices), and this provision shall be inserted in all subcontracts and material

contracts and notice of its provisions shall be given to all persons furnishing material for work when no formal contract is entered into for such material.

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

1.8.10. Storage of Items Off-Site. The District may request that Contractor procure and store off-site certain equipment, supplies, and or materials. In addition, the Contractor may request that it be permitted to procure and store off-site certain equipment, supplies, and or materials. In either case, and before the District issues payment for those item(s), the Contractor shall comply with the insurance and/or bond requirements herein related to the storage of off-site items that the District has paid for and that the Contractor remains in possession of.

2. [RESERVED]

3. ARCHITECT

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

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

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

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

4. CONSTRUCTION MANAGER

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

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

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

5.1. **Project Inspector**

- 5.1.1. One or more Project Inspector(s), including special Project Inspector(s), as required, will be assigned to the Work by District, in accordance with requirements of title 24, part 1, of the California Code of Regulations, to enforce the building code and monitor compliance with Plans and Specifications for the Project previously approved by the DSA. Duties of Project Inspector(s) are specifically defined in section 4-342 of said part 1 of title 24.
- 5.1.2. No Work shall be carried on except with the knowledge and under the inspection of the Project Inspector(s). The Project Inspector(s) shall have free access to any or all parts of Work at any time. Contractor shall furnish Project Inspector(s) reasonable opportunities for obtaining such information as may be necessary to keep Project Inspector(s) fully informed respecting progress and manner of work and character of materials. Inspection of Work shall not relieve Contractor from an obligation to fulfill this Contract. Project Inspector(s) and the DSA are authorized to stop work whenever the Contractor and/or its Subcontractor(s) are not complying with the Contract Documents. Any work stoppage by the Project Inspector(s) and/or DSA shall be without liability to the District. Contractor shall instruct its Subcontractors and employees accordingly.
- 5.1.3. If Contractor and/or any Subcontractor requests that the Project Inspector(s) perform any inspection off-site, this shall only be done if it is allowable pursuant to applicable regulations and DSA. If the off-site inspections are more frequent than are reasonable for the type of off-site inspection, those inspections shall be at the expense of the Contractor.
- 5.1.4. **Limitations on Project Inspector Authority.** The Project Inspector does not have authority to interpret the Contract Documents or to modify the Work depicted in the Contract Documents. No Work inconsistent with the Contract Documents shall be performed solely on the basis of the direction of the Project Inspector, and the Contractor shall be liable to the District for the consequences of all Work performed on such basis.
- 5.1.5. Contractor acknowledges that the DSA inspection, approval and certification process for projects was revised in 2012-2013 and that Contractor must comply with the requirements of the most recent versions of DSA document PR 13-01. Below are provisions of this document from 2012-2013: PR 13-01 (Procedure: Construction

Oversight Process) - Duties of Contractor related to the use of "Project Inspection Card" (Form DSA 152).

- 5.1.5.1. The Contractor shall carefully study the DSA approved documents and shall plan a schedule of operations well ahead of time.
- 5.1.5.2. If at any time it is discovered that work is being done which is not in accordance with the DSA approved construction documents, the Contractor shall correct the work immediately.
- 5.1.5.3. Verify that forms DSA 152 are issued for the project prior to the commencement of construction.
- 5.1.5.4. Meet with the design team, the Laboratory of Record and the Project Inspector to mutually communicate and understand the testing and inspection program and the methods of communication appropriate for the project.
- 5.1.5.5. Notify the Project Inspector, in writing, of the commencement of construction of each and every aspect of the work at least 48 hours in advance by submitting form DSA 156 (or other agreed upon written documents) to the Project Inspector.
- 5.1.5.6. Notify the Project Inspector of the completion of construction of each and every aspect of the work by submitting form DSA 156 (or other agreed upon written documents) to the Project Inspector.
- 5.1.5.7. Consider the relationship of the signed off blocks and sections of the form DSA 152 and the commencement of subsequent work. Until the Project Inspector has signed off applicable blocks and sections of the form DSA 152, the Contractor may be prohibited from proceeding with subsequent construction activities that cover up the unapproved work. Any subsequent construction activities, that cover up the unapproved work, will be subject to a "Stop Work Order" from the DSA or the District and are subject to removal and remediation if found to be in non-compliance with the DSA approved construction documents.

5.2. Tests and Inspections

- 5.2.1. Tests and Inspections shall comply with title 24, part 1, California Code of Regulations, group 1, article 5, section 4-335, and with the provisions of the Specifications.
- 5.2.2. If the Contract Documents, laws, ordinances or any public authority with jurisdiction over the Work requires the Work, or any portion thereof, to be specially tested, inspected or approved, the Contractor shall give the Architect, the Construction Manager and the Project Inspector written notice of the readiness of such Work for observation, testing or inspection at least seventy-two (72) hours prior to the time for the conducting of such test, inspection or observation. If inspection, testing or observation is by authority other than the District, the Contractor shall inform the Project Inspector and the Construction Manager not less than seventy-two (72) hours prior to the date fixed for such inspection, test or observation. The Contractor shall not cover up any portion of the Work subject to tests, inspections or observations prior to the completion and satisfaction of the requirements of such test, inspection or

observation. In the event that any portion of the Work subject to tests, inspection or approval shall be covered up by Contractor prior to completion and satisfaction of the requirements of such tests, inspection or approval, Contractor shall be responsible for the uncovering of such portion of the Work as is necessary for performing such tests, inspection or approval without adjustment of the Contract Price or the Contract Time on account thereof.

- 5.2.3. The District will select an independent testing laboratory to conduct the tests. Selection of the materials required to be tested shall be by the laboratory or the District's representative and not by the Contractor. The Contractor shall notify the District's representative a sufficient time in advance of its readiness for required observation or inspection.
- 5.2.4. The Contractor shall notify the District's representative a sufficient time in advance of the manufacture of material to be supplied under the Contract Documents, that must by terms of the Contract Documents be tested, in order that the District may arrange for the testing of same at the source of supply. This notice shall be, at a minimum, seventy-two (72) hours prior to the manufacture of the material that needs to be tested. These notifications shall be submitted in all instances via hard copy and, if requested by the Project Inspector(s), also electronically via an internet-based notification/reporting system.
- 5.2.5. Any material shipped by the Contractor from the source of supply prior to having satisfactorily passed such testing and inspection or prior to the receipt of notice from said representative that such testing and inspection will not be required, shall not be incorporated into and/or onto the Project.
- 5.2.6. The District will select and pay testing laboratory costs for all tests and inspections. Costs of tests of any materials found to be not in compliance with the Contract Documents shall be paid for by the District and reimbursed by the Contractor or deducted from the Guaranteed Project Cost.

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

If the Contractor performs Work outside the Inspector's regular working hours, over a period of more than eight (8) hours per day by any single person, on weekends/holidays or requests the Inspector to perform inspections off Site, then the costs of any inspections required outside regular working hours, over a period of more than eight (8) hours per day by any single person, on weekends/holidays or off Site, shall be borne by the Contractor and may be invoiced to the Contractor by the District or the District may deduct those expenses from the next Tenant Improvement Payment.

6. CONTRACTOR

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

6.1. Status of Contractor

- 6.1.1. Contractor is and shall at all times be deemed to be an independent contractor and shall

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