

BOARD OF EDUCATION AGENDA

REGULAR MEETING
September 28, 2021 - 5:30 PM

Meeting Will be Conducted Via Zoom - for Zoom link and password, please see item #3 (Reconvene to Public Session) under Call to Order below.

If you are unable to join the meeting via Zoom but would like to submit a public comment on the item(s) listed on this agenda, or items under the jurisdiction of the Board of Education, please send public comment to: publiccomments@alamedaunified.org. Comments received by 5:00pm on Monday, September 27, 2021 will be distributed to Board trustees prior to the Board meeting.
Alameda, CA 94501

Regular meetings held in Council Chambers will be recorded and broadcast live on Comcast, Channel 15

VIDEO

The Board of Education will meet for Closed Session and to discuss labor negotiations, student discipline, personnel matters, litigation, and other matters as provided under California State law and set forth on the agenda below. Following Closed Session, the Board reconvenes to Public Session. Adjournment of the Public Session will be no later than 10:30 PM for all regular and special meetings, unless extended by a majority vote of the Board.

Writings relating to a board meeting agenda item that are distributed to at least a majority of the Board members less than 72 hours before the noticed meeting, and that are public records not otherwise exempt from disclosure, will be available for inspection at the District administrative offices, 2060 Challenger Drive, Alameda, CA. Such writings may also be available on the District's website. (Govt Code 54957.5b).

Individuals who require special accommodations (American Sign Language interpreter, accessible seating, documentation in accessible format, etc.) should contact Kerri Lonergan, Assistant to the Superintendent, at 337-7187 no later than 48 hours preceding the meeting.

IF YOU WISH TO ADDRESS THE BOARD OF EDUCATION

Please submit a "Request to Address the Board" slip to Kerri Lonergan, Assistant to the Superintendent, prior to the introduction of the item. For meeting facilitation, please submit the slip at your earliest possible convenience. Upon recognition by the President of the Board, please come to the podium and identify yourself prior to speaking. The Board of Education reserves the right to limit speaking time to three (3) minutes or fewer per individual. Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four (4) minutes.

Closed Session Items: may be addressed under Public Comment on Closed Session Topics.

Non Agenda and Consent Items: may be addressed under Public Comments.

Agenda Items: may be addressed after the conclusion of the staff presentation on the item.

A. CALL TO ORDER

1. Public Comment on Closed Session Topics: The Board of Education Reserves the Right to Limit Public Comment to 10 Minutes. Due to this meeting being held via teleconference, please send public comments related to Closed Session agenda items to: publiccomments@alamedaunified.org. Public comments received prior to 5:00 PM on September 27, 2021 will be distributed to the Board of Education prior to the meeting.

To join the Zoom meeting in order to make a public comment on Closed Session Agenda Items only:

Join Zoom Meeting (Closed Session ONLY!)

Join Zoom Meeting

<https://zoom.us/j/91852291856>

Meeting ID: 918 5229 1856

2. Adjourn to Closed Session - 5:30 PM - Board Members will meet privately via Zoom for Closed Session. Any action taken during Closed Session will be reported out under "Closed Session Action Report."

Conference with Labor Negotiators - Pursuant to Subdivision 54957.6:
Agency designated representative: Timothy Erwin - Assistant Superintendent, Human Resources.

Employee organizations: Alameda Education Association (AEA), California School Employees Association Chapter 27 (CSEA 27), California School Employees Association Chapter 860 (CSEA 860) and Executive Cabinet/Administrative and Supervisory/Confidential/Licensed/Unrepresented.

Conference with Legal Counsel Regarding Existing Litigation Pursuant to Subdivision (b) to Government Code Section 54956.9. Agency designated representative: Roy Combs, Fagen Friedman & Fulfroost, LLP (1 case):

1) Trainman v. Alameda Unified School District: Case No. RG20061550 (Alameda County Superior Court)

Conference with Legal Counsel Regarding Anticipated Litigation Pursuant to Subdivision (b) to Government Code Section 54956.9(d)(2). Agency designated representative: Roy Combs, Fagen Friedman & Fulfroost, LLP (1 case):

1) Significant Exposure to Litigation

3. Reconvene to Public Session - 6:30 PM - Via Zoom Video Conference.

Join Public Board Meeting (Zoom format):

<https://zoom.us/j/99261512385?pwd=ZWw3emJZeWZMRm9vQ3V1YlZCdFE5UT09>

Meeting ID: 992 6151 2385

Passcode: 854348

To view meeting on Facebook Live at 6:30 PM, please click on the following link:

<https://www.facebook.com/AlamedaUnified/>

4. Call to Order - Pledge of Allegiance - Board of Education President Jennifer Williams will lead the Pledge of Allegiance
5. Introduction of Board Members and Staff via Zoom video conference
6. Closed Session Action Report

B. MODIFICATION(S) OF THE AGENDA - The Board may change the order of business including, but not limited to, an announcement that an agenda item will be considered out of order, that consideration of an item has been withdrawn, postponed, rescheduled or removed from the Consent Calendar for separate discussion and possible action

C. COMMUNICATIONS

1. Public Comments - Participants who would like to make comments on items listed on this agenda can join the meeting from their computer, tablet or smartphone. We ask the participants

to type their full name when joining the meeting, as prompted. The Board President will announce the opportunity for public comment on items that are not on the agenda but are under the Board's jurisdiction. We ask that all participants who wish to make public comments for that agenda item use the "raise your hand" feature. If a member of the public is unable to join the meeting via Zoom, they may send their public comment to: publiccomments@alamedaunified.org. Emails received by 5pm on Monday, September 27th will be distributed to Board members prior to the meeting.

2. Written Correspondence - Written correspondence regarding an agenda item that is distributed to a majority of Board Members is shared.
3. Report from Employee Organizations - Representatives from the District's employee organizations may make announcements or provide information to the Board and Public in the form of a brief oral report. The Board will not take action on such items. Alameda Education Association (AEA); California School Employees Association Chapter 27 (CSEA 27); California School Employees Association Chapter 860 (CSEA 860) (5 Mins Each/Information).
4. PTA Council Report - Representatives from the District's PTA Council group may make announcements or provide information to the Board and Public in the form of a brief oral report. The Board will not take action on such items. (5 Mins/Information)
5. Board Members' Report - Board of Education Members may make announcements or provide information to the Public in the form of an oral report. The Board will not take action on such items.
6. Student Board Members' Report - Student Board Members may make announcements or provide information to the Board and the Public in the form of an oral report. The Board will not take action on such items.
7. Superintendent's Report - The Superintendent of Schools may make announcements or provide information to the Board and Public in the form of an oral report. The Board will not take action on such items.

D. ADOPTION OF THE CONSENT CALENDAR

1. Certificated Personnel Actions
2. Classified Personnel Actions
3. Approval and Acceptance of Donations
4. Approval of Bill Warrants and Payroll Registers
5. Approval of Local Early Access Program (LEAP) for the 2021-2022 School Year
6. Approval of Project Award of Multiple District Measure I Modernization Projects (Alameda Community Learning Center/Nea, Bay Farm School, Earhart Elementary) Pursuant to Request for Proposal Dated July 20, 2021
7. Approval of Project Award of Wood Middle School HVAC Measure I Modernization Project Pursuant to Request for Proposal Dated July 27, 2021
8. Approval of Special Education Local Plan Area Master Contracts
9. Proclamation: American Character Education Month - October
10. Proclamation: Disability Employment Awareness Month - October
11. Proclamation: Energy Awareness Month - October
12. Proclamation: Filipino American History Month - October
13. Proclamation: Lesbian, Gay, Bisexual, Transgender, Queer/Questioning History Month - October
14. Proclamation: National Child Health Day - October 4, 2021
15. Proclamation: National Domestic Violence Awareness Month - October

16. Proclamation: National Dyslexia Awareness Month - October
17. Proclamation: Walk and Roll to School Day - October 6, 2021
18. Proclamation: World Teachers' Day - October 5, 2021
19. Ratification of Contracts Executed Pursuant to Board Policy 3300
20. Resolution No. 2021-2022.16 Approval of Budget Transfers, Increases, Decreases

E. GENERAL BUSINESS – Informational reports and action items are presented under General Business. The public may comment on each item listed under General Business as the item is taken up. The Board reserves the right to limit public comment on General Business items to ten (10) minutes per item. The Board may, with the consent of persons representing both sides of an issue, allocate a block of time to each side to present their issue.

1. Check-In and Update on Start of 2021-2022 School Year (5 Mins/Information)
2. Approval of Provisional Policies to be Used at School Sites in Cases of Unhealthy Air Quality (5 Mins/Action)
3. Results of the AUSD Public Opinion Poll of a Potential Bond Measure Presented by TBWBH Props & Measures and EMC Research (15 Mins/Information)
4. Update on the Process and Timeline for the Selection of Appointee for Vacant Board Seat (10 Mins/Information)
5. Resolution No. 2021-2022.15 Certification of Requirement of Education Code Section 60119 for Pupil Textbooks and Instructional Materials for Grades K-12 for Fiscal Year 2021-2022 (5 Mins/Public Hearing/Information)
6. Resolution No. 2021-2022.17 Proclaiming a Local Emergency Ratifying the Proclamation of a State of Emergency by Governor Newsom Dated March 4, 2020 and Authorizing Remote Teleconference Meetings for the Period October 1, 2021 Through October 30, 2021 (10 Mins/Action)

F. ADJOURNMENT

ALAMEDA UNIFIED SCHOOL DISTRICT
BOARD AGENDA ITEM

Item Title: Adjourn to Closed Session - 5:30 PM - Board Members will meet privately via Zoom for Closed Session. Any action taken during Closed Session will be reported out under "Closed Session Action Report."

Item Type:

Background: Adjourn to Closed Session - 5:30 PM - Board Members will meet privately via Zoom for Closed Session. Any action taken during Closed Session will be reported out under "Closed Session Action Report."

Conference with Labor Negotiators - Pursuant to Subdivision 54957.6:
Agency designated representative: Timothy Erwin - Assistant Superintendent, Human Resources.

Employee organizations: Alameda Education Association (AEA), California School Employees Association Chapter 27 (CSEA 27), California School Employees Association Chapter 860 (CSEA 860) and Executive Cabinet/Administrative and Supervisory/Confidential/Licensed/Unrepresented.

Conference with Legal Counsel Regarding Existing Litigation Pursuant to Subdivision (b) to Government Code Section 54956.9. Agency designated representative: Roy Combs, Fagen Friedman & Fulfroft, LLP (1 case):

1) Trainman v. Alameda Unified School District: Case No. RG20061550 (Alameda County Superior Court)

Conference with Legal Counsel Regarding Anticipated Litigation Pursuant to Subdivision (b) to Government Code Section 54956.9(d)(2). Agency designated representative: Roy Combs, Fagen Friedman & Fulfroft, LLP (1 case):

1) Significant Exposure to Litigation

AUSD LCAP Goals: 1. Eliminate barriers to student success and maximize learning time.

Fund Codes:

Fiscal Analysis

Amount (Savings) (Cost):

Recommendation:

AUSD Guiding Principle:

Submitted By:

ALAMEDA UNIFIED SCHOOL DISTRICT
BOARD AGENDA ITEM

Item Title: Certificated Personnel Actions

Item Type: Consent

Background:

AUSD LCAP Goals:

Fund Codes:

Fiscal Analysis

Amount (Savings) (Cost): All positions shown are authorized by the board and are included in the 2021-2022 budget.

Recommendation: Approve as submitted.

AUSD Guiding Principle: #6 - Allocation of funds must support our vision, mission, and guiding principles.

Submitted By: Timothy Erwin, Chief Human Resources Officer

ATTACHMENTS:

Description	Upload Date	Type
☐ Certificated Personnel Actions	9/29/2021	Backup Material

ALAMEDA UNIFIED SCHOOL DISTRICT
BOARD AGENDA ITEM

Item Title: Classified Personnel Actions

Item Type: Consent

Background:

AUSD LCAP Goals:

Fund Codes:

Fiscal Analysis

Amount (Savings) (Cost): All positions shown are authorized by the board and are included in the 2021-2022 budget.

Recommendation: Approve as submitted.

AUSD Guiding Principle: #6 - Allocation of funds must support our vision, mission, and guiding principles.

Submitted By: Timothy Erwin, Chief Human Resources Officer

ATTACHMENTS:

Description	Upload Date	Type
☐ Classified Personnel Actions	9/29/2021	Backup Material

ALAMEDA UNIFIED SCHOOL DISTRICT
BOARD AGENDA ITEM

Item Title: Approval and Acceptance of Donations

Item Type: Consent

Background: Throughout the school year, donations are routinely accepted by the District. The donations are from various sources and are commonly designated for specific uses.

AUSD LCAP Goals: 4. Ensure that all students have access to basic services.

Fund Codes: 01 General Fund

Fiscal Analysis

Amount (Savings) (Cost): Will increase the revenues of the District in the amount of \$23,714.50.

Recommendation: Approve as submitted.

AUSD Guiding Principle: #5 - Accountability, transparency, and trust are necessary at all levels of the organization. | #6 - Allocation of funds must support our vision, mission, and guiding principles.

Submitted By: Shariq Khan, Assistant Superintendent of Business Services

ATTACHMENTS:

Description	Upload Date	Type
☐ Summary Site Donations	9/21/2021	Backup Material

2020-2021
Summary Site Donations
July 01, 2021 - September 21, 2021

Slip Date	Site	Check#	Date	Donor	Amount	Site Donations	Total Donations
7/1/2021	Alameda High	5438	6/17/2021	Lesa Rene Ross	\$ 144.82		
7/1/2021	Alameda High	2472	6/15/2021	J Isreal Madera	\$ 133.00		
7/1/2021	Alameda High	1595	6/9/2021	Lisa Anne Shepard Appleyard	\$ 14.00		
7/1/2021	Alameda High	1019	6/15/2021	John Bang	\$ 208.23		
7/1/2021	Alameda High	1837	6/15/2021	Jennifer McCormick	\$ 204.45		
7/1/2021	Alameda High	1085	6/15/2021	Shelby Sheehan	\$ 15.00		
7/1/2021	Alameda High	130	6/15/2021	Lisa Allen	\$ 170.00		
7/1/2021	Alameda High	Cash	6/14-16/2021	No Name	\$ 1,487.00		
7/1/2021	Alameda High	312	6/14/2021	Jocelyn Douglas	\$ 60.00		
8/20/2021	Alameda High	Cash	8/16-18/2021	No Name	\$ 470.00		
8/20/2021	Alameda High	1049	8/16/2021	Greg Pillman	\$ 20.00		
8/20/2021	Alameda High	2730	8/17/2021	Sarah Barde Wagner	\$ 20.00		
8/20/2021	Alameda High	1825	8/17/2021	Carmen Watson	\$ 20.00		
8/20/2021	Alameda High	2398	8/17/2021	Eun Koo Chong	\$ 20.00		
8/20/2021	Alameda High	4719	8/17/2021	Erin Mathern	\$ 20.00		
8/20/2021	Alameda High	3275	8/17/2021	Curtis Stuhrenberg	\$ 25.00		
8/20/2021	Alameda High	5630	8/17/2021	Brian Bunger	\$ 40.00		
8/20/2021	Alameda High	1433	8/16/2021	Kathy Gin	\$ 200.00		
8/20/2021	Alameda High	2284	8/16/2021	Kimberly Woo	\$ 20.00		
8/20/2021	Alameda High	6820	8/16/2021	Jennifer Solomon	\$ 20.00		
8/20/2021	Alameda High	143	8/16/2021	Sikandar Khan Khatri	\$ 20.00		
8/20/2021	Alameda High	3340	8/16/2021	James Jin Zou	\$ 20.00		
8/20/2021	Alameda High	1492	8/16/2021	Nathaniel Fennell	\$ 20.00		
8/20/2021	Alameda High	1561	8/16/2021	Amy Norris Fry	\$ 20.00		
8/20/2021	Alameda High	1071	8/16/2021	Linda Jew	\$ 20.00		
8/20/2021	Alameda High	965	8/16/2021	Naya Delos Reyes-Lillazar	\$ 20.00		
8/20/2021	Alameda High	205	8/16/2021	Vickie Lim	\$ 20.00		
8/20/2021	Alameda High	2702	8/16/2021	Kelley Seltzer	\$ 20.00		
8/20/2021	Alameda High	1251	8/16/2021	Jeffrey Delong	\$ 20.00		
8/20/2021	Alameda High	3701	8/16/2021	Ann Paul Canavese	\$ 20.00		
8/20/2021	Alameda High	2476	8/16/2021	Iryna Oreshkova	\$ 20.00		
8/20/2021	Alameda High	121	8/16/2021	Yao Tong	\$ 20.00		
8/20/2021	Alameda High	163	8/16/2021	Dung Lu	\$ 20.00		
8/20/2021	Alameda High	643	8/16/2021	Stephen McNara	\$ 20.00		
8/20/2021	Alameda High	1082	8/16/2021	Sarah Noble	\$ 20.00		
8/20/2021	Alameda High	1605	8/16/2021	Tracyann Eggen	\$ 20.00		
8/20/2021	Alameda High	997	8/16/2021	Amanda Porter	\$ 20.00		
8/20/2021	Alameda High	912	8/16/2021	Matt Parker	\$ 20.00		
8/20/2021	Alameda High	2378	8/16/2021	Gloria Alcalá	\$ 20.00		
8/20/2021	Alameda High	1029	8/16/2021	Zeleka Alemu	\$ 20.00		
8/20/2021	Alameda High	1053	8/16/2021	Nellie Vanessa Montes	\$ 20.00		
8/20/2021	Alameda High	148	8/16/2021	Jovic Guzman	\$ 20.00		
8/20/2021	Alameda High	1591	8/16/2021	O Higgins	\$ 20.00		
8/20/2021	Alameda High	743	8/16/2021	Tung Pang Poon	\$ 20.00		
8/20/2021	Alameda High	123	8/16/2021	Camille Danzi	\$ 20.00		
8/20/2021	Alameda High	152	8/16/2021	Sandra Deffner	\$ 20.00		
8/20/2021	Alameda High	1789	8/17/2021	Eve Alley	\$ 20.00		
8/20/2021	Alameda High	3330	8/17/2021	Charisma Serrano	\$ 20.00		
8/20/2021	Alameda High	1389	8/17/2021	John Wai Yu Ma	\$ 20.00		
8/20/2021	Alameda High	1115	8/17/2021	Luo Family Foundation INC	\$ 20.00		
8/20/2021	Alameda High	156	8/17/2021	Raphaelle Loren	\$ 20.00		
8/20/2021	Alameda High	2283	8/17/2021	Jack Kotovsky	\$ 20.00		
8/20/2021	Alameda High	1687	8/17/2021	Lynne Chung	\$ 20.00		
8/20/2021	Alameda High	153	8/17/2021	Estifanos Abraham	\$ 20.00		
8/20/2021	Alameda High	2027	8/18/2021	Robyn Orosz	\$ 20.00		
8/20/2021	Alameda High	2073	8/18/2021	Amy Roizen	\$ 20.00		
8/20/2021	Alameda High	409	8/18/2021	Cate McManus	\$ 20.00		
8/20/2021	Alameda High	601	8/18/2021	James Kim	\$ 20.00		
8/20/2021	Alameda High	7004	8/18/2021	Monica Carrion	\$ 20.00		
8/20/2021	Alameda High	919	8/16/2021	Michelle Wu	\$ 25.00		
8/20/2021	Alameda High	705	8/16/2021	Carol Gordon	\$ 25.00		
8/20/2021	Alameda High	1512	8/17/2021	Andrew Yoo	\$ 25.00		
8/20/2021	Alameda High	3244	8/16/2021	Elizabeth Park	\$ 40.00		
8/20/2021	Alameda High	103	8/16/2021	Talia Guzman-Gonzalez	\$ 40.00		
8/20/2021	Alameda High	191	8/16/2021	Robert Mann	\$ 40.00		
8/20/2021	Alameda High	3595	8/16/2021	Shivaun McDonald	\$ 40.00		
8/20/2021	Alameda High	253	8/17/2021	Hallie Von Rock	\$ 40.00		
8/20/2021	Alameda High	5278	8/16/2021	Jon Rawski	\$ 50.00		
8/20/2021	Alameda High	2653	8/16/2021	Katherine Edison	\$ 50.00		
8/20/2021	Alameda High	1974	8/16/2021	Susan Lindtner	\$ 50.00		
8/20/2021	Alameda High	273	8/16/2021	Denise Lew	\$ 50.00		
8/20/2021	Alameda High	6216	8/16/2021	Karie Frasch	\$ 50.00		
8/20/2021	Alameda High	1080	8/16/2021	Stella Lee	\$ 50.00		

8/20/2021	Alameda High	643	8/17/2021	Kerry Walker	\$	50.00
8/20/2021	Alameda High	4179	8/17/2021	Robert Davison	\$	50.00
8/20/2021	Alameda High	6554	8/16/2021	Pamela Luo	\$	60.00
8/20/2021	Alameda High	1033	8/16/2021	Lisa Decardenas	\$	100.00
8/20/2021	Alameda High	3491	8/16/2021	Grace Caulfield	\$	100.00
8/20/2021	Alameda High	2397	8/17/2021	Global Building Janitorial SVC	\$	20.00
8/24/2021	Alameda High	Cash		No Date No Name	\$	100.00
8/24/2021	Alameda High	789	8/2/2021	Jennifer Feliciano	\$	25.00
8/24/2021	Alameda High	2820	8/8/2021	Raymond Lam	\$	50.00
8/24/2021	Alameda High	1481	8/9/2021	Margo Waldron	\$	25.00
8/24/2021	Alameda High	1505	8/4/2021	Lyla Bradley	\$	200.00
8/24/2021	Alameda High	1207	8/9/2021	Heather Genschmer LCSW	\$	50.00
8/24/2021	Alameda High	918	8/6/2021	Toshie Narita	\$	100.00
8/24/2021	Alameda High	1241	8/16/2021	Sarah Hua	\$	50.00
8/24/2021	Alameda High	2674	8/9/2021	Susan Rimerman	\$	50.00
8/24/2021	Alameda High	121	8/10/2021	Dina Paredes	\$	50.00
8/24/2021	Alameda High	2240	8/9/2021	Carrie Wasson	\$	50.00
8/24/2021	Alameda High	1729	8/6/2021	Andrew Labatt	\$	50.00
8/24/2021	Alameda High	723	8/10/2021	Tiffany Murphy	\$	50.00
8/24/2021	Alameda High	111	8/5/2021	Raven Halderman	\$	50.00
8/24/2021	Alameda High	3692	8/8/2021	Sara Goldsmith	\$	100.00
8/24/2021	Alameda High	2892	8/10/2021	ProBalance Inc	\$	100.00
8/25/2021	Alameda High	9263	8/18/2021	Moreau Catholic High School	\$	125.00
8/24/2021	Alameda High	Cash		No Date No Name	\$	70.00
8/24/2021	Alameda High	230	8/16/2021	Monica Digioacchino	\$	50.00
8/24/2021	Alameda High	3204	8/16/2021	Susan M Blank	\$	100.00
8/24/2021	Alameda High	290	8/17/2021	Thuha Nguyen	\$	15.00
8/24/2021	Alameda High	716	8/16/2021	Patricia Sanchez	\$	30.00
8/24/2021	Alameda High	2286	8/17/2021	Erin Wright	\$	40.00
8/24/2021	Alameda High	301	8/17/2021	Jennifer Crane	\$	40.00
8/24/2021	Alameda High	1246	8/16/2021	Stephen Johnson	\$	40.00
8/24/2021	Alameda High	415	8/16/2021	Theresa Bui	\$	50.00
8/24/2021	Alameda High	2712	8/16/2021	Lisa Toyama	\$	50.00
8/24/2021	Alameda High	1423	8/8/2021	William Phan	\$	50.00
8/24/2021	Alameda High	5787	8/16/2021	Nicole Elliott	\$	50.00
8/24/2021	Alameda High	2548	8/17/2021	Michelle Lewis	\$	50.00
8/24/2021	Alameda High	1186	8/17/2021	Karen Garcia	\$	20.00
8/24/2021	Alameda High	3446	8/16/2021	Monica Taylor	\$	20.00
8/24/2021	Alameda High	1761	8/16/2021	Warren Morishige	\$	20.00
8/24/2021	Alameda High	2726	8/16/2021	KJ Chin	\$	20.00
8/24/2021	Alameda High	1674	8/16/2021	Dave Ean-Huat Khor	\$	20.00
8/24/2021	Alameda High	125	8/16/2021	Kai Chun Fong	\$	20.00
8/24/2021	Alameda High	269	8/16/2021	Bryan Finch	\$	20.00
8/24/2021	Alameda High	124	8/17/2021	Dina Paredes	\$	20.00
8/24/2021	Alameda High	132	8/16/2021	Maureen Frentz	\$	20.00
8/24/2021	Alameda High	1241	8/17/2021	Lisa Rigamonti	\$	20.00
8/24/2021	Alameda High	3728	8/17/2021	Cynthia Wondolleck	\$	20.00
8/24/2021	Alameda High	2371	8/16/2021	Ruby Wong	\$	20.00
8/24/2021	Alameda High	3205	8/16/2021	Susan Blank	\$	20.00
8/24/2021	Alameda High	1767	8/16/2021	Christophe Gontard	\$	20.00
8/24/2021	Alameda High	1819	8/17/2021	Cheryll Marie Wong	\$	20.00
8/24/2021	Alameda High	408	8/16/2021	Cate McManus	\$	20.00
8/24/2021	Alameda High	3116	8/16/2021	Derrick Roorda	\$	20.00
8/24/2021	Alameda High	1943	8/17/2021	Andrea Beil	\$	20.00
8/24/2021	Alameda High	972	8/16/2021	Diana Fan	\$	20.00
8/24/2021	Alameda High	3549	8/16/2021	Michael Murphy	\$	20.00
8/24/2021	Alameda High	1024	8/16/2021	Elizabeth Lynne White	\$	30.00
8/24/2021	Alameda High	1137	8/18/2021	Caleen Oshio	\$	30.00
8/24/2021	Alameda High	1674	8/17/2021	Melissa Raber	\$	30.00
8/24/2021	Alameda High	2057	8/16/2021	Lance Miller	\$	40.00
8/24/2021	Alameda High	1779	8/16/2021	Alene Okazaki	\$	40.00
8/24/2021	Alameda High	3248	8/17/2021	Jess Aney	\$	40.00
8/24/2021	Alameda High	1645	8/16/2021	Claire Legas	\$	40.00
8/24/2021	Alameda High	1348	8/16/2021	Budd Seeley	\$	40.00
8/24/2021	Alameda High	5504	8/17/2021	Karen Burton	\$	40.00
8/24/2021	Alameda High	345	8/17/2021	Natasha Reeb	\$	40.00
8/24/2021	Alameda High	1595	8/17/2021	Chiradip Mandal	\$	50.00
8/24/2021	Alameda High	3639	8/16/2021	Beatrice Liu	\$	50.00
8/24/2021	Alameda High	3691	8/16/2021	Laura Grunbaum	\$	50.00
8/24/2021	Alameda High	357	8/16/2021	Lisa Harrison Fallin	\$	50.00
8/24/2021	Alameda High	1325	8/16/2021	Katherine Javandel	\$	50.00
8/24/2021	Alameda High	1971	8/14/2021	Paul Clem	\$	100.00
8/24/2021	Alameda High	356	8/16/2021	Natasha McDougald	\$	60.00
8/24/2021	Alameda High	1914	8/16/2021	John Maxey	\$	20.00
8/24/2021	Alameda High	122	8/16/2021	Tommy Cheung	\$	20.00
8/24/2021	Alameda High	1615	8/19/2021	Ginger Soto	\$	20.00
8/24/2021	Alameda High	911	8/15/2021	Katie Kong	\$	20.00
8/24/2021	Alameda High	1068	8/16/2021	Michiko Mares	\$	20.00

8/24/2021 Alameda High	1199	8/16/2021 Fiona Delipe	\$	20.00
8/24/2021 Alameda High	232	8/16/2021 Choi Ha Lam	\$	20.00
8/24/2021 Alameda High	2215	8/16/2021 Aubyn Redmond	\$	20.00
8/24/2021 Alameda High	205	8/17/2021 J A Ayon	\$	20.00
8/24/2021 Alameda High	3170	8/17/2021 Ximena Seaborn	\$	20.00
8/24/2021 Alameda High	1035	8/17/2021 Julie Haas	\$	20.00
8/24/2021 Alameda High	5212	8/17/2021 Lucia Wyborny	\$	20.00
8/24/2021 Alameda High	2853	8/17/2021 Chere Douglas	\$	20.00
8/24/2021 Alameda High	142	8/17/2021 John Lin	\$	20.00
8/24/2021 Alameda High	1731	8/17/2021 Carrie Guthrie	\$	20.00
8/24/2021 Alameda High	5095	8/17/2021 Valerie Webb	\$	20.00
8/24/2021 Alameda High	1995	8/17/2021 Anne Kelsey Lamb	\$	20.00
8/24/2021 Alameda High	578	8/17/2021 Joyce Chou	\$	20.00
8/24/2021 Alameda High	3123	8/17/2021 Sheila Edwards	\$	20.00
8/24/2021 Alameda High	1114	8/17/2021 Luo Family Foundation, INC	\$	20.00
8/24/2021 Alameda High	1217	8/16/2021 Albert Dao	\$	20.00
8/24/2021 Alameda High	1635	8/16/2021 Linda Feiler	\$	20.00
8/24/2021 Alameda High	1037	8/16/2021 Alexandra Opecko	\$	20.00
8/24/2021 Alameda High	3691	8/16/2021 Kevin Dong	\$	20.00
8/24/2021 Alameda High	1731	8/16/2021 Andrew Labatt	\$	20.00
8/24/2021 Alameda High	287	8/16/2021 Naomi Hoffer	\$	20.00
8/24/2021 Alameda High	1753	8/16/2021 Heather Weber	\$	20.00
8/24/2021 Alameda High	1561	8/16/2021 Debbie Deveno	\$	20.00
8/24/2021 Alameda High	3396	8/16/2021 Corinna Fong	\$	20.00
8/24/2021 Alameda High	2316	8/16/2021 Kathleen Ann Logan	\$	20.00
8/24/2021 Alameda High	2087	8/16/2021 David Crotty	\$	20.00
8/24/2021 Alameda High	1209	8/16/2021 Heather Genschmer	\$	20.00
8/24/2021 Alameda High	1565	8/16/2021 Arlene Banducci	\$	20.00
8/24/2021 Alameda High	2727	8/16/2021 CW Chin	\$	20.00
8/24/2021 Alameda High	627	8/16/2021 Philip Leong	\$	20.00
8/24/2021 Alameda High	2058	8/16/2021 Becky Xin Zhu	\$	20.00
8/24/2021 Alameda High	2696	8/17/2017 Shirley Laureta	\$	20.00
8/24/2021 Alameda High	1754	8/16/2021 Heather Weber	\$	20.00
8/24/2021 Alameda High	1331	8/16/2021 Kara Eastwood	\$	20.00
8/24/2021 Alameda High	1263	8/16/2021 Nicole Mersch	\$	20.00
8/24/2021 Alameda High	2703	8/16/2021 Jeffrey Stevenson	\$	20.00
8/24/2021 Alameda High	3694	8/16/2021 Sara Goldsmith	\$	20.00
8/24/2021 Alameda High	3571	8/17/2017 Natalie Fong	\$	20.00
8/24/2021 Alameda High	1761	8/16/2021 Monica Lee	\$	20.00
8/24/2021 Alameda High	2930	8/17/2017 Audrey Chiang	\$	20.00
8/24/2021 Alameda High	395	8/18/2021 Nemanja Dzokic	\$	20.00
8/24/2021 Alameda High	330	8/18/2021 Greg Zaire	\$	20.00
8/24/2021 Alameda High	1185	8/17/2017 Karen Garcia	\$	20.00
8/24/2021 Alameda High	1258	8/17/2017 Grace Nerona	\$	20.00
8/24/2021 Alameda High	1084	8/17/2017 Oliver Albrecht	\$	20.00
8/24/2021 Alameda High	169	8/16/2021 Rebecca Huang	\$	20.00
8/24/2021 Alameda High	1306	8/16/2021 Casey Owens	\$	20.00
8/24/2021 Alameda High	1004	8/16/2021 Hae-Won Choi	\$	20.00
8/24/2021 Alameda High	2658	8/16/2021 Joanne Xiaoen Fan Chen	\$	20.00
8/24/2021 Alameda High	3344	8/16/2021 Jin Cho	\$	20.00
8/24/2021 Alameda High	679	8/16/2021 Stephanie Wilson	\$	20.00
8/24/2021 Alameda High	810	8/16/2021 Heidi Hoi Yee Chiu	\$	20.00
8/24/2021 Alameda High	2506	8/16/2021 Sylvia Dwa	\$	20.00
8/24/2021 Alameda High	47459	8/16/2021 Amelia G. Foos	\$	20.00
8/24/2021 Alameda High	1864	8/16/2021 Melanie Lee	\$	20.00
8/24/2021 Alameda High	565	8/16/2021 Derick Daily	\$	20.00
8/24/2021 Alameda High	2099	8/16/2021 Anand Krishnan	\$	20.00
8/24/2021 Alameda High	3118	8/16/2021 Andrea Ramsay Krautler	\$	20.00
8/24/2021 Alameda High	472	8/16/2021 Sandra Celebrini	\$	20.00
8/24/2021 Alameda High	1200	8/16/2021 Fiona Delipe	\$	20.00
8/24/2021 Alameda High	518	8/18/2021 George Choe	\$	20.00
8/24/2021 Alameda High	1108	8/16/2021 Deborah Hynes	\$	20.00
8/24/2021 Alameda High	943	8/16/2021 Sheetal Kalyan Cordova	\$	20.00
8/24/2021 Alameda High	1382	8/16/2021 Susan Whang	\$	20.00
8/24/2021 Alameda High	2171	8/16/2021 Jeffrey Ward	\$	20.00
8/24/2021 Alameda High	3026	8/17/2021 Ursula Salamanca Aldana	\$	20.00
8/24/2021 Alameda High	1029	8/17/2021 Jacqueline Mata	\$	20.00
8/24/2021 Alameda High	3073	8/17/2021 Hilary Antoinette Keenan	\$	20.00
8/24/2021 Alameda High	1278	8/17/2021 June Johnson	\$	20.00
8/24/2021 Alameda High	354	8/17/2021 Robert Marcacci	\$	20.00
8/24/2021 Alameda High	7923	8/17/2021 Diana Gae Gibson Pace	\$	20.00
8/24/2021 Alameda High	1788	8/16/2021 Laurie Brown	\$	25.00
8/24/2021 Alameda High	3404	8/16/2021 Ian Boyd	\$	25.00
8/24/2021 Alameda High	1511	8/16/2021 Lyla Bradley	\$	40.00
8/24/2021 Alameda High	1260	8/16/2021 Stefanie Cox	\$	100.00
8/25/2021 Alameda High	Cash	6/10-24/21 Cash	\$	605.00
8/30/2021 Alameda High	3958	8/4/2021 Andrea Long	\$	125.00
8/30/2021 Alameda High	4215	8/9/2021 Susan Burgess	\$	100.00

8/30/2021	Alameda High	404	8/9/2021	Tracey Willard	\$ 200.00
8/30/2021	Alameda High	3141	8/10/2021	Madhu Mummidi	\$ 200.00
8/30/2021	Alameda High	480	8/10/2021	Blanche Kim	\$ 160.00
8/30/2021	Alameda High	5092	8/8/2021	Valerie Webb	\$ 275.00
8/30/2021	Alameda High	1750	8/6/2021	Jean Liu	\$ 260.00
8/30/2021	Alameda High	3120	8/5/2021	Naomi Wortis	\$ 275.00
8/30/2021	Alameda High	3165	8/4/2021	Ximena B De Seaborn	\$ 450.00
8/30/2021	Alameda High	7916	8/2/2021	Diana Gae Gibson Pace	\$ 435.00
8/30/2021	Alameda High	2203	8/12/2021	Michael Wilson	\$ 450.00
8/30/2021	Alameda High	1888	8/10/2021	Sharon Burke	\$ 435.00
8/30/2021	Alameda High	115	8/10/2021	Jeffrey Braun	\$ 435.00
8/30/2021	Alameda High	6654	8/9/2021	Jocelyn Holash	\$ 1,000.00
8/31/2021	Alameda High	Cash	No Date	No Name	\$ 624.00
8/31/2021	Alameda High	2843	8/16/2021	Clemence Tissot-Chin	\$ 20.00
8/31/2021	Alameda High	3091	8/16/2021	Andrea Leal	\$ 20.00
8/31/2021	Alameda High	1734	8/16/2021	Carol Tomono	\$ 20.00
8/31/2021	Alameda High	309	8/17/2021	Anne Ostergren	\$ 20.00
8/31/2021	Alameda High	1073	8/18/2021	Julie McCalmont	\$ 20.00
8/31/2021	Alameda High	351	8/18/2021	Annette Kiewietdejonge	\$ 20.00
8/31/2021	Alameda High	1025	8/18/2021	Nancy Lee	\$ 20.00
8/31/2021	Alameda High	2083	8/18/2021	Noel Rabinowitz	\$ 20.00
8/31/2021	Alameda High	5158	8/18/2021	Michelle Johnson	\$ 20.00
8/31/2021	Alameda High	138	8/19/2021	Annalee Mintz	\$ 20.00
8/31/2021	Alameda High	2634	8/19/2021	Cashel O'Boyle	\$ 20.00
8/31/2021	Alameda High	3411	8/20/2021	Lori Moe	\$ 20.00
8/31/2021	Alameda High	465	8/22/2021	Luis Licea	\$ 20.00
8/31/2021	Alameda High	3159	8/22/2021	Jennifer Barbey	\$ 20.00
8/31/2021	Alameda High	420	8/23/2021	Lily Wong	\$ 20.00
8/31/2021	Alameda High	591	8/23/2021	Francisco Albelda	\$ 20.00
8/31/2021	Alameda High	9239	8/23/2021	Carlo Elmer Villegas	\$ 20.00
8/31/2021	Alameda High	120	8/23/2021	Elvira Snagic	\$ 20.00
8/31/2021	Alameda High	525	8/23/2021	John Bae	\$ 20.00
8/31/2021	Alameda High	4543	8/23/2021	Melissa Bond	\$ 20.00
8/31/2021	Alameda High	147	8/23/2021	Huy Che	\$ 20.00
8/31/2021	Alameda High	161	8/23/2021	Renee East	\$ 20.00
8/31/2021	Alameda High	1481	8/23/2021	Kristine Rosete Louie	\$ 20.00
8/31/2021	Alameda High	5100	8/23/2021	Wendy Quayle	\$ 20.00
8/31/2021	Alameda High	4708	8/23/2021	Ralph Baca	\$ 20.00
8/31/2021	Alameda High	275	8/23/2021	Michael Hans	\$ 20.00
8/31/2021	Alameda High	255	8/23/2021	Fernando Cabera	\$ 20.00
8/31/2021	Alameda High	266	8/24/2021	Doris Martin	\$ 20.00
8/31/2021	Alameda High	434	8/24/2021	Jerrold Connors	\$ 20.00
8/31/2021	Alameda High	641	8/24/2021	Jennifer Medeiros	\$ 20.00
8/31/2021	Alameda High	4304	8/24/2021	Scott Shimada	\$ 20.00
8/31/2021	Alameda High	2154	8/24/2021	Jack Kotovsky	\$ 20.00
8/31/2021	Alameda High	218	8/24/2021	Patricia Ah-Hing	\$ 20.00
8/31/2021	Alameda High	643	8/24/2021	Jennifer Dowell	\$ 20.00
8/31/2021	Alameda High	1561	8/24/2021	Natalie Matthey Olsen	\$ 20.00
8/31/2021	Alameda High	4527	8/24/2021	Albert Soohoo	\$ 20.00
8/31/2021	Alameda High	1322	8/24/2021	Molly Basette	\$ 20.00
8/31/2021	Alameda High	302	8/24/2021	O'Calvin Painting	\$ 20.00
8/31/2021	Alameda High	406	8/25/2021	Jennifer Hastings	\$ 20.00
8/31/2021	Alameda High	2522	8/25/2021	Margo Dunlap	\$ 20.00
8/31/2021	Alameda High	101	8/25/2021	Steven Soderlund	\$ 20.00
8/31/2021	Alameda High	1684	8/25/2021	Heather Acevedo	\$ 20.00
8/31/2021	Alameda High	2412	8/25/2021	Esther Barajas Morales	\$ 20.00
8/31/2021	Alameda High	3213	8/26/2021	Mr Rob Dekker	\$ 20.00
8/31/2021	Alameda High	2284	8/30/2021	Kimberly Buckingham	\$ 20.00
8/31/2021	Alameda High	2253	8/18/2021	Isabella Lisitza	\$ 25.00
8/31/2021	Alameda High	920	8/16/2021	Vincent Tuhung Wu	\$ 25.00
8/31/2021	Alameda High	1827	8/23/2021	Carmen Watson	\$ 25.00
8/31/2021	Alameda High	724	8/24/2021	Eileen O'Niell Wilson	\$ 25.00
8/31/2021	Alameda High	706	8/24/2021	C.M. Gordon	\$ 25.00
8/31/2021	Alameda High	409	8/20/2021	Ricky Wells	\$ 15.00
8/31/2021	Alameda High	889	8/16/2021	Karin Jenks	\$ 30.00
8/31/2021	Alameda High	1757	8/23/2021	Cynthia Miner	\$ 30.00
8/31/2021	Alameda High	897	8/17/2021	Derek Kim	\$ 40.00
8/31/2021	Alameda High	1163	8/23/2021	Heather Dooley	\$ 40.00
8/31/2021	Alameda High	1179	8/23/2021	Dennis Aman	\$ 40.00
8/31/2021	Alameda High	1122	8/23/2021	Erin Ashworthy	\$ 40.00
8/31/2021	Alameda High	702	8/25/2021	Margaretta Rose	\$ 40.00
8/31/2021	Alameda High	142	8/23/2021	Li Shen	\$ 100.00
8/31/2021	Alameda High	1428	8/25/2021	Arturo Miramontes	\$ 100.00
8/31/2021	Alameda High	445	8/17/2021	Leslie Sauter	\$ 300.00
8/31/2021	Alameda High	106	8/25/2021	Manuel Eng	\$ 50.00
8/31/2021	Alameda High	2091	8/25/2021	Rhea Bayley	\$ 50.00
8/31/2021	Alameda High	3125	8/17/2021	Naomi Wortis	\$ 100.00
8/31/2021	Alameda High	259	8/23/2021	Gopalkrishnan Vijay Kumar	\$ 100.00

8/31/2021	Alameda High	568	8/19/2021	Craig Enis	\$	50.00
8/31/2021	Alameda High	3520	8/20/2021	Tania Doly Araujo	\$	50.00
8/31/2021	Alameda High	1658	8/20/2021	Gilbert Hernandez	\$	50.00
8/31/2021	Alameda High	2015	8/23/2021	James Eckmier	\$	50.00
8/31/2021	Alameda High	1429	8/16/2021	Matthew John Murray	\$	50.00
8/31/2021	Alameda High	568	8/16/2021	Brian Strand	\$	50.00
8/31/2021	Alameda High	1869	8/16/2021	Casey McCants	\$	50.00
8/31/2021	Alameda High	1187	8/17/2021	Eve Gilbert	\$	50.00
8/31/2021	Alameda High	143	8/20/2021	Elaine Lee	\$	20.00
8/31/2021	Alameda High	3024	8/27/2021	Thomas Lama	\$	20.00
8/31/2021	Alameda High	1599	8/27/2021	Judith Denery	\$	20.00
8/31/2021	Alameda High	2279	8/20/2021	Natasha Westlund	\$	20.00
8/31/2021	Alameda High	1038	8/17/2021	R.L Leung	\$	20.00
8/31/2021	Alameda High	1733	8/17/2021	Maria Maravilla	\$	20.00
8/31/2021	Alameda High	1114	8/18/2021	Andrea Crutchfield	\$	20.00
8/31/2021	Alameda High	258	8/19/2021	Anna Krolikowska	\$	20.00
8/31/2021	Alameda High	294	8/17/2021	Ivonne Terrero	\$	20.00
8/31/2021	Alameda High	184	8/17/2021	Lisa Piazza	\$	20.00
8/31/2021	Alameda High	2415	8/17/2021	Wendy Fiero	\$	20.00
8/31/2021	Alameda High	236	8/17/2021	Jefferey Hochderffer	\$	20.00
8/31/2021	Alameda High	355	8/17/2021	Margaret Lee	\$	20.00
8/31/2021	Alameda High	1208	8/17/2021	Mikyung Pustelnik	\$	20.00
8/31/2021	Alameda High	597	8/17/2021	Suzanne Rasmussen	\$	20.00
8/31/2021	Alameda High	1607	8/17/2021	Nicole Myovich	\$	20.00
8/31/2021	Alameda High	193	8/16/2021	Michael Baptista	\$	20.00
8/31/2021	Alameda High	1428	8/17/2021	Bruce Baber Jr	\$	20.00
8/31/2021	Alameda High	1253	8/17/2021	Barbara Ann Caulfield	\$	20.00
8/31/2021	Alameda High	1027	8/17/2021	Jacqueline Mata	\$	20.00
8/31/2021	Alameda High	403	8/16/2021	Jennifer Hastings	\$	20.00
8/31/2021	Alameda High	1289	8/16/2021	Linh Hoang	\$	20.00
8/31/2021	Alameda High	1395	8/16/2021	Julie Choi	\$	20.00
8/31/2021	Alameda High	2193	8/16/2021	Steven Wasson	\$	20.00
8/31/2021	Alameda High	1663	8/16/2021	Chi Kau Agnes Yip	\$	20.00
8/31/2021	Alameda High	1159	8/16/2021	Kendra Mills	\$	20.00
8/31/2021	Alameda High	540	8/16/2021	Shu Tang	\$	20.00
8/31/2021	Alameda High	1915	8/16/2021	John Maxey	\$	20.00
8/31/2021	Alameda High	1333	8/16/2021	Emily Lew	\$	20.00
8/31/2021	Alameda High	487	8/16/2021	Su-Lin Meyer	\$	20.00
8/31/2021	Alameda High	2386	8/16/2021	Jolyn Stockton	\$	20.00
8/31/2021	Alameda High	3046	8/16/2021	Danielle London	\$	20.00
8/31/2021	Alameda High	1818	8/16/2021	Susan Mahl Naclerio	\$	20.00
8/31/2021	Alameda High	1383	8/16/2021	Susan Whang	\$	20.00
8/31/2021	Alameda High	3132	8/16/2021	Greg MacDonald	\$	20.00
8/31/2021	Alameda High	543	8/16/2021	Lyn To	\$	20.00
8/31/2021	Alameda High	3024	8/16/2021	Robin Kimiko Saulsbury	\$	20.00
8/31/2021	Alameda High	459	8/16/2021	Shanee Cook	\$	20.00
8/31/2021	Alameda High	1386	8/16/2021	Yu Hua Pan	\$	20.00
8/31/2021	Alameda High	2966	8/16/2021	Laura Zhou	\$	20.00
8/31/2021	Alameda High	446	8/17/2021	Leslie Sauter	\$	300.00
8/31/2021	Alameda High	1397	8/16/2021	Lulee Chai	\$	20.00
8/31/2021	Alameda High	806	8/16/2021	Dan Goldfield	\$	20.00
8/31/2021	Alameda High	1641	8/16/2021	Linda Gee	\$	20.00
8/31/2021	Alameda High	3321	8/16/2021	Jennifer Balaian	\$	40.00
8/31/2021	Alameda High	9655	8/9/2021	Julie Anne Taylor	\$	100.00
8/31/2021	Alameda High	1333	8/16/2021	Ana Canal	\$	100.00
8/31/2021	Alameda High	1189	8/15/2021	Jeffrey Kimble	\$	100.00
8/31/2021	Alameda High	3001	8/18/2021	Kristin Bowers Carpenter	\$	40.00
8/31/2021	Alameda High	2075	8/16/2021	Karen Barnes	\$	40.00
8/31/2021	Alameda High	1121	8/16/2021	Erin Ashworth	\$	40.00
8/31/2021	Alameda High	4145	8/16/2021	Scott Heather	\$	40.00
8/31/2021	Alameda High	2122	8/16/2021	Wendy Moorhouse	\$	25.00
8/31/2021	Alameda High	1542	8/17/2021	Kimberly McGowan	\$	25.00
8/31/2021	Alameda High	1835	8/17/2021	J Scott Dawson	\$	25.00
8/31/2021	Alameda High	1630	8/18/2021	Barbie Wong	\$	25.00
9/9/2021	Alameda High	Cash	8/16-18-21	No Name	\$	980.00
						<u>\$ 21,065.50</u>
8/19/2021	ASTI	598457	5/27/2021	The Benevity Community Impact Fund	\$	75.00
8/19/2021	ASTI	609648	6/17/2021	The Benevity Community Impact Fund	\$	125.00
8/19/2021	ASTI	620525	7/28/2021	The Benevity Community Impact Fund	\$	75.00
						<u>\$ 275.00</u>
8/24/2021	Bay Farm	1110201753	8/18/2021	The Blackbaud Giving Fund	\$	110.00
						<u>\$ 110.00</u>
7/1/2021	Encinal Jr. & Sr.	1980	4/28/2021	Ann Poynter	\$	75.00
7/1/2021	Encinal Jr. & Sr.	5890	4/22/2021	Elizabeth Warmerdam	\$	75.00
7/1/2021	Encinal Jr. & Sr.	14708939	4/20/2021	Laura Hernandez	\$	100.00

7/1/2021	Encinal Jr. & Sr.	16707	6/3/2021	NeedMyTranscript	\$	2.00		
7/1/2021	Encinal Jr. & Sr.	3534989	8/10/2020	MacroPro	\$	15.00		
7/1/2021	Encinal Jr. & Sr.	17190	6/10/2021	NeedMyTranscript	\$	2.00		
7/1/2021	Encinal Jr. & Sr.	Cash	No Date	No Name	\$	180.00		
8/12/2021	Encinal Jr. & Sr.	Cash	No Date	No Name	\$	4.00		
8/12/2021	Encinal Jr. & Sr.	46944	7/26/2021	Cardinal Newman High School	\$	300.00		
8/12/2021	Encinal Jr. & Sr.	69388	8/3/2021	NeedMyTranscript LLC	\$	2.00		
9/2/2021	Encinal Jr. & Sr.	Cash	No Date	No Name	\$	78.00		
9/2/2021	Encinal Jr. & Sr.	9271	8/18/2021	Moreau Catholic High School	\$	300.00		
9/2/2021	Encinal Jr. & Sr.	9-295779022	No Date	Morual Childress	\$	6.00		
							\$	1,139.00
7/1/2021	Love	4984	6/11/2021	HyunJoo Park	\$	250.00		
							\$	250.00
7/1/2021	Maya Lin	6960	3/2/2020	Frank Bette Center for the Arts	\$	345.00		
7/20/2021	Maya Lin	34945	7/20/2021	Pike Photocopy INC	\$	15.00		
7/20/2021	Maya Lin	34954	7/20/2021	Pike Photocopy INC	\$	15.00		
							\$	375.00
8/23/2021	Student Services	No Number	No Date	Philanthropic Ventures	\$	500.00		
							\$	500.00
			Total				\$	23,714.50

ALAMEDA UNIFIED SCHOOL DISTRICT
BOARD AGENDA ITEM

Item Title: Approval of Bill Warrants and Payroll Registers

Item Type: Consent

Background: On a routine basis, all payments from the funds of the District are made by written order of the Board of Education. This requirement is provided under Education Code 42631.

Ten redactions were made where posting of that information would violate agreed upon confidentiality settlements. The District is posting all bills and warrants except for the ones that are redacted.

AUSD LCAP Goals: 4. Ensure that all students have access to basic services.

Fund Codes: 01 General Fund

Fiscal Analysis

Amount (Savings) (Cost): Will reduce the available funds of each respective site/department budget by \$3,119,641.32.

Recommendation: Approve as submitted.

AUSD Guiding Principle: #5 - Accountability, transparency, and trust are necessary at all levels of the organization. | #6 - Allocation of funds must support our vision, mission, and guiding principles.

Submitted By: Shariq Khan, Assistant Superintendent of Business Services

ATTACHMENTS:

Description	Upload Date	Type
□ Summary of Register	9/21/2021	Backup Material

ALAMEDA UNIFIED SCHOOL DISTRICT
BOARD AGENDA ITEM

Item Title: Approval of Local Early Access Program (LEAP) for the 2021-2022 School Year

Item Type: Consent

Background: Local Early Access Program (LEAP) is a parent-child early intervention program serving children from birth to three years old who meet the following criteria:

- Developmental delay with 50% in one or more areas. Referrals are made by Regional Center East Bay.
- Children eligible for Special Education in the low incidence category.

LEAP is administered by Children's Hospital and Research Center at Oakland dba UCSF Benioff Children's Hospital Oakland ("CHILDREN's") and has more than 30 years of experience providing services to children with developmental disabilities and their families. This program has both a home-based and center-based component.

Funding is provided by the State Department of Education for infant discretionary programs. The funds flow through the Alameda Unified School District. LEAP invoices the District in four quarterly increments. The District benefits from this arrangement since the monies not spent by LEAP are available to pay for district level infant services and support.

AUSD LCAP Goals: 4. Ensure that all students have access to basic services.

Fund Codes:

Fiscal Analysis

Amount (Savings) (Cost): \$314,583.00 (Funded by State Department of Education)

Recommendation: Approve as submitted.

AUSD Guiding Principle: #1 - All students have the ability to achieve academic and personal success.| #5 - Accountability, transparency, and trust are necessary at all levels of the organization.| #6 - Allocation of funds must support our vision, mission, and guiding principles.

Submitted By: Kirsten Zazo, Assistant Superintendent of Educational Services

ALAMEDA UNIFIED SCHOOL DISTRICT
BOARD AGENDA ITEM

Item Title: Approval of Project Award of Multiple District Measure I Modernization Projects (Alameda Community Learning Center/Nea, Bay Farm School, Earhart Elementary) Pursuant to Request for Proposal Dated July 20, 2021

Item Type: Action

Background: Pursuant to Education Code section 17406, school districts must award lease-leaseback contracts based on a competitive solicitation process, to the proposer providing the best value to the district. On October 24, 2017, the Board of Trustees approved Resolution No. 2017-2018.22 and adopted the procedures for evaluating qualifications of lease leaseback contractors.

On October 13, 2020, the District passed Resolution No. 2020-2021.15 in which the lease-leaseback contractor evaluation procedures were updated. The update was part of the creation of a new pool of qualified contractors for upcoming District projects. As part of that process, on May 1, 2020, the District issued a Request to Prequalify and for Statement of Qualifications for Preliminary and Construction Services (“RFQ”) The District’s intent was to create a pool of qualified contractors from which proposals on certain projects would be solicited.

District staff advertised and issued the RFQ, which identified all criteria that the District would consider in evaluating the proposals and qualifications of the proposers. A total of four firms submitted prequalification packets. Their submissions were scored and each of the four firms qualified to be placed in the pool of qualified contractors.

On July 20, 2021, the District issued a Request for Proposals to the pool of qualified contractors for modernization projects at three separate sites: Earhart Elementary School, Bay Farm School and Alameda Community Learning Center / NEA Community Learning Center (“Multiple District Modernization Projects”). On August 27, 2021, all four of the qualified contractors submitted proposals for the Multiple District Modernization Projects. Based upon the proposals submitted and the scoring of the respective proposals, it was determined that Lathrop Construction Associates, Inc. provided the best value for the Multiple District Modernization Projects. Staff recommends awarding the Projects to Lathrop Construction Associates, Inc.

Because all of the Multiple District Modernization Projects are in the preconstruction phase, the price criteria component of the award of each of these projects is based upon the proposing contractor’s cost of performing services. When the preconstruction work has reached the point where a Guaranteed Project Cost (“GPC”) is negotiated, the final agreement for the Projects will be approved by the Board. In the event agreement on a GPC cannot be reached, then, as required by the Education Code, the District will then enter into negotiations to perform the construction of that project with the second highest ranked contractor.

The lease-leaseback contract will come back to the Board for ratification at a future meeting.

AUSD LCAP Goals: 4. Ensure that all students have access to basic services.

Fund Codes: 21 Building – Bond Fund

Fiscal Analysis

Amount (Savings) (Cost):

Recommendation: Approve as submitted.

AUSD Guiding Principle: #5 - Accountability, transparency, and trust are necessary at all levels of the organization.| #6 - Allocation of funds must support our vision, mission, and guiding principles.| #7 - All employees must receive respectful treatment and professional support to achieve district goals.

Submitted By: Shariq Khan, Assistant Superintendent of Business Services

ATTACHMENTS:

Description		Upload Date	Type
▣	RFP Dated July 20, 2021 - Multiple District Projects	9/21/2021	Backup Material

Alameda Unified School District
2060 Challenger Drive
Alameda, California 94501

July 20, 2021

REQUEST FOR PROPOSALS
FOR CONSTRUCTION SERVICES (LEASE-LEASEBACK)
FOR MULTIPLE DISTRICT MODERNIZATION PROJECTS

Your firm is part of the Alameda Unified School District's ("District") pool of contractors qualified pursuant to the District's Request to Prequalify and Qualifications to Perform Preliminary and Construction Services (Lease-Leaseback) for certain district projects dated July 20, 2021 (the "RFQ"). As indicated in the RFQ, the District intends to award multiple District modernization projects as further described in **Attachment 1** attached hereto and incorporated herein by reference ("Project(s)") utilizing the lease-leaseback delivery method. (Ed. Code, § 17406.)

The District issues this Request for Proposals to ("RFP") to request that the contractors the District qualified ("Contractor(s)") submit proposals to perform preliminary and construction services for the Project ("Proposal(s)"). Proposals shall include price information that are consistent with the Contractor's Response to the RFQ and this RFP ("RFP"). **CONTRACTORS INTENDING TO SUBMIT A PROPOSAL MUST SUBMIT A PROPOSAL FOR ALL PROJECTS INCLUDED IN THIS RFP.**

MEP Prequalification. Subcontractors with the following license classifications (C-4, C-7, C-10, C-16, C-20, C-34, C-36, C-38, C-42, C-43, and/or C-46) ("MEP Subcontractors") **shall not** be required to prequalify at this specific time. At the conclusion of Preliminary Services, **prior to the** District and Contractor negotiating final pricing for a Project, MEP Subcontractors performing work on a Project under one of those licenses must prequalify with the District to be eligible to be included in the Contractor's final pricing. MEP Subcontracts may prequalify by submitting the MEP Subcontractor Prequalification Questionnaire attached hereto as **Attachment 3 ("Prequalification Questionnaire")**. **MEP Subcontractors that have prequalified with the District in the last year and are in good standing with the District need not submit a Prequalification Questionnaire.**

Skilled and Trained Workforce Notice. These projects will be subject to the skilled and trained workforce requirements pursuant to Public Contract Code section 2600, et seq. and Education Code section 17407.5 ("SWF Statutes"). **By submitting a Proposal, Contractors agree to be bound by the District's Project Labor Agreement attached to the Contract (defined below) as Exhibit M.**

Proposal. Each Proposal must be submitted by the date indicated in the RFP Schedule and must include one (1) original and six (6) copies of requested materials as well as one (1) electronic copy, in PDF format with bookmarks on a thumb drive to: **Alameda Unified School District; 2060 Challenger Drive, Alameda, CA 94501; Attn: Robbie Lyng; Telephone: 510-337-7000.**

Questions. Questions regarding this RFP must be submitted by the date indicated in the RFP Schedule and must be in writing and directed only to **Robbie Lyng at construction@alamedaunified.org**. **Any attempt by a Contractor to visit this the Project site or contact any other employee, agent, or board member of the District, other than the person identified here, may result in a Proposal being deemed nonresponsive and rejected.**

Mandatory Site Visit. There is a **mandatory** site visit for each Project site on the date and at the times indicated in the RFP Schedule. All Contractors that intend to submit a Proposal must attend the relevant site visits. **The failure of any Contractor to attend the relevant mandatory site visit shall be grounds for the District to deem the Contractor's Proposal non-responsive.**

List of Attachments. The following attachments are part of this RFP:

Attachment 1	Description of Projects and Construction Schedules
Attachment 2	Contractor's Cost Proposal Form

Attachment 3	Subcontractor Prequalification Form
Attachment 4	Form of Lease-Leaseback Contract

RFP Schedule. Below is the anticipated RFP Schedule. The District reserves the right to modify this RFP Schedule via an addendum.

Event / Occurrence	Time / Date / Deadline
District Issues RFP	July 20, 2021
Mandatory Site Visits	
ACLC/Nea, 1900 Third Street, Alameda	July 30, 2021 at 11 am
Bay Farm School, 200 Aughinbaugh Way, Alameda	July 30, 2021 at 1:30 pm
Earhart Elementary School, 400 Packet Landing Road, Alameda	July 30, 2021 at 3 pm
Pre-response meeting	August 6, 2021, 10 am
Deadline for Contractors to submit questions regarding this RFP	August 13, 2021
District to respond to Contractors' questions regarding this RFP	August 20, 2021
DEADLINE FOR CONTRACTORS TO SUBMIT PROPOSALS	August 27, 2021
District to interview some or all Contractors (at discretion of District)	September 3, 2021
District to award Project(s)	September 28, 2021

The District reserves the right to reject any or all Proposals. The District also reserves the right to amend this RFP as necessary. The Proposal and attachments submitted to the District in response to this RFP shall remain property of the District. The District may in its discretion award individual Projects to Contractors, or all Projects to one Contractor.

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

1. **Contractor's Proposal.** Contractor shall provide the information requested below. The Proposal must include the information below. **Contractor shall provide the information requested below for EACH Project, organized by tabs for EACH Project. To the extent that the information in any tab applies to all Projects, Contractor may so indicate in the Proposal.**
 - 1.1. **Compensation.** Provide the following pricing information on the Proposal Cost for attached to this RFP in **Attachment 2 ("Proposal Form")**. **If the Contractor is proposing to perform Services for multiple Projects, Contractor shall provide the Proposal Form for EACH Project. If the pricing information, or any single component thereof, will be the same for certain Project(s), the Contractor may so indicate in the Proposal.**
 - 1.1.1. **Preliminary Services Cost.** State on the Proposal Form as a **lump sum** what Contractor will charge to provide the Preliminary Phase Services the Project(s) as identified in the Contract attached hereto as **Attachment 4** to this RFP, which is based on **either** identified hourly fees, or for specific sums for identified tasks.
 - 1.1.2. **Detailed Guaranteed Project Cost.** Utilizing the table in the Proposal Form, provide the Firm's charges for the items identified therein for the Project(s). **These percentages shall be fixed through the Contractor's tenure on the Project(s) and will not be subject to negotiation.**
 - 1.1.3. **Financing Charges.** Utilizing the table in the Proposal Form, provide the Firm's financing charge for this Project(s).
 - 1.1.4. **General Conditions.**
 - 1.1.4.1. **Components.** Provide a detailed list of **ALL** items that Contractor would include in its general conditions or general requirements on the Project for the District.
 - 1.1.4.2. **Amount.** Indicate as a percentage of direct construction costs, the amount that the Contractor would charge on the Project for the District.
 - 1.2. **Contractor's Personnel.** In Contractor's RFQ, Contractor identified key personnel who would be performing services for the District's Projects. The District expects that the same personnel identified in the Contractor's RFQ shall be assigned to the Project upon award. Contractor shall again identify Contractor's personnel, along with their resumes, who will be assigned to the Projects. **Contractor must note any changes to the key personnel identified in Contractor's Response to the RFQ. If Contractor is proposing different key personnel for different Projects, Contractor shall indicate which personnel will be assigned to EACH Project.**
 - 1.3. **Construction Schedule.** Discuss the Contractor's ability to meet the construction schedule for the Project(s) set forth in **Attachment 1**.
 - 1.4. **Work Commitments.** Please specify the workload of the Contractor that will, or Contractor anticipates will, run concurrently with the Project(s). If applicable, provide a statement of all contractual obligations that relate in any way to similar work for the District that may run concurrently with the Project and may have a potential to impede Contractor's ability to construct the Project(s).
 - 1.5. **Subcontractor Procurement.**
 - 1.5.1. **Subcontractors Prequalification.** As noted, MEP Subcontractors **shall not** be required to prequalify at this time. At the conclusion of Preliminary Services, **prior to the** District and Contractor negotiating final pricing for a Project, MEP Subcontractors performing work on the Project under one of those licenses, must prequalify with the District to be eligible to be included in the Contractor's final pricing. MEP Subcontracts may prequalify by submitting the Prequalification Questionnaire. **MEP Subcontractors that have**

prequalified with the District in the last year and are in good standing with the District need not submit a Prequalification Questionnaire. The District highly recommends that all Contractors inform all of their potential MEP Subcontractors to immediately complete the prequalification process to ensure their eligibility to be included for the Project.

- 1.5.2. Contractor shall solicit and procure Subcontractors pursuant to the Subcontractor Procurement Process attached as Exhibit H of the Facilities Lease of the Contract in **Attachment 4**.
 - 1.5.3. Describe Contractor's process for soliciting subcontractors for a lease-leaseback project and how the Contractor works collaboratively with a school district to ensure transparency in the pricing of the GPC and that the District receives a competitive GPC.
 - 1.5.4. Describe the Contractor's process for ensuring that all subcontractor bid packages are full and complete, and how Contractor minimizes scope gaps.
 - 1.5.5. Please indicate Contractor's ability and willingness on future lease-leaseback projects, to comply with the Subcontractor Procurement Process attached as Exhibit H of the Facilities Lease of the Contract in **Attachment 4**.
 - 1.6. **Accessories, Additional Components, or Upgrades.** For **EACH** Project, list any accessories, additional components, warranties, or upgrades that Contractor intends to utilize in performing its construction work that might increase the value of Contractor's work. **The District reserves the right to negotiate the inclusion or exclusion of any such items at the time the District finalizes the Contract.**
 - 1.7. **Comments to Lease-Leaseback Contract.** The District has updated its form lease-leaseback contract since the District issued the RFQ. The District will utilize the form lease-leaseback contract attached hereto as **Attachment 4** and incorporated herein by reference ("**Contract**"). If Contractor has any comments or objections to the Contract, it **must** provide those comments or objections, with specificity, in its Proposal. **PLEASE NOTE: The District will not consider any changes to the Contract if they are not specifically submitted with the Contractor's Proposal.**
2. **District's Best Value Selection Process.** The District shall evaluate Contractors' Proposals based on a best value determination process for each project.
- 2.1. The District shall score Proposals and award the Project(s) to the Contractor that the District deems, in its discretion, presents the "best value" to the District.
 - 2.2. If Contractor proposes on multiple Projects pursuant to this RFP, the District shall score the information in the "Compensation" section separately for each Project, as applicable, then shall add the scores for information in the "Compensation" section with the remaining scoring categories to arrive at a score for each Project.
 - 2.3. During the evaluation of the Proposals, contact shall only be through the individual identified in the RFP. Contractors shall neither contact nor lobby evaluators during the evaluation process. Attempts by a Contractor to contact and/or influence the District may result in disqualification of that Contractor.
 - 2.4. The District reserves the right to reject any Proposal as non-responsive, and not to contract with any Contractor for the Project. The District makes no representation that participation in the RFP process will lead to an award of contract or any consideration whatsoever. The District reserves the right to seek Proposals from or to contract with any Contractor not participating in this process. The District shall in no event be responsible for the cost of preparing any Proposal. The District reserves the right to award a single Project to individual Contractors, or all Projects to a single Contractor.

- 2.5. All Proposals will become the property of the District and subject to the California Public Records Act, Government Code sections 6250, et seq. Those elements in a Proposal that are trade secrets as that term is defined in Civil Code section 3426.1(d) or otherwise exempt by law from disclosure and which are prominently marked as "TRADE SECRET," "CONFIDENTIAL," or "PROPRIETARY" may not be subject to disclosure. The District shall not be liable or responsible for the disclosure of any such records including, without limitation, those so marked if disclosure is deemed to be required by law or by an order of a Court. A Contractor that indiscriminately identifies all or most of its Proposal as exempt from disclosure without justification may be deemed non-responsive. In the event the District is required to defend an action on a Public Records Act request for any of the contents of a Proposal marked "Confidential," "Proprietary," or "Trade Secret," the Contractor agrees, by submission of its Proposal, to defend and indemnify the District from all costs and expenses, including attorneys' fees, in any action or liability arising under the Public Records Act.
3. **District's Appeal Process.** A Contractor may appeal the District's "best value" determination. If a Contractor decides to appeal the District's determination, it must follow the following procedure. Failure of a Contractor to timely follow all appeal steps shall be a waiver of the Contractor's right to appeal the District's determination.
- 3.1. The Contractor shall submit, in writing, within two (2) business days after receipt of notice of the District's determination, a written request for a response from the District to explain the District's determination.
- 3.2. Within two (2) business days from receipt of the District's response to the Contractor's request, Contractors may request in writing a meeting, which will be restricted to no more than two (2) persons from the Contractor to have a discussion with District staff regarding that Contractor's Proposal. All meetings will take place via a conference call or an in-person meeting, at the District's sole discretion. Contractors may submit with the request any and all information that it believes supports a finding that District's determination should be changed.
- 3.3. If the Contractor continues to contest the District's determination after that meeting with District staff, then the Contractor may address the Board at the next public noticed meeting of the District's governing board, pursuant to the governing board's procedures for public comment. In order for a Contractor to preserve its right to challenge the District's determination, the Contractor must address the Board at the next public noticed meeting of the Board after the Contractor's meeting with District staff.

ATTACHMENT 1

DESCRIPTION OF THE PROJECT AND CONSTRUCTION SCHEDULE

Below are the Projects, scope of work, and preliminary construction schedule that are included in this RFP:

- **Alameda Community Learning Center / NEA Community Learning Center Modernization Project**

- **Estimated Budget:** The Estimated Budget is not yet set and is subject to revision at the conclusion of value engineering.
- **Scope of Services**

There are two scopes of work with different DSA approvals on this campus. The Mechanical Modernization project involves replacing existing mechanical units at the Administration Building (Bldg. A), six classroom buildings (Bldgs. B, D, F, G, H, and I), and the Multi-use Building (Bldg. C). The Perimeter Fencing and Modernization project involves installation of new security fencing around the perimeter of the site and modernization of the fire alarm and door hardware at existing buildings.

- **Construction Schedule**

Preliminary Services. Preliminary services shall be for three (3) to six (6) months commencing as soon as the District's Board awards the Contract.

Construction Services. The District anticipates the duration of this Project to be twelve (12) months. **PLEASE BE ADVISED: THESE DATES ARE SUBJECT TO CHANGE AT THE TIMES THE DISTRICT AND SELECTED CONTRACTOR FINALIZE THE CONTRACT. THE CONTRACT SHALL SET FORTH THE DATES ON WHICH THE DISTRICT SHALL HAVE BENEFICIAL OCCUPANCY AND CONTRACTOR SHALL COMPLETE THE PROJECT.**

- **Plans and Specifications**

The Project's Plans and Specifications may be found at: **East Bay Blue Print**
<https://www.ipdservices.com/clients/eastbay/?eastbay&Show=Planroom&Project=All>

- **Bay Farm Elementary School New Construction and Related Site Work Project**

- **Estimated Budget:** The Estimated Budget is not yet set and is subject to revision at the conclusion of value engineering.
- **Scope of Services**

This Project includes construction of a new 1-story classroom building with 4 standard classrooms and a new outdoor courtyard, removal of existing portable classrooms at the rear of the campus, relocation of existing bike parking corral, and replacement of existing asphalt paving.

- **Construction Schedule**

Preliminary Services. Preliminary services shall be for three (3) to six (6) months commencing as soon as the District's Board awards the Contract.

Construction Services. The District anticipates the duration of this Project to be nine (9) months. **PLEASE BE ADVISED: THESE DATES ARE SUBJECT TO CHANGE AT THE TIMES THE DISTRICT AND SELECTED CONTRACTOR FINALIZE THE CONTRACT. THE CONTRACT SHALL SET FORTH THE DATES ON WHICH THE DISTRICT SHALL HAVE BENEFICIAL OCCUPANCY AND CONTRACTOR SHALL COMPLETE THE PROJECT.**

- **Plans and Specifications**

The Project's Plans and Specifications may be found at: **East Bay Blue Print**

<https://www.ipdservices.com/clients/eastbay/?eastbay&Show=Planroom&Project=All>

- **Earhart High School Modernization Project**

- **Estimated Budget:** The Estimated Budget is not yet set and is subject to revision at the conclusion of value engineering.
- **Scope of Services**

This Project is a modernization of the existing campus with scope as identified below:

- **MAJOR MODERNIZATION BLDG 4**

- Adult restroom remodel with all new fixtures, toilet accessories and new finishes;
- New epoxy floors and partitions at children's bathrooms;
- New flooring throughout building;
- Wall coverings at classrooms to be replaced;
- Gutter to be replaced at all sides per Garland's report; and
- Exterior side at playground to be repaired with cement plaster

- **MINOR MODERNIZATION BLDGS. 1-3, MU & ADMINISTRATION**

- New flooring at administration bldg. throughout
- (2) TK restrooms added to bldg. 1
- New rear and side stage curtains at MU
- Bldg. 3 at room C18, carpet to be replaced with linoleum tile/carpet tile

- **PORTABLES**

- New siding for portables PC1, PC2, PC3, PC4 and PC8
- Magnetic white boards at the upper grades (total of 4 white boards)
- New flooring at all portables

- **CAMPUS WIDE**

- All waterless urinals to be replaced with plumbed urinals
- All exhaust fans to be replaced in adult restrooms
- All windows to be replaced with dual pane and to follow district standards
- All door locks to be replaced with new security locks
- Campus to be painted inside and out
- New exterior and interior lighting campus wide
- Large new numbers and names on all buildings
- Roller shades at all buildings
- New drinking fountains with bottle fillers to replace existing DF's

- **Construction Schedule**

Preliminary Services. Preliminary services shall be for three (3) to six (6) months commencing as soon as the District's Board awards the Contract.

Construction Services. The District anticipates the duration of this Project to be twelve (12) months. **PLEASE BE ADVISED: THESE DATES ARE SUBJECT TO CHANGE AT THE TIMES THE DISTRICT AND SELECTED CONTRACTOR FINALIZE THE CONTRACT. THE CONTRACT SHALL SET FORTH THE DATES ON WHICH THE DISTRICT SHALL HAVE BENEFICIAL OCCUPANCY AND CONTRACTOR SHALL COMPLETE THE PROJECT.**

- **Plans and Specifications**

The Project's Plans and Specifications may be found at: **East Bay Blue Print**

<https://www.ipdservices.com/clients/eastbay/?eastbay&Show=Planroom&Project=All>

ATTACHMENT 2

CONTRACTOR'S COST PROPOSAL FORM

NOTE: CONTRACTOR SHALL SUBMIT THE PROPOSAL FORM FOR EACH PROJECT FOR WHICH CONTRACTOR PROPOSES TO PERFORM SERVICES:

NAME OF PROJECT: _____

Preliminary Services. Contractor submits the following lump sum proposal to perform Preliminary Services. If the Contractor should identify whether the lump sum proposal is based upon specific scopes of work, or hourly rates based upon anticipated hours performing work. **If Contractor proposes a lump sum based upon specific scopes of work, Contractor should also provide a rate sheet which shall be used for any extra services outside the Scope of Preliminary Services in the Contract.**

Lump Sum Proposal for Preliminary Services		\$ _____
Review of Design Documents		\$ _____
Value Engineering		\$ _____
Constructability Review		\$ _____
Confirm Modifications to Design Drawings		\$ _____
Review of Budget for Project Costs		\$ _____
Preparation of Construction Schedule and Phasing Plan		\$ _____
Construction Planning and Bidding		\$ _____
[Other] _____		\$ _____
Staffing that would be part of Preliminary Services (<i>at or below the rates indicated in your RFQ response</i>)		
Project Manager (hourly rate)		\$ _____
Constructability Reviewer (hourly rate)		\$ _____
Estimator (hourly rate)		\$ _____
Scheduler (hourly rate)		\$ _____

Construction / Financing Charges. Contractor proposes the following construction charges for the Project.

NOTE: ALL PERCENTAGES SHALL BE AT OR BELOW THE CONTRACTOR'S PERCENTAGES INDICATED IN ITS RESPONSE TO THE RFQ.

Item	Percentage
Mark-up on Subcontractor work	_____ %
Mark-up on self-performed work	_____ %

Mark-up on Subcontractor change order work	_____ %
Mark-up on self-performed change order work	_____ %
Fee / overhead & profit (as a percentage of direct costs) if any, that is in addition to any mark-up	_____ %
Bond cost (as a percentage of direct costs)	_____ %
Insurance cost (as a percentage of direct costs)	_____ %
Other costs (identify in sufficient detail for evaluation, either as a lump sum or a percentage of direct costs. If there are no additional charges, then please state zero (0) here.)	\$ ____ or ____ %

<p>Financing Charge. Contractor will finance a portion of the GPC for a period of time. Although the exact amount may be adjusted at the District's discretion, it is anticipated that the financing for this Project will be for less than 10% of the total GPC. During the Project, the District will make Tenant Improvement Payments for work performed, and after Completion of the District will make monthly Lease Payments of one-twelfth (1/12) of the total financed amount for the Project, plus an agreed-upon interest charge for the Project. Please provide the District with your proposed interest charge for the financed portion of the GPC in Attachment 1, at or below the Contractor's proposed finance charge it indicated in its response to the RFQ.</p>	_____ %
--	---------

ATTACHMENT 3

MEP PREQUALIFICATION QUESTIONNAIRE

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

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

Name	Position	Years with Co.	% Ownership

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

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

CONTRACTOR'S BONDING COMPANY (SURETY) INFORMATION

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

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

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

--	--	--

Name of broker/agent:

Address of broker/agent:

Telephone number of broker/agent:

E-mail of broker/agent:


Contractor's total current bonding capacity: \$

CONTRACTOR'S INSURANCE INFORMATION

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

Address of those insurance company(ies):		
"Best" rating(s) for those insurance company(ies):		
Number of years Contractor has been with those insurance company(ies):		
Name of broker/agent:		
Address of broker/agent:		
Telephone number of broker/agent:		
E-mail of broker/agent:		
Contractor's current insurance limits for the following types of coverage:		
Commercial General Liability	Combined Single Limit (per occurrence)	\$
	Combined Single Limit (aggregate)	\$
Product Liability & Completed Operations	(aggregate)	\$
	(per occurrence)	\$
Automobile Liability – Any Auto	Combined Single Limit (aggregate)	\$
Automobile Liability – Any Auto	Combined Single Limit (per occurrence)	\$
Employers' Liability		\$
Builder's Risk (Course of Construction)		
Workers' Compensation Experience Modification Rate for the past five (5) premium years:		
(1) Current year:	(2)	(3)
	(4)	(5)

QUESTIONS

Pass/Fail Questions (Essential Criteria)		
1.	<p>Has your Firm contracted for and completed construction of a minimum of the following:</p> <ul style="list-style-type: none"> ○ Three (3) California K-12 public school district construction projects, ○ Each with a value of at least \$500,000, and ○ All within the past five (5) years? (Please circle one). <p>NOTE: You must list these projects in the "Contractor Project References" Section.</p>	<p style="text-align: center;"><u>YES</u> <u>NO</u></p> <p>NO = cannot prequalify</p>
2.	<p>Does your Firm currently hold all contractors license(s) necessary to perform the Work and have those license(s) been consistently active for at least five (5) years without revocation or suspension? (Please circle one).</p>	<p style="text-align: center;"><u>YES</u> <u>NO</u></p> <p>NO = cannot prequalify</p>
3.	<p>Has your Firm or an Associated Firm been found non-responsible, debarred, disqualified, forbidden, or otherwise prohibited from performing work and/or bidding on work for any public agency within California within the past five (5) years? (Please circle one).</p>	<p style="text-align: center;"><u>YES</u> <u>NO</u></p> <p>YES = cannot prequalify</p>
4.	<p>Has your Firm or an Associated Firm defaulted on a contract or been terminated for cause by any public agency on any project within California within the past five (5) years and, if so and if challenged, has that default or termination been upheld by a court or an arbitrator? (Please circle one).</p>	<p style="text-align: center;"><u>YES</u> <u>NO</u></p> <p>YES = cannot prequalify</p>
5.	<p>Has your Firm or an Associated Firm or any of their owners or officers been convicted of a crime under federal, state, or local law involving:</p> <ul style="list-style-type: none"> (1) Bidding for, awarding of, or performance of a contract with a public entity; (2) Making a false claim(s) to any public entity; or (3) Fraud, theft, or other act of dishonesty <p>to any contracting party within the past ten (10) years? (Please circle one).</p>	<p style="text-align: center;"><u>YES</u> <u>NO</u></p> <p>YES = cannot prequalify</p>
6.	<p>Has a performance bond surety for your Firm or a performance bond surety for an Associated Firm had to:</p> <ul style="list-style-type: none"> (1) Take over or complete a project, (2) Supervise the work of a project, or (3) Pay amounts to third parties, <p>related to construction activities of your Firm or an Associated Firm within the past five (5) years? (Please circle one).</p>	<p style="text-align: center;"><u>YES</u> <u>NO</u></p> <p>YES = cannot prequalify</p>
<div style="display: flex; align-items: center;">  <div> <p>If you answered:</p> <p>"NO" to questions 1-2 or</p> <p>"YES" to questions 3-6, then STOP.</p> <p>You are not eligible for prequalification at this time.</p> </div> </div>		

Scored Questions		
1.	<p>Has your Firm paid liquidated damages pursuant to a contract for a project with either a public or private owner within the past five (5) years? (Please circle one).</p> <p>If YES, explain and indicate on separate signed sheet(s) the project name(s), damages(s), and date(s).</p>	<p><u>YES</u> <u>NO</u></p>
2.	<p>Has your Firm paid a premium of more than one percent (1%) for a performance and payment bond on any project(s) within the past five (5) years? (Please circle one).</p> <p>If YES, explain and indicate on separate signed sheet(s) the project name(s), the premium amount(s), and date(s).</p>	<p><u>YES</u> <u>NO</u></p>
3.	<p>Has any insurer had to pay amounts to third parties that were in any way related to construction activities of your Firm within the past five (5) years? (Please circle one).</p> <p>If YES, explain and indicate on separate signed sheet(s) the project name(s), the amount(s) paid, and date(s).</p>	<p><u>YES</u> <u>NO</u></p>
4.	<p>Has your Firm's Workers' Compensation Experience Modification Rate exceeded 1.0 at any time for the past five (5) premium years? (Please circle one).</p> <p>If YES, explain and indicate on separate signed sheet(s) the EMR(s) and the applicable date(s).</p>	<p><u>YES</u> <u>NO</u></p>
5.	<p>Has there been a period when your Firm had employees but was without workers' compensation insurance or state-approved self-insurance within the past five (5) years? (Please circle one).</p> <p>If YES, explain and indicate on separate signed sheet(s) the reason(s) for not having this insurance and the applicable date(s).</p>	<p><u>YES</u> <u>NO</u></p>
6.	<p>Has your Firm declared bankruptcy or been placed in receivership within the past five (5) years? (Please circle one).</p> <p>If YES, explain and indicate on separate signed sheet(s) the type of bankruptcy, the Firm's current recovery plan, and the applicable date(s).</p>	<p><u>YES</u> <u>NO</u></p>
7.	<p>Has your Firm been denied bond coverage by a surety company, or has there been a period of time when your Firm had no surety bond in place during a public construction project when one was required within the past five (5) years? (Please circle one).</p> <p>If YES, provide details on a separate signed sheet indicating the date(s) when your Firm was denied coverage and the name of the company or companies which denied coverage; and the period(s) during which you had no surety bond in place.</p>	<p><u>YES</u> <u>NO</u></p>
8.	<p>Has a project owner, general contractor, architect, or construction manager filed claim(s) in an amount exceeding \$50,000 against your Firm, or has your Firm filed claim(s) in an amount exceeding \$50,000 against a project owner, general contractor, architect, or construction manager in the past five (5) years?</p> <p>If YES, explain and indicate on separate signed sheet(s) the project name(s), claim(s) and the date(s) of claim(s).</p>	<p><u>YES</u> <u>NO</u></p>

9.	Has your Firm or an Associated Firm been cited and/or assessed any penalties for non-compliance with state and/or federal laws and/or regulations, including public bidding requirements and Labor Code violations, within the past five (5) years? If "YES," indicate on separate signed sheet(s) the project name(s), violation(s), and date(s) of citation(s) and/or assessment(s).	YES NO
10.	Has your Firm been cited and/or assessed penalties by the Environmental Protection Agency, any air quality management district, any regional water quality control board, or any other environmental agency within the past five (5) years? If "yes," indicate on separate signed sheet(s) the project name(s), violation(s), and date(s) of citation.	YES NO
11.	Has CAL OSHA and/or federal Occupational Safety and Health Administration cited and assessed penalties against your Firm, including any "serious," "willful" or "repeat" violations of safety or health regulations within the past five (5) years? If "yes," indicate on separate signed sheet(s) the project name(s), violation(s), and date(s) of citation. If the citation was appealed and a decision has been issued, state the case number and the date of the decision.	YES NO
12.	Has your Firm been required to pay either back wages or penalties for its failure to comply with California's prevailing wage laws, with California's apprenticeship laws or regulations, or with federal Davis-Bacon prevailing wage laws within the past five (5) years? If "yes," indicate on separate signed sheet(s) the project name(s), the nature of the violation(s), the name and owner of the project(s), the number of employees who were initially underpaid and the amount of back wages and penalties that your Firm was required to pay.	YES NO
13.	Does your Firm require weekly , documented safety meetings to be held for construction employees and field supervisors during the course of a project?	YES NO
14.	Provide the name, address and telephone number of the apprenticeship program (approved by the California Apprenticeship Council) from whom you intend to request the dispatch of apprentices to your Firm for use on any public work project for which you are awarded a contract by the District.	

CONTRACTOR PROJECT REFERENCES	
<ul style="list-style-type: none"> List <u>ALL</u> projects in which your Firm has participated as a contractor or first-tier subcontractor during the past <u>five (5) years</u> with a Firm contract value of more than <u>\$250,000.</u> You may limit your response to the twenty (20) most-recently completed projects, but you <u>must</u> include at least the three (3) most recent California K-12 public school projects with a contract value of more than \$500,000 performed by your Firm. Include all information indicated below on separate signed sheets as necessary, and explain or clarify any response as necessary. 	
Project Name/Identification:	
Project address/location:	
Project owner, contact person, and telephone:	
Project architect name and telephone number:	
If contractor was a subcontractor on the project, name of general contractor and telephone number:	
Scope of work:	
Original completion date:	
Date completed:	
Initial contract value (as of time of bid award):	
Final contract value:	
Did the project include constructing or modernizing an earthquake resistant building?	

CERTIFICATION

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

Date: _____

Proper Name of Contractor: _____

Signature: _____

By: _____ (Print Name)

Title: _____

ATTACHMENT 4

FORM OF LEASE-LEASEBACK CONTRACT

SITE LEASE

This Site lease ("**Site Lease**") dated _____, 20____ ("Effective Date"), is made and entered into by and between the **Alameda Unified School District**, as lessor ("**District**"), and **@Contractor**, as lessee ("**Contractor**") (together, the "**Parties**").

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

School Site(s) or Site(s)	Address
_____ School	_____, CA 9 _____

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

WHEREAS, the District desires to provide for the construction of **@Project Name** ("**Project(s)**"); and

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

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

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

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

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

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

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

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

1. **Definitions.** Unless the context clearly otherwise requires, or expressly stated otherwise, all words and phrases defined in the Facilities Lease, and attachments thereto, shall have the same meaning in this Site Lease.
2. **Exhibits.** The following Exhibits are attached to and by reference incorporated and made a part of this Site Lease.
 - 2.1. **Exhibit A:** Descriptions of the Site(s)
 - 2.2. **Exhibit B:** Descriptions of the Project Site(s) and Descriptions of the Project(s)
3. **Lease of the Project Site(s).** The District hereby leases to the Contractor, and the Contractor hereby leases from the District, the Project Site(s), subject only to Permitted Encumbrances, in accordance with the provisions of this Site Lease, to have and to hold for the term of this Site Lease. This Site Lease shall only take effect if the Facilities Lease is executed by the District and Contractor within three (3) days of execution of this Site Lease.
 - 3.1. **Work in Phases.** If the Work of the Project is to be performed in phases, then the only areas bound by the terms of this Site Lease are:
 - 3.1.1. As indicated to be within specific phases of the Project and
 - 3.1.2. For which portions of the Lease Payments as provided for in the Facilities Lease are still owing,
4. **Leaseback of the Project Site(s).** The Parties agree that the Project Site(s) will be leased back to the District pursuant to the Facilities Lease for the term thereof.
5. **Term.** The term of this Site Lease shall commence as of the Effective Date and shall terminate on the last day of the Term of the Facilities Lease, provided the District has paid to the Contractor, or its assignee, all payments which may be due under the Facilities Lease, and provided this Site Lease has not been terminated pursuant to the termination provisions of the Facilities Lease.
6. **Payment.** In consideration for the lease of the Project Site(s) by the District to the Contractor and for other good and valuable consideration, the Contractor shall pay One Dollar (\$1.00) per year to the District upon execution of this Site Lease until the expiration or early termination of this Site Lease and/or the Facilities Lease.
7. **Termination.** This Site Lease may be terminated only as permitted in the Facilities Lease. If the District terminates the Facilities Lease pursuant to the provisions in the Facilities Lease, then this Site Lease shall also terminate.
8. **Title to Site(s).** During the term of this Site Lease, the District shall hold fee title to the Site(s), including the Project Site(s), and nothing in this Site Lease or the Facilities Lease shall change, in any way, the District's ownership interest in the Site(s).
9. **Improvements.** Title to all improvements made on the Project Site(s) during the term hereof shall be held, vest and transfer pursuant to the terms of the Facilities Lease.

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

15.6. Condemnation Proceedings.

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

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

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

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

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

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

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

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

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

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

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

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

the indemnity requirements as indicated in the Facilities Lease.

18. Assignment and Subleasing. This Site Lease may be assigned and/or the Project Site(s) subleased, as a whole or in part, by the Contractor only upon the prior written consent of the District to such assignment or sublease, which shall not be unreasonably withheld.

19. Restrictions on District. The District agrees that it will not mortgage, sell, encumber, assign, transfer or convey the Project Site(s) or any portion thereof during the term of this Site Lease in any way that would interfere with or diminish Contractor's interests indicated in this Site Lease.

20. Liens and Further Encumbrances. Contractor agrees to keep the Project Site(s) and every part thereof free and clear of any and all encumbrances and/or liens, including without limitation, pledges, charges, encumbrances, claims, mechanic liens and/or other liens for or arising out of or in connection with work or labor done, services performed, or materials or appliances used or furnished for or in connection with the Project Site(s) or the Project. Pursuant to the Facilities Lease, Contractor further agrees to pay promptly and fully and discharge any and all claims on which any encumbrance and/or lien may or could be based, and to save and hold District free and harmless from any and all such liens, mortgages, and claims of liens and suits or other proceedings pertaining thereto. This subsection does not apply to Permitted Encumbrances.

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

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

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

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

If to Contractor:
@Contractor

_____, CA 9_____
ATTN: _____

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

With a copy to:

_____, CA 9_____
ATTN: _____

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

22. Binding Effect. This Site Lease shall inure to the benefit of and shall be binding upon the Contractor and the District and their respective successors and assigns.

23. No Additional Waiver Implied by One Waiver. In the event any agreement contained in this Site Lease should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive future compliance with any term hereof or any other breach hereunder.

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

Lease or the Facilities Lease.

- 25. Amendments, Changes and Modifications.** Except as to the termination rights of both Parties as indicated in the Facilities Lease, this Site Lease may not be amended, changed, modified, altered or terminated without the written agreement of both Parties hereto.
- 26. Execution in Counterparts.** This Site Lease may be executed in several counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.
- 27. Contractor and District Representatives.** Whenever under the provisions of this Site Lease approval by the Contractor or the District is required, or the Contractor or the District is required to take some action at the request of the other, such approval or such request shall be given for the Contractor by the Contractor Representative and for the District by the District Representative, and any party hereto shall be authorized to rely upon any such approval or request.
- 28. Applicable Law.** This Site Lease shall be governed by and construed in accordance with the laws of the State of California, and venue shall be in the County within which the Site(s) is located.
- 29. Attorney's Fees.** If either party brings an action or proceeding involving the Site(s) or to enforce the terms of this Site Lease or to declare rights hereunder, each party shall bear the cost of its own attorneys' fees.
- 30. Captions.** The captions or headings in this Site Lease are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Site Lease.
- 31. Prior Agreements.** This Site Lease and the corresponding Facilities Lease collectively contain all of the agreements of the Parties hereto with respect to any matter covered or mentioned in this Site Lease and no prior agreements or understanding pertaining to any such matter shall be effective for any purpose.
- 32. Further Assurances.** Parties shall promptly execute and deliver all documents and instruments reasonably requested to give effect to the provisions of this Site Lease.
- 33. Recitals Incorporated.** The Recitals set forth at the beginning of this Site Lease are hereby incorporated into its terms and provisions by this reference.
- 34. Time of the Essence.** Time is of the essence with respect to each of the terms, covenants, and conditions of this Site Lease.
- 35. Force Majeure.** A party shall be excused from the performance of any obligation imposed in this Site Lease as indicated in the Facilities Lease.
- 36. Interpretation.** None of the Parties hereto, nor their respective counsel, shall be deemed the drafters of this Site Lease or the Facilities Lease for purposes of construing the provisions of each. The language in all parts of this Site Lease shall in all cases be construed according to its fair meaning, not strictly for or against any of the Parties hereto.

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

Alameda Unified School District

@Contractor

Signature: _____

Signature: _____

Print Name: _____

Print Name: _____

Print Title: _____

Print Title: _____

**EXHIBIT A
TO SITE LEASE**

(IDENTICAL TO EXHIBIT A TO THE FACILITIES LEASE)

**EXHIBIT B
TO SITE LEASE**

(IDENTICAL TO EXHIBIT B TO THE FACILITIES LEASE)

FACILITIES LEASE

This Facilities lease ("**Facilities Lease**"), dated _____, 20____ ("Effective Date"), is made and entered into by and between **@Contractor**, as, as sublessor ("**Contractor**"), and the **Alameda Unified School District**, as sublessee ("**District**") (together, the "**Parties**").

RECITALS

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

School Site(s) or Site(s)	Address
_____ School	_____, CA 9 _____

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

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

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

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

- _____ [Architect Name]

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

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

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

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

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

WHEREAS, the Parties have performed all acts, conditions and things required by law to exist, to have happened and to have been performed precedent to and in connection with the execution and entering into of this Facilities

Lease and all those conditions precedent do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the Parties hereto are now duly authorized to execute and enter into this Facilities Lease; and

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

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

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

1.1. "Contractor" or "Lessor" means **@Contractor**, a Corporation, organized and existing under the laws of the State of California, and its successors and assigns.

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

1.3. "Contract Documents" are defined in **Exhibit D** to this Facilities Lease.

1.4. "District" or "Lessee" means the **Alameda Unified School District**, a school district duly organized and existing under the laws of the State of California.

1.5. "District Representative" means the Superintendent of the District, or any other person authorized by the Board of Trustees of the District to act on behalf of the District under or with respect to this Facilities Lease.

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

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

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

2.1. Exhibit A: Descriptions of the Site(s): The descriptions of the real property constituting the Site(s).

2.2. Exhibit B: Descriptions of The Project Site(s) and Descriptions of the Project(s): The description of the

Project Site(s) and the Project.

2.3. Exhibit C: Guaranteed Project Cost and Other Project Cost(s), Funding, and Payment Provisions for Each of the Leased Project Site(s): A detailed description of the Guaranteed Project Cost and the provisions related to the payment of that amount by the District to the Contractor.

2.4. Exhibit D: General Construction Provisions: The provisions generally describing the Project's construction.

2.5. Exhibit E: Memorandum of Commencement Date for the Facilities Lease for Each of the Leased Project Site(s): The Memorandum which will memorialize the commencement and expiration dates of the Term.

2.6. Exhibit F: Construction Schedules for each of the Project Site(s): The Construction Schedule(s) shall be submitted in computer generated network format and shall be organized by Activity Codes representing the Contractor's intended sequencing of the Work, and with time scaled network diagrams of activities. The Preliminary Construction Schedule(s) shall include activities such as mobilization, preparation of submittals, specified review periods, procurement items, fabrication items, milestones, and all detailed construction activities.

2.7. Exhibit G: Schedule(s) of Values for Each of the Project Site(s)

2.8. Exhibit H: Subcontractor Procurement Process

2.9. Exhibit I: Certificates and Bonds to Lease-Leaseback Documents and Division 1 Documents to Lease-Leaseback Documents

2.10. Exhibit J: Plans, Technical Specifications, and Drawings

2.11. Exhibit K: Revisions to Contract Documents

2.12. Exhibit L: Agreement for Preliminary Services [IF APPLICABLE]

2.13. Exhibit M: Project Labor Agreement between the District and the Alameda Building and Trades Council dated [REDACTED].

3. Lease of Project and Project Site(s).

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

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

3.3. As to the Project Site(s), this Facilities Lease shall be deemed and constitute a sublease.

3.4. No Disruption to Educational Activities

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

3.4.1. Occupied School Site(s). The Contractor acknowledges that portions of the Project Site(s) shall, at all times, be occupied by the District as an operating school. The Parties have agreed to a plan and

process whereby the Contractor's activities shall be kept separate from the operating school even though the operating school is within the Project Site(s). The specifics of the plan and process are as indicated in **Exhibit K**.

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

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

4. Term.

4.1. Facilities Lease is Legally Binding. This Facilities Lease is legally binding on the Parties upon execution by the Parties and the District Board's approval of this Facilities Lease. The Term of this Facilities Lease for the purposes of District's occupancy shall commence after the Parties have satisfied all preconditions for the Parties execution of the Memorandum of Commencement as set forth in "Timing of Lease Payments" in **Exhibit C**, and then on the earlier of the following two (2) events ("**Commencement Date**"), and shall terminate **twelve (12) months** after the Commencement Date (the "**Term**"):

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

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

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

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

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

4.5. The Term may be extended or shortened upon the occurrence of the earliest of any of the following events, which shall constitute the end of the Term:

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

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

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

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

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

6. **Termination.**

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

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

6.1.2. Default of Contractor includes, without limitation:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6.2. Termination Due to Default by District. If District defaults pursuant to the provision(s) of the Facilities Lease, the Contractor, or its assignee, will have the right, for the then remaining term of the Site Lease, to:

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

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

6.2.3. Relet the Project Site(s).

6.3. Termination of Contractor for Convenience. The District in its sole discretion may terminate for convenience this Facilities Lease upon three (3) days written notice to the Contractor. In case of a termination for convenience, the Contractor shall have no claims against the District except the actual portion of the Guaranteed Project Cost expended for labor, materials, and services performed that is unpaid and can be documented through timesheets, invoices, receipts, or otherwise, up to and until the date of termination, plus necessary and reasonable documented demobilization costs. If the District terminates for convenience this Facilities during or after completion of Contractor's performance of the Preliminary Services, the Contractor will be entitled to payment for all undisputed amounts for the performance of Preliminary Services as provided for in **Exhibit C**, but shall not be entitled to any additional compensation.

6.4. Lease Terminable Only as Set Forth Herein. Except as otherwise expressly provided in this Facilities Lease and the "Termination and Suspension and Scope Reduction" section of **Exhibit D** to this Facilities Lease, this Facilities Lease shall not terminate, nor shall District have any right to terminate this Facilities Lease or be entitled to the abatement of any all necessary payments pursuant to the "Payment of Guaranteed Project Cost" Provisions as indicated in **Exhibit C** or any reduction thereof. The obligations hereunder of District shall not be otherwise affected by reason of any damage to or destruction of all or any part of the Project; the taking of the Project or any portion thereof by condemnation or otherwise; the prohibition, limitation or restriction of District's use of the Project; the interference with such use by any private person or Contractor; the District's acquisition of the ownership of the Project (other than pursuant to an express provision of this Facilities Lease); any present or future law to the contrary notwithstanding. It is the intention of the Parties hereto that all necessary payments pursuant to the "Payment of Guaranteed Project Cost Provisions" as indicated in **Exhibit C** shall continue to be payable in all events, and the obligations of the District hereunder shall continue unaffected unless the requirement to pay or perform the same shall be terminated or modified pursuant to an express provision of this Facilities Lease.

6.5. Nothing contained herein shall be deemed a waiver by the District of any rights that it may have to bring a separate action with respect to any Event of Default by Contractor hereunder or under any other agreement to recover the costs and expenses associated with that action. The District covenants and agrees that it will remain obligated under this Facilities Lease in accordance with its terms.

6.6. Following Project Completion, and to the extent applicable, the District will not take any action to terminate, rescind or avoid this Facilities Lease, notwithstanding the bankruptcy, insolvency, reorganization,

composition, readjustment, liquidation, dissolution, winding-up or other proceeding affecting Contractor or any assignee of Contractor in any such proceeding, and notwithstanding any action with respect to this Facilities Lease which may be taken by any trustee or receiver of Contractor or of any assignee of Contractor in any such proceeding or by any court in any such proceeding. Following Project Completion, except as otherwise expressly provided in this Facilities Lease, District waives all rights now or hereafter conferred by law to quit, terminate or surrender this Facilities Lease or the Project or any part thereof.

6.7. District acknowledges that Contractor may assign an interest in some or all of the necessary payments pursuant to the "Payment of Guaranteed Project Cost Provisions" as indicated in **Exhibit C** to a lender in order to obtain financing for the cost of constructing the Project and that the lender may rely on the foregoing covenants and provisions in connection with such financing.

7. Title.

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

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

7.3. During the Term of this Facilities Lease, the Contractor shall hold title to the Project improvements provided by Contractor which comprise fixtures, repairs, replacements or modifications thereto.

7.4. If the District makes all necessary payments under the Guaranteed Project Cost Provisions indicated in **Exhibit C**, all right, title and interest of Contractor, its assigns and successors in interest in and to the Project and the Project Site(s) shall be transferred to and vested in the District at the end of the Term. Title shall be transferred to and vested in the District hereunder without the necessity for any further instrument of transfer; provided, however, that Contractor agrees to execute any instrument requested by District to memorialize the termination of this Facilities Lease and transfer of title to the Project.

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

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

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

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

9.3. No Violations. Neither the execution and delivery of this Facilities Lease nor the Site Lease, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the District is now a party or by which the District is bound, or constitutes a default under any of the foregoing, or results in the creation or

imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the District, or upon the Project Site(s), except Permitted Encumbrances

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

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

9.6. Condemnation Proceedings.

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

9.6.2. If for any reason the foregoing covenant is determined to be unenforceable or in some way invalid, or if District should fail or refuse to abide by such covenant, then, to the extent it may lawfully do so, District agrees that the financial interest of Contractor shall be as indicated in Section 6.1 of this Facilities Lease.

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

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

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

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

10.4. No Bankruptcy. Contractor is not now and has never been in bankruptcy or receivership.

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

10.6. No Encumbrances. Contractor shall not pledge any District payments of any kind, related to the Site Lease, this Facilities Lease, or in any way derived from the Project Site(s), and shall not mortgage or encumber the Project Site(s), except as may be specifically permitted pursuant to the provisions of this Facilities Lease related to Contractor's financing the construction of the Project.

10.7. Continued Existence. Contractor shall not voluntarily commence any act intended to dissolve or terminate the legal existence of Contractor, at or before the latest of the following:

10.7.1. Eighteen (18) months following Project Completion,

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

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

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

11. Preliminary Services [IF APPLICABLE]

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

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

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

12. Construction of Project

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

12.2. Construction of Project.

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

12.2.2. **Contract Time / Construction Schedule.**

- 12.2.2.1. The Construction shall be performed pursuant to the construction schedule(s), attached hereto as **Exhibit F ("Construction Schedule(s))**". The time period between the **Notice to Proceed** for construction of the Project and **Completion** shall be the total Contract time ("**Contract Time**").
- 12.2.2.2. The Construction Schedule must be approved by the District prior to execution of this Facilities Lease. District and Contractor may, if agreed to in writing, approve changes in the Construction Schedule.
- 12.2.3. **Schedule of Values.** The Contractor has provided a schedule of values, approved by the District, which attached hereto as **Exhibit G ("Schedule(s) of Values")**. The Schedule of Values must be approved by the District prior to the District's approval of the Contractor's first Application for Tenant Improvement Payment.
- 12.2.4. **Liquidated Damages:** Time is of the essence for all work Contractor must perform to obtain Project Completion. It is hereby understood and agreed that it is and will be difficult and/or impossible to ascertain and determine the actual damage that the District will sustain in the event of and by reason of Contractor's delay; therefore, pursuant to Government Code section 53069.85 and Public Contract Code section 7203, Contractor shall forfeit and pay to District the following sum(s) as liquidated damages ("**Liquidated Damages**"): **Two Thousand Dollars (\$2,000) per day** as liquidated damages for each and every day's delay beyond the Contract Time for each School Site(s).
- 12.2.4.1. **[USE IF PROJECT INVOLVES MULTIPLE SCHOOL SITES]** Each portion of the Liquidated Damages shall be calculated cumulatively. For example, if two of the School Site(s) are delayed as indicated here, the daily liquidated damage amount is two times (2x) the daily rate; three of the School Site(s), three times (3x), etc.
- 12.2.4.2. It is hereby understood and agreed that neither the total cumulative Liquidate Damages amount nor any portion of the Liquidated Damage amount are penalties.
- 12.2.4.3. In the event any portion of the liquidated damages is not paid to the District, the District may deduct that amount from any money due or that may become due the Contractor under this Facilities Lease. The District's right to assess liquidated damages is as indicated herein and in the **Exhibit D**. Contractor and Surety shall be liable for and pay to District the entire amount of Liquidated Damages including any portion that exceeds the amount of the Contract Price then held, retained or controlled by District.
- 12.2.4.4. The time during which the construction of the Project is delayed for cause as hereinafter specified may extend the Contract Time for a reasonable time as the District may grant. This provision does not exclude the recovery of damages for delay by either party under other provisions in this Facilities Lease.
- 12.2.5. **Guaranteed Project Cost.** Contractor will cause the Project to be constructed within the Guaranteed Project Cost as set forth and defined in the Guaranteed Project Cost Provisions indicated in **Exhibit C** and Contractor will not seek additional compensation from District in excess of that amount.
- 12.2.6. **Modifications.** If the DSA requires changes to the Contract Documents submitted by District to Contractor, and those changes change the construction costs and/or construction time for the Project, then those changed costs will be handled as a change in the Work pursuant to the provisions of **Exhibit D**.

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

12.2.8. Compliance Monitoring and Enforcement by the Department of Industrial Relations.

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

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

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

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

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

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

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

15. Taxes and Other Impositions. All ad valorem real property taxes, special taxes, possessory interest taxes, bonds and special lien assessments or other impositions of any kind with respect to the Project, the Project Site(s) and the improvements thereon, charged to or imposed upon either Contractor or the District or their respective interests or estates in the Project, shall at all times be paid by District. In the event any possessory interest tax is

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

16. Insurance

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

16.1.1. Commercial General Liability and Automobile Liability Insurance. Contractor shall procure and maintain, during the life of the Project, Commercial General Liability Insurance and Automobile Liability Insurance that shall protect Contractor, District, and the State, from all claims for bodily injury, property damage, personal injury, death, advertising injury, and medical payments arising from operations under the Project. Contractor shall ensure that Products Liability and Completed Operations coverage, Fire Damage Liability, and Any auto including owned and non-owned, are included within the above policies and at the required limits, or Contractor shall procure and maintain these coverages separately.

16.1.2. Umbrella Liability Insurance

16.1.2.1. Contractor may procure and maintain, during the life of the Project, an Umbrella Liability Insurance Policy to meet the policy limit requirements of the required policies if Contractor's underlying policy limits are less than required.

16.1.2.2. There shall be no gap between the per occurrence amount of any underlying policy and the start of the coverage under the Umbrella Liability Insurance Policy. Any Umbrella Liability Insurance Policy shall protect Contractor, District, and the State, in amounts and including the provisions and requirements for Commercial General Liability and Automobile Liability and Employers' Liability Insurance.

16.1.3. Subcontractor: Contractor shall require its Subcontractor(s), if any, to procure and maintain Commercial General Liability Insurance, Automobile Liability Insurance, and Umbrella Liability Insurance with minimum limits as agreed to by the District's risk manager.

16.1.4. Workers' Compensation and Employers' Liability Insurance

16.1.4.1. In accordance with provisions of section 3700 of the California Labor Code, the Contractor and every Subcontractor shall be required to secure the payment of compensation to its employees.

16.2. Contractor shall procure and maintain, during the life of the Project, Workers' Compensation Insurance and Employers' Liability Insurance for all of its employees engaged in work under the Project, on/or at the Site of the Project. This coverage shall cover, at a minimum, medical and surgical treatment, disability benefits, rehabilitation therapy, and survivors' death benefits. Contractor shall require its Subcontractor(s), if any, to procure and maintain Workers' Compensation Insurance and Employers' Liability Insurance for all employees of Subcontractor(s). Any class of employee or employees not covered by a Subcontractor's insurance shall be covered by Contractor's insurance. If any class of employee or employees engaged in Work under the Project, on or at the Site of the Project, is not protected under the Workers' Compensation Insurance, Contractor shall provide, or shall cause a Subcontractor to provide, adequate insurance coverage for the protection of any employee(s) not otherwise protected before any of those employee(s) commence work.

- 16.2.1. **Contractor's Risk Insurance: Contractor's Risk "All Risk" Insurance.** Contractor shall procure and maintain, during the life of the Project, Contractor's Builders Risk (Course of Construction), or similar first party property coverage acceptable to the District, issued on a replacement cost value basis. The cost shall be consistent with the total replacement cost of all insurable Work of the Project included within the Contract Documents. Coverage is to insure against all risks of accidental physical loss and shall include without limitation the perils of vandalism and/or malicious mischief (both without any limitation regarding vacancy or occupancy), sprinkler leakage, civil authority, sonic disturbance, earthquake, flood, collapse, wind, fire, lightning, and smoke. Coverage shall include debris removal, demolition, increased costs due to enforcement of all applicable ordinances and/or laws in the repair and replacement of damaged and undamaged portions of the property, and reasonable costs for the Architect's and engineering services and expenses required as a result of any insured loss upon the Work and Project, including completed Work and Work in progress, to the full insurable value thereof. The deductible for this insurance shall be paid by Contractor.
- 16.2.2. **Professional Liability Insurance.** This insurance shall cover the Contractor and his/her sub-consultant(s) for professional liability in at least the amounts set forth herein below. Additionally, the policy must contain terms or endorsements extending coverage that requires the insurer to defend and indemnify for acts which happen before the effective date of the policy provided the claim is first made during the policy period, coverage to continue through Project Completion plus "tail" coverage for two (2) years thereafter.
- 16.2.3. **Property of Others Insurance (if not expressly stated as part of above insurance policies).** If equipment and material are stored off-site and are in the Contractor's possession, the Contractor shall procure and maintain, during the storage of equipment and material, insurance coverage acceptable to the District that shall protect Contractor and District from all claims for Project equipment and materials stored off-site that is lost, stolen, or damaged. The District shall be named as a loss payee for this insurance coverage. The insurance coverage shall include a "loss payable endorsement" stating that all amounts payable will be paid as a joint-check to the Contractor and District. If approved in advance by District, this required insurance may be obtained by an "Employee Theft Protection Insurance Policy" or an "Employee Theft Protection Bond."
- 16.2.4. **Proof of Insurance and Other Requirements: Endorsements and Certificates**
- 16.2.4.1. Contractor shall not commence Work nor shall it allow any Subcontractor to commence Work under the Project, until Contractor and its Subcontractor(s) have procured all required insurance and Contractor has delivered in duplicate to the District all insurance certificates indicating the required coverages have been obtained, and the District has approved these documents. If the District requests copies of Contractor's insurance policies and/or endorsements from Contractor, Contractor shall provide them within fourteen (14) days.
- 16.2.4.2. Endorsements, certificates, and insurance policies shall include the following:
- 16.2.4.2.1. A clause stating:
- "This policy shall not be amended, canceled or modified and the coverage amounts shall not be reduced until notice has been mailed to the District and Construction Manager stating date of amendment, modification, cancellation or reduction. Date of amendment, modification, cancellation or reduction may not be less than thirty (30) days after date of mailing notice."

16.2.4.2.2. Language stating in particular those insured, extent of insurance, location and operation to which insurance applies, expiration date, to whom cancellation and reduction notice will be sent, and length of notice period.

16.2.4.3. All endorsements, certificates and insurance policies shall state that District, its Board members, employees and agents, and the State of California, are named additional insureds under all policies except Workers' Compensation Insurance, Professional Liability Insurance, and Employers' Liability Insurance. After the Project has reached Completion, the Contractor need only retain the named additional insureds on the Completed Operations Policy.

16.2.4.4. Contractor's and Subcontractors' insurance policy(s) shall be primary and non-contributory to any insurance or self-insurance maintained by District, its trustees, employees and/or agents, the State of California, Construction Manager(s), Project Manager(s), Inspector(s), and/or Architect(s).

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

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

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

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

Commercial General Liability	Combined Single Limit	\$2,000,000
	General Aggregate	\$4,000,000
	Product Liability and Completed Operations	\$2,000,000
Automobile Liability – Any Auto	Combined Single Limit NO General Aggregate	\$2,000,000
Workers Compensation		Statutory limits pursuant to State law
Employers' Liability		\$3,000,000
Contractors Risk (Course of Construction)		Issued for the value and scope of Work indicated herein, until the Project has reached Completion
Excess Liability		\$5,000,000
Property of Others	Combined Single Limit General Aggregate	Issued for the value and scope of Work stored off-site.
Professional Liability, if required by the District and either: - the premium is approved by the District, or - by each subconsultant and/or designer of documents produced by Contractor.		\$1,000,000 per occurrence and annual aggregate

16.3. District's Insurance.

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

16.3.1.1. Property Program Liability Coverage

16.3.1.2. Interruption of Business / Extra Expense and Rental Value Coverage

17. Indemnification.

17.1. Contractor's Indemnity Obligation. The Contractor shall indemnify, defend with legal counsel reasonably acceptable to the District, protect and hold harmless the District, and their respective board members, officers, representatives, and employees, in both individual and official capacities ("Indemnitees"), against all suits, claims, damages, losses, and expenses, caused by, arising out of, resulting from, or incidental to, the performance of the Work under this Contract by the Contractor or its Subcontractors to the full extent allowed by the laws of the State of California, and not to any extent that would render these provisions void or unenforceable, including, without limitation, any such suit, claim, damage, loss, or expense attributable to, without limitation, bodily injury, sickness, disease, death, subcontractor procurement/selection, alleged patent violation or copyright infringement, or to injury to or destruction of tangible property (including damage to the Work itself not covered by Contractor's and/or District's insurance policy(s) and including the loss of use resulting therefrom), except to the extent caused by the negligence or willful misconduct of any Indemnatee. This agreement and obligation of the Contractor shall not be construed to negate, abridge, or otherwise reduce any right or obligation of indemnity that would otherwise exist as to any party or person described herein. This indemnification, defense, and hold harmless obligation includes any failure or alleged failure by Contractor to comply with any provision of law or the Contract Documents, including, without limitation, any stop notice actions, stop payment notice actions, or liens by the California Department of Labor Standards Enforcement.

17.1.1. The Contractor shall give prompt notice to the District in the event of any injury (including death), loss, or damage included herein. Without limitation of the provisions herein, if the Contractor's agreement to indemnify, defend, and hold harmless the Indemnitees as provided herein against liability for damage arising out of bodily injury to persons or damage to property caused by or resulting from the negligence of any of the Indemnitees shall to any extent be or be determined to be void or unenforceable, it is the intention of the Parties that these circumstances shall not otherwise affect the validity or enforceability of the Contractor's agreement to indemnify, defend, and hold harmless the rest of the Indemnitees, as provided herein, and in the case of any such suits, claims, damages, losses, or expenses caused in part by the default, negligence, or act or omission of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, and in part by any of the Indemnitees, the Contractor shall be and remain fully liable on its agreements and obligations herein to the full extent permitted by law. The Parties agree that if any Court finds that any part of this agreement to indemnify, defend, and hold harmless the Indemnitees to be void or unenforceable, then that that portion found to be void or unenforceable shall be severed to the fullest extent permitted by law from the remainder of this agreement to indemnify, defend and hold harmless, and the remainder of the agreement to indemnify, defend and hold harmless shall remain in full force and effect.

17.1.2. In any and all claims against any of the Indemnitees by any employee of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts

any of them may be liable, the Contractor's indemnification obligation herein shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Contractor or any Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

17.2. District's Indemnity Obligation.

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

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

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

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

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

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

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

18. Eminent Domain.

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

18.1.1. The financial interest of Contractor shall be limited to the amount of principal payments pursuant to the Guaranteed Project Cost Provisions indicated in **Exhibit C** that are then due or past due together with all remaining and succeeding principal payments pursuant to the Guaranteed Project Cost Provisions indicated in **Exhibit C** for the remainder of the original Term.

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

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

18.3. Partial Taking. If, following delivery of possession of the Project by Contractor to District, less than all of the Project and the Project Site(s) is taken permanently, or if all of the Project and the Project Site(s) or any

part thereof is taken temporarily, under the power of eminent domain:

- 18.3.1. This Facilities Lease shall continue in full force and effect and shall not be terminated by virtue of that partial taking and the Parties waive the benefit of any law to the contrary, and
- 18.3.2. There shall be a partial abatement of any principal payments pursuant to the Guaranteed Project Cost Provisions indicated in **Exhibit C** as a result of the application of the net proceeds of any eminent domain award to the prepayment of those payments hereunder. The Parties agree to negotiate, in good faith, for an equitable split of the net proceeds of any eminent domain award and a corresponding reduction in the payments required pursuant to the Guaranteed Project Cost Provisions indicated in **Exhibit C**, and

19. Damage and Destruction. If, following delivery of possession of the Project by Contractor to District, the Project is totally or partially destroyed due to fire, acts of vandalism, flood, storm, earthquake, Acts of God, or other casualty beyond the control of either party hereto, the Term shall end and District shall no longer be required to make any payments required pursuant to the Guaranteed Project Cost Provisions indicated in **Exhibit C** that are then due or past due or any remaining and succeeding principal payments pursuant to the Guaranteed Project Cost Provisions indicated in **Exhibit C** for the remainder of the original Term. The Contractor shall still be due any funds, payments, or disbursements from the District's rental interruption insurance to pay for the amounts that would otherwise have been due and owing from the District under **Exhibit C**.

20. Abatement.

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

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

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

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

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

21. Access

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

District for purposes of making any repairs required to be made by Contractor.

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

22. Assignment, Subleasing

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

- 22.1.1. This Facilities Lease and the obligation of the District to make the payments required pursuant to the Guaranteed Project Cost Provisions indicated in **Exhibit C** shall remain obligations of the District; and
- 22.1.2. The District shall, within thirty (30) days after the delivery thereof, furnish or cause to be furnished to Contractor a true and complete copy of any assignment or sublease; and

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

23. Events of Default of District

23.1. Events of Default by District Defined. The following shall be "Events of Default" of the District under this Facilities Lease. The terms "Event of Default" and "Default" shall mean, whenever they are used as to the District in the Site Lease or this Facilities Lease, shall only be one or more of the following events:

- 23.1.1. Failure by the District to pay payments required pursuant to the "Payment of the Guaranteed Project Cost" Provisions as indicated in **Exhibit C**, and the continuation of such failure for a period of forty-five (45) days.
- 23.1.2. Failure by the District to perform any material covenant, condition or agreement in this Facilities Lease and that failure continues for a period of forty-five (45) days after Contractor provides District with written notice specifying that failure and requesting that the failure be remedied; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, Contractor shall not unreasonably withhold its consent to an extension of such time if corrective action is instituted by the District within the applicable period and diligently pursued until the default is corrected.

23.2. Remedies on District's Default. If there has been an Event of Default on the District's part, the Contractor may exercise any and all remedies available pursuant to law or granted pursuant to this Facilities Lease; provided, however, there shall be no right under any circumstances to accelerate any of the payments required pursuant to the Guaranteed Project Cost Provisions indicated in **Exhibit C** or otherwise declare those payments not then past due to be immediately due and payable.

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

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

- 23.2.1.2. If an appraiser cannot be agreed to, an amount equal to the mean between a District appraisal and a Contractor appraisal for the Project Site(s), both prepared by an MAI-certified appraiser.
- 23.2.2. District's obligation to make the payments required pursuant to the Guaranteed Project Cost Provisions indicated in **Exhibit C** shall be:
- 23.2.2.1. Increased by the amount of costs, expenses, and damages incurred by the Contractor in re-renting the Project Site(s), and
- 23.2.2.2. Decreased by the amount of rent Contractor receives in reletting the Project Site(s).
- 23.2.3. The District agrees that the terms of this Facilities Lease constitute full and sufficient notice of the right of Contractor to re-rent the Project Site(s) in the Event of Default without effecting a surrender of this Facilities Lease, and further agrees that no acts of Contractor in performing a re-renting as permitted herein shall constitute a surrender or termination of this Facilities Lease, but that, on the contrary, in the event of an Event of Default by the District the right to re-rent the Project Site(s) shall vest in Contractor as indicated herein.
- 23.3. District's Continuing Obligation.** Unless there has been damage, destruction, a Taking as described above, or the Contractor is in Default as indicated herein, the District shall continue to remain liable for the payments required pursuant to the Guaranteed Project Cost Provisions indicated in **Exhibit C** and those amounts shall be payable to Contractor at the time and in the manner as therein provided.
- 23.4. No Remedy Exclusive.** No remedy herein conferred upon or reserved to Contractor is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Facilities Lease or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle Contractor to exercise any remedy reserved herein, it shall be necessary to give notice, as indicated in this Facilities Lease and by law.

24. Events of Default of Contractor

- 24.1. Events of Default by Contractor Defined.** The following shall be "Events of Default" of the Contractor under this Facilities Lease. The terms "Event of Default" and "Default" shall mean, whenever they are used as to the Contractor in the Site Lease or this Facilities Lease, shall only be one or more of the following events:
- 24.1.1. Contractor unreasonably refuses or fails to prosecute the work on the Project with such reasonable diligence as will accomplish Project Completion within the Contract Time or any extension thereof;
- 24.1.2. Prior to Project Completion, Contractor is adjudged a bankrupt, or files for bankruptcy, or if it should make a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of its insolvency;
- 24.1.3. Contractor persistently disregards applicable law as indicated in **Exhibit D**, or otherwise be in violation of **Exhibit D**.
- 24.1.4. Failure by the Contractor to perform any material covenant, condition or agreement in this Facilities Lease and that failure continues for a period of seven (7) days after District provides Contractor with written notice specifying that failure and requesting that the failure be

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

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

24.2.1. If District terminates the Site Lease and the Facilities Lease pursuant to this section, the Project Site(s) and any improvements built upon the Project Site(s) shall vest in District upon termination of the Site Lease and Facilities Lease, and District shall thereafter be required to pay only the principal amounts then due and owing pursuant to the Guaranteed Project Cost Provisions indicated in **Exhibit C**, less any damages incurred by District due to Contractor's Default.

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

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

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

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

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

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

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

If to Contractor:
@Contractor
_____, CA 9_____
ATTN: _____

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

With a copy to:

_____, CA 9_____
ATTN: _____

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

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

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

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

29. Amendments, Changes and Modifications. Except as to the termination rights of both Parties as indicated herein, this Facilities Lease may not be amended, changed, modified, altered or terminated without the written agreement of both Parties hereto.

30. Net-Net-Net Lease. This Facilities Lease shall be deemed and construed to be a “net-net-net lease” and the District hereby agrees that all payments it makes pursuant to the Guaranteed Project Cost Provisions indicated in **Exhibit C** shall be an absolute net return to Contractor, free and clear of any expenses, charges or set-offs.

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

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

33. Applicable Law. This Facilities Lease shall be governed by and construed in accordance with the laws of the State of California, and venued in the County within which the School Site(s) is located.

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

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

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

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

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

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

40. Force Majeure.

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

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

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

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

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

Alameda Unified School District

@Contractor

Signature: _____

Signature: _____

Print Name: _____

Print Name: _____

Print Title: _____

Print Title: _____

EXHIBIT A
TO FACILITIES LEASE

DESCRIPTION OF DISTRICT SITE(S)

_____ School

_____, CA 9 _____

[INSERT ARCHITECT DRAWING, AERIAL PHOTO / SCREEN-SHOT OF ENTIRE SCHOOL SITE]

EXHIBIT B
TO FACILITIES LEASE

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

[INCLUDE IF CONTRACTOR PERFORMS PRELIMINARY SERVICES AND PARTIES AMEND FOR GPC]

CONTRACTOR SHALL NOT BEGIN WORK ON THE CONSTRUCTION PHASE OF THE PROJECT UNTIL THE PARTIES HAVE AMENDED THE AGREEMENT TO INCLUDE A GUARANTEED PROJECT COST, AND THE DISTRICT HAS ISSUED A NOTICE TO PROCEED FOR CONSTRUCTION TO THE CONTRACTOR.

PROJECT SITE(S) DESCRIPTION:

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

[DESCRIBE PROJECT SITE(S) AND INSERT PICTURE/DRAWING/SCREEN SHOT OF PROJECT SITE(S)]

PROJECT(S) DESCRIPTION:

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

[Describe Project(s)]

**EXHIBIT C
TO
FACILITIES LEASE**

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

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

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

3. Guaranteed Project Cost (or Guaranteed Maximum Price). Pursuant to the Facilities Lease, Contractor will cause the Project to be constructed for Dollars (\$), ("**Guaranteed Project Cost**" or "**GPC**" or "**Guaranteed Maximum Price**" or "**GMP**"). Except as indicated herein for modifications to the Project approved by the District pursuant to **Exhibit D**, or by written amendment, Contractor will not seek additional compensation from District in excess of Guaranteed Project Cost. District shall pay the Guaranteed Project Cost to Contractor in the form of Tenant Improvement Payments and Lease Payments plus Interest as indicated herein. The Guaranteed Project Cost includes the following components and as further detailed herein:

3.1. Cost to Perform Work.

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

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

3.2. General Conditions. The fixed amount to be paid for all costs for labor, equipment and materials for the items identified therein which are necessary for the proper management of the Project, and shall include all costs paid or incurred by the Contractor (except for insurance); all fees, permits, assessments and charges that are required to be paid to other agencies or entities to permit, authorize or entitle construction, reconstruction or completion of the Project; taxes; and all contributions, assessments and benefits, holidays, vacations, retirement benefits, and incentives, whether required by law or collective bargaining agreements or otherwise paid or provided by Contractor to its employees. The District reserves the right to request changes to the personnel, equipment, or facilities provided as General Conditions as may be necessary or appropriate for the proper management of the Project, in which case, the cost of General Conditions shall be increased or reduced accordingly.

3.3. Bonds and Insurance.

3.4. Overhead and Profit.

3.5. Contingency.

[OPTIONAL. AMOUNTS OF THE CONTINGENCY ARE TO BE NEGOTIATED AT THE TIME THE GUARANTEED PROJECT

COST IS SET.].

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

3.5.1.1. Scope gaps;

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

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

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

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

3.5.2. The Contingency shall only be used:

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

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

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

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

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

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

[LIST ANY, IF APPLICABLE]

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

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

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

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

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

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

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

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

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

4.2.3. The District represents that the total annual Lease Payment plus interest obligation does not surpass the District's annual budget and will not require the District to increase or impose additional taxes

or obligations on the public that did not exist prior to the execution of the Facilities Lease.

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

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

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

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

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

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

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

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

4.2.6.1. The Final Tenant Improvement Payment has been paid;

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

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

4.2.6.4. The Contractor has provided a duly completed and executed "**Unconditional Waiver and Release upon Final Payment**" compliant with Civil Code section 8138 from all subcontractors of any tier and suppliers that each has been paid all amounts owing to it from the Contractor for all work on the Project.

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

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

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

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

5. Changes to Guaranteed Project Cost.

5.1. As indicated in the Facilities Lease, the Parties may add or remove specific scopes of work from the Project. Based on these change(s), the Parties may agree to a reduction or increase in the Guaranteed Project Cost. If a cost impact or a change is agreed to by the Parties, it shall be reflected as a reduction or increase in the Tenant Improvement Payments and paid upon the payment request from the Contractor when the work is performed or deducted from the next payment request from the Contractor, as applicable. Any change to the Guaranteed Project Cost shall not affect the Lease Payments, nor the interest rate, unless expressly agreed upon by the District in writing.

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

5.3. Cost Savings. Contractor shall work cooperatively with Architect, subcontractors and District, in good faith, to identify appropriate opportunities to reduce Project costs and promote cost savings. Any identified cost savings from the Guaranteed Project Cost shall be identified by Contractor, and if approved in writing by the District, that cost savings shall be deducted from the Guaranteed Project Cost. If any cost savings require revisions to the Construction Documents, Contractor shall work with the District with respect to revising the Construction Documents and, if necessary, obtaining the approval of DSA with respect to those revisions. At the District's discretion, any reasonable cost incurred by District and/or the Contractor for those revisions may be paid for out of the identified savings before it is deducted from the Guaranteed Project Cost. Contractor shall be entitled to an extension of Contract Time equal to the delay in Project Completion caused by any cost savings adopted by District, if requested in writing before the approval of the cost savings.

5.4. Insurance and Bond Reimbursements. At Project Completion, Contractor shall require reimbursement from its insurance brokers and/or insurers and its bond brokers and/or sureties, all portions of Contractor's bond premiums, either paid or to be paid, that are not at-risk due to a reduction in the Guaranteed Project Cost. All amounts of premium reimbursement that Contractor receives from the Contractor's insurance brokers and/or insurers and its bond brokers and or sureties, shall be withheld by District from Contractor's Lease Payment(s). The District shall estimate this amount until Contractor indicates what the total amount of this reimbursement.

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

EXHIBIT D
TO
FACILITIES LEASE

GENERAL CONSTRUCTION PROVISIONS

TABLE OF CONTENTS

1.	CONTRACT TERMS AND DEFINITIONS	35
1.1.	Definitions.....	35
1.2.	Laws Concerning The Contract.....	38
1.3.	No Oral Agreements	38
1.4.	No Assignment	38
1.5.	Notice And Service Thereof	39
1.6.	No Waiver	39
1.7.	Substitutions for Specified Items.....	39
1.8.	Materials and Work.....	39
2.	[RESERVED]	40
3.	ARCHITECT.....	41
4.	CONSTRUCTION MANAGER	41
5.	INSPECTOR, INSPECTIONS, AND TESTS.....	41
5.1.	Project Inspector	41
5.2.	Tests and Inspections	43
5.3.	Costs for After Hours and/or Off Site Inspections	43
6.	CONTRACTOR	43
6.1.	Status of Contractor	44
6.2.	Contractor's Supervision	44
6.3.	Duty to Provide Fit Workers / Required Personnel.....	45
6.4.	Prohibition on Harassment.....	46
6.5.	Conferences and Meetings.	47
6.6.	Purchase of Materials and Equipment	48
6.7.	Documents on Work.....	49
6.8.	Preservation of Records.....	49
6.9.	Integration of Work.....	50
6.10.	Obtaining Licenses.....	50
6.11.	Work to Comply With Applicable Laws and Regulations.....	50
6.12.	Safety/Protection of Persons and Property	51
6.13.	Working Evenings and Weekends.....	53
6.14.	Noise and Dust Control.....	53
6.15.	Cleaning Up	54
7.	SUBCONTRACTORS	55
7.3.	Bidding for Subcontractor Work	55
8.	OTHER CONTRACTS/CONTRACTORS	56
9.	DRAWINGS AND SPECIFICATIONS	56
9.3.	Trade Name or Trade Term.....	57
9.6.	Interpretation of Contract Documents/Order of Precedence:	57
9.7.	Integration / Modification.	57
9.9.	Ownership of Drawings	58
10.	CONTRACTOR'S SUBMITTALS AND SCHEDULES	58
10.1.	Construction Schedule.....	58
10.2.	Schedule of Values	58
10.3.	Safety Plan.	59
10.4.	Complete Subcontractor List.	60

10.5.	Monthly Progress Schedule(s)	60
10.6.	Safety Data Sheets (SDS) (formerly known as Material Safety Data Sheets, or MSDSs.	60
10.7.	Logistics Plan.	60
11.	SITE ACCESS, CONDITIONS, AND REQUIREMENTS.....	60
11.1.	Site Investigation	60
11.2.	Soils Investigation Report & Site Due Diligence	60
11.3.	Access to Work	63
11.4.	Layout and Field Engineering.....	63
11.5.	Utilities & Sanitary Facilities	63
11.6.	Surveys	63
11.7.	Regional Notification Center.....	63
11.8.	Existing Utility Lines.....	64
11.9.	Notification	64
11.10.	Hazardous Materials	64
11.11.	No Signs	64
12.	TRENCHES.....	65
12.1.	Trenches Greater Than Five Feet	65
12.2.	Excavation Safety	65
12.3.	No Tort Liability of District.....	65
12.4.	No Excavation Without Permits.....	65
12.5.	Discovery of Hazardous Waste, Unusual Conditions and /or Unforeseen Conditions	65
13.	INSURANCE AND BONDS	66
13.1.	Contractor's Insurance.....	66
13.2.	Contract Security - Bonds	66
14.	WARRANTY/GUARANTEE/INDEMNITY	66
14.1.	Warranty/Guarantee.....	66
14.2.	Indemnity	67
15.	TIME	67
15.1.	Computation of Time / Adverse Weather	67
15.2.	Hours of Work	68
15.3.	Progress and Project Completion.....	68
15.4.	Schedule.....	68
15.5.	Expeditious Completion.....	68
16.	EXTENSIONS OF TIME – LIQUIDATED DAMAGES	68
16.1.	Contractor's Notice of Delay.....	68
16.2.	Excusable and Compensable Delay(s)	70
16.3.	Excusable and Non-Compensable Delay(s)	71
16.4.	Unexcused Delay(s) – Liquidated Damages.....	72
16.5.	Float or Slack in the Schedule	72
17.	CHANGES IN THE WORK.....	72
17.1.	No Changes Without Authorization	72
17.2.	Architect Authority.....	73
17.3.	Change Orders.....	73
17.4.	Unilateral Change Orders	74
17.5.	Force Account Directives	74
17.6.	Price Request.....	75
17.7.	Proposed Change Order.....	75
17.8.	Format for Proposed Change Order	77
17.9.	Change Order Certification	81
17.10.	Determination of Change Order Cost	81
17.11.	Deductive Change Orders.....	82
17.12.	Discounts, Rebates, and Refunds	82
17.13.	Accounting Records	82

17.14.	Notice Required	83
17.15.	Applicability to Subcontractors	83
17.16.	Alteration to Change Order Language	83
17.17.	Failure of Contractor to Execute Change Order	83
18.	REQUESTS FOR INFORMATION	83
19.	PAYMENTS.....	84
19.1.	Guaranteed Project Cost.....	84
19.2.	Applications for Tenant Improvement Payments	84
19.3.	District's Approval of Application for Tenant Improvement Payment.....	86
19.4.	Subcontractor Payments	90
20.	COMPLETION OF THE WORK.....	90
20.1.	Completion.....	90
20.2.	Closeout Procedures.....	91
20.3.	Final Inspection	92
20.4.	Costs of Multiple Inspections.....	93
20.5.	Beneficial Occupancy or Use Prior to Project Completion.....	93
21.	FINAL PAYMENT AND RETENTION	93
21.1.	Final Payment.....	93
21.2.	Prerequisites for Final Tenant Improvement Payment	93
21.3.	Retention	94
21.4.	Claims Asserted After Final Tenant Improvement Payment.....	95
22.	UNCOVERING WORK, CORRECTION OF WORK AND RIGHT TO TAKEOVER WORK	95
22.1.	Uncovering Work.....	95
22.2.	Rejection of Work.....	95
22.3.	Nonconforming Work	95
22.4.	Correction of Work	95
22.5.	District's Right to Takeover Work	96
23.	TERMINATION AND SUSPENSION AND SCOPE REDUCTION	96
23.1.	Emergency Termination of Public Contracts Act of 1949.....	97
23.2.	Suspension of Work.....	97
23.3.	Scope Reduction.....	97
24.	CLAIMS RESOLUTION	98
24.1.	Exclusive Remedy.	98
24.2.	Performance during Claim Resolution Process.....	98
24.3.	Waiver	98
24.4.	Intention.	98
24.5.	Other Provisions.	98
24.6.	Claim Presentation	99
24.7.	Subcontractors.	99
24.8.	Documentation of Resolution.....	103
24.9.	Claim Resolution Process – Non-Applicability.....	103
25.	LABOR, WAGE & HOUR, APPRENTICE AND RELATED PROVISIONS	104
25.1.	Compliance Monitoring and Enforcement by the DIR	104
25.2.	Wage Rates, Travel and Subsistence.....	104
25.3.	Hours of Work	105
25.4.	Payroll Records.....	106
25.5.	Apprentices	107
25.6.	Non-Discrimination	108
25.7.	Labor First Aid	109
25.8.	Skilled and Trained Workforce Requirement	109
26.	MISCELLANEOUS.....	111
26.1.	Assignment of Antitrust Actions	111
26.2.	Excise Taxes.....	111

26.3.	Taxes	112
26.4.	Shipments	112

[TABLE OF CONTENTS NEEDS TO BE UPDATED WHEN DOCUMENT IS FINALIZED]

Form Agreement

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

1. CONTRACT TERMS AND DEFINITIONS

1.1. Definitions

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

1.1.1. Adverse Weather: Shall be only weather that satisfies all of the following conditions: (1) unusually severe precipitation, sleet, snow, hail, heat, or cold conditions in excess of the norm for the location and time of year it occurred, and (2) at the Project Site(s).

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

1.1.3. Approval, Approved, and/or Accepted: Refer to written authorization, unless stated otherwise.

1.1.4. Architect: The individual, partnership, corporation, joint venture, or any combination thereof, named as Architect, who will have the rights and authority assigned to the Architect in the Contract Documents. The term Architect means the District's Architect on this Project or the Architect's authorized representative.

1.1.5. Beneficial Occupancy: Occupancy of the Project by the District for its intended purpose and which produces relatively little interference with the Contractor in completing construction.

1.1.6. Change Order: A written order to the Contractor authorizing an addition to, deletion from, or revision in the Work, and/or authorizing an adjustment in the Guaranteed Project Cost or Contract Time. If a Change Order is required to be approved by DSA, the District may call it a Construction Change Document.

1.1.7. Completion (or “Project Completion”): Where the Work to construct the Project is 100% complete, including all punch list items. Final DSA approval of the Project is not required for Project Completion.

1.1.8. Construction Manager (or “Project Manager”): The individual, partnership, corporation, joint venture, or any combination thereof, or its authorized representative, named as such by the District. If no Construction Manager is used on the Project that is the subject of this Contract, then all references to Construction Manager herein shall be read to refer to District.

1.1.9. Construction Schedule: The progress schedule of construction of the Project as provided by Contractor and approved by District.

1.1.10. Contract, Contract Documents: The Contract consists exclusively of the documents evidencing the agreement of the District and Contractor, identified as the Contract Documents. The Contract Documents consist of the following documents:

- 1.1.10.1. Site Lease
- 1.1.10.2. Facilities Lease, with all of its Exhibits
- 1.1.10.3. These General Construction Provisions
- 1.1.10.4. Noncollusion Declaration

- 1.1.10.5. Certifications to be Completed by Contractor
- 1.1.10.6. Disabled Veterans Business Enterprise Participation Certification
- 1.1.10.7. Criminal Background Investigation/Fingerprinting Certification
- 1.1.10.8. Roofing Contract Financial Interest Certification
- 1.1.10.9. Performance Bond
- 1.1.10.10. Payment Bond (Contractor's Labor & Material Bond)
- 1.1.10.11. All Division 1 Documents, which shall only supplement these General Construction Provisions, but shall not control if their provisions contradict these Construction Provisions
- 1.1.10.12. All Plans, Technical Specifications, and Drawings
- 1.1.10.13. Any and all addenda to any of the above documents
- 1.1.10.14. Any and all change orders or written modifications to the above documents if approved in writing by the District

1.1.11. Contract Time: The time period stated in the Facilities Lease for Project Completion.

1.1.12. Contractor (or "Contractor"): The licensed person, entity, or entities identified in the Facilities Lease as contracting to perform the Work to be done under this Contract.

1.1.13. Daily Job Report(s): Daily Project reports prepared by the Contractor's employee(s) who are present on Site, which shall include the information required herein.

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

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

1.1.16. District (or "Owner"): The public agency or the school district for which the Work is performed. The governing board of the District or its designees will act for the District in all matters pertaining to the Contract. The District may, at any time,

1.1.16.1. Direct the Contractor to communicate with or provide notice to the Construction Manager or the Architect on matters for which the Contract Documents indicate the Contractor will communicate with or provide notice to the District; and/or

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

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

1.1.18. DSA: Division of the State Architect.

1.1.19. Force Account Directive: A process that may be used when the District and the Contractor cannot agree on a price for a specific scope of work or before Contractor prepares a price for the scope of work, Contractor performs on a time and materials basis.

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

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

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

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

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

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

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

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

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

1.1.29. Safety Orders: Written and/or verbal orders for construction issued by the California Division of Industrial Safety (“CalOSHA”) or by the United States Occupational Safety and Health Administration (“OSHA”).

1.1.30. Safety Plan: Contractor’s safety plan specifically adapted for the Project. Contractor's Safety Plan shall comply with all provisions regarding Project safety, including all applicable provisions in these General Construction Provisions.

1.1.31. Samples: Physical examples that illustrate materials, products, equipment, finishes, colors, or workmanship and that, when approved in accordance with the Contract Documents, establish standards by which portions of the Work will be judged.

1.1.32. Shop Drawings: All drawings, prints, diagrams, illustrations, brochures, schedules, and other data that are prepared by the Contractor, a subcontractor, manufacturer, supplier, or distributor, that illustrate how specific portions of the Work shall be fabricated or installed.

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

1.1.34. Specifications: That portion of the Contract Documents, Division 1 through Division 49, and all technical sections, and addenda to all of these, if any, consisting of written descriptions and requirements of a technical nature of materials, equipment, construction methods and systems, standards, and workmanship.

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

1.1.36. Subcontractor: A contractor and/or supplier who is under contract with the Contractor or with any other subcontractor, regardless of tier, to perform a portion of the Work of the Project.

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

1.1.38. Surety: The person, firm, or corporation that executes as surety the Contractor's Performance Bond and Payment Bond, and must be a California admitted surety insurer as defined in the Code of Civil Procedure section 995.120.

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

1.1.40. Unilateral Change Order: A written order prepared and issued by the District, the Construction Manager, and/or the Architect and signed by the District and the Architect, directing a change in the Work. **A Unilateral Change Order is NOT a Construction Change Document (which is defined above as a Change Order that DSA must approve).**

1.1.41. Work: All labor, materials, equipment, components, appliances, supervision, coordination, and services required by, or reasonably inferred from, the Contract Documents, that are necessary for Project Completion.

1.2. Laws Concerning The Contract

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

1.3. No Oral Agreements

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

1.4. No Assignment

Except as specifically permitted in the Facilities Lease, Contractor shall not assign this Contract or any part thereof including, without limitation, any services or money to become due hereunder without the prior written consent of the District. Assignment without District's prior written consent shall be null and void. Any assignment of money due or to 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

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

1.6. No Waiver

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

1.7. Substitutions for Specified Items

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

1.8. Materials and Work

1.8.1. Except as otherwise specifically stated in this Contract, Contractor shall provide and pay for all materials, labor, tools, equipment, transportation, supervision, temporary constructions of every nature, and all other services, management, and facilities of every nature whatsoever necessary to execute and complete this Contract within the Contract Time.

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

1.8.3. Unless otherwise specified, all materials shall be new and the best of their respective kinds and grades as noted or specified, and workmanship shall be of good quality.

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

1.8.5. For all materials and equipment specified or indicated in the Drawings, the Contractor shall

provide all labor, materials, equipment, and services necessary for complete assemblies and complete working systems, functioning as intended, including incidental items not indicated on Drawings, nor mentioned in the Specifications, that can legitimately and reasonably be inferred to belong to the Work described, or be necessary in good practice to provide a complete assembly or system. In all instances, material and equipment shall be installed in strict accordance with each manufacturer's most recent published recommendations and specifications.

1.8.6. Contractor shall, after award of Contract by District and after relevant submittals have been approved, place orders for materials and/or equipment as specified so that delivery of same may be made without delays to the Work. Contractor shall, upon demand from District, present documentary evidence showing that orders have been placed. Failure of Contractor to comply with this provision shall not be a basis for an extension to the Contract Time.

1.8.7. District reserves the right but has no obligation, for any neglect in complying with the above instructions, to place orders for such materials and/or equipment as it may deem advisable in order that the Work may be completed at the date specified in the Facilities Lease, and all expenses incidental to the procuring of said materials and/or equipment shall be paid for by Contractor or withheld from payment(s) to Contractor.

1.8.8. Contractor warrants good title to all material, supplies, and equipment installed or incorporated in Work and agrees upon Project Completion to deliver the Site to District, together with all improvements and appurtenances constructed or placed thereon by it, and free from any claims, liens, or charges. Contractor further agrees that neither it nor any person, firm, or corporation furnishing any materials or labor for any work covered by the Contract shall have any right to lien any portion of the Premises or any improvement or appurtenance thereon, except that Contractor may install metering devices or other equipment of utility companies or of political subdivision, title to which is commonly retained by utility company or political subdivision. In the event of installation of any such metering device or equipment, Contractor shall advise District as to owner thereof.

1.8.9. Nothing contained in this Article, however, shall defeat or impair the rights of persons furnishing materials or labor under any bond given by Contractor for their protection or any rights under any law permitting such protection or any rights under any law permitting such persons to look to funds due Contractor in hands of District (e.g., stop payment notices), and this provision shall be inserted in all subcontracts and material contracts and notice of its provisions shall be given to all persons furnishing material for work when no formal contract is entered into for such material.

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

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

2. [RESERVED]

3. ARCHITECT

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

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

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

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

4. CONSTRUCTION MANAGER

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

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

4.3. If the District does not use a Construction Manager on this Project, all references to Construction Manager or CM shall be read as District.

5. INSPECTOR, INSPECTIONS, AND TESTS

5.1. Project Inspector

5.1.1. One or more Project Inspector(s), including special Project Inspector(s), as required, will be assigned to the Work by District, in accordance with requirements of title 24, part 1, of the California Code of Regulations, to enforce the building code and monitor compliance with Plans and Specifications for the Project previously approved by the DSA. Duties of Project Inspector(s) are specifically defined in section 4-342 of said part 1 of title 24.

5.1.2. No Work shall be carried on except with the knowledge and under the inspection of the Project Inspector(s). The Project Inspector(s) shall have free access to any or all parts of Work at any time. Contractor shall furnish Project Inspector(s) reasonable opportunities for obtaining such information as may be necessary to keep Project Inspector(s) fully informed respecting progress and manner of work and

character of materials. Inspection of Work shall not relieve Contractor from an obligation to fulfill this Contract. Project Inspector(s) and the DSA are authorized to stop work whenever the Contractor and/or its Subcontractor(s) are not complying with the Contract Documents. Any work stoppage by the Project Inspector(s) and/or DSA shall be without liability to the District. Contractor shall instruct its Subcontractors and employees accordingly.

5.1.3. If Contractor and/or any Subcontractor requests that the Project Inspector(s) perform any inspection off-site, this shall only be done if it is allowable pursuant to applicable regulations and DSA. If the off-site inspections are more frequent than are reasonable for the type of off-site inspection, those inspections shall be at the expense of the Contractor.

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

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

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

5.1.5.2. If at any time it is discovered that work is being done which is not in accordance with the DSA-approved construction documents, the contractor shall correct the work immediately.

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

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

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

5.1.5.6. Notify the project inspector and, when applicable, the in-plant inspector, of the completion of construction of each and every aspect of the work by submitting form DSA 156 (or other agreed-upon written documents) to the project inspector.

5.1.5.7. Consider the relationship of the signed-off blocks and sections of the form DSA 152 and the commencement of subsequent work. Until the project inspector has signed off applicable blocks and sections of the form DSA 152, the contractor may be prohibited from proceeding with subsequent construction activities that cover up the unapproved work. Any subsequent construction activities that cover up the unapproved work will be subject to a "Stop Work Order" from DSA or the school district (see IR A-13 for additional information), and are subject to removal and remediation if found to be in noncompliance with the DSA-approved construction documents.

5.1.5.8. Submit the final verified report. All prime contractors are required to submit final Contractor

Verified Reports (form DSA 6-C).

5.2. Tests and Inspections

5.2.1. Tests and Inspections shall comply with title 24, part 1, California Code of Regulations, group 1, article 5, section 4-335, and with the provisions of the Specifications.

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

5.2.3. The District will select an independent testing laboratory to conduct the tests. Selection of the materials required to be tested shall be by the laboratory or the District's representative and not by the Contractor. The Contractor shall notify the District's representative a sufficient time in advance of its readiness for required observation or inspection.

5.2.4. The Contractor shall notify the District's representative a sufficient time in advance of the manufacture of material to be supplied under the Contract Documents, that must by terms of the Contract Documents be tested, in order that the District may arrange for the testing of same at the source of supply. This notice shall be, at a minimum, seventy-two (72) hours prior to the manufacture of the material that needs to be tested. These notifications shall be submitted in all instances via hard copy and, if requested by the Project Inspector(s), also electronically via an internet-based notification/reporting system.

5.2.5. Any material shipped by the Contractor from the source of supply prior to having satisfactorily passed such testing and inspection or prior to the receipt of notice from said representative that such testing and inspection will not be required, shall not be incorporated into and/or onto the Project.

5.2.6. The District will select and pay testing laboratory costs for all tests and inspections. Costs of tests of any materials found to be not in compliance with the Contract Documents shall be paid for by the District and reimbursed by the Contractor or deducted from the Guaranteed Project Cost.

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

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

6. CONTRACTOR

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

6.1. Status of Contractor

6.1.1. Contractor is and shall at all times be deemed to be an independent contractor and shall be wholly responsible for the manner in which it and its Subcontractors perform the services required of it by the Contract Documents. Nothing herein contained shall be construed as creating the relationship of employer and employee, or principal and agent, between the District, or any of the District's employees or agents, and Contractor or any of Contractor's Subcontractors, agents or employees. Contractor assumes exclusively the responsibility for the acts of its employees as they relate to the services to be provided during the course and scope of their employment. Contractor, its Subcontractors, agents, and its employees shall not be entitled to any rights or privileges of District employees. District shall be permitted to monitor the Contractor's activities to determine compliance with the terms of this Contract.

6.1.2. As required by law, Contractor and all Subcontractors shall be properly licensed and regulated by the Contractors State License Board, located at 9821 Business Park Drive, Sacramento, California 95827, with a mailing address of Post Office Box 26000, Sacramento, CA 95826, and with a website at <http://www.cslb.ca.gov>.

6.2. Contractor's Supervision

6.2.1. During progress of the Work, Contractor shall keep on the Premises, and at all other appropriate locations where any Work related to the Contract is being performed, minimum staffing as indicated in **Exhibit K** to the Facilities Lease. These persons shall each comply with the following:

6.2.1.1. Each shall be an employee of the Contractor, to whom the District does not object.

6.2.1.2. Each shall speak fluently English, written and verbal, and the predominant language of the Contractor's employees.

6.2.2. Before commencing the Work herein, Contractor shall give written notice to District of the name of its project manager and construction superintendent. Neither the Contractor's project manager nor construction superintendent shall be changed except with prior written notice to District, unless the Contractor's project manager and/or construction superintendent proves to be unsatisfactory to Contractor, District, any of the District's employees, agents, the Construction Manager, or the Architect, in which case, Contractor shall notify District in writing or if such project manager or construction superintendent are no longer employed by Contractor. The Contractor's project manager and construction superintendent shall each represent Contractor, and all directions given to Contractor's project manager and/or construction superintendent shall be as binding as if given to Contractor.

6.2.3. Contractor shall give efficient supervision to the Work, using its best skill and attention. Contractor shall carefully study and compare all Contract Documents, Drawings, Specifications, and other instructions and shall at once report to District, Construction Manager, and Architect any error, inconsistency, or omission that Contractor or its employees and Subcontractors may discover, in writing, with a copy to District's Project Inspector(s).

6.2.4. The Contractor's project manager shall devote sufficient time to the Project on site, and in the Contractor's home office to pre-plan activities to meet the Construction Schedule and fulfill all Contract obligations. This includes making timely submittals, issuing and disseminating necessary RFI's, promptly

processing and distributing bulletins, change orders and payments, keeping required logs current etc. If any of these activities fall behind contract requirements or dates necessary to complete the Project on time, the Contractor must provide a full time project manager on site dedicated solely to the Project, until the deficiencies are corrected.

6.2.5. The Contractor shall verify all indicated dimensions before ordering materials or equipment, or before performing work. The Contractor shall take field measurements, verify field conditions, and shall carefully compare such field measurements and conditions and other information known to the Contractor with the Project Documents before commencing work. Errors, inconsistencies or omissions discovered shall be reported to the District at once. Upon commencement of any item of work, the Contractor shall be responsible for dimensions related to such item of work and shall make any corrections necessary to make work properly fit at no additional cost to District. This responsibility for verification of dimensions is a non-delegable duty and may not be delegated to subcontractors or agents.

6.2.6. Contractor shall not be relieved from performing work related to omissions from the plans, drawings or specifications, or misdescriptions of details of work which are manifestly necessary to carry out the intent of the plans, drawings and specifications, or which are customarily performed. Contractor shall perform this work as if fully and correctly set forth and described in the plans, drawings and specifications.

6.2.7. The Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction. The Contractor shall be responsible to see that the finished work complies accurately with the Contract Documents.

6.3. Duty to Provide Fit Workers / Required Personnel

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

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

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

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

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

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

6.3.7. The Contractor shall employ a full-time superintendent and necessary assistants who shall have complete authority to represent and act on behalf on the Contractor on all matters pertaining to the Work. The superintendent shall be competent and have a minimum of five (5) years experience in

construction supervision on projects of similar scale and complexity. The superintendent shall be satisfactory to the District and, if not satisfactory, shall be replaced by the Contractor with one that is acceptable. The superintendent shall not be changed without the written consent of the District unless the superintendent ceases to be employed by the Contractor.

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

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

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

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

6.4. Prohibition on Harassment

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

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

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

6.4.4. Contractor shall not permit any person, whether employed by Contractor or a Subcontractor or any other person or entity, performing any Work at or about the Site to engage in any prohibited form of harassment. Any person performing or providing Work on or about the Site engaging in a prohibited form of harassment directed to any student, faculty member or staff of the District or directed to any other

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

6.5. Conferences and Meetings.

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

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

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

three (3) week look-ahead schedule identifying all planned activities for the next three (3) weeks and any deviations from activities in the current Construction Schedule.

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

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

6.6. Purchase of Materials and Equipment

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

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

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

6.6.2.2. **Payment for Stored Materials.** District shall only make payment to Contractor for Stored Materials if agreed upon in advance, in writing, by the District and provided that Contractor submits an itemized list of all Stored Materials with Contractor's Application for Payment. Contractor's itemized list of all Stored Materials shall be supported by all of the following:

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

6.6.2.2.2. Verified invoices for the Stored Materials; and

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

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

6.7. Documents on Work

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

6.7.2. Daily Job Reports.

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

- 6.7.2.1.1. A detailed description of all Work performed by the Contractor and Subcontractor(s) on that day.
- 6.7.2.1.2. A summary of all other pertinent events and/or occurrences on that day.
- 6.7.2.1.3. The weather conditions on that day.
- 6.7.2.1.4. A list of all Subcontractor(s) working on that day,
- 6.7.2.1.5. A list of each Contractor employee working on that day and the total hours worked for each employee.
- 6.7.2.1.6. A complete list of all major equipment on Site that day, whether in use or not.
- 6.7.2.1.7. All complete list of all materials, supplies, and equipment delivered on that day.
- 6.7.2.1.8. A complete list of all inspections and tests performed on that day.

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

6.8. Preservation of Records

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

6.9. Integration of Work

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

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

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

6.10. Obtaining Licenses

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

6.11. Work to Comply With Applicable Laws and Regulations

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

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

6.11.2. Contractor shall comply with all applicable mitigation measures, if any, adopted by any public agency with respect to this Project pursuant to the California Environmental Quality Act (Public Resources Code section 21000 et seq.)

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

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

6.12. Safety/Protection of Persons and Property

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

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

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

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

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

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

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

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

6.12.9. Hazards Control – Contractor shall store volatile wastes in covered metal containers and remove them from the Site regularly, which shall be daily when appropriate for the type of hazardous wastes to

be removed. Contractor shall prevent accumulation of wastes that create hazardous conditions. Contractor shall provide adequate ventilation during use of volatile or noxious substances.

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

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

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

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

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

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

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

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

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

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

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

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

same at his expense with same kind, quality, and size of Work or item damaged. This shall include any adjoining property of the District and others.

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

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

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

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

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

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

6.13. Working Evenings and Weekends

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

6.14. Noise and Dust Control

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

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

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

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

6.15. Cleaning Up

6.15.1. The Contractor shall provide all services, labor, materials, and equipment necessary for protecting the Work, all school occupants, furnishings, equipment, and building structure from damage until Project Completion and final acceptance by District. Dust barriers shall be provided to isolate dust and dirt from construction operations. Upon Project Completion, Contractor shall clean to the original state any areas beyond the Work area that become dust laden as a result of the Work. The Contractor must erect the necessary warning signs and barricades to ensure the safety of all school occupants. The

Contractor at all times must maintain good housekeeping practices to reduce the risk of fire damage and must make a fire extinguisher, fire blanket, and/or fire watch, as applicable, available at each location where cutting, braising, soldering, and/or welding is being performed or where there is an increased risk of fire.

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

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

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

7. SUBCONTRACTORS

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

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

7.3. Bidding for Subcontractor Work

7.3.1. CONTRACTOR SHALL SOLICIT AND PROCURE SUBCONTRACTORS PURSUANT TO THE SUBCONTRACTOR PROCUREMENT PROCESS ATTACHED TO THE FACILITIES LEASE AS EXHIBIT H.

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

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

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

7.6. Contractor is directed to familiarize itself with sections 1720 through 1861 of the Labor Code of the State of California, as regards the payment of prevailing wages and related issues, and to comply with all applicable requirements therein all including, without limitation, section 1775 and the Contractor's and Subcontractors'

obligations and liability for violations of prevailing wage law and other applicable laws. Prevailing wage rates are on file with the District and are available to any interested party on request or at www.dir.ca.gov/oprl/statistics_and_databases.html.

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

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

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

8. OTHER CONTRACTS/CONTRACTORS

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

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

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

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

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

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

9. DRAWINGS AND SPECIFICATIONS

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

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

9.3. Trade Name or Trade Term.

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

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

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

9.4. Interpretation of Contract Documents/Order of Precedence:

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

- 9.4.1.** District-approved modifications, beginning with the most recent (if any);
- 9.4.2.** Exhibit K: Revisions to Contract Documents
- 9.4.3.** Exhibit D: General Construction Provisions
- 9.4.4.** Facilities Lease
- 9.4.5.** Site Lease
- 9.4.6.** Exhibit C: GPC and Other Project Costs
- 9.4.7.** Remaining Exhibits to the Facilities Lease
- 9.4.8.** Division 1 Documents (Documents beginning with “01”);
- 9.4.9.** Division 2 through Division 49 documents (Technical Specifications);
- 9.4.10.** Figured dimensions;
- 9.4.11.** Large-scale drawings;
- 9.4.12.** Small-scale drawings.

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

9.5. Integration / Modification.

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

by both Parties, and unless provided otherwise by the Contract Documents.

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

9.7. Ownership of Drawings

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

10. CONTRACTOR'S SUBMITTALS AND SCHEDULES

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

10.1. Construction Schedule

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

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

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

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

10.2. Schedule of Values

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

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

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

10.2.2. Divided by each of the following areas:

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

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

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

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

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

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

10.3. Safety Plan.

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

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

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

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

10.4. Complete Subcontractor List.

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

10.5. Monthly Progress Schedule(s)

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

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

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

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

10.7. Logistics Plan.

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

11. SITE ACCESS, CONDITIONS, AND REQUIREMENTS

11.1. Site Investigation

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

11.2. Soils Investigation Report & Site Due Diligence

11.2.1. When a soils investigation report obtained from test holes at Site is available, that report shall be available to the Contractor but shall not be a part of this Contract. Any information obtained from that report or any information given on Drawings as to subsurface soil condition or to elevations of existing

grades or elevations of underlying rock is approximate only, is not guaranteed, does not form a part of this Contract. Contractor may reasonably rely thereon, however the District makes no warranty regarding the completeness or accuracy of any such report or other information regarding subsurface conditions. Contractor acknowledges that it has made visual examination of Site and has made whatever tests Contractor deems appropriate to determine underground condition of soil.

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

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

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

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

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

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

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

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

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

11.2.3.4. Contractor has given the District prompt written notice of all conflicts, errors, ambiguities, or

discrepancies that it has discovered in or among the Contract Documents and the actual conditions, and the written resolution thereof by the District is acceptable to Contractor;

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

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

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

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

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

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

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

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

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

independent investigation of all conditions affecting the Work and must not rely on information provided by District.

11.3. Access to Work

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

11.4. Layout and Field Engineering

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

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

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

11.5. Utilities & Sanitary Facilities

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

11.6. Surveys

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

11.7. Regional Notification Center

The Contractor, except in an emergency, shall contact the appropriate regional notification center at least two (2) days prior to commencing any excavation if the excavation will be conducted in an area or in a private easement that is known, or reasonably should be known, to contain subsurface installations other than the underground facilities owned or operated by the District, and obtain an inquiry identification number from that notification center. No excavation shall be commenced and/or carried out by the Contractor unless an

inquiry identification number has been assigned to the Contractor or any Subcontractor and the Contractor has given the District the identification number. Any damages arising from Contractor's failure to make appropriate notification shall be at the sole risk and expense of the Contractor. Any delays caused by failure to make appropriate notification shall be at the sole risk of the Contractor and shall not be considered for an extension of the Contract time.

11.8. Existing Utility Lines

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

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

11.8.3. No provision herein shall be construed to preclude assessment against Contractor for any other delays in Project Completion. Nothing in this Section shall be deemed to require District to indicate the presence of existing service laterals, appurtenances, or other utility lines, with the exception of main or trunk utility lines, whenever the presence of these utilities on the Site of the construction Project can be inferred from the presence of other visible facilities, such as buildings, meter junction boxes, trenches on or adjacent to the Site of the construction.

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

11.9. Notification

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

11.10. Hazardous Materials

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

11.11. No Signs

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

approval of the District.

12. TRENCHES

12.1. Trenches Greater Than Five Feet

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

12.2. Excavation Safety

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

12.3. No Tort Liability of District

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

12.4. No Excavation Without Permits

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

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

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

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

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

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

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

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

13. INSURANCE AND BONDS

13.1. Contractor's Insurance

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

13.2. Contract Security - Bonds

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

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

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

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

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

14. WARRANTY/GUARANTEE/INDEMNITY

14.1. Warranty/Guarantee

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

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

14.1.2.1. Project Completion,

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

At the District's sole option, Contractor shall repair or replace any and all of that Work, together with any other Work that may be displaced in so doing, that may prove defective in workmanship and/or materials within a **ONE (1) year** period from date of Project Completion as defined above without expense whatsoever to District. In the event of failure of Contractor and/or Surety to commence and pursue with

diligence said replacements or repairs within ten (10) days after being notified in writing, Contractor and Surety hereby acknowledge and agree that District is authorized to proceed to have defects repaired and made good at expense of Contractor and/or Surety who hereby agree to pay costs and charges therefore immediately on demand.

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

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

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

14.2. Indemnity

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

15. TIME

15.1. Computation of Time / Adverse Weather

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

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

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

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

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

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

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

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

15.2. Hours of Work

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

15.3. Progress and Project Completion

15.3.1. Time of the Essence

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

15.3.2. No Commencement Without Insurance

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

15.3.3. Sufficient Forces

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

15.4. Schedule

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

15.5. Expeditious Completion

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

16. EXTENSIONS OF TIME – LIQUIDATED DAMAGES

16.1. Contractor's Notice of Delay

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

these General Construction Provisions.

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

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

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

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

16.1.4.2. Logical Ties / Fragnets. Specific logical ties to the Contract Schedule for the proposed changes and/or delay showing the activity/activities in the Construction Schedule that are affected by the change and/or delay. (A portion of any delay of seven (7) days or more must be provided.) Include a "fragnet" analysis for the portion of the schedule and the activities the Contractor contends are impacted by the delay and a detailed time impact analysis in compliance with the provisions of the "**Construction Schedule – Network Analysis**" provisions indicated in **Exhibit I**.

16.1.4.3. Updated Construction Schedule. A recovery or updated Construction Schedule must be submitted.

16.1.5. District shall review the facts and extent of any noticed delay and may grant Contract Time extension(s) of time for completing Work when, in the District's judgment, the findings of fact justify an extension.

16.1.6. Extension(s) of time shall apply only to that portion of Work affected by delay, and shall not apply to other portions of Work not so affected.

16.1.7. An extension of time may only be granted if Contractor has timely submitted the updated Construction Schedule as required herein.

16.1.8. Following submission of a notice of delay, the District may determine whether the delay is to be considered:

16.1.8.1. Excusable and Compensable, Excusable and Non-Compensable, or Unexcused;

16.1.8.2. How long the delay continues; and

16.1.8.3. To what extent the prosecution and Completion of the Work might be delayed thereby.

16.1.9. Contractor's failure to request adjustment(s) of the Contract Time in strict conformity with applicable provisions of the Contract Documents shall be deemed Contractor's waiver of its right to assert a claim for a delay.

16.1.10. Limitations Upon Adjustment of Contract Time on Account of Delays. Any adjustment of the Contract Time on account of an Excusable Delay or a Compensable Delay shall be limited as set forth herein. No adjustment of the Contract Time shall be made on account of any Excusable Delays or

Compensable Delays unless those delay(s) actually and directly impact Work or Work activities on the critical path of the then current and updated approved Construction Schedule as of the date on which a delay first occurs. The District shall not be deemed in breach of, or otherwise in default of any obligation hereunder, if the District shall deny a request by the Contractor for an adjustment of the Contract Time for any delay that does not actually and directly impact Work on the then current and updated approved Construction Schedule. In submitting a request for an adjustment of Contract Time, and as a condition precedent to the District's review of that request, Contractor shall insert into the then current and updated approved Construction Schedule a "fragnet" analysis and a detailed time impact analysis representing the event that Contractor claims to result in delay to the critical path as depicted in the updated approved Construction Schedule. If an Excusable Delay and a Compensable Delay occur concurrently, the maximum extension of the Contract Time shall be the number of days from the commencement of the first delay to the cessation of the delay that ends last. If an Unexcused Delay occurs concurrently with either an Excusable Delay or a Compensable Delay, the maximum extension of the Contract Time shall be the number of days, if any, which the Excusable Delay or the Compensable Delay exceeds the period of time of the Unexcused Delay.

16.2. Excusable and Compensable Delay(s)

16.2.1. Contractor is **not** entitled to additional compensation for any delay, even a delay caused by Adverse Weather or an Excusable Delay, unless **all** of the following conditions are met:

16.2.1.1. The District is responsible for the delay;

16.2.1.2. The delay is unreasonable under the circumstances involved and impacts the critical path of the Work and extends the most current Contract Completion date;

16.2.1.3. The delay was not within the contemplation of District and Contractor;

16.2.1.4. Contractor complies with the Change Order procedures, and if necessary, the Claims procedures of the Contract Documents;

16.2.1.5. The delay could not have been avoided or mitigated by the Contractor's care, prudence, foresight, and diligence;

16.2.1.6. The delay extends the most current Contract Completion date; and

16.2.1.7. The Delay is not concurrent with a Contractor-caused delay or other type of Excusable Delay.

16.2.2. In accordance with California Public Contract Code section 7102, if the Contractor's progress is delayed by the events described in the preceding subsection, Contractor shall not be precluded from the recovery of damages directly and proximately resulting therefrom. In that event, Contractor's damages, if any, shall be limited to direct, actual and unavoidable additional costs of labor, materials or construction equipment directly resulting from that delay, and shall exclude special, indirect or consequential damages. In no event shall Contractor seek costs or damages for delays, interruptions, hindrances or disruptions to the Work for on-Site or off-Site costs or damages based upon formulas, e.g. Eichleay or other formula. Except as expressly provided for herein, Contractor shall not have any other claim, demand or right to adjustment of the Contract Price arising out of delay, interruption, hindrance or disruption to the progress of the Work. Adjustments to the Contract Price and the Contract Time, if any, on account of Changes to the Work or Suspension of the Work shall be governed by the applicable provisions of the Contract Documents, including without limitation, the "**Changes in the Work**" section and the percentages in the "**Format for Proposed Change**" section of these General Construction Provisions.

16.3. Excusable and Non-Compensable Delay(s)

16.3.1. An "Excusable Delay" shall mean an interruption of the Work beyond the reasonable control of the Contractor and that:

16.3.1.1. Could have not been avoided by the Contractor exercising care, prudence, foresight, and diligence, and

16.3.1.2. Actually extended the most current Project Completion date.

16.3.2. The Contractor may be entitled to an extension of the Project Completion date if there is an Excusable Delay, but the Contractor shall not be entitled to additional compensation for an Excusable Delay.

16.3.3. Excusable Delays are limited to interruptions that satisfy the above requirements and that are Force Majeure Events as indicated in the Facilities Lease.

16.3.4. Contractor is aware that governmental agencies and utilities, including, without limitation, the Division of the State Architect, the Department of General Services, gas companies, electrical utility companies, water districts, cities, counties and other agencies may have to approve Contractor-prepared drawings or approve a proposed installation. Contractor shall include in its bid, time for possible review of its drawings and for reasonable delays and damages that may be caused by such agencies. Contractor is not entitled to make a claim for damages or delays or an Excusable Delay arising from the review of Contractor's drawings or other approvals from the Division of the State Architect, the Department of General Services, gas companies, electrical utility companies, water districts, and other agencies.

16.3.5. Neither the financial resources of the Contractor or any person or entity directly or indirectly engaged by the Contractor in performance of any portion of the Work shall be deemed conditions beyond the control of the Contractor. If an event of Excusable Delay occurs, the Contract Time shall be subject to adjustment hereunder only if the Contractor establishes: (i) full compliance with all applicable provisions of the Contract Documents relative to the method, manner and time for Contractor's notice and request for adjustment of the Contract Time; (ii) that the event(s) forming the basis for Contractor's request to adjust the Contract Time are outside the reasonable control and without any fault or neglect of the Contractor or any person or entity directly or indirectly engaged by Contractor in performance of any portion of the Work; and (iii) that the event(s) forming the basis for Contractor's request to adjust the Contract Time directly and adversely impacted the critical path of the Work as indicated in the approved Construction Schedule or the most recent updated approved Construction Schedule relative to the date(s) of the claimed event(s) of Excusable Delay.

16.3.6. Computation of Time / Adverse Weather

16.3.6.1. The Contractor will only be allowed a time extension for Adverse Weather conditions if requested by Contractor within five (5) calendar days of the Adverse Weather event, and only if all of the following conditions are met – thereby making the resulting delay an Excusable Delay.

16.3.6.1.1. The weather conditions constitute Adverse Weather, as defined herein and further specified in **Exhibit K**;

16.3.6.1.2. Contractor can verify that the Adverse Weather caused delays in excess of five (5) hours of the indicated labor required to complete the scheduled tasks of Work on the day affected by the Adverse Weather;

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

16.3.6.1.4. The number of days of delay for the month exceed those indicated in the **Exhibit K**.

16.3.6.2. A day-for-day extension will only be allowed for those days in excess of those indicated in the **Exhibit K**.

16.3.6.3. The Contractor shall work seven (7) days per week, if necessary, irrespective of inclement weather, to maintain access and the Construction Schedule, and to protect the Work under construction from the effects of Adverse Weather, all at no further cost to the District.

16.4. Unexcused Delay(s) – Liquidated Damages

16.4.1. Unexcused Delays refer to any delay to the progress of the Work caused by events or factors other than those specifically identified in the “Excusable and Compensable Delay(s)” or the “Excusable and Non-Compensable Delay(s)” sections above. Neither the Contract Price nor the Contract Time shall be adjusted on account of Unexcused Delays.

16.4.2. Contractor and District hereby agree that the exact amount of damages for failure to complete the Work within the time specified is extremely difficult or impossible to determine. If the Work is not completed within the time specified in the Contract Documents, it is understood that the District will suffer damage. It being impractical and unfeasible to determine the amount of actual damage, it is agreed the Contractor shall forfeit and pay to District as fixed and liquidated damages, and not as a penalty, the amount set forth in the Contract Documents for each calendar day of delay in Completion. Contractor and its Surety shall be liable for the amount thereof pursuant to Government Code section 53069.85.

16.4.3. Contractor shall not forfeit or pay liquidated damages for an Excusable Delay or an Excusable and Compensable Delay.

16.5. Float or Slack in the Schedule

Float or slack is the amount of time between the early start date and the late start date, or the early finish date and the late finish date, of any of the activities in the schedule. Float or slack is not for the exclusive use of or benefit of either the District or the Contractor, however it shall be used as necessary to accommodate delays in the progress of the Work which may occur during the course of construction, as determined by the District. Contractor shall not be entitled to an extension of time for any claimed delays to the extent that such delays may be covered by the float.

17. CHANGES IN THE WORK

17.1. No Changes Without Authorization

17.1.1. There shall be no change whatsoever in the Drawings, Specifications, or in the Work without an executed Change Order authorized by the District as herein provided. District shall not be liable for the cost of any extra work or any substitutions, changes, additions, omissions, or deviations from the Drawings and Specifications unless the District's governing board has authorized the same and the cost thereof has been approved in writing by Change Order. No extension of time for performance of the Work shall be allowed hereunder unless claim for such extension is made at the time changes in the Work are ordered, and such time duly adjusted in writing in the Change Order. The provisions of the Contract Documents shall apply to all such changes, additions, and omissions with the same effect as if originally embodied in the Drawings and Specifications.

17.1.2. Verbal Order of Change in the Work. Any verbal order, direction, instruction, interpretation, or

determination from the District, the Project Inspector or the Architect which in the opinion of the Contractor causes any change to the scope of the Work, or otherwise requires an adjustment to the Contract Price or the Contract Time, shall be treated as a Change only if the Contractor gives the District written notice within three (3) Business Days of the order, directions, instructions, interpretation or determination and prior to acting in accordance therewith. Time is of the essence in Contractor's written notice pursuant to the preceding sentence so that the District can promptly investigate and consider alternative measures to address the order, direction, instruction, interpretation or determination giving rise to Contractor's notice. Accordingly, Contractor acknowledges that its failure, for any reason, to give written notice within three (3) Business Days of any right to assert or claim any entitlement to an adjustment of the Contract Time or the Contract Price on account of that verbal order, direction, instruction, interpretation or determination shall constitute a waiver of its right to make that claim. The written notice shall state the date, circumstances, extent of adjustment to the Contract Price or the Contract Time, if any, requested, and the source of the verbal order, directions, instructions, interpretation or determination that the Contractor regards as a Change. Unless the Contractor acts in strict accordance with this procedure, any verbal order, direction, instruction, interpretation or determination shall not be treated as a Change and the Contractor hereby waives any claim for any adjustment to the Contract Price or the Contract Time on account thereof.

17.1.3. Contractor shall perform immediately all work that has been authorized by a fully executed Change Order, Unilateral Change Order, or Force Account Directive. Contractor shall be fully responsible for any and all delays and/or expenses caused by Contractor's failure to expeditiously perform this Work and Contractor's failure or refusal to proceed with that Work may be deemed to be Contractor's default of a material obligation of the Contractor under the Contract Documents.

17.1.4. Should any Change Order result in an increase in the Guaranteed Project Cost, the cost of that Change Order shall be agreed to, in writing, in advance by Contractor and District. In the event that Contractor proceeds with any change in Work without a Change Order executed by the District, Contractor waives any claim of additional compensation or time for that additional work.

17.1.5. Contractor understands, acknowledges, and agrees that the reason for District authorization is so that District may have an opportunity to analyze the Work and decide whether the District shall proceed with the Change Order or alter the Project so that a change in Work becomes unnecessary.

17.1.6. In an emergency affecting safety of life or of work or of adjoining property, Contractor, without special instruction or authorization, shall act, at its discretion, to prevent all threatened loss or injury. Any compensation or time claimed by Contractor on account of emergency work shall be determined as indicated herein as a PCO.

17.2. Architect Authority

The Architect will have authority to order minor changes in the Work not involving any adjustment in the Guaranteed Project Cost, or an extension of the Contract Time, or a change that is inconsistent with the intent of the Contract Documents. These changes shall be effected by written Change Order, Unilateral Change Order, or by Architect's response(s) to RFI(s).

17.3. Change Orders

17.3.1. A Change Order is a written instrument prepared and issued by the District and signed by the District (as authorized by the District's governing board), the Contractor, the Architect, and approved by the Project Inspector (if necessary) and DSA (if necessary), stating their agreement regarding all of the following. If a Change Order is required to be approved by DSA, the District may call it a "*Construction Change Document*":

17.3.1.1. A description of a change in the Work;

17.3.1.2. The amount of the adjustment in the Guaranteed Project Cost, if any; and

17.3.1.3. The extent of the adjustment in the Contract Time, if any.

17.4. Unilateral Change Orders

17.4.1. A Unilateral Change Order is a written order prepared and issued by the District, the Construction Manager, and/or the Architect and signed by the District, directing a change in the Work. The District may as provided by law, by Unilateral Change Order and without invalidating the Contract, order changes in the Work consisting of additions, deletions, or other revisions. If all or a portion of the Project is being funded by funds requiring approval by the State Allocation Board (SAB), these revisions may be subject to compensation once approval of same is received and funded by the SAB, and funds are released by the Office of Public School Construction (OPSC). Any dispute as to the sum of the Unilateral Change Order or timing of payment shall be resolved pursuant to the Payment and Claims and Disputes provisions herein. **A Unilateral Change Order is NOT a “Construction Change Document” (which is defined above as a Change Order that DSA must approve).**

17.4.2. The District may issue a Unilateral Change Order in the absence of agreement on the terms of a Change Order.

17.5. Force Account Directives

17.5.1. When work, for which a definite price has not been agreed upon in advance, is to be paid for on a time-and-material basis, all direct costs necessarily incurred and paid by the Contractor for labor, material, and equipment used in the performance of that Work, shall be subject to the approval of the District and compensation will be determined as set forth herein.

17.5.2. District will issue a Force Account Directive (which may also be called a “Construction Directive”) to proceed with the Work on a force account (time-and-material) basis, and a not-to-exceed budget will be established by District.

17.5.3. All requirements regarding direct cost for labor, labor burden, material, equipment, and markups on direct costs for overhead and profit described in this section shall apply to Force Account Directives. However, District will only pay for actual costs verified in the field by the District or its authorized representative(s) on a daily basis.

17.5.4. Contractor shall be responsible for all cost related to the administration of Force Account Directive. The markup for overhead and profit for Contractor modifications shall be full compensation to the Contractor to administer Force Account Directive.

17.5.5. Contractor shall notify District or its authorized representative(s) at least twenty-four (24) hours prior to proceeding with any of the Force Account Directive work. Furthermore, the Contractor shall notify the District when it has consumed eighty percent (80%) of the budget, and shall not exceed the budget unless specifically authorized in writing by the District. Contractor will not be compensated for force account work in the event that Contractor fails to timely notify the District regarding the commencement of Force Account Directive work, or to the extent exceeding the Force Account Directive budget.

17.5.6. Contractor shall diligently proceed with the work, and on a daily basis, submit a daily time-and-material report on a form supplied by the District no later than 5:00 p.m. each day. The report shall contain a detailed itemization of the daily labor, material, and equipment used on the time-and-material

work only. The names of the individuals performing the force account work shall be included on the daily time-and-material reports. The type and model of equipment shall be identified and listed. District will review the information contained in the reports, and sign the reports no later than the next work day, and return a copy of the report to Contractor for its records. District will not sign, nor will Contractor receive compensation for work District cannot verify. Contractor will provide a weekly Force Account Directive summary indicating the status of each Force Account Directive in terms of percent complete of the not-to-exceed budget and the estimated percent complete of the work.

17.5.7. In the event Contractor and District reach a written agreement on a set cost for the work while the work is proceeding based on a Force Account Directive, the Contractor's signed daily time-and-material reports shall be discontinued and all previously signed reports shall be invalid.

17.6. Price Request

17.6.1. Definition of Price Request. A Price Request ("PR") is a written request prepared by the District requesting the Contractor to submit to the District an estimate of the effect of a proposed change in the Work on the Guaranteed Project Cost and the Contract Time.

17.6.2. Scope of Price Request. A Price Request shall contain adequate information, including any necessary Drawings and Specifications, to enable Contractor to provide the cost breakdowns required herein. The Contractor shall not be entitled to any additional compensation for preparing a response to a Price Request, whether ultimately accepted or not.

17.6.3. Do not consider Price Requests to be instructions either to stop work in progress or to execute the proposed change.

17.6.4. Within the time specified in Price Request after receipt of Price Request, submit a quotation estimating cost adjustments to the Contract Price and the Contract Time necessary to execute the change.

17.6.4.1. Include a list of quantities of products required or eliminated and unit costs, with total amount of purchases and credits to be made. If requested, furnish survey data to substantiate quantities.

17.6.4.2. Indicate applicable taxes, delivery charges, equipment rental, and amounts of trade discounts.

17.6.4.3. Include costs of labor and supervision directly attributable to the change.

17.6.4.4. Include an updated Contractor's Construction Schedule that indicates the effect of the change, including, but not limited to, changes in activity duration, start and finish times, and activity relationship. Use available total float before requesting an extension of the Contract Time.

17.7. Proposed Change Order

17.7.1. Definition of Proposed Change Order. A Proposed Change Order ("PCO") is a written request prepared by the Contractor requesting that the District and the Architect issue a Change Order based upon a proposed change to the Work.

17.7.2. Changes in Guaranteed Project Cost. A PCO shall include breakdowns pursuant to the revisions herein to validate any change in Guaranteed Project Cost.

17.7.3. Changes in Time. A PCO shall also include any changes in time required to complete the Project. Include an updated Contractor's Construction Schedule that indicates the effect of the change, including,

but not limited to, changes in activity duration, start and finish times, and activity relationships. Use available total float before requesting an extension of the Contract Time. Any additional time requested shall not be the number of days to make the proposed change, but must be based upon the impact to the Construction Schedule as defined in the Contract Documents. If Contractor fails to request a time extension in a PCO, then the Contractor is thereafter precluded from requesting time and/or claiming a delay. If the Contractor is requesting additional time and believes that time is both Excusable and Compensable, then the Contractor must provide detailed documentation that supports its position and that addresses all the components of the "Excusable and Compensable Delay(s)" section above.

17.7.4. Unknown and/or Unforeseen Conditions. If Contractor submits a PCO requesting an increase in Guaranteed Project Cost and/or Contract Time that is based at least partially on Contractor's assertion that Contractor has encountered unknown and/or unforeseen condition(s) on the Project, then Contractor shall base the PCO on provable information that demonstrates that the unknown and/or unforeseen condition(s) were actually or reasonably unknown and/or unforeseen. If not, the District shall deny the PCO and the Contractor shall complete the Project without any increase in Guaranteed Project Cost and/or Contract Time based on that PCO.

17.7.5. Time to Submit PCO. Contractor shall submit its PCO within five (5) days of the date Contractor discovers, or reasonably should discover, the circumstances giving rise to the proposed change order, unless additional time to submit a proposed change order is granted in writing by the District. Time is of the essence in Contractor's written notice pursuant to the preceding sentence so that the District can promptly investigate and consider alternative measures to address the basis for the PCO. Accordingly, Contractor acknowledges that its failure, for any reason, to give written notice (with Supporting Documentation to permit the District's review and evaluation) within this time frame shall be deemed Contractor's waiver, release, discharge and relinquishment of any right to assert or claim any entitlement to an adjustment of the Contract Time or the Contract Price on account of the circumstances giving rise to the PCO.

17.7.6. COVID-19.

17.7.6.1. Contractor agrees that the Contract Price and the Contract Time are based on the Contractor's full compliance with all applicable and existing federal, state, and/or local statutes, orders, rules, regulations, ordinances, and/or directives relating to construction site safety in connection with COVID-19, and/or any similar virus or derivative strain at the time of Contract award. Therefore, any cost or delay associated with COVID-19, or any derivative or similar strain thereof, or any federal, state, or local order relating thereto, shall not be considered compensable unless:

17.7.6.1.1. It occurred after the date of the award of the Contract to Contractor;

17.7.6.1.2. It materially increases the Contract Price or the Contract Time; and

17.7.6.1.3. Contractor notifies the District within 10 days of notice of any new derivative, strain, or new public health order(s), including the anticipated increase to the Contract Price or Contract Time due to the new derivative, strain, or new public health order(s), and Contractor substantiates those costs with detailed supporting documentation as required for a PCO.

17.7.6.2. If, during the construction of the Project, the applicable and existing federal, state, and/or local statutes, orders, rules, regulations, ordinances, and/or directives relating to construction site safety in connection with COVID-19, and/or any similar virus or derivative strain, are changed or rescinded (e.g., by the reduction of potential exposure or risk due to vaccinations), the Parties agree to reduce the Contract Price and the Contract Time due to the removal of the required efforts. If the Parties cannot mutually agree on the appropriate reduction, the District may issue a Unilateral Change Order for an amount of time and money it determines to be both reasonable and

appropriate. The Parties agree that any dispute related to this provision will be resolved pursuant to the Claims Resolution Process herein.

17.8. Format for Proposed Change Order

The following format(s) on the following two (2) pages shall be used as applicable by the District and the Contractor (e.g. Change Orders, PCO's) to communicate proposed additions and deductions to the Contract, supported by attached documentation

FORMAT FOR PROPOSED CHANGE FOR SUBCONTRACTOR PERFORMED WORK

	<u>SUBCONTRACTOR PERFORMED WORK</u>	<i>ADD</i>	<i>DEDUCT</i>
(A)	<u>Labor Charge</u> 1. Hours. Attach total itemized hours. 2. Rate. This shall be no more than the Straight-Time Total Hourly Rate as determined by the Department of Industrial Relations ("DIR") for the applicable local labor category.		
(B)	<u>Labor Burden & Worker's Compensation Charge</u> 1. This shall be no more than twenty percent (20%) of item (A), the Labor Charge. 2. This shall be the total cumulative charge permitted for all Subcontractors or all labor performed by the Subcontractor or Subcontractor's Subcontractor(s) (i.e., all "lower-tier" Subcontractor(s)).		
(C)	<u>Subtotal (A+B)</u>		
(D)	<u>Material Charge</u> Attach itemized quantity and unit cost plus sales tax and invoice(s) from vendor(s)		
(E)	<u>Equipment Charge</u> Attach invoice(s) from supplier(s).		
(F)	<u>Subtotal (C+D+E)</u>		
(G)	<u>Subcontractor's Overhead and Profit Charge</u> 1. This shall be no more than eight percent (8%) of item (F). 2. This shall be the total cumulative mark-up permitted for the Subcontractor and Subcontractor's Subcontractor(s) (i.e., all "lower-tier" Subcontractor(s)).		
(H)	<u>Subtotal (F+G)</u>		
(I)	<u>General Contractor's "Mark-Up" and "Fee/Overhead & Profit"</u> At or below those amounts indicated in the Contractor's response to the RFQ and/or RFP for this Project.		
(J)	<u>General Contractor's Bond Cost</u> At or below the amount indicated in the Contractor's response to the RFQ and/or RFP for this Project.		
(K)	<u>General Contractor's Insurance Cost</u> At or below the amount indicated in the Contractor's response to the RFQ and/or RFP for this Project.		
(L)	<u>TOTAL (H+I+J+K)</u>		
(M)	<u>Time</u>	<u> </u> Days	

FORMAT FOR PROPOSED CHANGE FOR CONTRACTOR PERFORMED WORK

	<u>GENERAL CONTRACTOR PERFORMED WORK</u>	<i>ADD</i>	<i>DEDUCT</i>
(A)	<u>Labor Charge</u> 1. Hours. Attach total itemized hours. 2. Rate. This shall be no more than the Straight-Time Total Hourly Rate as determined by the Department of Industrial Relations ("DIR") for the applicable local labor category.		
(B)	<u>Labor Burden & Worker's Compensation Charge</u> 1. This shall be no more than twenty percent (20%) of item (A), the Labor Charge. 2. This shall be the total cumulative charge permitted for all labor performed by Contractor.		
(C)	<u>Subtotal (A+B)</u>		
(D)	<u>Material Charge</u> Attach itemized quantity and unit cost plus sales tax and invoice(s) from vendor(s).		
(E)	<u>Equipment Charge</u> Attach invoice(s) from supplier(s).		
(F)	<u>Subtotal (C+D+E)</u>		
(G)	<u>General Contractor's "Mark-Up" and "Fee/Overhead & Profit"</u> At or below those amounts indicated in the Contractor's response to the RFQ and/or RFP for this Project.		
(H)	<u>General Contractor's Bond Cost</u> At or below the amount indicated in the Contractor's response to the RFQ and/or RFP for this Project.		
(I)	<u>General Contractor's Insurance Cost</u> At or below the amount indicated in the Contractor's response to the RFQ and/or RFP for this Project.		
(J)	<u>TOTAL (F+G+H+I)</u>		
(K)	<u>Time</u>	_____ Days	

17.8.1. All Proposed Change Order requests by Contractor for a change shall include a complete itemized breakdown with the following detail:

17.8.1.1.Labor. Labor breakdown by trade classification, wage rates, and estimated hours. Labor costs shall only include fringe benefits indicated by governing trade organizations. Wages shall not exceed current prevailing wages in the locality for performance of the changes.

17.8.1.1.1. The Contractor's or Subcontractors' labor burden and Workers' Compensation premium shall only be charged as indicated herein. In no event shall Contractor include any other charges than as indicated herein without the prior written approval of the District.

17.8.1.2.Material. Material quantities, and types of products, and transportation costs, if applicable.

17.8.1.3. Equipment. Equipment breakdown by make, type, size, rental rates, equipment hours and transportation costs, if applicable.

17.8.1.3.1. The equipment costs shall not exceed one hundred percent (100%) of the Association of Equipment Distributors (AED) rental rates or Caltrans rates, whichever is less. Hourly, daily, weekly, or monthly rates shall be used, whichever is lower. Hourly rates including operator shall not be used.

17.8.1.3.2. The actual time to be paid for equipment shall be the time that the equipment is in productive operation on the Work or idled as a result of the event or circumstance giving rise to the Proposed Change Order. In computing the hourly rental of equipment, any time less than thirty (30) minutes shall be considered one-half (1/2) hour. No payment will be made for time while equipment is inoperative due to breakdown, or for non-workdays. In addition, the rental time shall not include the time required to move the equipment to and from the Project Site(s). No mobilization or demobilization will be allowed for equipment already on site. If such equipment is not moved by its own power, then loading and transportation costs will be paid in lieu of rental time thereof. However, neither moving time nor loading and transportation costs will be paid if the equipment is used on the Project Site(s) in any other way than upon the work directly related to the event or circumstance giving rise to the Proposed Change Order.

17.8.1.3.3. Individual pieces of equipment having a replacement value of one thousand dollars (\$1,000) or less shall be considered to be small tools or small equipment, and no payment will be made since the costs of these tools and equipment is included as part of the markup for overhead and profit defined herein.

17.8.1.3.4. Payment to the Contractor for the use of equipment as set forth above shall constitute full compensation to the Contractor for the cost of fuel, power, oil, lubricants, supplies, small equipment, necessary attachments, repairs and maintenance of any kind, depreciation, storage, insurance, labor (except for equipment operators), and any and all costs to the Contractor incidental to the use of the equipment.

17.8.1.3.5. Should Contractor, or any of its owners, officers, directors or agents, hold any ownership interest in any company, organization, association or corporation from whom rental equipment is secured. Contractor shall immediately notify District of such and the price set for any such rental shall be agreed upon in advance by the Contractor and the District.

17.8.1.4. Mark-Up, Fee / Overhead and Profit. Markup for overhead and profit, which shall be used to compensate Contractor for all costs for all administration, general conditions, and supervision, including, without limitation:

17.8.1.4.1. All home office overhead, field office overhead, field office personnel including, but not limited to, principals, project managers, superintendents, supervisory foremen, estimators, project engineers, detailers, draftsmen, schedulers, consultants, watchmen, payroll clerks, administrative assistants, labor compliance costs and secretaries.

17.8.1.4.2. All field and field office expenses including, but not limited to, field trailers, parking, storage sheds, office equipment and supplies, telephone service and long distance telephone calls, computers, fax machines, temporary utilities, sanitary facilities and services, janitorial services, small tools and equipment with a cost under \$1000 each, portable scaffolding, blocking, shores, appliances, job vehicles, security and fencing, conformance to regulatory requirements including compliance to safety regulations, safety programs and meetings, cartage, warranties, As-Built Drawings, as well as any related maintenance costs.

17.8.1.4.3. Administrative functions such as, but not limited to, reviewing, coordinating, distributing, processing, posting, recording, estimating, negotiating, expediting, engineering, drawing, detailing, revising shop drawings, carting, cleaning, protecting the work, and other incidental Work related to the change.

17.8.1.4.4. All other costs and taxes required to be paid, but not included under direct costs as defined above including, without limitation, payroll taxes, social security, etc.

17.8.1.4.5. All costs for Contractor's bonds and insurance.

17.8.1.4.6. Taxes: Federal excise tax shall not be included. District will issue an exemption on request.

17.8.1.5. Contract Time. Justification for any adjustment in Contract Time including a schedule analysis identifying critical schedule activities delayed by the request. Contract Time shall be extended or reduced by Change Orders, Unilateral Change Orders, or Force Account Directives for a period of time commensurate with the time reasonably necessary to perform a Change. This time must be requested in writing by the Contractor with the Price Request, PCO, or expressly in writing as part of its documentation for Unilateral Change Orders, or Force Account Directives. The Contractor shall justify any Contract Time extension by submittal of a schedule analysis as required in this Changes section of these General Construction Provisions accurately portraying the impact of the change on the critical path of the Construction Schedule. Changes performed within available float shall not justify an extension to the Contract Time. The District shall make the final determination of the amount of Contract Time to allocate to any Change.

17.8.1.6. Supporting Documentation. Contractor shall include with each PCO, along with the itemized breakdown as required herein, reasonable documentation substantiating the requested change in the Contract Price and Contract Time. If the District deems Contractor's supporting documentation incomplete or inadequate to substantiate the requested change to the Contract Price and Contract Time, the District may request that Contractor supplement the PCO with additional, reasonable supporting documentation.

17.9. Change Order Certification

17.9.1. All Change Orders and PCOs shall include the following certification by the Contractor. The Parties acknowledged that if a Change Order is approved that does not include this language, that Change Order shall be deemed to include this certification language:

The undersigned Contractor approves the foregoing as to the changes, if any, and the Guaranteed Project Cost specified for each item and as to the extension of time allowed, if any, for Project Completion, and agrees to furnish all labor, materials, and service, and perform all work necessary to complete any additional work specified for the consideration stated herein. Submission of sums that have no basis in fact or which Contractor knows are false are at the sole risk of Contractor and may be a violation of the False Claims Act set forth under Government Code section 12650 et seq. It is understood that the changes herein to the Contract shall only be effective when approved by the governing board of the District. It is expressly understood that the value of the extra Work or changes expressly includes any and all of the Contractor's costs and expenses, both direct and indirect, resulting from additional time required on the Project or resulting from delay to the Project. Any costs, expenses, damages, or time extensions not included are deemed waived.

17.10. Determination of Change Order Cost

17.10.1. The amount of the increase or decrease in the Guaranteed Project Cost from a Change Order, if any, shall be determined in one or more of the following ways as applicable to a specific situation and at the District's discretion:

17.10.1.1. District acceptance of a PCO;

17.10.1.2. By agreement between District and Contractor.

17.10.1.3. By amounts contained in Contractor's schedule of values, if applicable;

17.10.1.4. By the District, based upon actual and necessary costs incurred by the Contractor as determined by the District on the basis of the Contractor's records. Promptly upon determining the extent of adjustment to the Contract Price, the District shall notify the Contractor in writing of the same; the Contractor shall be deemed to have accepted the District's determination of the amount of adjustment to the Contract Price on account of a Change to the Work unless Contractor shall notify the District, in writing, not more than fifteen (15) days from the date of the District's written notice, of any objection to the District's determination. Failure of the Contractor to timely notify the District of Contractor's objections to the District's determination of the extent of adjustment to the Contract Price shall be deemed Contractor's acceptance of the District's determination and a waiver of any right or basis of the Contractor to thereafter protest or otherwise object to the District's determination. Notwithstanding any objection of the Contractor to the District's determination of the extent of any adjustment to the Contract Price pursuant to this provision, Contractor shall diligently proceed to perform and complete any such Change.

17.10.2. If the District has put in contingency(s) and/or allowance(s) in **Exhibit C** to the Facilities Lease, then approved Change Order(s) may be paid out of those contingency(s) and/or allowance(s), pursuant to **Exhibit C** and if agreed to by the District.

17.11. Deductive Change Orders

All deductive Change Order(s) must be prepared pursuant to the provisions herein. If Contractor offers a proposed amount for a deductive Change Order(s), Contractor shall include a minimum of five percent (5%) total overhead, profit & general conditions to be deducted with the amount of the work of the Change Order(s). If Subcontractor work is involved, Subcontractors shall also include a minimum of five percent (5%) total overhead, profit & general conditions to be deducted with the amount of its deducted work. Any deviation from this provision shall only be permitted with the District's prior written approval.

17.12. Discounts, Rebates, and Refunds

For purposes of determining the cost, if any, of any change, addition, or omission to the Work hereunder, all trade discounts, rebates, refunds, and all returns from the sale of surplus materials and equipment shall accrue and be credited to the Contractor, and the Contractor shall make provisions so that such discounts, rebates, refunds, and returns may be secured, and the amount thereof shall be allowed as a reduction of the Contractor's cost in determining the actual cost of construction for purposes of any change, addition, or omission in the Work as provided herein. Such discounts and rebates generated as a result of early payments shall only be credited to the District, provided that the District provides Contractor with early payment in order to secure such discounts and rebates.

17.13. Accounting Records

With respect to portions of the Work performed by Change Orders, Unilateral Change Orders, or Force Account Directives, Contractor shall keep and maintain cost-accounting records satisfactory to the District, which shall be available to the District on the same terms as any other books and records the Contractor is

required to maintain under the Contract Documents.

17.14. Notice Required

If the Contractor desires to make a claim for an increase in the Guaranteed Project Cost, or any extension in the Contract Time for Project Completion, it shall notify the District pursuant to the provisions herein. No claim shall be considered unless made in accordance with the provisions herein. Contractor shall proceed to execute the Work even though the adjustment may not have been agreed upon. Any change in the Guaranteed Project Cost or extension of the Contract Time resulting from such claim shall be authorized by a Change Order.

17.15. Applicability to Subcontractors

Any requirements under this Article shall be equally applicable to Change Orders, Unilateral Change Orders, or Force Account Directives issued to Subcontractors by the Contractor to the extent as required by the Contract Documents.

17.16. Alteration to Change Order Language

Contractor shall not alter Change Orders or reserve time in Change Orders. Contractor shall execute finalized Change Orders and proceed under the provisions herein with proper notice.

17.17. Failure of Contractor to Execute Change Order

Contractor shall be in default of the Contract if Contractor fails to execute a Change Order when the Contractor agrees with the addition and/or deletion of the Work in that Change Order.

18. REQUESTS FOR INFORMATION

18.1. Any Request for Information ("RFI") shall reference all applicable Contract Document(s), including Specification section(s), detail(s), page number(s), drawing number(s), and sheet number(s), etc. The Contractor shall make suggestions and interpretations of the issue raised by each Request for Information. A Request for Information cannot modify the Guaranteed Project Cost, Contract Time, or the Contract Documents.

18.2. The Contractor shall be responsible for any costs incurred for professional services that District may deduct from any amounts owing to the Contractor, if Contractor makes multiple Requests for Information that request interpretation(s) or decision(s) of a matter where the information sought is equally available to the Contractor. District, at its sole discretion, shall deduct from and/or invoice Contractor for all the professional services arising herein.

18.3. Requests for Information shall comply with all requirements of the Contract Documents.

18.4. Prior to submitting the RFI, Contractor shall diligently review the Contract Documents for information responsive to the RFI, including information incorporated by reference. Contractor should not issue an RFI regarding information contained in or inferable from the Contract Documents, including information incorporated by reference. An RFI is invalid if the RFI response is contained in or inferable from the Contract Documents.

18.5. Contractor shall be responsible for preparing and submitting each RFI so as to not cause delay to the progress of the Work nor to cause any impact to the Contractor's labor productivity. An RFI may be considered untimely if not submitted within **Forty-Eight (48) hours** of receipt from a Contractor's subcontractor. Untimely submission of any RFI will preclude Contractor from asserting any claims for delay or

for labor impact against the District.

18.6. If the Contractor fails to timely notify the District and the Architect in writing of any Conditions encountered and the Contractor proceeds to perform any portion of the Work containing or affected by such Conditions the Contractor shall bear all costs associated with or required to correct, remove, or otherwise remedy any portion of the Work affected thereby without adjustment of the Contract Time or the Contract Price. In requesting information of the District to address and resolve any conditions, the Contractor shall act with promptness in submitting any written request so as to allow the District a reasonable period of time to review, evaluate and respond to any request, taking into account the then current status of the progress and completion of the Work and the actual or potential impact of any conditions upon the completion of the Work within the Contract Time. The Contract Time shall not be subject to adjustment in the event that the Contractor shall fail to timely request information from the District.

19. PAYMENTS

19.1. Guaranteed Project Cost

As compensation for Contractor's construction of the Project, the District shall pay Contractor pursuant to the terms of **Exhibit C** to the Facilities Lease.

19.2. Applications for Tenant Improvement Payments

19.2.1. Procedure for Applications for Tenant Improvement Payments

19.2.1.1. Not before the fifth (5th) day of each calendar month during the progress of the Work, Contractor shall submit to the District and the Architect an itemized Application for Payment for operations completed in accordance with the Schedule of Values. The Contractor shall include in the Application for Tenant Improvement Payments an itemized list of equipment and materials that are stored off-site and are in the Contractor's possession. Each Application for Tenant Improvement Payment shall be notarized, if required, and supported by the following or each portion thereof unless waived by the District in writing:

19.2.1.1.1. The amount paid to the date of the Application for Tenant Improvement Payment to the Contractor, to all its Subcontractors, and all others furnishing labor, material, or equipment for its Contract;

19.2.1.1.2. The amount being requested under the Application for Tenant Improvement Payment by the Contractor on its own behalf and separately stating the amount requested on behalf of each of the Subcontractors and all others furnishing labor, material, and equipment under the Contract;

19.2.1.1.3. The balance that will be due to each of such entities after said payment is made;

19.2.1.1.4. A certification that the As-Built Drawings and annotated Specifications are current;

19.2.1.1.5. Itemized breakdown of work done for the purpose of requesting partial payment;

19.2.1.1.6. An updated and acceptable construction schedule in conformance with the provisions herein;

19.2.1.1.7. The additions to and subtractions from the Guaranteed Project Cost and Contract Time;

19.2.1.1.8. A total of the cumulative Retention withheld prior to the current Application for Payment, and that to be withheld under the current Application for Payment (5% of the current Application for Payment);

19.2.1.1.9. Verified material invoices, evidence of equipment purchases, rentals, and other support and details of cost as the District may require from time to time;

19.2.1.1.10. The percentage of completion of the Contractor's Work by line item;

19.2.1.1.11. Schedule of Values updated from the preceding Application for Tenant Improvement Payment;

19.2.1.1.12. If Contractor includes in the Application for Tenant Improvement Payments an itemized list of equipment and materials that are stored off-site and are in the Contractor's possession, the Contractor's Application for Tenant Improvement Payment shall be supported by the following:

19.2.1.1.12.1. Itemized breakdown of equipment and materials that are stored off-site and are in the Contractor's possession for the purpose of requesting partial payment, identifying the serial numbers and exact storage location of each piece of equipment and material;

19.2.1.1.12.2. Verified invoices for equipment and materials that are stored off-site and are in the Contractor's possession;

19.2.1.1.12.3. Original copy of Property of Others Insurance, Employee Theft Protection Insurance Policy or an Employee Theft Protection Bond. These documents shall include for the itemized equipment and materials that are stored off-site and are in the Contractor's possession, certificates and endorsements stating the coverage and stating that the District is a loss payee or obligee, as appropriate;

19.2.1.1.13. A duly completed and executed "Conditional Waiver and Release on Progress Payment" compliant with Civil Code section 8132 from each subcontractor of any tier and supplier to be paid from the current Tenant Improvement Payment;

19.2.1.1.14. A duly completed and executed "Unconditional Waiver and Release on Progress Payment" compliant with Civil Code section 8134 from each subcontractor of any tier and supplier that was paid from the Tenant Improvement Payment from sixty (60) days prior; and

19.2.1.1.15. A certification by the Contractor of the following:

19.2.1.1.15.1.1. The Contractor warrants title to all Work performed as of the date of this payment application. The Contractor further warrants that all Work performed as of the date of this payment application is free and clear of liens, claims, security interests, or encumbrances in favor of the Contractor, Subcontractors, material and equipment suppliers, workers, or other persons or entities making a claim by reason of having provided labor, materials, and equipment relating to the Work, except those of which the District has been informed.

19.2.1.1.16. If requested by the District, a third party, or as required by the California Department of Industrial Relations, all requested or required certified payroll record ("CPR(s)") for each journeyman, apprentice, worker, or other employee employed by the Contractor and/or

each Subcontractor in connection with the Work for the period of the Application for Payment.

19.2.1.2. Except as expressly provided for herein, no payments shall be made by the District on account of any item of the Work, including without limitation, materials or equipment that, at the time of the Contractor's submittal of an Application for Tenant Improvement Payments, has/have not been incorporated into and made a part of the Work.

19.2.2. Prerequisites for Tenant Improvement Payments

19.2.2.1. First Payment Request: The following items, if applicable, must be completed before the District will accept and/or process the Contractor's first payment request:

- 19.2.2.1.1. Schedule of unit prices, if applicable;
- 19.2.2.1.2. Receipt by Architect of all submittals due as of the date of the payment application;
- 19.2.2.1.3. Copies of authorizations and licenses from governing authorities;
- 19.2.2.1.4. Initial progress report;
- 19.2.2.1.5. Surveyor qualifications;
- 19.2.2.1.6. Written acceptance of District's survey of rough grading, if applicable;
- 19.2.2.1.7. List of all Subcontractors, with names, license numbers, telephone numbers, and Scope of Work;
- 19.2.2.1.8. All bonds and insurance endorsements; and

19.2.2.2. No Waiver of Criteria. Any payments made to Contractor where criteria set forth herein have not been met shall not constitute a waiver of said criteria by District. The approval of any Application for Progress Payment or the disbursement of any Tenant Improvement Payment to the Contractor shall not be deemed nor constitute acceptance of defective Work or Work not in conformity with the Contract Documents. Instead, such payment shall be construed as a good faith effort by District to resolve differences so Contractor may pay its Subcontractors and suppliers. Contractor agrees that failure to submit such items may constitute a breach of contract by Contractor and may subject Contractor to termination.

19.3. District's Approval of Application for Tenant Improvement Payment

19.3.1. Upon receipt of an Application for Tenant Improvement Payment, The District shall act in accordance with both of the following:

19.3.1.1. Each Application for Tenant Improvement Payment shall be reviewed by the District as soon as practicable after receipt for the purpose of determining that the Application for Tenant Improvement Payment is a proper Application for Tenant Improvement Payment.

19.3.1.2. Any Application for Tenant Improvement Payment determined not to be a proper Application for Tenant Improvement Payment suitable for payment shall be returned to the Contractor as soon as practicable, but not later than seven (7) days, after receipt. An Application for Tenant Improvement Payment returned pursuant to this paragraph shall be accompanied by a document setting forth in writing the reasons why the Application for Tenant Improvement Payment is not proper. The number of days available to the District to make a payment without incurring

interest pursuant to this section shall be reduced by the number of days by which the District exceeds this seven-day return requirement.

19.3.1.3. An Application for Tenant Improvement Payment shall be considered properly executed if funds are available for each payment request from a Schedule of Value line item in the Application for Tenant Improvement Payment, and payment is not delayed due to an audit inquiry by a financial officer or auditor of the District, the County, or the State.

19.3.1.3.1. An Application for Tenant Improvement Payment shall be considered improperly executed and returned, if payment is requested from a Schedule of Value line item that exceeds the percentage of work performed in that pay period for that scope of work, or that does not have funds available or that have been exhausted for that Schedule of Value line item, or if an Application for Tenant Improvement Payment includes line items not shown in the Schedules of Values of **Exhibit G**.

19.3.2. The District's review of the Contractor's Application for Tenant Improvement Payment will be based on the District's and the Architect's observations at the Site and the data comprising the Application for Tenant Improvement Payment that the Work has progressed to the point indicated and that, to the best of the District's and the Architect's knowledge, information, and belief, the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to:

19.3.2.1. Observation of the Work for general conformance with the Contract Documents,

19.3.2.2. Results of subsequent tests and inspections,

19.3.2.3. Minor deviations from the Contract Documents correctable prior to Project Completion, and

19.3.2.4. Specific qualifications expressed by the Architect.

19.3.3. District's approval of the certified Application for Tenant Improvement Payment shall be based on Contractor complying with all requirements for a fully complete and valid certified Application for Tenant Improvement Payment.

19.3.4. If Contractor includes in its Application for Tenant Improvement Payments an itemized list of equipment and materials that are stored off-site and are in the Contractor's possession, Contractor shall provide all required supporting documentation.

19.3.5. Payments to Contractor

19.3.5.1. Within thirty (30) days after District approval of the Application for Tenant Improvement Payment, Contractor shall be paid a sum equal to ninety-five percent (95%) of the value of the Work performed (as verified by Architect and Inspector and certified by Contractor) up to the last day of the previous month, less the aggregate of previous payments and other amounts statutorily or contractually necessary to be withheld, including, without limitation, any item listed as "Reasons to Withhold Payment" herein below. Contractor shall continue to perform and shall complete the Project.

19.3.5.2. As the amount of the GPC that remains with the District approaches the total amount of the Lease Payments, the District shall ensure it maintains sufficient funds for the total Lease Payments and all other amounts statutorily or contractually necessary, including, without limitation, any item listed as "Reasons to Withhold Payment" herein below. Contractor shall continue to perform and shall complete the Project.

19.3.5.3. The value of the Work completed shall be Contractor's best estimate. No inaccuracy or error in said estimate shall operate to release the Contractor, or any Surety upon any bond, from damages arising from such Work, or from the District's right to enforce each and every provision of this Contract, and the District shall have the right subsequently to correct any error made in any estimate for payment.

19.3.6. No Waiver

No payment by District hereunder shall be interpreted so as to imply that District has inspected, approved, or accepted any part of the Work. Notwithstanding any payment, the District may enforce each and every provision of this Contract. The District may correct or require correction of any error subsequent to any payment.

19.3.7. Warranty of Title

19.3.7.1. If a lien or a claim based on a stop payment notice of any nature should at any time be filed against the Work or any District property, by any entity that has supplied material or services at the request of the Contractor, Contractor and Contractor's Surety shall promptly, on demand by District and at Contractor's and Surety's own expense, take any and all action necessary to cause any such lien or a claim based on a stop payment notice to be released or discharged immediately therefrom.

19.3.7.2. If the Contractor fails to furnish to the District within ten (10) calendar days after demand by the District, satisfactory evidence that a lien or a claim based on a stop payment notice has been so released, discharged, or secured, the District may discharge such indebtedness and deduct the amount required therefor, together with any and all losses, costs, damages, and attorney's fees and expense incurred or suffered by District from any sum payable to Contractor under the Contract.

19.3.8. Decisions to Withhold Payment

19.3.8.1. Reasons to Withhold Payment

The District may withhold payment to the extent reasonably necessary to protect the District if, in the District's opinion, the representations to the District required herein cannot be made. The District may withhold payment to such extent as may be necessary to protect the District from loss because of, but not limited to:

- 19.3.8.1.1. Defective Work not remedied within **FORTY-EIGHT (48)** hours of written notice to Contractor;
- 19.3.8.1.2. Stop payment notices or other liens served upon the District as a result of the Contract;
- 19.3.8.1.3. Liquidated damages assessed against the Contractor
- 19.3.8.1.4. The cost of Project Completion if there exists reasonable doubt that the Work can be completed for the unpaid balance of the Guaranteed Project Cost or by the Contract Time;
- 19.3.8.1.5. Damage to the District or other contractor(s);
- 19.3.8.1.6. Unsatisfactory prosecution of the Work by the Contractor;
- 19.3.8.1.7. Failure to store and properly secure materials;

19.3.8.1.8. Failure of the Contractor to submit, on a timely basis, proper, sufficient, and acceptable documentation required by the Contract Documents, including, without limitation, a Construction Schedule, Submittal Schedule, Schedule of Values, Monthly Progress Schedules, Shop Drawings, Product Data and samples, Proposed product lists, executed Change Orders, and/or verified reports;

19.3.8.1.9. Failure of the Contractor to submit As-Built Drawings;

19.3.8.1.10. Erroneous estimates by the Contractor of the value of the Work performed, or other false statements in an Application for Payment;

19.3.8.1.11. Unauthorized deviations from the Contract Documents;

19.3.8.1.12. Failure of the Contractor to prosecute the Work in a timely manner in compliance with the milestones within the Construction Schedule, established progress schedules, and/or completion dates;

19.3.8.1.13. The failure to provide certified payroll records acceptable to the District for each journeyman, apprentice, worker, or other employee employed by the Contractor and/or each Subcontractor in connection with the Work for the period of the Application for Payment;

19.3.8.1.14. Failure to properly pay prevailing wages as defined in Labor Code section 1720 et seq., and/or failure to comply with any other Labor Code requirements;

19.3.8.1.15. Failure to properly maintain or clean up the Site;

19.3.8.1.16. Payments to indemnify, defend, or hold harmless the District;

19.3.8.1.17. Any payments due to the District, including but not limited to payments for failed tests, utilities changes, or permits;

19.3.8.1.18. Failure to pay Subcontractor(s) or supplier(s) as required by law and by the Contract Documents;

19.3.8.1.19. Contractor is otherwise in breach, default, or in substantial violation of any provision of this Contract.

19.3.8.1.20. Extra services for Architect.

19.3.8.1.21. Extra services for the Inspector including but not limited to overtime tests and inspection or reinspection required due to Contractor's failed tests or installation of unapproved or defective materials and Contractor's requests for inspection and Contractor's failure to attend the inspection.

19.3.8.1.22. Any other obligation(s) of the District which the District is authorized and/or compelled by law to perform.

19.3.8.2. Reallocation of Withheld Amounts. District may, in its reasonable discretion, apply any withheld amount to pay outstanding claims or obligations as defined herein. In so doing, District shall make such payments on behalf of Contractor only after providing fourteen (14) days prior written notice to Contractor, requesting the Contractor provide information in response to same. District shall consider all information provided by Contractor in exercising its discretion to pay any such claim or obligation. These payments may be made without prior judicial determination of claim or

obligation. District will render Contractor an accounting of funds disbursed on behalf of Contractor.

19.3.8.3. If Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents or fails to perform any provision thereof, District may, after **FORTY-EIGHT (48)** hours written notice to the Contractor and, without prejudice to any other remedy, make good such deficiencies. The District shall adjust the total Guaranteed Project Cost by reducing the amount thereof by the cost of making good such deficiencies. If District deems it inexpedient to correct Work that is damaged, defective, or not done in accordance with Contract provisions, an equitable reduction in the Guaranteed Project Cost (of at least one hundred twenty-five percent (125%) of the estimated reasonable value of the nonconforming Work) shall be made therefor.

19.3.9. Payment After Cure

When Contractor removes the grounds for declining approval, payment shall be made for amounts withheld because of them. No interest shall be paid on any amounts withheld due to the failure of the Contractor to perform in accordance with the terms and conditions of the Contract Documents.

19.4. Subcontractor Payments

19.4.1. Payments to Subcontractors

No later than seven (7) days after receipt of each Tenant Improvement Payment, or pursuant to Business and Professions Code section 7108.5 and Public Contract Code section 7107, the Contractor shall pay to each Subcontractor, out of the amount paid to the Contractor on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to its Sub-subcontractors in a similar manner.

19.4.2. No Obligation of District for Subcontractor Payment

The District shall have no obligation to pay, or to see to the payment of, money to a Subcontractor except as may otherwise be required by law.

19.4.3. Joint Checks

Provided Contractor is in breach of its payment obligations to its subcontractors and after 14 days written notice, District shall have the right in its sole discretion, if necessary for the protection of the District, to issue joint checks made payable to the Contractor and Subcontractors and material or equipment suppliers. The joint check payees shall be responsible for the allocation and disbursement of funds included as part of any such joint payment. In no event shall any joint check payment be construed to create any contract between the District and a Subcontractor of any tier, any obligation from the District to such Subcontractor, or rights in such Subcontractor against the District.

20. COMPLETION OF THE WORK

20.1. Completion

20.1.1. Completion of the Project will be when 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.

20.1.2. Acceptance. The Project may only be accepted by action of the governing board of the District, or its Designee. District, at its sole option, may accept the Project when the Project is not yet at Completion, except for minor corrective items, as distinguished from incomplete items. If Contractor fails

to complete all minor corrective items within thirty (30) days after the date of the District's acceptance of the Project, the District shall withhold from the final Tenant Improvement Payment one hundred fifty percent (150%) of an estimate of the amount sufficient to complete the corrective items, as determined by District, until the item(s) are completed.

20.1.2.1. At the end of the thirty (30) day period, if there are any items remaining to be corrected, District may elect to proceed as provided herein related to adjustments to Guaranteed Project Cost, and/or District's right to perform the Work of the Contractor.

20.2. Closeout Procedures

20.2.1. In addition to the closeout procedures indicated herein, Contractor shall comply with all the closeout requirements, procedures, and actions as indicated in all Contract Documents.

20.2.2. Punch List

The Contractor shall notify the Architect when Contractor considers the Work complete. Upon notification, Architect will prepare a list of minor items to be completed or corrected ("Punch List"). The Contractor and/or its Subcontractors shall proceed promptly to complete and correct items on the Punch List. Failure to include an item on Punch List does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

20.2.3. Closeout Requirements

20.2.3.1. Utility Connections

Buildings shall be connected to water, gas, sewer, and electric services, complete and ready for use. Service connections shall be made and existing services reconnected.

20.2.3.2. As-Built Drawings

20.2.3.2.1. Contractor shall provide exact "as-built" of the Work upon Project Completion as indicated in the Contract Documents ("As-Built Drawings").

20.2.3.2.2. Contractor is liable and responsible for any and all inaccuracies in As-Built Drawings, even if inaccuracies become evident at a future date.

20.2.3.2.3. Upon Project Completion and as a condition precedent to approval of final payment, Contractor shall obtain the Inspector and the Architect's approval of the corrected prints and provide to the District the As-Built Drawings and information on disk. When completed, Contractor shall deliver corrected drawings and diskette/CD/other data storage device acceptable to District with AutoCAD file to the District.

20.2.3.3. Maintenance Manuals: Contractor shall prepare all operation and maintenance manuals and date as indicated in the Contract Documents.

20.2.3.4. Closeout Documentation: Contractor shall provide all Closeout Documentation, which shall include the following, without limitation:

- 20.2.3.4.1. A full set of final As-Built Drawings, as further defined herein.
- 20.2.3.4.2. All Operations & Maintenance Manuals and information, as further defined herein.
- 20.2.3.4.3. All Warranties, as further defined herein.
- 20.2.3.4.4. Verified report(s) for all scope(s) of work (most recent revision of DSA 6-C,).

20.3. Final Inspection

20.3.1. Contractor shall comply with Punch List procedures as provided herein and in all the Contract Documents and maintain the presence of its District-approved project superintendent and project manager until the Punch List is complete to ensure proper and timely completion of the Punch List. Under no circumstances shall Contractor demobilize its forces prior to completion of the Punch List. Upon receipt of Contractor's written notice that all of the Punch List items have been fully completed and the Work is ready for final inspection and acceptance, Architect and Project Inspector will inspect the Work and shall submit to Contractor and District a final inspection report noting the Work, if any, required in order to complete in accordance with the Contract Documents. Absent unusual circumstances, this report shall consist of the Punch List items not yet satisfactorily completed.

20.3.2. Upon Contractor's completion of all items on the Punch List and any other uncompleted portions of the Work, the Contractor shall notify the District, the Architect and the Project Inspector, who shall again inspect such Work. If the Architect and the Project Inspector find the Work complete and acceptable under the Contract Documents, the Architect will notify Contractor, who shall then jointly submit to the Architect and the District its final Application for Payment.

20.3.3. Final Inspection Requirements

20.3.3.1. Before calling for final inspection, Contractor shall determine that the following have been performed:

- 20.3.3.1.1. The Work has been completed.
- 20.3.3.1.2. All life safety items are completed and in working order.
- 20.3.3.1.3. Mechanical and electrical Work are complete and tested, fixtures are in place, connected, and ready for tryout.
- 20.3.3.1.4. Electrical circuits scheduled in panels and disconnect switches labeled.
- 20.3.3.1.5. Painting and special finishes complete.
- 20.3.3.1.6. Doors complete with hardware, cleaned of protective film, relieved of sticking or binding, and in working order.
- 20.3.3.1.7. Tops and bottoms of doors sealed.
- 20.3.3.1.8. Floors waxed and polished as specified.
- 20.3.3.1.9. Broken glass replaced and glass cleaned.
- 20.3.3.1.10. Grounds cleared of Contractor's equipment, raked clean of debris, and trash removed from Site.
- 20.3.3.1.11. Work cleaned, free of stains, scratches, and other foreign matter, of damaged and broken material replaced.
- 20.3.3.1.12. Finished and decorative work shall have marks, dirt, and superfluous labels removed.

20.3.3.1.13. Final cleanup, as provided herein.

20.4. Costs of Multiple Inspections

More than two (2) requests of the District to make a final inspection shall be considered an additional service of District, Architect, Construction Manager, and/or Project Inspector, and all subsequent costs will be invoiced to Contractor and if funds are available, withheld from remaining payments.

20.5. Beneficial Occupancy or Use Prior to Project Completion

20.5.1. District's Rights to Beneficial Occupancy or Use

The District may, at its sole discretion, have Beneficial Occupancy or use of any completed or partially completed portion of the Project at any stage. Neither the District's Final Acceptance, the making of Final Payment, nor the Beneficial Occupancy or use of the Project, in whole or in part, by District shall constitute acceptance of the Project not in accordance with the Contract Documents nor relieve the Contractor or the Contractor's Performance Bond Surety from liability with respect to any warranties or responsibility for faulty or defective Work or materials, equipment and workmanship incorporated therein. The District and the Contractor shall agree in writing to the responsibilities assigned to each of them for payments, security, maintenance, heat, utilities, damage to the Project, insurance, the period for correction of the Work, and the commencement of warranties required by the Contract Documents. Any dispute as to responsibilities shall be resolved pursuant to the Disputes and Claims provisions herein, with the added provision that during the dispute process, the District shall have the right to Beneficial Occupancy or use any portion of the Project that it needs or desires to use.

20.5.2. Inspection Prior to Beneficial Occupancy or Use

Immediately prior to partial Beneficial Occupancy or use of the Project, the District, the Contractor, and the Architect shall jointly inspect the area to be occupied or portion of the Project to be used in order to determine and record the condition of the Work.

20.5.3. No Waiver

Unless otherwise agreed upon, partial or entire occupancy or use of a portion or portions of the Project shall not in and of itself constitute an acceptance of the Project not complying with the requirements of the Contract Documents.

21. FINAL PAYMENT AND RETENTION

21.1. Final Payment

Upon receipt and approval of a valid and final Application for Tenant Improvement Payment, the Architect may issue a final Certificate of Tenant Improvement Payment. The District shall thereupon jointly inspect the Work and either accept the Project as complete or notify the Architect and the Contractor in writing of reasons why the Project is not complete. Upon acceptance of the Project, the District may record a Notice of Completion with the County Recorder, and the Contractor shall, upon receipt of final Tenant Improvement Payment from the District, pay the amount due Subcontractors. The amount of the final Tenant Improvement Payment shall be equal to the remaining value of the work performed, less the total amount to be paid as Lease Payments pursuant to Exhibit C.

21.2. Prerequisites for Final Tenant Improvement Payment

The following conditions must be fulfilled prior to Final Tenant Improvement Payment:

21.2.1. A full and final waiver or release of all Stop payment notices in connection with the Work shall be submitted by Contractor, including a release of Stop payment notice in recordable form, together with (to the extent permitted by law) a copy of the full and final release of all Stop payment notice rights.

21.2.2. A duly completed and executed “**Conditional Waiver and Release on Final Payment**” compliant with Civil Code section 8136 from each subcontractor of any tier and supplier to be paid from the **current** Tenant Improvement Payment;

21.2.3. A duly completed and executed “**Unconditional Waiver and Release upon Final Payment**” compliant with Civil Code section 8138 from each subcontractor of any tier and supplier that was paid from the **previous** Tenant Improvement Payment; and

21.2.4. The Contractor shall have made all corrections to the Work that are required to remedy any defects therein, to obtain compliance with the Contract Documents or any requirements of applicable codes and ordinances, or to fulfill any of the orders or directions of District required under the Contract Documents.

21.2.5. Each Subcontractor shall have delivered to the Contractor all written guarantees, warranties, applications, and bonds required by the Contract Documents for its portion of the Work.

21.2.6. Contractor must have completed all requirements set forth under “Closeout Procedures,” Including, without limitation, an approved set of complete As-Built Drawings.

21.2.7. Architect shall have issued its written approval that final payment can be made.

21.2.8. The Contractor shall have delivered to the District all manuals and materials required by the Contract Documents.

21.2.9. The Contractor shall have completed final clean up as provided herein.

21.3. Retention

21.3.1. The retention (5% of the total Contract Price; “**Retention**”), **less** the total Lease Payments and less any amounts disputed by the District or that the District has the right to withhold pursuant to provisions herein, shall be paid as follows:

21.3.1.1. After approval by the District of the Architect’s Certificate of Payment,

21.3.1.2. After the satisfaction of the conditions set forth herein, and

21.3.1.3. Within sixty (60) days following Project Completion pursuant to Public Contract Code section 7107.

21.3.1.4. No earlier than thirty-five (35) days of the recording of the Notice of Completion by District, if a Notice of Completion is recorded by the District.

21.3.2. No interest shall be paid on any amounts withheld due to a failure of the Contractor to perform, in accordance with the terms and conditions of the Contract Documents.

21.3.3. District and Contractor acknowledge that the District’s protections, restrictions and requirements outlined in the “retention” provisions of applicable California law (including, without limitation, Public Contract Code sections 7201 and 9203) are satisfied by the amount(s) the District will withhold as

Retention under this Contract, including the amounts that the District will pay as Lease Payments under this Contract.

21.4. Claims Asserted After Final Tenant Improvement Payment.

Any lien, stop payment notice or other claim filed or asserted after the Contractor's acceptance of the Final Payment by any Subcontractor, of any tier, laborer, Material Supplier or others in connection with or for Work performed under the Contract Documents shall be the sole and exclusive responsibility of the Contractor pursuant to the indemnification obligations of the Contract Documents. In the event any lien, stop payment notice or other claim of any Subcontractor, Laborer, Material Supplier or others performing Work under the Contract Documents remain unsatisfied after Final Tenant Improvement Payment is made, Contractor shall refund to District all monies that the District may pay or be compelled to pay in discharging any lien, stop payment notice or other claim, including, without limitation all costs and reasonable attorneys' fees incurred by District in connection therewith.

22. UNCOVERING WORK, CORRECTION OF WORK AND RIGHT TO TAKEOVER WORK

22.1. Uncovering Work.

If a portion of the Work is covered without Inspector or Architect approval or not in compliance with the Contract Documents, it must, if required in writing by the District, the Project Inspector, or the Architect, be uncovered for the Project Inspector's or the Architect's observation and be replaced at the Contractor's expense without change in the Guaranteed Project Cost or Contract Time.

22.2. Rejection of Work.

Prior to the District's Acceptance of the Work, any Work or materials or equipment forming a part of the Work or incorporated into the Work that is defective or not in conformity with the Contract Documents may be rejected by the District, the Architect or the Project Inspector and the Contractor shall correct all rejected Work without any adjustment to the Contract Price or the Contract Time, even if the Work, materials or equipment have been previously inspected by the Architect or the Project Inspector or even if they failed to observe the defective or non-conforming Work, materials or equipment.

22.3. Nonconforming Work

22.3.1. Contractor shall promptly remove from Premises all Work identified by District as failing to conform to the Contract Documents whether incorporated or not. Contractor shall promptly replace and re-execute its own Work to comply with the Contract Documents without additional expense to the District and shall bear the expense of making good all work of other contractors destroyed or damaged by any removal or replacement pursuant hereto and/or any delays to the District or other contractors caused thereby.

22.3.2. If Contractor does not remove or reasonably begin and diligently remove Work that District has identified as failing to conform to the Contract Documents within a reasonable time, not to exceed five (5) calendar days, District may remove it and may store any material at Contractor's expense. If Contractor does not pay expense(s) of that removal within ten (10) days' time thereafter, District may, upon ten (10) days' written notice, sell any material at auction or at private sale and shall deduct all costs and expenses incurred by the District and/or District may withhold those amounts from payment(s) to Contractor.

22.4. Correction of Work

22.4.1. Correction of Rejected Work

Pursuant to the notice provisions herein, the Contractor shall promptly correct the Work rejected by the District, the Architect, or the Project Inspector as failing to conform to the requirements of the Contract Documents, whether observed before or after Project Completion and whether or not fabricated, installed, or completed. The Contractor shall bear costs of correcting the rejected Work, including additional testing, inspections, and compensation for the Inspector's or the Architect's services and expenses made necessary thereby.

22.4.2. One-Year Warranty Corrections

If, within one (1) year after the date of Project Completion or a designated portion thereof, or after the date for commencement of warranties established hereunder, or by the terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the District to do so. This period of one (1) year shall be extended with respect to portions of the Work first performed after Project Completion by the period of time between Project Completion and the actual performance of the Work. This obligation hereunder shall survive acceptance of the Work under the Contract and termination of the Contract. The District shall give such notice promptly after discovery of the condition.

22.5. District's Right to Takeover Work

22.5.1. If the Contractor should neglect to prosecute or reasonably begin and diligently prosecute the Work properly or fail to perform any provisions of this contract, the District, after **five (5) calendar days** written notice to the Contractor, may, without prejudice to any other remedy it may have, make good such deficiencies and may deduct the cost thereof from the payment then or thereafter due the Contractor.

22.5.2. If it is found at any time, before or after Project Completion, that Contractor has varied from the Drawings and/or Specifications, including, but not limited to, variation in material, quality, form, or finish, or in the amount or value of the materials and labor used, District may require at its option:

22.5.2.1. That all such improper Work be removed, remade or replaced, and all work disturbed by these changes be made good by Contractor at no additional cost to the District;

22.5.2.2. That the District deduct from any amount due Contractor the sum of money equivalent to the difference in value between the work performed and that called for by the Drawings and Specifications; or

22.5.2.3. That the District exercise any other remedy it may have at law or under the Contract Documents, including but not limited to the District hiring its own forces or another contractor to replace the Contractor's nonconforming Work, in which case the District shall either issue a deductive Change Order, a Unilateral Change Order, or invoice the Contractor for the cost of that work. Contractor shall pay any invoices within thirty (30) days of receipt of same or District may withhold those amounts from payment(s) to Contractor.

22.5.3. Acceptance of Defective or Non-Conforming Work. The District may, in its sole and exclusive discretion, elect to accept Work that is defective or that is not in accordance with the requirements of the Contract Documents, instead of requiring its removal and correction, in which case the Contract Price shall be reduced as appropriate and equitable.

23. TERMINATION AND SUSPENSION AND SCOPE REDUCTION

The Parties' rights to terminate the Project are as indicated in the Facilities Lease. In the event of a termination of

the Facilities Lease and notwithstanding any other provision in the Contract Documents, the Surety shall remain liable to all obligees under the Payment Bond and to the District under the Performance Bond for any claim related to the Project.

23.1. Emergency Termination of Public Contracts Act of 1949

23.1.1. In addition to the Parties' right to termination under the Facilities Lease, this Contract is subject to termination as provided by sections 4410 and 4411 of the Government Code of the State of California, being a portion of the Emergency Termination of Public Contracts Act of 1949.

23.1.1.1. Section 4410 of the Government Code states:

In the event a national emergency occurs, and public work, being performed by contract, is stopped, directly or indirectly, because of the freezing or diversion of materials, equipment or labor, as the result of an order or a proclamation of the President of the United States, or of an order of any federal authority, and the circumstances or conditions are such that it is impracticable within a reasonable time to proceed with a substantial portion of the work, then the public agency and the contractor may, by written agreement, terminate said contract.

23.1.1.2. Section 4411 of the Government Code states:

Such an agreement shall include the terms and conditions of the termination of the contract and provision for the payment of compensation or money, if any, which either party shall pay to the other or any other person, under the facts and circumstances in the case.

23.1.1.3. Compensation to the Contractor shall be determined on the basis of the reasonable value of the Work done, including preparatory work. As an exception to the foregoing and at the District's discretion, in the case of any fully completed separate item or portion of the Work for which there is a separate previously submitted unit price or item on the accepted schedule of values, that price shall control. The District, at its sole discretion, may adopt the Guaranteed Project Cost as the reasonable value of the work done or any portion thereof.

23.2. Suspension of Work

23.2.1. District may, without cause, order Contractor in writing to suspend, delay or interrupt the Project in whole or in part for such period of time as District may determine. When the District resumes the Project, the Parties will attempt to negotiate an adjustment in the GPC for increases or decreases in the cost of performance of the Project caused by suspense, delay or interruption. If the parties cannot agree on an adjusted GPC, the District may terminate the leases as permitted herein.

23.2.2. In the event the District shall order suspension of the Work, an adjustment shall be made to the Contract Price for increases in the direct cost of performance of the Work of the Contract Documents, actually caused by suspension, delay or interruption ordered by the District; provided however that no adjustment of the Contract Price shall be made to the extent: (i) that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible under the Contract Documents; or (ii) that an equitable adjustment is made or denied under another provision of the Contract Documents. The foregoing notwithstanding, any adjustment of the Contract Price shall not include any adjustment to increase the Contractor's overhead, general administrative costs or profit, all of which will remain as reflected in the Schedule of Values submitted by the Contractor pursuant to the Contract Documents. In the event of the District's suspension of the Work, the Contract Time shall be equitably adjusted.

23.3. Scope Reduction.

In cases of suspension, partial or complete termination, or at the discretion of the District, the District reserves the right to unilaterally approve a deductive Change Order to reduce scope of work or perform work with other forces or its own forces.

24. CLAIMS RESOLUTION

24.1. Exclusive Remedy.

24.1.1. Compliance with the claim resolution process and timelines described in this Claims Resolution section as well as the notice provisions of the Contract are express conditions precedent to Contractor's right to commence litigation or arbitration, file a claim under the California Government Code, or commence any other legal action related to the Project ("Claims Resolution Process").

24.1.2. Contractor acknowledges that its failure, for any reason, to provide written notice and all required supporting documentation to permit the District's review and evaluation within the time frame required by this Claims Resolution Process, shall be deemed Contractor's waiver, release, discharge and relinquishment of any right to assert, request, or demand any entitlement to an adjustment of the Contract Time or the contract Price on account of any instruction, request, drawings, specifications, action, condition, omission, default or other situation.

24.1.3. To the extent any provision(s) of this Claims Resolution Process conflict with or otherwise impair the timeframes and procedures of Public Contract Code section 9204, the provisions of Section 9204 shall control. If provisions of this Claims Resolution Process are supplementary and/or in addition to the requirements of Section 9204, but do not conflict with or otherwise impair the timeframes and procedures of Section 9204, the provisions of this Claims Resolution Process and the Contract shall control.

24.2. Performance during Claim Resolution Process.

The Contractor shall diligently proceed with Work on the Project at the same time that Claims are addressed under the Claims Resolution Process. It is the intent of District to resolve Claims with the Contractor as close to the events giving rise to the Claims as possible, and to avoid stale or late Claims and the late documenting of Claims. Contractor's failure to diligently proceed in accordance with the District's instructions or the Contract terms will be considered a material breach of the Contract and a waiver of Contractor's rights under this Contract.

24.3. Waiver.

If Contractor fails to timely submit any written notices required under the terms of the Contract or in this Claims Resolution section, Contractor waives and releases its rights regarding further review of its Claim, unless Contractor and District mutually agree in writing to other time limits.

24.4. Intention.

The Claims Resolution Process required herein is intended to provide a concise mechanism for resolving Claims as they arise during the Project, while requiring accurate documentation related to contested issues as to those Claims that are not contemporaneously resolved.

24.5. Other Provisions.

If portions of the Contract, other than this Claims Resolution Process, establish a specific process regarding a specific subject, then that process shall govern and control the resolutions of any disagreements thereunder.

Otherwise, the provisions in this Claims Resolution Process shall control the resolution of all Claims.

24.6. Claim Presentation

24.6.1. Claim: A claim is a written demand by Contractor (or by Contractor on behalf of a Subcontractor) that the Contractor must submit by **registered mail or certified mail return receipt requested** for:

24.6.1.1. An extension to the Contract Time, including relief from damages or penalties assessed by the District for delay;

24.6.1.2. Payment of money or damages arising from work done by, or on behalf of, the Contractor pursuant to the Contract and payment that is not otherwise expressly provided for in the Contract Documents or the Contractor is not otherwise entitled; or

24.6.1.3. Payment that is disputed by the District.

24.6.2. A PCO may be a Claim, but the Parties agree that a PCO shall only be a Claim if:

24.6.2.1. The District states in writing that it disagrees with the terms of a PCO and directs the Contractor to utilize the Claim Resolution Process, or

24.6.2.2. The District rejects in whole or in part a PCO and the Contractor states in writing that it is utilizing the Claim Resolution Process for the portion of the PCO that the District rejected.

24.6.3. Subcontractors.

24.6.3.1. Public Contract Code section 9204(d)(5) states that the Contractor may present to the District a Claim on behalf of a Subcontractor or lower tier Subcontractor. A Subcontractor may request in writing, either on his or her own behalf or on behalf of a lower tier Subcontractor, that the Contractor present a claim for Work which was performed by the Subcontractor or by a lower tier Subcontractor on behalf of the Subcontractor. The Subcontractor requesting that the Claim be presented to the District shall furnish reasonable documentation to support the Claim. Within 45 days of receipt of this written request, the Contractor shall notify the Subcontractor in writing as to whether the Contractor presented the claim to the District and, if the Contractor did not present the Claim, provide the Subcontractor with a statement of the reasons for not having done so.

24.6.3.2. Contractor is responsible for providing this Claims Resolution Process to its Subcontractors and for ensuring that all Subcontractors or others who may assert Claims by and through Subcontractors and/or the Contractor are informed of this Claims Resolution Process. No Claim submitted by any party that fails to follow the provisions of this Claims Resolution Process will be considered. Contractor shall indemnify, keep and hold harmless the District and its consultants, against all suits, claims, damages, losses, and expenses, including but not limited to attorney's fees, caused by, arising out of, resulting from, or incidental to, the failure to provide this Claims Resolution Process to its Subcontractors or others who may assert Claims by and through Subcontractors and/or the Contractor.

24.6.4. Contractor Must Timely Identify, Present and Document Any Claim

24.6.4.1. Every Claim shall be stated with specificity in writing and signed by Contractor under penalty of perjury and presented to the District within ten (10) calendar days from the date Contractor

discovers or reasonably should discover, that an act, error or omission of District, its agents or employees, or action, condition or other situation has occurred that may entitle Contractor to make a Claim. This shall include the Contractor's actual or constructive knowledge of any instruction, request, drawings, specifications, action, condition, omission, default or other situation for which the contractor believes there should an adjustment of the Contract Price or Contract Time. Contractor shall provide this writing even if Contractor has not yet been damaged, delayed, or incurred extra cost when Contractor discovers, or reasonably should discover, the act, error, omission, action, condition or situation giving rise to the incidents giving rise to the Claim. The writing shall:

24.6.4.1.1. Identify all of the issues, events, conditions, circumstances and/or causes giving rise to the Claim;

24.6.4.1.2. Identify all pertinent dates and/or durations and all actual and/or anticipated effects on the Contract Price, milestones and/or Contract Time adjustments; and

24.6.4.1.3. Identify in detail line-item costs if the Claim seeks money.

24.6.4.1.4. If the Claim involves extra work, a detailed cost breakdown of the amounts the Contractor is seeking, including actual cost records (including without limitation, payroll records, material and rental invoices and the like) demonstrating that those costs have actually been incurred. To the extent costs have not yet been incurred at the time the Claim is submitted, actual cost records must be submitted on a current basis not less than once a week during any periods costs are incurred. A cost record will be considered current if submitted within seven (7) days of the date the cost reflected in the record is incurred. At the request of District, extra costs may be subject to further verification procedures (such as having an inspector verify the performance of alleged extra work on a daily basis).

24.6.4.1.5. If the Claim involves an error or omission in the Contract Documents:

24.6.4.1.5.1. An affirmative representation under penalty of perjury by Contractor and any affected Subcontractors and suppliers that the error or omission was not discovered prior to submitting a proposal for the Work, and

24.6.4.1.5.2. A detailed statement demonstrating that the error or omission reasonably should not have been discovered, by Contractor, its Subcontractors and suppliers, prior to submitting a proposal for the Work.

24.6.4.1.6. If the Claim involves a request for additional compensation for escalation of materials costs, then this provision exclusively governs those request(s) by Contractor and the following are all conditions precedent to Contractor's submission of a Proposed Change Order or Claim for additional compensation for escalation of materials costs.

24.6.4.1.6.1. Contractor shall not be entitled to submit a request for compensation for escalation of materials unless the actual cost of materials exceeds ten percent (10%) of the **total** material costs on the Project.

24.6.4.1.6.2. The cost escalation is the result of unusual and unforeseeable market conditions not reasonably foreseeable at the time of award of the Contract and was not an escalated cost resulting from any action or inaction of the Contractor.

24.6.4.1.6.3. Contractor timely ordered and/or purchased the materials at issue.

24.6.4.1.6.4. Contractor's material costs were reasonable at the time of District's

approval of the Contractor's GPC for the Project.

24.6.4.1.6.5. Contractor demonstrates an actual increase in the cost of materials in its Contract Price at the time of District's approval of the Contractor's GPC and/or as reflected in Contractor's actual material payment cost paid either at time of purchase or delivery, whichever is earlier.

24.6.4.1.6.6. An actual year-to-date price increase has occurred and can be substantiated by the E.N.R. 20-City Average Material Cost Index for the material at issue that demonstrates the claim for an increase in price of the material at the time of delivery of the higher priced material to the Project.

24.6.4.2. The writing shall be accompanied by all documents substantiating Contractor's position regarding the Claim.

24.6.4.3. A Claim that asserts an effect on any schedule milestones and/or Contract Time shall include all pertinent scheduling data demonstrating the impact(s) on the critical path(s), milestone(s) and/or Contract Time.

24.6.4.4. Contractor agrees that it shall not base its damages, its calculations or its Claim on a "total cost" approach, a "modified total cost" approach or a "jury verdict method" approach.

24.6.5. Certification. Each copy of the Claim Documentation shall be certified by a responsible officer of the Contractor in accordance with the requirements of the Contract Documents. This certification shall be under penalty of perjury and must include the following language immediately above or before the Contractor's signature: ***"I declare under penalty of perjury under the laws of the State of California that the information provided and statements made in this Claim are true and correct, substantiated and of merit."*** The Contractor acknowledges that this requirement is not a mere formality but is intended to ensure that the Contractor only submits Claims that it believes are true and correct, substantiated and have merit. Should Contractor fail to submit the foregoing written statement signed under penalty of perjury, Contractor waives and releases its Claim, including all rights and remedies in connection therewith. This certification must include a certification of any portion of the Claim from Subcontractor(s) or others who are asserting Claims by and through Subcontractors and/or the Contractor

24.6.6. District's Written Statement/Decision on Claim. The District shall issue a written statement/decision regarding the Claim to the Contractor within forty-five (45) days of receipt of the written Claim from the Contractor, or three (3) days after the District's first regular governing board meeting after that 45-day period if the District's governing board does not meet within that first 45-day period. If the District fails to timely provide a written statement/decision regarding the Claim, the Claim shall be deemed rejected in its entirety.

24.6.7. Contractor Must Demand an Informal Meet and Confer Conference if Contractor Pursues Any Claim

24.6.7.1. FAILURE OF A CONTRACTOR TO TIMELY DEMAND A MEET AND CONFER CONFERENCE IS A WAIVER OF ITS RIGHT TO PURSUE ALL OR A PORTION OF ITS CLAIM.

24.6.7.2. Where There Is No Agreement: If there is no agreement between Contractor and the District on a Claim, then within ten (10) calendar days of the date of the District's written statement/decision in response to a Claim or PCO, if Contractor pursues that Claim, then Contractor must demand, by **registered mail or certified mail return receipt requested**, a meet and confer conference with District staff. A meet and confer conference with District staff shall be a condition precedent to Contractor seeking any further relief, including a mediation as indicated below.

24.6.7.3. Where There Is Partial Agreement: If Contractor and the District partially agree on a Claim but do not reach complete agreement, then the Parties shall complete a Change Order, if applicable, for the issues and/or amounts agreed to. For those issues not agreed to, if Contractor pursues those issues from that Claim, then Contractor must demand, by **registered mail or certified mail return receipt requested**, a meet and confer conference with District staff regarding those issues. A meet and confer conference with District staff shall be a condition precedent to Contractor seeking any further relief, including a mediation as indicated below, in connection with the District's rejection.

24.6.7.4. Meet and Confer Conference. District and Contractor shall schedule the meet and confer conference as soon as reasonably possible after Contractor's written demand for a meet and confer conference, but in no case later than thirty (30) days after Contractor's demand.

24.6.7.5. District's Written Decision. Within ten (10) **business** days of the meet and confer conference, the District shall issue a written decision. If the District fails to timely provide a written statement/decision after the meet and confer conference, all Claim issues that were part of the meet and confer conference shall be deemed rejected in their entirety.

24.6.7.5.1. If the District's decision completely resolves the Claim, then the Parties shall complete a Change Order, if applicable, for the issues and/or amounts agreed to.

24.6.7.5.2. If the District rejects the Contractor's Claim in whole or in part or does not issue a timely written response, then the parties shall mediate the remaining issues of the Claim.

24.6.7.5.3. Contractor's costs incurred in seeking relief for Claims are not recoverable from District.

24.6.8. Mediation.

24.6.8.1. At the District's sole discretion, this mediation may be a multiple-party mediation with the Architect, the Construction Manager, the Inspector, and/or other District consultants.

24.6.8.2. The District and Contractor shall mutually agree to a mediator within ten (10) **business** days after the disputed portion of the Claim has been identified in writing. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the Claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator.

24.6.9. Contractor's Obligation to File a Government Code Claim. Nothing in this Contract, including this Claims Resolution Process, waives, modifies or tolls the Contractor's obligation to present a timely claim under Government Code section 910, et seq. Therefore, in addition to complying with this Claims Resolution Process, the Contractor is required to present claims to the District pursuant to Government Code section 910, et seq. If after the requirements of this Claims Resolution Process are satisfied, and all or a portion of the Claim remains unresolved, and if the Government Code claim is rejected by the District, the Contractor may proceed under the post-mediation provisions of this Claims Resolution Process.

24.6.10. Post Mediation Provisions

24.6.10.1. **Claims of \$375,000 or Less:** The provisions of Public Contract Code § 20104.4 shall apply. Pursuant to Public Contract Code § 20104.4(a), within sixty (60) days, but no earlier than thirty (30) days, following the filing of responsive pleadings, the court shall submit the matter to nonbinding mediation unless waived by mutual stipulation of both parties. Pursuant to Public Contract Code § 9204(d)(2)(D), a mediation conducted pursuant to this Claims Resolution Process shall excuse the

obligation under Public Contract Code § 20104.4(a) to mediate after litigation has been commenced unless otherwise agreed to by the parties in writing.

24.6.10.2. Litigation of Claims in Excess of \$375,000. If, after a mediation as indicated above, the Parties have not resolved the Claim, either Party may commence an action in a court of competent jurisdiction to contest that decision within ninety (90) days following the conclusion of that mediation or one (1) year following the accrual of the cause of action, whichever is later. By mutual agreement, the Parties can agree to instead resolve the Claim through arbitration.

24.6.11. The District shall be entitled to remedy any false claims, as defined in California Government Code section 12650 *et seq.*, made to the District by the Contractor or any Subcontractor under the standards set forth in Government Code section 12650 *et seq.* Any Contractor or Subcontractor who submits a false claim shall be liable to the District for three times the amount of damages that the District sustains because of the false claim. A Contractor or Subcontractor who submits a false claim shall also be liable to the District for (a) the costs, including attorney fees, of a civil action brought to recover any of those penalties or damages, and (b) a civil penalty of up to \$11,000 for each false claim. In addition, Contractor may be subject to criminal prosecution under California Penal Code §72 and/or civil liability under False Claims Act. If so, the District may be entitled to recover its costs incurred to investigate any False Claim, including but not limited to attorneys' fees and expert fees incurred in connection with that investigation.

24.7. Documentation of Resolution.

If a Claim is resolved, the District shall determine if that resolution shall be documented in a settlement agreement or release or other document, as appropriate.

24.8. Claim Resolution Process – Non-Applicability.

The procedures and provisions in this Claims Resolution section shall **not** apply to:

24.8.1. District's determination of what Work is or will be constructed, or whether the Work complies with the Contract Documents for purposes of accepting the Work;

24.8.2. District's rights and obligations as a public entity, such as, but without limitation, the revocation of pre-qualified or qualified status, barring a contractor from District contracts, the imposition of penalties or forfeitures prescribed by statute or regulation; provided, however, that penalties imposed against a public entity by statutes such as Section 7107 of the Public Contract Code, shall be subject to the mandatory dispute resolution provisions of this Claims Resolution section and the Contract;

24.8.3. Personal injury, wrongful death or property damage claims;

24.8.4. Latent defect or breach of warranty or guarantee to repair;

24.8.5. Stop notices or stop payment notices; or

24.8.6. Any other District rights as set forth herein.

24.9. The District's failure to respond to a Claim from the Contractor within the time periods described herein or to otherwise meet the time requirements of Public Contract Code section 9204 shall automatically result in the Claim being deemed rejected in its entirety, with no admission by the District as to the merits of the Claim.

24.10. If District fails to timely issue payment for any Claim or portion of a Claim as required pursuant to these Claim Resolution Procedures, the Contractor is permitted to assess interest indicated in Public Contract Code section 9204. Notwithstanding this provision, and in accordance with California Public Contract Code §7107, the District is entitled to withhold up to 150% of disputed amounts and the District shall not be liable for payment of interest on such disputed amounts pending final adjudication of such disputes.

25. LABOR, WAGE & HOUR, APPRENTICE AND RELATED PROVISIONS

25.1. Compliance Monitoring and Enforcement by the DIR

25.1.1. Contractor shall comply with the registration and compliance monitoring provisions of Labor Code section 1771.4, including furnishing its CPRs to the Labor Commissioner of California and complying with any applicable enforcement by the Department of Industrial Relations. Labor Code section 1771.1(a) states the following:

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

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

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

25.2. Wage Rates, Travel and Subsistence

25.2.1. Pursuant to the provisions of article 2 (commencing at section 1770), chapter 1, part 7, division 2, of the Labor Code of California, the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality in which this public work is to be performed for each craft, classification, or type of worker needed to execute this Contract are on file at the District’s principal office and copies will be made available to any interested party on request. Contractor shall obtain and post a copy of these wage rates at the job site.

25.2.2. Holiday and overtime work, when permitted by law, shall be paid for at a rate of at least one and one-half times the above specified rate of per diem wages, unless otherwise specified. The holidays upon which those rates shall be paid need not be specified by the District, but shall be all holidays recognized in the applicable collective bargaining agreement. If the prevailing rate is not based on a collectively bargained rate, the holidays upon which the prevailing rate shall be paid shall be as provided in Section 6700 of the Government Code.

25.2.3. Contractor shall pay and shall cause to be paid each worker engaged in Work on the Project not less than the general prevailing rate of per diem wages determined by the Director of the Department of Industrial Relations ("DIR") ("Director"), regardless of any contractual relationship which may be alleged to exist between Contractor or any Subcontractor and such workers.

25.2.4. If during the period this bid is required to remain open, the Director determines that there has been a change in any prevailing rate of per diem wages in the locality in which the Work under the Contract is to be performed, such change shall not alter the wage rates in the Notice to Bidders or the Contract subsequently awarded.

25.2.5. Pursuant to Labor Code section 1775, Contractor shall, as a penalty to District, forfeit the statutory amount, (currently not to exceed two hundred dollars (\$200) for each calendar day, or portion thereof), for each worker paid less than the prevailing rates, as determined by the District and/or the Director, for the work or craft in which that worker is employed for any public work done under Contract by Contractor or by any Subcontractor under it.

25.2.5.1. The amount of the penalty shall not be less than forty dollars (\$40) for each calendar day, or portion thereof, unless the failure of Contractor was a good faith mistake and, if so, the error was promptly and voluntarily corrected when brought to the attention of Contractor.

25.2.5.2. The amount of the penalty shall not be less than eighty dollars (\$80) for each calendar day or portion thereof, if Contractor has been assessed penalties within the previous three (3) years for failing to meet Contractor's prevailing wage obligations on a separate contract, unless those penalties were subsequently withdrawn or overturned.

25.2.5.3. The amount of the penalty may not be less than one hundred twenty dollars (\$120) for each calendar day, or portion thereof, if the Labor Commissioner determines the Contractor willfully violated Labor Code section 1775.

25.2.5.4. The difference between such prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate, shall be paid to each worker by Contractor.

25.2.6. Any worker employed to perform Work on the Project, which Work is not covered by any classification listed in the general prevailing wage rate of per diem wages determined by the Director, shall be paid not less than the minimum rate of wages specified therein for the classification which most nearly corresponds to Work to be performed by him, and such minimum wage rate shall be retroactive to time of initial employment of such person in such classification. Prevailing wage rates are on file with the District and are available to any interested party on request or at www.dir.ca.gov/oprl/statistics_and_databases.html.

25.2.7. Pursuant to Labor Code section 1773.1, per diem wages are deemed to include employer payments for health and welfare, pension, vacation, travel time, subsistence pay, and apprenticeship or other training programs authorized by section 3093, and similar purposes.

25.2.8. Contractor shall post at appropriate conspicuous points on the Site of Project, a schedule showing all determined minimum wage rates and all authorized deductions, if any, from unpaid wages actually earned. In addition, Contractor shall post a sign-in log for all workers and visitors to the Site, a list of all subcontractors of any tier on the Site, and the required Equal Employment Opportunity poster(s).

25.3. Hours of Work

25.3.1. As provided in article 3 (commencing at section 1810), chapter 1, part 7, division 2, of the Labor

Code, eight (8) hours of labor shall constitute a legal days work. The time of service of any worker employed at any time by Contractor or by any Subcontractor on any subcontract under this Contract upon the Work or upon any part of the Work contemplated by this Contract shall be limited and restricted by Contractor to eight (8) hours per day, and forty (40) hours during any one week, except as hereinafter provided. Notwithstanding the provisions hereinabove set forth, Work performed by employees of Contractor in excess of eight (8) hours per day and forty (40) hours during any one week, shall be permitted upon this public work upon compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half times the basic rate of pay.

25.3.2. Contractor shall keep and shall cause each Subcontractor to keep an accurate record showing the name of and actual hours worked each calendar day and each calendar week by each worker employed by Contractor in connection with the Work or any part of the Work contemplated by this Contract. The record shall be kept open at all reasonable hours to the inspection of District and to the Division of Labor Standards Enforcement of the DIR.

25.3.3. Pursuant to Labor Code section 1813, Contractor shall as a penalty to the District forfeit the statutory amount (believed by the District to be currently one hundred dollars (\$100)) for each worker employed in the execution of this Contract by Contractor or by any Subcontractor for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week in violation of the provisions of article 3 (commencing at section 1810), chapter 1, part 7, division 2, of the Labor Code.

25.3.4. Any Work necessary to be performed after regular working hours, or on Sundays or other holidays shall be performed without additional expense to the District.

25.4. Payroll Records

25.4.1. Pursuant to the provisions of section 1776 of the Labor Code, notice is hereby given that Contractor shall prepare and provide to the California Department of Industrial Relations and shall cause each Subcontractor performing any portion of the Work under this Contract to prepare and provide to the California Department of Industrial Relations, accurate and certified payroll record ("CPR(s)"), showing the name, address, social security number, work classification, straight time, and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by the Contractor and/or each Subcontractor in connection with the Work.

25.4.1.1. In addition to any other requirements under Labor Code section 1770, et seq., the CPRs enumerated hereunder shall be certified and shall be provided as required by the California Department of Industrial Relations.

25.4.2. In addition, all CPRs shall be available for inspection at all reasonable hours at the principal office of Contractor on the following basis:

25.4.2.1. A certified copy of an employee's CPR shall be made available for inspection or furnished to the employee or his/her authorized representative on request.

25.4.2.2. CPRs shall be made available for inspection or furnished upon request to a representative of District, Division of Labor Standards Enforcement, Division of Apprenticeship Standards, and/or the Department of Industrial Relations.

25.4.2.3. CPRs shall be made available upon request by the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through either the District, Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. If the requested CPRs have not been provided pursuant to the provisions herein, the requesting party shall,

prior to being provided the records reimburse the costs of preparation by Contractor, Subcontractors, and the entity through which the request was made. The public shall not be given access to the records at the principal office of Contractor.

25.4.3. The form of certification for the CPRs shall be as follows:

I, _____ (Name-Print), the undersigned, am the _____ (Position in business) with the authority to act for and on behalf of _____ (Name of business and/or Contractor), certify under penalty of perjury that the records or copies thereof submitted and consisting of _____ (Description, number of pages) are the originals or true, full, and correct copies of the originals which depict the payroll record(s) of actual disbursements by way of cash, check, or whatever form to the individual or individual named, and (b) we have complied with the requirements of sections 1771, 1811, and 1815 of the Labor Code for any work performed by our employees on the Project.

Date: _____ Signature: _____
(Section 16401 of Title 8 of the California Code of Regulations)

25.4.4. Each Contractor shall file a certified copy of the CPRs with the entity that requested the records within ten (10) days after receipt of a written request.

25.4.5. Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by District, Division of Apprenticeship Standards, or Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address, and social security number. The name and address of Contractor awarded Contract or performing Contract shall not be marked or obliterated.

25.4.6. Contractor shall inform District of the location of the records enumerated hereunder, including the street address, city, and county, and shall, within five (5) Business days, provide a notice of change of location and address.

25.4.7. In the event of noncompliance with the requirements of this section, Contractor shall have ten (10) days in which to comply subsequent to receipt of written notice specifying in what respects Contractor must comply with this section. Should noncompliance still be evident after the ten (10) day period, Contractor shall, as a penalty to District, forfeit one hundred dollars (\$100) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of Division of Apprenticeship Standards or Division of Labor Standards Enforcement, these penalties shall be withheld from Tenant Improvement Payment and/or Lease Payments then due.

25.4.8. It shall be the responsibility of Contractor to ensure compliance with the provisions of Labor Code section 1776.

25.5. Apprentices

25.5.1. Contractor acknowledges and agrees that, if this Contract involves a dollar amount greater than or a number of working days greater than that specified in Labor Code section 1777.5, then this Contract is governed by the provisions of Labor Code Section 1777.5. It shall be the responsibility of Contractor to ensure compliance with this Article and with Labor Code section 1777.5 for all apprenticeship occupations.

25.5.2. Apprentices of any crafts or trades may be employed and, when required by Labor Code section 1777.5, shall be employed provided they are properly registered in full compliance with the provisions of the Labor Code.

25.5.3. Every such apprentice shall be paid the standard wage paid to apprentices under the regulations of the craft or trade at which he/she is employed, and shall be employed only at the work of the craft or trade to which she/he is registered.

25.5.4. Only apprentices, as defined in section 3077 of the Labor Code, who are in training under apprenticeship standards and written apprentice agreements under chapter 4 (commencing at section 3070), division 3, of the Labor Code, are eligible to be employed. The employment and training of each apprentice shall be in accordance with the provisions of the apprenticeship standards and apprentice agreements under which he/she is training.

25.5.5. Pursuant to Labor Code section 1777.5, if that section applies to this Contract as indicated above, Contractor and any Subcontractors employing workers in any apprenticeable craft or trade in performing any Work under this Contract shall apply to the applicable joint apprenticeship committee for a certificate approving the Contractor or Subcontractor under the applicable apprenticeship standards and fixing the ratio of apprentices to journeymen employed in performing the Work.

25.5.6. Pursuant to Labor Code section 1777.5, if that section applies to this Contract as indicated above, Contractor and any Subcontractor may be required to make contributions to the apprenticeship program.

25.5.7. If Contractor or Subcontractor willfully fails to comply with Labor Code section 1777.5, then, upon a determination of noncompliance by the Administrator of Apprenticeship, it shall:

25.5.7.1. Be denied the right to bid on any subsequent project for one (1) year from the date of such determination;

25.5.7.2. Forfeit as a penalty to District the full amount as stated in Labor Code section 1777.7. Interpretation and enforcement of these provisions shall be in accordance with the rules and procedures of the California Apprenticeship Council and under the authority of the Chief of the Division of Apprenticeship Standards.

25.5.8. Contractor and all Subcontractors shall comply with Labor Code section 1777.6, which section forbids certain discriminatory practices in the employment of apprentices.

25.5.9. Contractor shall become fully acquainted with the law regarding apprentices prior to commencement of the Work. Special attention is directed to sections 1777.5, 1777.6, and 1777.7 of the Labor Code, and title 8, California Code of Regulations, section 200 et seq. Questions may be directed to the State Division of Apprenticeship Standards, 455 Golden Gate Avenue, San Francisco, California 94102.

25.5.10. Contractor shall ensure compliance with all certification requirements for all workers on the Project including, without limitation, the requirements for electrician certification in Labor Code section 108, et seq.

25.6. Non-Discrimination

25.6.1. Contractor herein agrees not to discriminate in its recruiting, hiring, promotion, demotion, or termination practices on the basis of race, religious creed, national origin, ancestry, sex, age, or physical handicap in the performance of this Contract and to comply with the provisions of the California Fair Employment and Housing Act as set forth in part 2.8 of division 3 of the California Government Code, commencing at section 12900; the Federal Civil Rights Act of 1964, as set forth in Public Law 88-352, and all amendments thereto; Executive Order 11246, and all administrative rules and regulations found to be applicable to Contractor and Subcontractor.

25.6.2. Special requirements for Federally Assisted Construction Contracts: During the performance of

this Contract, Contractor agrees to incorporate in all subcontracts the provisions set forth in Chapter 60-1.4(b) of Title 41 published in Volume 33 No. 104 of the Federal Register dated May 28, 1968.

25.7. Labor First Aid

Contractor shall maintain emergency first aid treatment for Contractor's workers on the Project which complies with the Federal Occupational Safety and Health Act of 1970 (29 U.S.C. § 651 et seq.), the California Occupational Safety and Health Act of 1973, and all related regulations, including without limitation sections 330 *et seq.* of Title 8 of the California Code of Regulations.

25.8. Skilled and Trained Workforce Requirement

25.8.1. Contractor is familiar with the hiring requirements set forth in Education Code section 17407.5, and as a condition of entering into this Facilities Lease, Contractor understands and agrees that Contractor and its Subcontractors at every tier will use a skilled and trained workforce, as defined in Education Code section 17407.5, to perform all Work on the Project that falls within an apprenticeable occupation in the building and construction trades.

25.8.2. Monthly Workforce Report. The Contractor will provide to the District on a monthly basis while the Project is being performed, a report demonstrating compliance by Contractor and its Subcontractors at every tier with the skilled workforce requirements described in Public Contract Code section 2602 ("Workforce Report(s)").

25.8.2.1. Content of Workforce Report(s). The Workforce Reports will state the following:

25.8.2.1.1. Each Subcontractor's name and license number, or list the Contractor if the Contractor is self-performing the applicable scope of Work;

25.8.2.1.2. That each worker is either a registered apprentice in an apprenticeship program approved by the State or a skilled journeyman;

25.8.2.1.3. Of the skilled journeymen for each Subcontractor and the Contractor, which are graduates of an approved apprenticeship program. It shall be sufficient for the Contractor to state the number of workers in each applicable category. The Contractor is not required to identify each individual worker who performed work on the Project in the Contractor's monthly report;

25.8.2.1.4. The monthly and cumulative percentages that entity has achieved of those graduates. If a Subcontractor (or the Contractor) is meeting the percentage cumulatively, the District may utilize that information when it determines whether the report is sufficient.

25.8.2.2. Time Frame. Each monthly Workforce Report must include all work performed during the preceding month and must be submitted to the District no later than thirty (30) days after the end of the preceding month. (i.e., the monthly Workforce Report for activity during March must be submitted no later than April 30.)

25.8.2.3. No Report or Incomplete Report of Contractor.

25.8.2.3.1. If the Contractor fails to provide a Workforce Report or provides a Workforce Report that is incomplete, the District shall withhold further payments from the Contractor until the Contractor provides a complete Workforce Report for that month. The District shall withhold from the Contractor an amount equal to one hundred and fifty percent (150%) of the value of the monthly billing for the relevant Subcontractor(s), which the Contractor shall be entitled to

withhold from the Subcontractor(s).

25.8.2.3.2. **Plan.** If the Contractor submits to the District a plan to achieve substantial compliance with Public Contract Code section 2601, et seq, the District shall resume making payments to the Contractor, including all previously withheld payments, unless, within a reasonable time, the District rejects the plan as insufficient. In the event that the District rejects the Contractor's plan as insufficient, the District shall provide an explanation in writing of the basis of for the District's rejection of the Contractor's plan.

25.8.2.4. No Report or Incomplete Report of Subcontractor(s).

25.8.2.4.1. If a monthly report by the Contractor is incomplete due to the failure of a Subcontractor(s) to timely or completely submit the information to the Contractor or District, the District shall only withhold an amount equal to one hundred and fifty percent (150%) of the value of the monthly billing for the non-compliant Subcontractor(s).

25.8.2.4.2. If the Contractor substitutes Subcontractor(s) for failure to provide a complete or timely report, and the Contractor replaces the Subcontractor(s) with one that provides an enforceable commitment that a skilled and trained workforce as defined in Public Contracts Code 2601, et seq. will be used to complete the Project, the District shall resume making payments to the Contractor.

25.8.2.5. **District Reporting Requirements.** The District shall forward to the Labor Commissioner a copy of a Contractor's monthly report submitted to the District that fails to comply with Public Contract Code section 2602, et seq. In the event that the Contractor submits a plan to the District to achieve substantial compliance with Public Contract Code 2601 et. seq., the District shall forward a copy of that plan to the Labor Commissioner.

25.8.3. End-of-Project Reconciliation.

25.8.3.1. At the end of the Project, if the Contractor cannot demonstrate that it has met the applicable participation level for all work that falls within an apprenticeable occupation as defined in Public Contract Code section 2600, et seq., Contractor may remedy its failure by paying to the appropriate trade apprenticeship fund(s), an amount equal to the number of additional hours required to meet the percentage, multiplied by the "Training" amount for that trade, at the Basic Hourly Rate. The Contractor must provide documentation to the District reasonably sufficient to demonstrate this payment and the trade apprenticeship funds' acceptance of payment(s).

25.8.3.2. If payment(s) to the applicable trade apprenticeship fund(s) are not made or accepted, then the District shall have the right to permanently retain ten percent (10%) of the price for the out of compliance apprenticeable occupation's Work, per month, as reflected in the Project's schedule of values, not to exceed the monthly amounts for first-time violations indicated in Public Contract Code 2603(a). The District shall withhold those funds until the Labor Commissioner makes its determination of violations pursuant to Public Contract Code section 2603. At that time, the District will distribute those funds as directed by the Labor Commissioner or, if the Labor Commissioner determines that no violation was made or the penalty(ies) are less than the amount the District is withholding, the District shall pay the applicable withheld amounts to the Contractor, with no interest or penalty.

25.8.3.3. The Parties agree that these end-of-Project remedies are reasonable and sufficient, subject to a determination made by Department of Industrial Relations or a court of competent jurisdiction that one or both of these remedies is insufficient.

25.8.4. Any payments the District withholds from the Contractor for noncompliance will be reflective only of the trade(s) or Subcontractor(s) out of compliance and will be paid once the subcontractor(s) and/or trade(s) are cumulatively compliant, subject to the End-of-Project Reconciliation process indicated herein above.

26. MISCELLANEOUS

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
FACILITIES LEASE**

MEMORANDUM OF COMMENCEMENT DATE

[TO BE ENTERED INTO AFTER CONSTRUCTION IS COMPLETE TO COMMENCE DISTRICT OCCUPANCY OF THE FACILITIES AND TO START THE LEASE TERM.]

This MEMORANDUM OF COMMENCEMENT DATE is dated _____, 20____, and is made by and between **@Contractor** ("Contractor"), as Lessor, and the **Alameda Unified School District** ("District"), as Lessee.

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

2. District hereby confirms the following:

A. That all construction of the Project required to be performed pursuant to the Facilities Lease has been completed by Contractor in all respects;

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

C. That the term of the leaseback period in the Facilities Lease commenced on _____, 20____, and will expire at 11:59 P.M. on _____, 20____.

IN WITNESS WHEREOF, the Parties have accepted and agreed to this Memorandum of Commencement Date, as of the date indicated above, and have directed and authorized their respective officers to execute this Memorandum of Commencement Date:

Alameda Unified School District

@Contractor

Signature: _____

Signature: _____

Print Name: _____

Print Name: _____

Print Title: _____

Print Title: _____

EXHIBIT F
TO
FACILITIES LEASE

CONSTRUCTION SCHEDULE

[INCLUDE THIS FIRST PARAGRAPH IF CONTRACTOR PERFORMS PRELIMINARY SERVICES AND PARTIES AMEND FOR GPC]: IF THE PARTIES AGREE TO A GUARANTEED PROJECT COST AND AMEND THE CONTRACT, THE PARTIES SHALL ALSO AMEND THIS EXHIBIT AND INCLUDE THE CONSTRUCTION SCHEDULE PREPARED BY THE CONTRACTOR AND AGREED TO BY THE DISTRICT PURSUANT TO THE CONTRACT.

Preliminary Services. The schedule for the Preliminary Services is as follows:

- Contractor shall commence the Preliminary Services on or before [Date], and
- Contractor shall complete the Preliminary Services on or before [Date].

Construction Schedule. The Construction Schedule is as follows:

- It is hereby understood and agreed that assuming the District issues a Notice to Proceed for the Project on or before [Date], then:
 - District shall have Beneficial Occupancy of the Project on or before [Date], and
 - Project Completion shall be on or before [Date].
- In addition to the general parameters above for the Construction Schedule, attached is a detailed Project Construction Schedule with a duration no longer than the Contract Time, and with specific milestones that Contractor shall meet.

EXHIBIT G
TO
FACILITIES LEASE

SCHEDULE OF VALUES

Attached is a detailed Schedule of Values that complies with the requirements of the Construction Provisions (Exhibit D) and that has been approved by the District.

[INSERT SCHEDULE VALUES IF GPC AND SCHEDULE OF VALUES ARE AGREED TO]

OR

[INCLUDE THIS PARAGRAPH IF CONTRACTOR PERFORMS PRELIMINARY SERVICES AND PARTIES AMEND FOR GPC]: IF THE PARTIES AGREE TO A GUARANTEED PROJECT COST AND AMEND THE CONTRACT, THE PARTIES SHALL ALSO AMEND THIS EXHIBIT AND INCLUDE THE SCHEDULE OF VALUES PREPARED BY THE CONTRACTOR AND AGREED TO BY THE DISTRICT PURSUANT TO THE CONTRACT.

**EXHIBIT H
TO
FACILITIES LEASE**

SUBCONTRACTOR PROCUREMENT PROCESS

If the District issues an RFP or RFQ/P and requires the Contractors to submit a **final** price for this Project at the time it is competing against other Contractors, the Contractor shall comply with the subcontractor prequalification requirements of Education Code section 17406 (a)(1)(C) and may otherwise select subcontractors based on their own reasonable and non-discriminatory process.

If the District issues an RFQ or RFQ/P and selects one Contractor who will **later** provide a final price for this Project, that Contractor shall, in addition to all legal requirements, including without limitation Education Code section 17406, take the following steps when the District directs the Contractor to procure Subcontractors so that Contractor can provide a final lump sum Guaranteed Project Cost ("**GPC**") for construction of the Project.

1. **Subcontractor Bid Packages.** Contractor shall prepare separate and specific Subcontractor bid packages that include all scope(s) of construction Work included in the Plans and Specifications.
2. **Public Notice.** Contractor shall provide notice of bidding for Subcontractors "in accordance with the publication requirements applicable to the District's competitive selection process" to solicit Subcontractors in compliance with statutory requirements and the District's process. (Education Code §17406.)
3. **District Review of Bid Packages and Notice.** At least fourteen (14) days prior to the bidding of Subcontractor bid packages, Contractor shall provide the District with a copy of the written notice it will publish (including newspaper advertising) to solicit Subcontractors. The District reserves the right to request that Contractor reasonably revise its published notice.
4. **Three Bona Fide Bids.** Contractor is required to receive **at least** three (3) bona fide bids from Subcontractors for all scopes of Work on the Project that constitute more than three percent (3%) of the total Project scope of Work. Prior to the Contractor seeking bids, the District may, in its sole discretion, and upon Contractor's written request, authorize Contractor to utilize a different minimum number of bona fide bids from Subcontractors.
5. **Prequalification.** Contractor's Subcontractors performing work valued in excess of ½ of 1% of the GPC must comply with the following:
 - a. **MEP Prequalification.** If the Project has electrical, mechanical, and plumbing components that will be performed by subcontractors performing under the following license classification(s) (C-4, C-7, C-10, C-16, C-20, C-34, C-36, C-38, C-42, C-43, and/or C-46; "**MEP Subcontractor(s)**"), and those MEP Subcontractors will be first-tier Subcontractors to the Contractor, those MEP Subcontractors must be prequalified with the District to be eligible to be included in a Contractor's proposal. MEP Subcontractors shall prequalify with the District utilizing the District's Prequalification Questionnaire. **The District highly recommends that the Contractor informs all of its potential MEP Subcontractors that must be prequalified to immediately complete the prequalification process to ensure their eligibility to be included as MEP Subcontractors for the Project.**
 - b. **Non-MEP Subcontractor Prequalification Criteria and Standards.** For this Project, Contractor may **NOT** prequalify non-MEP subcontractors solicited for work on this Project, unless the Contractor provides any prequalification or qualification criteria, process or questionnaire to the District for approval at least fourteen (14) days prior to the bidding of Subcontractor bid packages.

- c. **LIMIT ON "BEST VALUE" SELECTION.** CONTRACTOR ACKNOWLEDGES THAT THIS PROCESS – THE PREQUALIFICATION OR ANY ASSOCIATED QUALIFICATION PROCESS – IS THE ONLY "BEST VALUE" SELECTION PROCESS AS IDENTIFIED IN EDUCATION CODE SECTION 17406 THAT THE DISTRICT HAS APPROVED FOR THIS PROJECT. THE CONTRACTOR MAY REQUEST, AT LEAST FOURTEEN (14) DAYS PRIOR TO THE BIDDING OF SUBCONTRACTOR BID PACKAGES, THAT THE DISTRICT APPROVE OTHER SELECTION PROCESS(ES) OR CRITERIA THAT THE CONTRACTOR DESIRES TO IMPLEMENT ON THIS PROJECT. CONTRACTOR CAN ONLY IMPLEMENT THOSE IF THE DISTRICT PRE-APPROVES THEM.
6. **Open-Book / Bid Opening.** Contractor shall invite the District to attend all bid opening(s) for the Project and shall within 48 hours of the bid opening(s) provide copies or access to all bid documents provided by all Subcontractors.
7. **Missing Scopes of Work in Subcontractor Bids ("Bid Levelling").** When Contractor has received all Subcontractor bids, Contractor shall identify all scope(s) of construction Work for which Contractor did not receive a bid and provide a written justification as to why the scope(s) of construction Work was either not included in a Subcontractor bid or was not bid on ("Unbid Work"). The District expects very little if any Unbid Work, far less than 1% of the GPC. After the District reviews the Contractor's justification, the Parties shall meet and confer and the District shall reasonably determine, in its sole discretion, whether to:
- a. Direct the Contractor to rebid the Unbid Work; or
 - b. If Contractor requests, allow the Contractor to self-perform the Unbid Work. If Contractor self-performs the Unbid Work, Contractor shall provide substantiation for the pricing for the Unbid Work that Contractor intends to self-perform. The Parties shall negotiate in good faith to determine a reasonable price for the Unbid Work that Contractor intends to self-perform. The District reserves the right to seek its own pricing of that Work to verify the value of Contractor's proposed pricing.
8. **Low Bid.** Because the "best value" process was implemented as part of the Subcontractor procurement process, once the Contractor receives Subcontractor bids, the Contractor shall award subcontracts to subcontractors with the **lowest responsive, responsible bid** that have satisfied the above prequalification and/or qualification steps, as applicable.
9. **Self-Performing Construction Work.** If Contractor intends to propose to self-perform portion(s) of the construction Work, it must
- a. Receive the District's prior written approval.
 - b. Provide its pricing (its bid) to the District 48 hours prior to Contractor's receipt of Subcontractor bids for those portion(s) of the Work.
 - c. Receive a minimum number of two (2) bona fide bids from Subcontractors for scope(s) of Work that the Contractor is bidding to self-perform, not including the Contractor's pricing/bid.

**EXHIBIT I
TO
FACILITIES LEASE**

**CERTIFICATES AND BONDS TO LEASE-LEASEBACK DOCUMENTS
AND
DIVISION 1 DOCUMENTS TO LEASE-LEASEBACK DOCUMENTS**

@Project Name

**Alameda Unified School District
and
@Contractor**

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)

CERTIFICATIONS TO BE COMPLETED BY CONTRACTOR

THE UNDERSIGNED MUST CHECK EACH BOX AND EXECUTE THIS FORM AND HEREBY CERTIFIES TO THE GOVERNING BOARD OF THE DISTRICT THAT:

- He/she is a representative of the Contractor,
- He/she is familiar with the facts herein certified and acknowledged,
- He/she is authorized and qualified to execute this Agreement and these certifications on behalf of Contractor and that by executing this Agreement he/she is certifying the following items.

☐ **Labor Code Sections 1860-1861 (Workers' Compensation).** In accordance with Labor Code section 3700, every contractor will be required to secure the payment of compensation to his or her employees. I acknowledge and certify under penalty of perjury that 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 this contract.

☐ **Government Code Sections 8355-8357 (Drug-Free Workplace).** I acknowledge and certify under penalty of perjury that I 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 the actions that 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) Any available 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 by subdivision (a) and that, as a condition of employment on the contract or grant, the employee agrees to abide by the terms of the statement.

I also acknowledge that this Contract may be subject to suspension of payments under the contract or grant or termination of the contract or grant, or both, and the contractor or grantee thereunder may be subject to debarment, in accordance with the requirements of the above-referenced statute, if the contracting or granting agency determines that any of the following has occurred:

- (1) The contractor or grantee has made a false certification under Section 8355.
- (2) The contractor or grantee violates the certification by failing to carry out the requirements of subdivisions (a) to (c), inclusive, of Section 8355.

I also acknowledge that the Department of General Services shall establish and maintain a list of individuals and organizations whose contracts or grants have been canceled due to failure to comply with the above-referenced statute. This list shall be updated monthly and published each month. No state agency shall award a contract or grant to a person or organization on the published list until that person or organization has complied with the above-referenced statute.

☐ **Tobacco-Free Environment.** 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 and certify under penalty of perjury that I am aware of the District's policy regarding tobacco-free environments at District sites, including the Project site and acknowledge and 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. The District also prohibits electronic cigarettes, "vaping" or similar product uses on District sites.

☐ **No Hazardous Materials.** I acknowledge and certify under penalty of perjury 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. I have instructed our employees with respect to the above-mentioned standards, hazards, risks, and liabilities.

- (i) 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. 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.
- (ii) 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.

The Contractor must immediately notify the District within two (2) Business Days, if the Contractor finds and before it disturbs, any material that the Contractor believes may be hazardous waste, as defined in section 25117 of the Health and Safety Code, and requires removal to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law

I acknowledge and certify under penalty of perjury that 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.
-

☐ **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 disburses when paint chips, chinks, 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.

(i) **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.

(ii) **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.

(iii) **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.

I acknowledge and certify under penalty of perjury, that:

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



Imported Materials. All soils, aggregate, or related materials ("Fill") that Contractor, a Subcontractor, agent or supplier, in any way, provides or delivers and/or supplies to the Project Site shall be free of any and all

hazardous material as defined in section 25260 of the Health and Safety Code, shall satisfy the requirements of any environmental review of the Project performed pursuant to the statutes and guidelines of the California Environmental Quality Act, sections 21000 et seq. of the Public Resources Code ("CEQA"), and shall comply with the requirements of sections 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. I acknowledge that, 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.

☐ **Roofing Contract Financial Interest Certification (Public Contract Code § 3006)**

I, _____ **[Your Name]**, _____ **[Firm Name]**
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 a 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.

I, _____ **[Your Name]**, _____ **[Firm Name]**
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, _____ **[Your Name]**, _____ **[Firm Name]**
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: _____

For Projects without substantive roofing components, check the following box and execute this certification:

☐ The Work on the Contract (1) does not include the replacement or repair of a roof or (2) is a repair of twenty five percent (25%) or less of the roof, (3) or is a repair project that has a total cost of twenty one thousand dollars (\$21,000) or less.

I acknowledge and certify under penalty of perjury that I am duly authorized to legally bind the Contractor to all provisions and items included in these certifications, that the contents of these certifications are true, and that these certifications are made under the laws of the State of California.

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 Contract Price, 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 Contract Price.

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: _____

CRIMINAL BACKGROUND INVESTIGATION / FINGERPRINTING CERTIFICATION

The undersigned does hereby certify to the governing board of the District that he/she is a representative of the Contractor, is familiar with the facts herein certified, is authorized and qualified to execute this certificate on behalf of Contractor; and that the information in this Criminal Background Investigation / Fingerprinting Certification 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 ("DOJ") has determined (per the DOJ process for Applicant Agencies described more fully on its website, located at:) that none of those employees have 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: _____

PERFORMANCE BOND (100% of Contract Price)
(Note: Contractor must use this form, NOT a surety company form.)

KNOW ALL PERSONS BY THESE PRESENTS:

WHEREAS, the governing board ("**Board**") of the **Alameda Unified School District** (or "**District**") and **@Contractor**, ("**Principal**") have entered into a contract for the furnishing of all materials and labor, services and transportation, necessary, convenient, and proper to perform the following project:

@Project Name ("**Project**" or "**Contract**")

which Contract dated _____, 20_____, and all of the Contract Documents attached to or forming a part of the Contract, are hereby referred to and made a part hereof, and

WHEREAS, said Principal is required under the terms of the Contract to furnish a bond for the faithful performance of the Contract;

NOW, THEREFORE, the Principal and _____ ("**Surety**") are held and firmly bound unto the Board of the District in the penal sum of:

_____ DOLLARS

(\$ _____), lawful money of the United States, for the payment of which sum well and truly to be made we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally, firmly by these presents, to:

- Perform all the work required to complete the Project; and
- Pay to the District all damages the District incurs as a result of the Principal's failure to perform all the Work required to complete the Project.

In the event the Principal is declared by the District to be in breach or default in the performance of the Contract, then, after written notice from the District 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 District.

The condition of the obligation is such that, if the above bounden Principal, his or its heirs, executors, administrators, successors, or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions, and agreements in the Contract and any alteration thereof made as therein provided, on his or its part to be kept and performed at the time and in the intent and meaning, including all contractual guarantees and warranties of materials and workmanship, and shall indemnify and save harmless the District, its trustees, officers and agents, as therein stipulated, then this obligation shall become null and void, otherwise it shall be and remain in full force and virtue.

As a condition precedent to the satisfactory completion of the Contract, the above obligation shall hold good for a period equal to the warranty and/or guarantee period of the Contract, during which time Surety's obligation shall continue if Contractor shall fail to make full, complete, and satisfactory repair, replace, and totally protect the District from loss or damage resulting from or caused by defective materials or faulty workmanship. The obligations of Surety hereunder shall continue so long as any obligation of Contractor remains. Nothing herein shall limit the District's rights or the Contractor's or Surety's obligations under the Contract, law or equity, including, but not limited to, California Code of Civil Procedure section 337.15.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Contract or to the Work to be performed thereunder shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration, or addition to the Contract Documents or to the Work.

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, two (2) identical counterparts of this instrument, each of which shall for all purposes be deemed an original thereof, have been duly executed by the Principal and Surety above named, on the _____ day of _____, 20_____.

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 Contract Price)

(Note: Contractor must use this form, NOT a surety company form.)

KNOW ALL PERSONS BY THESE PRESENTS:

WHEREAS, the governing board ("**Board**") of the **Alameda Unified School District** (or "**District**") and **@Contractor**, ("**Principal**") have entered into a contract for the furnishing of all materials and labor, services and transportation, necessary, convenient, and proper to perform the following project:

@Project Name ("**Project**" or "**Contract**")

which Contract dated _____, 20_____, and all of the Contract Documents attached to or forming a part of the Contract, are hereby referred to and made a part hereof, and

WHEREAS, pursuant to law and the Contract, the Principal is required, before entering upon the performance of the work, to file a good and sufficient bond with the body by which the Contract is awarded in an amount equal to 100 percent (100%) of the Contract price, to secure the claims to which reference is made in the Civil Code of California, including section 9100, and the Labor Code of California, including section 1741.

NOW, THEREFORE, the Principal and _____, ("**Surety**") are held and firmly bound unto all laborers, material men, and other persons referred to in said statutes in the penal sum of:

_____ DOLLARS

(\$ _____), lawful money of the United States, being a sum not less than the total amount payable by the terms of Contract, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, or assigns, jointly and severally, by these presents.

The condition of this obligation is that if the Principal or any of his or its subcontractors, of the heirs, executors, administrators, successors, or assigns of any, all, or either of them shall fail to pay for any labor, materials, provisions, provender, or other supplies, used in, upon, for or about the performance of the work contracted to be done, or for any work or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to such work or labor, that the Surety will pay the same in an amount not exceeding the amount herein above set forth, and also in case suit is brought upon this bond, will pay a reasonable attorney's fee to be awarded and fixed by the Court, and to be taxed as costs and to be included in the judgment therein rendered.

It is hereby expressly stipulated and agreed that this bond shall inure to the benefit of any and all persons, companies, and corporations entitled to file claims under sections 9000 through 9566 of the Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

Should the condition of this bond be fully performed, then this obligation shall become null and void; otherwise it shall be and remain in full force and affect.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Contract or to the Work to be performed thereunder shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration, or addition to the Contract Documents or to the Work.

IN WITNESS WHEREOF, two (2) identical counterparts of this instrument, each of which shall for all purposes be deemed an original thereof, have been duly executed by the Principal and Surety above named, on the _____ day of _____, 20_____.

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.

Division 1 Documents
to
Lease-Leaseback Documents

COORDINATION AND PROJECT MEETINGS	133
PRODUCT OPTIONS AND SUBSTITUTIONS.....	136
CONSTRUCTION SCHEDULE – NETWORK ANALYSIS.....	138
SUBMITTALS	145
REGULATORY REQUIREMENT.....	148
TESTING LABORATORY SERVICES	150
TEMPORARY FACILITIES AND CONTROLS	153
SITE STANDARDS	157
TEMPORARY TREE AND PLAN PROTECTION	159
STORM WATER POLLUTION PREVENTION PLAN - CONSTRUCTION	162
MATERIALS AND EQUIPMENT.....	165
DELIVERY, STORAGE AND HANDLING	167
CONTRACT CLOSEOUT AND FINAL CLEANING	168
FIELD ENGINEERING.....	170
CUTTING AND PATCHING.....	171
OPERATION AND MAINTENANCE.....	174
WARRANTIES	176
RECORD DOCUMENTS.....	177
COMMISSIONING	178

[TABLE OF CONTENTS NEEDS TO BE UPDATED WHEN DOCUMENT IS FINALIZED]

COORDINATION AND PROJECT MEETINGS

1. GENERAL

1.1. SECTION INCLUDES

- 1.1.1. Coordination Responsibilities of the Contractor
- 1.1.2. Field Engineering Responsibilities of the Contractor
- 1.1.3. Preconstruction Conference.
- 1.1.4. Progress Meetings.
- 1.1.5. Pre-Installation Conferences.
- 1.1.6. Post Construction Dedication.

1.2. COORDINATION RESPONSIBILITIES OF THE CONTRACTOR

- 1.2.1. Coordinate scheduling, submittals, and Work of the Specifications to assure efficient and orderly sequence of installation of interdependent construction elements, with provisions for accommodating items installed later.
- 1.2.2. Prior to commencement of a particular type or kind of work examine relevant information, contract documents, and subsequent data issued to the Project.
- 1.2.3. Verify that utility requirement characteristics of operating equipment are compatible with building utilities. Coordinate work of various sections having interdependent responsibilities for installing, connecting to, and placing in service, such equipment.
- 1.2.4. Closing up of holes, backfilling, and other covering up operations shall not proceed until all enclosed or covered work and inspections have been completed. Verify before proceeding.
- 1.2.5. Coordinate space requirements and installation of mechanical and electrical work which are indicated diagrammatically on Drawings. Follow routing shown for pipes, ducts, and conduit as closely as practicable; place runs parallel with line of building. Utilize spaces efficiently to maximize accessibility for other installations, for maintenance, and for repairs.
- 1.2.6. In finished areas except as otherwise indicated, conceal pipes, ducts, and wiring within the construction. Coordinate locations of fixtures and outlets with finish elements.
- 1.2.7. In locations where several elements of mechanical and electrical work must be sequenced and positioned with precision in order to fit into available space, prepare coordination drawings showing the actual conditions required for the installation. Prepare coordination drawings prior to purchasing, fabricating, or installing any of the elements required to be coordinated.
- 1.2.8. Closing up of walls, partitions or furred spaces, backfilling, and other covering up operations shall not proceed until all enclosed or covered work and inspections have been completed. Verify before proceeding.
- 1.2.9. Coordinate completion and clean up of Work of separate sections in preparation for completion and for portions of work designated for District's occupancy.
- 1.2.10. After District occupancy of Project, coordinate access to Site for correction of defective Work and Work not in accordance with Contract Documents, to minimize disruption of District's activities.
- 1.2.11. Coordinate all utility company work in accordance with the Contract Documents.

1.3. FIELD ENGINEERING RESPONSIBILITIES OF THE CONTRACTOR

- 1.3.1. Contractor shall employ a Land Surveyor registered in the State of California and acceptable to the Construction Manager.
- 1.3.2. Control datum for survey is that established by District provided survey. Contractor to locate and protect survey control and reference points.
- 1.3.3. Replace dislocated survey control points based on original survey control.
- 1.3.4. Provide field engineering services. Establish elevations, lines, and levels utilizing recognized engineering survey practices.
- 1.3.5. Upon completion of Work, submit certificate signed by the Land Surveyor, that elevations and locations of Work are in conformance with Contract Documents. Record

deviations on Record Drawings.

1.4. PRECONSTRUCTION CONFERENCE

- 1.4.1. Construction Manager or Project Engineer will schedule a conference immediately after receipt of fully executed Contract Documents prior to Project mobilization.
- 1.4.2. Mandatory Attendance: Construction Manager, Project Engineer, Inspector of Record, Architect of Record, Contractor, Contractor's Project Manager, and Contractor's Job/Project Superintendent.
- 1.4.3. Optional Attendance: Architect's consultants, subcontractors, and utility company representatives.
- 1.4.4. Construction Manager shall preside at conference and shall prepare and record minutes and distribute copies.
- 1.4.5. Agenda:
 - 1.4.5.1. Execution of the Contract Documents.
 - 1.4.5.2. Issue Notice to Proceed.
 - 1.4.5.3. Submission of executed bonds and insurance certificates.
 - 1.4.5.4. Distribution of Contract Documents.
 - 1.4.5.5. Submission of list of Subcontractors, list of Products, Schedule of Values, and Progress Schedule.
 - 1.4.5.6. Designation of responsible personnel representing the parties.
 - 1.4.5.7. Procedures for processing Force Account Directives and Change Orders.
 - 1.4.5.8. Procedures for Request for Information.
 - 1.4.5.9. Procedures for testing and inspecting.
 - 1.4.5.10. Procedures for processing applications for payment.
 - 1.4.5.11. Procedures for Project closeout.
 - 1.4.5.12. Use of Premises.
 - 1.4.5.13. Work restrictions.
 - 1.4.5.14. District's occupancy requirements or options.
 - 1.4.5.15. Responsibility for temporary facilities and controls.
 - 1.4.5.16. Construction waste management and recycling.
 - 1.4.5.17. Parking availability.
 - 1.4.5.18. Office, work and storage areas.
 - 1.4.5.19. Equipment deliveries and priority.
 - 1.4.5.20. Security.
 - 1.4.5.21. Progress cleaning.

1.5. PROGRESS MEETINGS

- 1.5.1. Construction Manager shall schedule and administer meetings throughout progress of the Work at a minimum of every week.
- 1.5.2. Construction Manager or Project Engineer will make arrangements for meetings, prepare agenda, and preside at meetings. Construction Manager shall record minutes (Field Reports), and distribute copies.
- 1.5.3. Attendance Required: Project Manager, Job Superintendent, Construction Manager, Project Engineer, Project Inspector (Inspector of Record), Architect of Record, Subcontractors, and suppliers as appropriate to agenda topics for each meeting.
- 1.5.4. Agenda:
 - 1.5.4.1. Review minutes of previous meetings. (Field Reports)
 - 1.5.4.2. Safety, and jobsite visits
 - 1.5.4.3. Review of Work progress.
 - 1.5.4.4. Field observations, problems, and decisions.
 - 1.5.4.5. Identification of problems which impede planned progress.
 - 1.5.4.6. Review of submittals schedule and status of submittals.
 - 1.5.4.7. Review of off-site fabrication and delivery schedules.
 - 1.5.4.8. Maintenance of construction schedule.
 - 1.5.4.9. Corrective measures to regain projected schedules.

- 1.5.4.10. Planned progress during succeeding work period.
- 1.5.4.11. Coordination of projected progress.
- 1.5.4.12. Maintenance of quality and work standards.
- 1.5.4.13. Effect of proposed changes on progress schedule and coordination.
- 1.5.4.14. Other business relating to Work.

- 1.5.5. District has authority to schedule meetings other than those listed, as necessary.

1.6. PRE-INSTALLATION CONFERENCES

When required in individual specification section, or requested by the District Contractor shall convene a pre-installation conference prior to commencing work of the section. Refer to individual specification section for timing requirements of conference.

- 1.6.1. Contractor shall require his/her subcontractors and suppliers directly affecting, or affected by, work of the specific section to attend.
- 1.6.2. Notify the Construction Manager, Project Engineer, Inspector of Record, and Architect of Record four (4) days in advance of meeting date.
- 1.6.3. The pre-installation conference may coincide with a regularly scheduled progress meeting.
- 1.6.4. Contractor shall prepare agenda, preside at conference, record minutes, and distribute copies within two (2) days after conference to participants.
- 1.6.5. The purpose of the meeting will be to review Contract Documents, conditions of installation, preparation and installation procedures, and coordination with related work and manufacturer's recommendations.
- 1.6.6. Pre-installation Schedule: As a minimum, Work being installed under the Contract Documents technical sections will require pre-installation conferences. Contractor shall review the technical specifications and add all additional requirements for pre-installation meetings contained in those sections.

1.7. POST CONSTRUCTION DEDICATION

- 1.7.1. Attendance Required: Project Superintendent, Contractor, Project Manager, major subcontractors, Construction Manager, Project Engineer, Inspector of Record, and Architect of Record.
- 1.7.2. Preparation prior to Dedication: Contractor and appropriate subcontractors and suppliers shall:
- 1.7.3. Assist District in operation of mechanical devices and systems.
 - 1.7.3.1. Verify operation and adjust controls for communication systems.
 - 1.7.3.2. Assist District in operation of lighting systems.

PRODUCT OPTIONS AND SUBSTITUTIONS

1. Substitution for Specified Items.

The Project shall be based on products and systems specified in Contract Documents or listed by name in Addenda. Contractor shall only request substitutions as indicated herein.

1.1. Request for Substitution Prior to Proposal.

- 1.1.1. District must receive any request for substitution a minimum of FOURTEEN (14) calendar days prior to the date proposals are due.
- 1.1.2. The District's denial of a substitution request prior to the date proposals are due shall be conclusive, requiring Contractors to base proposals only on approved items. The District is not responsible and/or liable in any way for a Contractor's damages and/or claims related, in any way, to that Contractor's basing its proposal on any requested substitution that the District has not approved. Contractor's proposal may be deemed non-responsive if it identifies a product or manufacturer of a non-approved substitution.
- 1.1.3. Approved substitutions shall be listed in Addenda.
- 1.1.4. District reserves the right not to act upon submittals of substitutions until after the date proposals are due. If the District does not act on a substitution request prior to the date proposals are due, Contractors must propose only on products and systems specified in Contract Documents or listed by name in Addenda.

1.2. Request for Substitution After Contract Awarded. Requests for substitutions after award of the Contract shall be within **THIRTY-FIVE (35) days of the date of the Notice of Award or similar notice to Contractor**. This time period can be extended by the District only, in its sole discretion.

- 1.2.1. Whenever in the Specifications any materials, process, or article is indicated or specified by grade, patent, or proprietary name, or by name of manufacturer, that Specification shall be deemed to be followed by the words "or equal." Contractor may, unless otherwise stated, offer any material, process, or article that shall be substantially equal or better in every respect to that so indicated or specified.
- 1.2.2. If the material, process, or article offered by Contractor is not, in the opinion of the District, substantially equal or better in every respect to that specified, then Contractor shall furnish the material, process, or article specified in the Specifications without any additional compensation or change.
- 1.2.3. This provision shall not be applicable with respect to any material, product, thing or service for which District made findings and gave notice in accordance with Public Contract Code section 3400(b); therefore, Contractor shall not be entitled to request a substitution with respect to those materials, products or services.
- 1.2.4. The burden of proof as to equality of any material, process, or article shall rest with Contractor.

1.3. A request for a substitution shall be in writing and shall include the following information and /or assurances.

- 1.3.1. All variations of the proposed substitute from the material specified including, but not limited to, principles of operation, materials, or construction finish, thickness or gauge of materials, dimensions, weight, and tolerances;
- 1.3.2. Available maintenance, repair or replacement services;
- 1.3.3. Increases or decreases in operating, maintenance, repair, replacement, and spare parts costs;
- 1.3.4. Whether or not acceptance of the substitute will require other changes in the Work (or in work performed by the District or others under contract with the District); and
- 1.3.5. The time impact on any part of the Work resulting directly or indirectly from acceptance of the proposed substitute.
- 1.3.6. The proposed substitute is equal or superior in all respects to that specified, and that such proposed substitute is suitable and fit for the intended purpose and will perform adequately the function and achieve the results called for by the general design and the Contract Documents;

- 1.3.7. The Contractor provides the same warranties and guarantees for the substitute that would be provided for that specified;
- 1.3.8. The Contractor shall be fully responsible for the installation of the substitute and any changes in the Work required, either directly or indirectly, because of the acceptance of such substitute, with no increase in Contract Price or Contract Time. Incidental changes or extra component parts required to accommodate the substitute will be made by the Contractor without a change in the Contract Price or Contract Time;
- 1.3.9. The Contractor shall be responsible for any re-design costs occasioned by District's acceptance and/or approval of any substitute; and
- 1.3.10. The Contractor shall, in the event that a substitute is less costly than that specified, credit the District with one hundred percent (100%) of the net difference between the substitute and the originally specified material. In this event, the Contractor agrees to execute a deductive Change Order to reflect that credit.
- 1.4. In the event Contractor furnishes a material, process, or article more expensive than that specified, the difference in the cost of that material, process, or article so furnished shall be borne by Contractor.
- 1.5. In no event shall the District be liable for any increase in Contract Price or Contract Time due to any claimed delay in the evaluation of any proposed substitute or in the acceptance or rejection of any proposed substitute.
- 1.6. If the District approves a substitution after the award of the Contract, the District shall memorialize that approval in a Change Order or other applicable Contract modification process.

CONSTRUCTION SCHEDULE - NETWORK ANALYSIS

1. GENERAL

1.1. REFERENCES

- 1.1.1. Construction Planning and Scheduling Manual - A Manual for General Contractors and the Construction Industry, The Associated General Contractors of America (AGC).
- 1.1.2. CSI - Construction Specifications Institute MP-2-1 Master Format.
- 1.1.3. U.S. National Weather Service - Local Climatological Data.

1.2. PERFORMANCE REQUIREMENTS

- 1.2.1. All Contractor's schedules shall comply with the baseline and milestones as indicated in the draft "Program Schedule" the District provided as a draft **Exhibit F** to the Facilities Lease.
- 1.2.2. Ensure adequate scheduling during construction activities so Work may be prosecuted in an orderly and expeditious manner within stipulated Contract Time.
- 1.2.3. Ensure coordination of Contractor and subcontractors at all levels.
- 1.2.4. Ensure coordination of submittals, fabrication, delivery, erection, installation, and testing of Products, materials and equipment.
- 1.2.5. Ensure on-time delivery of District furnished Products, materials and equipment.
- 1.2.6. Ensure coordination of jurisdictional reviews.
- 1.2.7. Prepare applications for payment.
- 1.2.8. Monitor progress of Work.
- 1.2.9. Prepare proper requests for changes to Contract Time.
- 1.2.10. Prepare proper requests for changes to Construction Schedule.
- 1.2.11. Assist in detection of schedule delays and identification of corrective actions.

1.3. QUALITY ASSURANCE

- 1.3.1. Perform scheduling work in accordance with Construction Planning and Scheduling Manual published by the AGC.
- 1.3.2. Maintain one copy of Construction Planning and Scheduling Manual on Site.
- 1.3.3. In the event of discrepancy between the AGC publication and the Contract Documents, provisions of the Contract Documents shall govern.

1.4. QUALIFICATIONS

1.4.1. Scheduler:

- 1.4.1.1. Contractor shall retain a construction scheduler to work in enough capacity to perform all of the Contractor's requirements to prepare the Construction Schedule. The Scheduler shall plan, coordinate, execute, and monitor a cost/resource loaded critical path method (CPM) schedule as required for Project and have a minimum of five (5) years direct experience using CPM.
- 1.4.1.2. Scheduler will cooperate with District and shall be available on site for monitoring, maintaining and updating schedules in a timely manner.
- 1.4.1.3. District has the right to reject the Scheduler based upon a lack of experience as required by this Document or based on lack of performance and timeliness of schedule submittals/fragnets on past projects. Contractor shall within seven (7) calendar days of District's rejection, propose another scheduler who meets the experience requirements stated above.

- 1.4.2. **Administrative Personnel:** Five (5) years minimum experience in using and monitoring schedules on comparable projects.

1.5. SUBMITTALS

- 1.5.1. Submission of submittals pursuant to "Contractor's Submittals And Schedules" in Exhibit D. Adobe "PDF" files are not acceptable.
- 1.5.2. Submit Short Interval Schedule at each Construction Progress Meeting.
- 1.5.3. Submit Time Adjustment Schedule within five (5) days of commencement of a claimed

delay.

- 1.5.4. Submit Recovery Schedules as required for timely completion of Work or when demanded by the District.
- 1.5.5. Submit job cost reports when demanded by the District.
- 1.5.6. Submit one (1) reproducible and two (2) copies of each schedule and cost report.
- 1.5.7. Submit large format plotted schedules monthly or at the request of the District or Construction Manager.

1.6. REVIEW AND EVALUATION

- 1.6.1. Contractor shall participate in joint review of Construction Schedule and Reports with District and Construction Manager.
- 1.6.2. Within seven (7) days of receipt of District and Construction Manager's comments provide satisfactory revision to Construction Schedule or adequate justification for activities in question.
- 1.6.3. In the event that an activity or element of Work is not detected by District or Construction Manager review, such omission or error shall be corrected by next scheduled update and shall not affect Contract Time.
- 1.6.4. Acceptance by District of corrected Construction Schedule shall be a condition precedent to making any Tenant Improvement Payment.
- 1.6.5. Cost-loaded values of Construction Schedule shall be basis for determining Tenant Improvement Payment unless waived by the District in writing.
- 1.6.6. Review and acceptance by District and Construction Manager of Preliminary Work Schedule or Construction Schedule does not constitute responsibility whatsoever for accuracy or feasibility of schedules nor does such acceptance expressly or impliedly warrant, acknowledge or admit reasonableness of activities, logic, duration, manpower, cost or equipment loading stated or implied on schedules.

1.7. FORMAT

- 1.7.1. Prepare diagrams and supporting mathematical analyses using Precedence Diagramming Method, under concepts and methods outlined in AGC Construction Planning and Scheduling Manual.
- 1.7.2. **Listings:** Reading from left to right, in ascending order for each activity.
- 1.7.3. **Diagram Size:** 42 inches maximum height x width required.
- 1.7.4. **Scale and Spacing:** To allow for legible notations and revisions.
- 1.7.5. Illustrate order and interdependence of activities and sequence of Work.
- 1.7.6. Illustrate complete sequence of construction by activity.
- 1.7.7. Provide legend of symbols and abbreviations used.

1.8. COST AND SCHEDULE REPORTS

- 1.8.1. **Activity Analysis:** Tabulate each activity of network diagram and identify for each activity:
 - 1.8.1.1. Description.
 - 1.8.1.2. Interface with outside contractors or agencies.
 - 1.8.1.3. Number.
 - 1.8.1.4. Preceding and following number.
 - 1.8.1.5. Duration.
 - 1.8.1.6. Earliest start date, earliest finish date.
 - 1.8.1.7. Actual start date, actual finish date.
 - 1.8.1.8. Latest start date, latest finish date.
 - 1.8.1.9. Total and free float.
 - 1.8.1.10. Identification of critical path activity.
 - 1.8.1.11. Monetary value keyed to Schedule of Values.
 - 1.8.1.12. Manpower requirements.
 - 1.8.1.13. Responsibility.
 - 1.8.1.14. Percentage complete.
 - 1.8.1.15. Variance positive or negative.

- 1.8.2. **Cost Report:** Tabulate each activity of network diagram and identify for each activity, unless waived by the District in writing:
 - 1.8.2.1. Description.
 - 1.8.2.2. Number.
 - 1.8.2.3. Total cost.
 - 1.8.2.4. Percentage complete.
 - 1.8.2.5. Value prior to current period.
 - 1.8.2.6. Value this period.
 - 1.8.2.7. Value to date.
- 1.8.3. **Required Sorts:** List activities in sorts or groups:
 - 1.8.3.1. By activity number.
 - 1.8.3.2. By amount of float time in order of early start.
 - 1.8.3.3. By responsibility in order of earliest start date.
 - 1.8.3.4. In order of latest start dates.
 - 1.8.3.5. In order of latest finish dates.
 - 1.8.3.6. Application for payment sorted by Schedule of Values.
 - 1.8.3.7. Listing of activities on critical path.
- 1.8.4. Listing of basic input data which generates schedule.

1.9. CONSTRUCTION SCHEDULE

- 1.9.1. Contractor shall develop and submit a preliminary schedule of construction (or Preliminary Construction Schedule) during the procurement process or, if not then, and only with the District's written approval, within thirty (30) days after award of the Contract. That document shall comply with this Document and the Contract Documents. It shall be submitted in computer generated network format and shall be organized by Activity Codes representing the Contractor's intended sequencing of the Work, and with time scaled network diagrams of activities. The Preliminary Construction Schedule shall include activities such as mobilization, preparation of submittals, specified review periods, procurement items, fabrication items, milestones, and all detailed construction activities.
- 1.9.2. Upon District's acceptance of the Preliminary Construction Schedule, Contractor shall update the accepted Preliminary Construction Schedule until Contractor's Construction Schedule is fully developed and accepted within the first thirty (30) calendar days. Once approved by District, this shall become the Construction Schedule (or "Baseline Schedule"). This schedule shall include and identify all tasks that are on the Project's critical path with a specific determination of the start and completion of each critical path task, all contract milestones and each milestone's completion date(s) as may be required by the District, and the date of Project Completion. Since updates to the Construction Schedule are the basis for payment to Contractor, submittal and acceptance of the Construction Schedule and updates shall be a condition precedent to making of monthly payments, as indicated in the General Construction Provisions (Exhibit D to the Facilities Lease).
- 1.9.3. Failure to submit an adequate or accurate Preliminary Construction Schedule, Construction Schedule, updates thereto or failure to submit on established dates, will be considered a breach of Contract.
- 1.9.4. Failure to include any activity shall not be an excuse for completing all Work by required Completion Date.
- 1.9.5. Activities of long intervals shall be broken into increments no longer than fourteen (14) days or a value over \$20,000.00 unless approved by the District or it is non-construction activity for procurement and delivery.
- 1.9.6. The Construction Schedule shall comply with the following and include the following:
 - 1.9.6.1. Provide a written narrative describing Contractor's approach to mobilization, procurement, and construction during the first thirty (30) calendar days including crew sizes, equipment and material delivery, Site

- access, submittals, and permits.
- 1.9.6.2. Shall designate critical path or paths.
- 1.9.6.3. Procurement activities to include mobilization, shop drawings and sample submittals.
- 1.9.6.4. Identification of key and long-lead elements and realistic delivery dates.
- 1.9.6.5. Construction activities in units of whole days limited to fourteen (14) days for each activity except non-construction, procurement and delivery.
- 1.9.6.6. Approximate cost and duration of each activity.
- 1.9.6.7. Shall contain seasonal weather considerations.
- 1.9.6.8. Indicate a date for Project Completion that is no later than Completion Date subject to any time extensions processed as part of a Change Order.
- 1.9.6.9. Conform to mandatory dates specified in the Contract Documents.
- 1.9.6.10. Contractor shall allow for inclement weather in the Proposed Baseline Schedule by incorporating an activity titled "Rain Day Impact Allowance" as the last activity prior to the Completion Milestone. No other activities may be concurrent with it. The duration of the Rain Day Impact Allowance activity will in accordance with the Contract Documents, including "Computation of Time / Adverse Weather" in Exhibit D , and will be calculated from the Notice to Proceed until the Completion.
- 1.9.6.11. Level of detail shall correspond to complexity of work involved.
- 1.9.6.12. Indicate procurement activities, delivery, and installation of District furnished material and equipment.
- 1.9.6.13. Designate critical path or paths.
- 1.9.6.14. Subcontractor work at all levels shall be included in schedule.
- 1.9.6.15. As developed shall show sequence and interdependence of activities required for complete performance of Work.
- 1.9.6.16. Shall be logical and show a coordinated plan of Work.
- 1.9.6.17. Show order of activities and major points of interface, including specific dates of completion.
- 1.9.6.18. Duration of activities shall be coordinated with subcontractors and suppliers and shall be best estimate of time required.
- 1.9.6.19. Shall show description, duration and float for each activity.
- 1.9.7. **Activity.** An activity shall meet the following criteria:
 - 1.9.7.1. Any portion or element of Work or action that is precisely described, readily identifiable, and is a function of a logical sequential process.
 - 1.9.7.2. Descriptions shall be clear and concise. Beginning and end shall be readily verifiable. Starts and finishes shall be scheduled by logical restraints.
 - 1.9.7.3. Responsibility shall be identified with a single performing entity.
 - 1.9.7.4. Additional codes shall identify building, floor, and CSI classification.
 - 1.9.7.5. Assigned dollar value (cost-loading) of each activity shall cumulatively equal total contract amount. Mobilization, bond and insurance costs shall be separate. General requirement costs, overhead, profit, shall be prorated throughout all activities. Activity costs shall correlate with Schedule of Values.
 - 1.9.7.6. Assigned manpower requirement (resource loading) of each activity.
 - 1.9.7.7. Major construction equipment shall be assigned to each activity.
 - 1.9.7.8. Activities labeled start, continue or completion are not allowed.
- 1.9.8. **Equipment and Materials.** For major equipment and materials show a sequence of activities including:
 - 1.9.8.1. Preparation of shop drawings and sample submissions.
 - 1.9.8.2. Review of shop drawings and samples.
 - 1.9.8.3. Finish and color selection.

- 1.9.8.4. Fabrication and delivery.
- 1.9.8.5. Erection or installation.
- 1.9.8.6. Testing.
- 1.9.9. Include a minimum of fifteen (15) days prior to Completion Date for punch lists and clean up. No other activities shall be scheduled during this period.
- 1.10. SHORT INTERVAL SCHEDULE**
 - 1.10.1. The Four-Week Rolling Schedule shall be based on the most recent District Accepted Construction Schedule or Update. It shall include weekly updates to all construction, submittal, fabrication/procurement, and separate Work Contract activities. Contractor shall ensure that it accurately reflects the current progress of the Work.
 - 1.10.2. Shall be fully developed horizontal bar-chart-type schedule directly derived from Construction Schedule.
 - 1.10.3. Prepare schedule on sheet of sufficient width to clearly show data.
 - 1.10.4. Provide continuous heavy vertical line identifying first day of week.
 - 1.10.5. Provide continuous subordinate vertical line identifying each day of week.
 - 1.10.6. Identify activities by same activity number and description as Construction Schedule.
 - 1.10.7. Show each activity in proper sequence.
 - 1.10.8. Indicate graphically sequences necessary for related activities.
 - 1.10.9. Indicate activities completed or in progress for previous two (2) week period.
 - 1.10.10. Indicate activities scheduled for succeeding two (2) week period.
 - 1.10.11. Further detail may be added if necessary to monitor schedule.
- 1.11. REQUESTED TIME ADJUSTMENT SCHEDULE**
 - 1.11.1. Updated Construction Schedule shall not show a Completion Date later than the Contract Time, subject to any time extensions processed as part of a Change Order.
 - 1.11.2. If an extension of time is requested, a separate schedule entitled "Requested Time Adjustment Schedule" shall be submitted to District and Architect.
 - 1.11.3. Indicate requested adjustments in Contract Time which are due to changes or delays in completion of Work.
 - 1.11.4. Extension request shall include forecast of Project Completion date and actual achievement of any dates listed in Contract Documents.
 - 1.11.5. To the extent that any requests are pending at time of any Construction Schedule update, Time Adjustment Schedule shall also be updated.
 - 1.11.6. Schedule shall be a time-scaled network analysis.
 - 1.11.7. Accompany schedule with formal written time extension request and detailed impact analysis justifying extension.
 - 1.11.8. Time impact analysis shall demonstrate time impact based upon date of delay, and status of construction at that time and event time computation of all affected activities. Event times shall be those as shown in latest Construction Schedule.
 - 1.11.9. Activity delays shall not automatically constitute an extension of Contract Time.
 - 1.11.10. Failure of subcontractors shall not be justification for an extension of time.
 - 1.11.11. Float is not for the exclusive use or benefit of any single party. Float time shall be apportioned according to needs of project, as determined by the District.
 - 1.11.12. Float suppression techniques such as preferential sequencing, special lead/lag logic restraints, extended activity durations, or imposed dates shall **not** be allowed without the prior written permission of the District.
 - 1.11.13. Extensions will be granted only to extent that time adjustments to activities exceed total positive float of the critical path and extends Completion date.
 - 1.11.14. District shall not have an obligation to consider any time extension request unless requirements of Contract Documents, and specifically, but not limited to these requirements are complied with.
 - 1.11.15. District shall not be responsible or liable for any construction acceleration due to failure of District to grant time extensions under Contract Documents should requested adjustments in Contract Time not substantially comply with submission and justification

requirements of Contract for time extension requests.

- 1.11.16. In the event a Requested Time Adjustment Schedule and Time Impact Analysis are not submitted within ten (10) days after commencement of a delay it is mutually agreed that delay does not require a Contract Time extension.

1.12. RECOVERY SCHEDULE

- 1.12.1. When activities are behind Construction Schedule a supplementary Recovery Schedule shall be submitted.
- 1.12.2. Contractor shall prepare and submit to the District a Recovery Schedule at any time requested by the District, at no cost to the District.
- 1.12.3. Form and detail shall be sufficient to explain and display how activities will be rescheduled to regain compliance with Construction Schedule and to complete the Work by the Completion Date.
- 1.12.4. Maximum duration shall be one (1) month and shall coincide with payment period.
- 1.12.5. Ten (10) days prior to expiration of Recovery Schedule, Contractor shall have to show verification to determine if activities have regained compliance with Construction Schedule. Based upon this verification the following will occur:
 - 1.12.5.1. Supplemental Recovery Schedule will be submitted to address subsequent payment period
 - 1.12.5.2. Construction Schedule will be resumed.

1.13. UPDATING SCHEDULES

- 1.13.1. Review and update schedule at least ten (10) days prior to submitting an Application for Payment.
- 1.13.2. Maintain schedule to record actual prosecution and progress.
- 1.13.3. Identify approved Change Orders which affect schedule as separate new activities.
- 1.13.4. No other revisions shall be made to schedule unless authorized by District.
- 1.13.5. **Written Narrative Report:** Contractor shall include a written report to explain the Monthly Schedule Update. The narrative shall, at a minimum include the following headings with appropriate discussions of each topic:
 - 1.13.5.1. Activities or portions of activities completed during previous reporting period.
 - 1.13.5.2. Actual start dates for activities currently in progress.
 - 1.13.5.3. Deviations from critical path in days ahead or behind.
 - 1.13.5.4. List of major construction equipment used and any equipment idle.
 - 1.13.5.5. Number of personnel by craft engaged on Work during reporting period.
 - 1.13.5.6. Progress analysis describing problem areas.
 - 1.13.5.7. Current and anticipated delay factors and their impact.
 - 1.13.5.8. Proposed corrective actions and logic revisions for Recovery Schedule.
 - 1.13.5.9. Proposed modifications, additions, deletions and changes in logic of Construction Schedule.
 - 1.13.5.10. In updating the Schedule, Contractor shall not modify Activity ID numbers, schedule calculation rules/criteria, or the Activity Coding Structure required.
- 1.13.6. Schedule update will form basis upon which Tenant Improvement Payments will be made.
- 1.13.7. District will not be obligated to review or process Application for Payment until schedule and Progress Report have been submitted.

1.14. DISTRIBUTION

- 1.14.1. Following joint review and acceptance of updated schedules distribute copies to District, Architect, and all other concerned parties.
- 1.14.2. Instruct recipients to promptly report in writing any problem anticipated by projections shown in schedule.

2. PRODUCTS

2.1. SCHEDULING SOFTWARE

Contractor shall utilize District approved software for scheduling software and shall employ the Critical Path Method (CPM) in the development and maintenance of the Construction Schedule. The scheduling software shall be capable of being resource loaded with manpower, costs and materials. It shall also be capable of generating time-scaled logic diagrams, resource histograms and profiles, bar charts, layouts and reports with any and/or all activity detail.

2.2. ELECTRONIC DATA

Provide compact disk(s) that contain a back-up of the Proposed Baseline Schedule data on it. The electronic P6 files shall be saved in ".XER" type format.

SUBMITTALS

1. GENERAL

1.1. SUBMITTAL PROCEDURES – USE OF SOFTWARE

1.1.1. CONTRACTOR SHALL UTILIZE DISTRICT APPROVED SOFTWARE FOR THE SUBMITTAL PROCESS

- 1.1.2. Contractor shall transmit each submittal in conformance with requirements of this Document. For each submittal, Contractor shall:
 - 1.1.2.1. Sequentially number the transmittal forms. Resubmitted submittals must have the original number with an alphabetic suffix;
 - 1.1.2.2. Identify Project and Architect's project number, Contractor, Subcontractor or supplier; pertinent Drawing sheet and detail number(s), and specification Section number, as appropriate;
 - 1.1.2.3. Apply Contractor's stamp, signed or initialed certifying that review, verification of Products required, field dimensions, adjacent construction work, and coordination of information is in accordance with the requirements of the Work and Contract Documents. Submittals without Contractor's stamp and signature will be returned without review.
- 1.1.3. Coordinate preparation and processing of submittals with performance of Work. Transmit each submittal sufficiently in advance of performance of Work to avoid delay.
 - 1.1.3.1. Coordinate each submittal with fabrication, purchasing, testing, delivery, other submittals, and related activities that require sequential activity.
 - 1.1.3.2. Coordinate transmittal of different types of submittals for related parts of Work so processing will not be delayed because of the need to review submittals concurrently for coordination.
 - 1.1.3.3. Architect reserves the right to withhold action on a submittal requiring coordination with other submittals until related submittals are received.
- 1.1.4. Comply with Contract Documents for list of submittals and time requirements for scheduled performance of Work.
- 1.1.5. No extension of Contract Time will be authorized because of failure to transmit submittals to the Architect sufficiently in advance of the Work to permit processing.
- 1.1.6. Identify variations from Contract Documents and Product or system limitations which may be detrimental to successful performance of the completed Work.
- 1.1.7. Provide space for Contractor and Architect review stamps.
- 1.1.8. Revise and resubmit submittals as required, identify all changes made since previous submittal.
- 1.1.9. Distribute copies of reviewed submittals to concerned parties. Instruct parties to promptly report any inability to comply with provisions.
- 1.1.10. Submittals not requested will not be recognized or processed. Submittals not requested will be returned without review.

1.2. SHOP DRAWINGS

- 1.2.1. Do not reproduce Contract Documents or copy standard information as the basis of shop drawings. Standard information prepared without specific reference to the Project is not a shop drawing.
- 1.2.2. Do not use or allow others to use Shop Drawings which have been submitted and have been rejected.

1.3. ELECTRONIC SUBMITTAL PROCESS

1.3.1. Submittal Procedure for Large Format shop drawings.

- 1.3.1.1. Contractor shall provide six (6) paper copies and of the large format Shop Drawings directly to the District and the Construction Manager (CM) and Contractor will provide an electronic transmittal (with a detailed description of the submittal including the subject, specification number and number of drawings) using the District approved software/program.

- 1.3.1.2. Contractor shall verify that the Submittal Schedule and all submittal log(s) are accurate and up to date.
- 1.3.1.3. The District and Architect will review and markup each Submittal and provide changes to Contractor for Contractor's incorporation into the Submittal.
- 1.3.1.4. This process will continue until the Contractor has provided a Submittal that is acceptable to the District and the Architect.
- 1.3.1.5. Once a Submittal is accepted, the District will provide a final accepted Submittal to the Contractor and the Contractor will closeout that one Submittal.
- 1.3.1.6. Contractor shall send one (1) copy of the completed record submittal of the large format documents to a vendor (Ford Graphics is suggested) and using the District approved software/program.

1.3.2. Product Data, Calculations and Small Format Drawings

- 1.3.2.1. Contractor shall upload/post one (1) electronic copy (from manufacturer's website or pre-scanned) of the product literature, data, calculations, and/or small format shop drawings using the District approved software/program with a Transmittal (with a detailed description of the submittal) directly to the CM.
- 1.3.2.2. The District and Architect will review and markup each Submittal and provide changes to Contractor for Contractor's incorporation into the Submittal.
- 1.3.2.3. This process will continue until the Contractor has provided a Submittal that is acceptable to the District and the Architect.
- 1.3.2.4. Once a Submittal is accepted, the District will provide a final accepted Submittal to the Contractor and the Contractor will closeout that one Submittal.
- 1.3.2.5. Contractor shall send one (1) copy of the completed record submittal of the large format documents to a vendor for scanning and posting using the District approved software/program.

1.3.3. Sample Submittal Procedure – (Product / Assembly Samples)

- 1.3.3.1. Contractor shall provide four (4) physical samples directly to the District and the CM and Contractor will provide an electronic transmittal (with a detailed description of the submittal including the subject, specification number and number of drawings) using the District approved software/program.
- 1.3.3.2. The District and Architect will review and markup each Submittal and provide changes to Contractor for Contractor's incorporation into the Submittal.
- 1.3.3.3. This process will continue until the Contractor has provided a Submittal that is acceptable to the District and the Architect.
- 1.3.3.4. Once a Submittal is accepted, the District will provide a final accepted Submittal to the Contractor and the Contractor will closeout that one Submittal.
- 1.3.3.5. Contractor shall send one (1) copy of the completed record submittal of the large format documents to a vendor (Ford Graphics is suggested) for using the District approved software/program.

1.4. PRODUCT DATA

In addition to the above requirements, mark each copy to identify applicable products, models, options, and other data. Supplement manufacturers' standard data to provide information unique to this Project.

1.5. SAMPLES

- 1.5.1. In addition to the above requirements, submit samples to illustrate functional and aesthetic characteristics of the Product in accordance with this Document, with integral parts and attachment devices. Coordinate sample submittals for interfacing work.
- 1.5.2. Where specific colors or patterns are not indicated, provide materials and products specified in the full range of color, texture and pattern for selection by District. Range shall include standard stocked color/texture/pattern, standard color/texture/pattern not stocked, but available from manufacturer, and special color/ texture/pattern

available from manufacturer as advertised in product data and brochures. Unless otherwise indicated in individual specification sections, District may select from any range at no additional cost to District.

- 1.5.3. Include identification on each sample, with full Project information.
- 1.5.4. Submit the number of samples that Contractor requires, plus one that will be retained by Architect and one by District.
- 1.5.5. Reviewed samples which may be used in the Work are indicated in individual specification Sections.

1.6. MANUFACTURER'S INSTRUCTION

- 1.6.1. When specified in individual specification Sections, submit manufacturers' printed instructions for delivery, storage, assembly, installation, start-up, adjusting, and finishing, in quantities specified for Product Data.
- 1.6.2. Identify conflicts between manufacturers' instructions and Contract Documents.

1.7. MANUFACTURER'S CERTIFICATES

- 1.7.1. When specified in individual specification Sections, submit manufacturers' certificate to Architect for review, in quantities specified for Product Data.
- 1.7.2. Indicate material or Product conforms to or exceeds specified requirements. Submit supporting reference date, affidavits, and certifications as appropriate.
- 1.7.3. Certificates may be recent or previous test results on material or Product, but must be acceptable to District.

1.8. MOCK-UP

- 1.8.1. Where indicated, provide mock-ups as required. Mock-ups shall be prepared per the specifications and shall accurately and reasonably represent the quality of construction the Contractor will provide. If the mock-up or portions thereof do not adequately represent the quality of the work specified, the Contractor shall modify it as needed.
- 1.8.2. Once completed to the District's satisfaction, the mock-up shall serve as the standard of quality for the work.
- 1.8.3. All mock-ups, at District's option, shall remain the property of the District. If not required by the District, Contractor shall remove and dispose of the mock-up.
- 1.8.4. Where indicated, on-site mock-ups, if accepted, may be integrated into the Work.

1.9. DEFERRED APPROVAL REQUIREMENTS

- 1.9.1. Installation of deferred approval items shall not be started until detailed plans, specifications, and engineering calculations have been accepted and signed by the Architect or Engineer in general responsible charge of design and signed by a California registered Architect or professional engineer who has been delegated responsibility covering the work shown on a particular plan or specification and approved by the Division of the State Architect (DSA). Deferred approval items for this Project are as indicated in the Contract Documents.
- 1.9.2. Deferred approval drawings and specifications become part of the approved documents for the Project when they are submitted to and approved by DSA.
- 1.9.3. Submit material using electronic submittal process as defined above.
- 1.9.4. Identify and specify all supports, fasteners, spacing, penetrations, etc., for each of the deferred approval items, including calculations for each and all fasteners.
- 1.9.5. Submit documents to Architect for review prior to requesting that the Architect forward it to the DSA.
- 1.9.6. Documents shall bear the stamp and signature of the Structural, Mechanical, or Electrical Engineer licensed in California who is responsible for that work.
- 1.9.7. Architect and its subconsultants will review the documents only for conformance with design concept. The Architect will then forward the Submittal to DSA for approval.
- 1.9.8. Contractor shall respond to review comments made by DSA and revise and resubmit submittal to the Architect for re-submittal to DSA for final approval.

REGULATORY REQUIREMENTS

1. GENERAL

1.1. DESCRIPTION

This section covers the general requirements for regulatory requirements pertaining to the Work and is supplementary to all other regulatory requirements mentioned or referenced elsewhere in the Contract Documents.

1.2. REQUIREMENTS OF REGULATORY AGENCIES

- 1.2.1.** All statutes, ordinances, laws, rules, codes, regulations, standards, and the lawful orders of all public authorities having jurisdiction of the Work, are hereby incorporated into the Contract Documents as if repeated in full herein and are intended to be included in any reference to Code or Building Code, unless otherwise specified, including, without limitation, the references in the list below. Contractor shall make available at the Site copies of all the listed documents applicable to the Work as the District and/or Architect may request, including, without limitation, applicable portions of the California Code of Regulations (C.C.R.).
- 1.2.2.** This Project shall be governed by applicable regulations, including, without limitation, the State of California's Administrative Regulations for the Division of the State Architect-Structural Safety (DSA/SS), Chapter 4, Part 1, Title 24, C.C.R., and the most current version on the date the Contract is executed and as it pertains to school construction including, without limitation:
 - 1.2.2.1.** Test and testing laboratory pursuant to Section 4-335 (District shall pay for the testing laboratory).
 - 1.2.2.2.** All special inspections pursuant to Section 4-333(d).
 - 1.2.2.3.** Contractor shall submit verified reports pursuant to Section 4-336 & 4-343(c).
 - 1.2.2.4.** Administration
 - 1.2.2.4.1.** Duties of the Architect and Engineers shall be pursuant to Section and 4-341.
 - 1.2.2.4.2.** Duties of Contractor shall be pursuant Section 4-343.
 - 1.2.2.4.3.** Verified Reports shall be pursuant to Section 4-336.
 - 1.2.2.5.** Contractor shall keep and make available a copy of Part 1 and 2 of the most current version of C.C.R., Title 24 at the Site during construction.
 - 1.2.2.6.** Contractor shall notify the Division of State Architect (DSA) upon the start of construction pursuant to Section 4-331.
 - 1.2.2.7.** Addenda and Change Orders shall be pursuant to Section 4-338.
- 1.2.3.** Items of deferred approval shall be clearly marked on the first sheet of the Architect's and/or Engineer's approved Drawings. All items later submitted for approval shall be pursuant to Title 24 requirements to the DSA.
 - 1.2.3.1.** Building Standards Administrative Code, C.C.R., Title 24, Part 1..
 - 1.2.3.2.** California Building Code (CBC), C.C.R., Title 24, Part 2.; (Uniform Building code volumes 1-3 and California Amendments).
 - 1.2.3.3.** California Electrical Code (CEC), C.C.R., Title 24, Part 3 ; (National Electrical Code and California Amendments).
 - 1.2.3.4.** California Mechanical Code (CMC), C.C.R., Title 24, Part 4 ; (Uniform Mechanical Code and California Amendments).
 - 1.2.3.5.** California Plumbing Code (CPC), C.C.R., Title 24, Part 5; (Uniform Plumbing Code and California Amendments).
 - 1.2.3.6.** California Fire Code (CFC), C.C.R., Title 24, Part 9; (Fire Plumbing Code and California Amendments).
 - 1.2.3.7.** California Referenced Standards Code, C.C.R., Title 24, Part 12.
 - 1.2.3.8.** State Fire Marshal Regulations, C.C.R., Title 19, Public Safety.
 - 1.2.3.9.** Partial List of Applicable NFPA Standards:
 - 1.2.3.9.1.** NFPA 13 - Automatic Sprinkler System.

- 1.2.3.9.2. NFPA 14 - Standpipes Systems.
- 1.2.3.9.3. NFPA 17A - Wet Chemical System
- 1.2.3.9.4. NFPA 24 - Private Fire Mains.
- 1.2.3.9.5. (California Amended) NFPA 72 - National Fire Alarm Codes.
- 1.2.3.9.6. NFPA 253 - Critical Radiant Flux of Floor Covering System.
- 1.2.3.9.7. FPA 2001 - Clean Agent Fire Extinguishing Systems.
- 1.2.3.10. California Division of the State Architect Interpretation of Regulations Manual.

Form Agreement

TESTING LABORATORY SERVICES

1. GENERAL

1.1. REFERENCES

- 1.1.1. ASTM D3740 - Practice for Evaluation of Agencies Engaged in Testing and/or Inspection of Soil and Rock as Used in Engineering Design and Construction.
- 1.1.2. ASTM E329 - Recommended Practice for Inspection and Testing Agencies for Concrete, Steel, and Bituminous Materials as Used in Construction.
- 1.1.3. CBC - California Building Code.
- 1.1.4. UBC - Uniform Building Code.
- 1.1.5. Title 24, Parts 1 and 2, of the California Code of Regulations. Contractor shall keep a copy of these available at the job Site for ready reference during construction
- 1.1.6. DSA - Division of the State Architect, Office of Regulation Services, Structural Safety Section. DSA shall be notified at or before the start of construction.

1.2. OBSERVATION AND SUPERVISION

- 1.2.1. The District and Construction Manager or their appointed representatives will review the Work and the Contractor shall provide facilities and access to the Work at all times as required to facilitate this review. Administration by the Architect and any consulting Structural Engineer will be in accordance with applicable regulations, including, without limitation, 24 C.C.R. §4-341.
- 1.2.2. One or more Project Inspector(s) approved by DSA and employed by or in contract with the District("Project Inspector"), will observe the Work in accordance with 24 C.C.R. §§4-333(b) and 4-342:
- 1.2.3. Project Inspector shall have access to the Work wherever it is in preparation or progress for ascertaining that the Work is in accordance with the Contract Documents and all applicable code sections. Contractor shall provide facilities and access as required and shall provide assistance for sampling or measuring materials.
 - 1.2.3.1. Project Inspector will notify District and Architect and inform Contractor of any observed failure of Work or material to conform to Contract Documents.
 - 1.2.3.2. The Project Inspector shall observe and monitor all testing and inspection activities required.
- 1.2.4. Contractor shall conform with all applicable laws as indicated in the Contract Documents, including, without limitation, to 24 C.C.R. §4-343. Contractor shall supervise and direct the Work and maintain a competent superintendent on the Project who is authorized to act in all matters pertaining to the Work. The Contractor shall inspect all materials, as they arrive, for compliance with the Contract Documents. Contractor shall reject defective Work or materials immediately upon delivery or failure of the Work or material to comply with the Contract Documents. The Contractor shall submit verified reports as indicated in the Contract Documents, including, without limitation, the Specifications and as required by 24 C.C.R. §4-336.

1.3. TESTS AND INSPECTIONS

- 1.3.1. Contractor shall be responsible for notifying District and Project Inspector of all required tests and inspections. Contractor shall notify District and Project Inspector forty-eight (48) hours in advance of performing any Work requiring testing or inspection.
- 1.3.2. Contractor shall provide access to Work to be tested and furnish incidental labor, equipment, and facilities to facilitate all inspections and tests.
- 1.3.3. District will pay for first inspections and tests required by the Title 24 and other inspections or tests that District and/or Architect may direct to have made, including, but not limited to, the following principal items:
 - 1.3.3.1. Tests and observations for earthwork and pavings.
 - 1.3.3.2. Tests for concrete mix designs, including tests of trial batches.
 - 1.3.3.3. Tests and inspections for structural steel work.
 - 1.3.3.4. Field tests for framing lumber moisture content.

- 1.3.3.5. Additional tests directed by District that establish that materials and installation comply with the Contract Documents.
 - 1.3.3.6. Test and observation of welding and expansion anchors.
 - 1.3.3.7. Factory observation of components and assembly of modular prefabrication structures and buildings.
 - 1.3.4. District may at its discretion, pay and then back charge Contractor for:
 - 1.3.4.1. Retests or reinspections, if required, and tests or inspection required due to Contractor error or lack of required identifications of material.
 - 1.3.4.2. Uncovering of work in accordance with Contract Documents.
 - 1.3.4.3. Testing done on weekends, holidays, and overtime will be chargeable to Contractor for the overtime portion.
 - 1.3.4.4. Testing done off site.
 - 1.3.5. Testing and inspection reports and certifications:
 - 1.3.5.1. If initially received by Contractor, Contractor shall provide to each of the following a copy of the agency or laboratory report of each test or inspection or certification: District; Construction Manager, if any; Architect; Consulting Engineer, if any; Other Engineers on the Project, as appropriate; and; Project Inspector.
 - 1.3.5.2. When the test or inspection is one required by the Title 24, a copy of the report shall also be provided to the DSA.
- 1.4. SELECTION AND PAYMENT**
 - 1.4.1. District's hiring of Testing Laboratory shall in no way relieve Contractor of its obligation to perform work in accordance with requirements of Contract Documents.
- 1.5. CONTRACTOR RESPONSIBILITIES**
 - 1.5.1. Submit proposed items for testing as required herein and/or as further required in the Contract Documents to Architect for review in accordance with applicable specifications.
 - 1.5.2. Cooperate with Laboratory personnel, and provide access to the Work and to manufacturer's facilities.
 - 1.5.3. Notify Architect, District, and Testing Laboratory 48 hours prior to expected time for operations requiring inspection and testing services.
 - 1.5.4. When tests or inspections cannot be performed after such notice, reimburse District for Laboratory personnel and travel expenses incurred due to the Contractor's negligence.
 - 1.5.5. Contractor shall notify District a sufficient time in advance of the manufacture of material to be supplied by Contractor pursuant to the Contract Documents, which must by terms of the Contract be tested, in order that the District may arrange for the testing of same at the source of supply.
 - 1.5.5.1. 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 that such testing and inspection will not be required shall not be incorporated in the Work.
 - 1.5.6. Contract and pay for services of District's Testing Laboratory to perform additional inspections, sampling and testing required when initial tests indicate Contractor's work and/or materials does not comply with Contract Documents.
- 1.6. PROJECT INSPECTOR'S ACCESS TO SITE**
 - 1.6.1. A Project Inspector employed by the District in accordance with the requirement of State of California Code of Regulations, Title 24, Part 1 will be assigned to the Work. Project Inspector's duties are specifically defined in 24. C.C.R. §4-342, and as indicated in the General Construction Provisions (Exhibit D to the Facilities Lease).
 - 1.6.2. District and Construction Manager shall at all times have access for the purpose of inspection to all parts of the Work and to the shops wherein the Work is in preparation, and Contractor shall at all times maintain proper facilities and provide safe access for such inspection.

- 1.6.3. The Work in all stages of progress shall be subject to the personal continuous observation of the Inspector. Inspector shall have free access to any or all parts of the Work at any time. Contractor shall furnish the Inspector reasonable facilities for obtaining such information as may be necessary to keep Inspector fully informed respecting the progress and manner of the Work and the character of the materials. Inspection of the Work shall not relieve the Contractor from any obligation set forth in the Contract Documents.
- 1.6.4. The Inspector is not authorized to change, revoke, alter, enlarge or decrease in any way any requirement of the Contract Documents, drawings, specifications or subsequent change orders.
- 1.6.5. Whenever there is insufficient evidence of compliance with any of the provisions of Title 24 or evidence that any material or construction does not conform to the requirements of Title 24, the Division of the State Architect may require tests as proof of compliance. Test methods shall be as specified herein or by other recognized and accepted test methods determined by the Division of the State Architect. All tests shall be performed by a testing laboratory accepted by the Division of the State Architect.

TEMPORARY FACILITIES AND CONTROLS

1. GENERAL

1.1. LOGISTICS PLAN

Contractor shall provide to the District for prior approval the Contractor's mobilization and logistics plan for the Site which shall include, at a minimum, the provisions herein.

1.2. TEMPORARY UTILITIES

1.2.1. Electric Power and Lighting

1.2.1.1. Contractor will furnish and pay for power during the course of the work to the extent power is not in the building(s) or on the Site. Contractor shall be responsible for providing temporary facilities required on the Site to point of intended use.

1.2.1.2. Contractor shall furnish, wire for, install, and maintain temporary electrical lights wherever it is necessary to provide illumination for the proper performance and/or observation of the Work: a minimum of 20 foot-candles for rough work and 50 foot-candles for finish work.

1.2.1.3. Contractor shall be responsible for maintaining existing lighting levels in the Project vicinity should temporary outages or service interruptions occur.

1.2.2. Heat and Ventilation

1.2.2.1. Contractor shall provide temporary heat to maintain environmental conditions to facilitate progress of the Work, to meet specified minimum conditions for the installation and curing of materials, and to protect materials and finishes from damage due to improper temperature and humidity conditions. Portable heaters shall be standard units complete with controls.

1.2.2.2. Contractor shall provide forced ventilation and dehumidification, as required, of enclosed areas for proper installation and curing of materials, to disperse humidity, and to prevent accumulations of dust, fumes, vapors, and gases.

1.2.2.3. Contractor shall pay the costs of installation, maintenance, operation, and removal of temporary heat and ventilation, including costs for fuel consumed, required for the performance of the Work.

1.2.3. Water

1.2.3.1. Contractor will furnish and pay for water during the course of the work. Contractor shall be responsible for providing temporary facilities required.

1.2.3.2. Contractor shall make potable water available for human consumption.

1.2.4. Sanitary Facilities

1.2.4.1. Contractor shall provide sanitary temporary facilities in no fewer numbers than required by law and such additional facilities as may be directed by the Inspector for the use of all workers. The facilities shall be maintained in a sanitary condition at all times and shall be left at the Site until removal is directed by the Project Inspector or Contractor completes all Work.

1.2.4.2. Use of toilet facilities in the Work shall not be permitted except by consent of the Project Inspector and District.

1.2.5. Telephone and Internet Service

1.2.5.1. Contractor shall arrange with local telephone and internet service company(ies) for service for the performance of the Work. Contractor shall, at a minimum, provide in all District field offices, one line for telephone, one line for fax machine, and one line for internet access. The Phone equipment must include speakerphone, intercom, conference call, flash, redial, call hold and voice mail. Internet speed spec should be 25/25 mbps or faster and WiFi speed specification shall utilize 802.11AC IEEE standard or better.

1.2.5.2. Contractor shall pay the costs for internet, telephone, and fax lines installation, maintenance, service, and removal; for Construction Site Office, Construction Manager's Office and Inspector's Office.

1.2.6. Fire Protection:

- 1.2.6.1. Contractor shall provide and maintain fire extinguishers and other equipment for fire protection. Such equipment shall be designated for use for fire protection only and shall comply with all requirements of the California Fire, State Fire Marshall and/or its designee.
- 1.2.6.2. Where on-site welding and burning of steel is unavoidable, Contractor shall provide protection for adjacent surfaces.

1.2.7. Custodial Service and Trash Removal:

Contractor shall provide custodial service and trash removal on a timely basis, not less than weekly for all Site Offices, restroom(s), and the Site.

1.2.8. Temporary Facilities:

- 1.2.8.1. Contractor shall coordinate floor plan and location of electrical, telephone, data outlets with District prior to ordering and delivering the trailer.
- 1.2.8.2. Contractor shall provide the following minimum facilities, trailers, offices, and services, fully furnished for the exclusive use by the District including desks, chairs, plan tables, etc.:
 - 1.2.8.2.1. One (1) office trailer with two (2) separate offices with windows and lockable doors
 - 1.2.8.2.2. One (1) bathroom
 - 1.2.8.2.3. One (1) conference room with a table and adequate seating for twelve (12)
- 1.2.8.3. Contractor will provide furnishings in the following quantities, to be set in rooms and position as directed by the District upon delivery:
 - 1.2.8.3.1. **1 per office** rolling mid-back task chairs, with arms
 - 1.2.8.3.2. **1 per office space:** double pedestal metal desks, 29" x 72" x 36", HON or equal
 - 1.2.8.3.3. **1 per office space and in meeting conference area:** metal bookcases, three shelf, 41"x34"x12"
 - 1.2.8.3.4. 1 resin folding table 29"x30"x72"
 - 1.2.8.3.5. 8 padded meeting chairs, Global or equal
 - 1.2.8.3.6. **1 per office:** four drawer, legal size lateral files, HON 500 series or equal
 - 1.2.8.3.7. Provide and install 2 "Plan-Hold" wall-mounted 42" wide plan racks with 36 individual plan holders each
 - 1.2.8.3.8. Provide and install 1 large white board in one conference room, 48" 72"
 - 1.2.8.3.9. Provide and install 1 large tack board in one conference room 48" x 72"
 - 1.2.8.3.10. Provide Canon all-in-one copier, printer, fax and printer, model Image Class MF733CDW or equal, with maintenance plan

1.3. CONSTRUCTION AIDS

1.3.1. Plant and Equipment:

- 1.3.1.1. Contractor shall furnish, operate, and maintain a complete plant for fabricating, handling, conveying, installing, and erecting materials and equipment; and for conveyances for transporting workmen. Include elevators, hoists, debris chutes, and other equipment, tools, and appliances necessary for performance of the Work.
- 1.3.1.2. Contractor shall maintain plant and equipment in safe and efficient operating condition. Damages due to defective plant and equipment, and uses made thereof, shall be repaired by Contractor at no expense to the District.
- 1.3.2. No District tools or equipment shall be used by Contractor for the performance of the Work.

1.4. BARRIERS AND ENCLOSURES

- 1.4.1. Contractor shall obtain District's written permission for locations and types of temporary barriers and enclosures, including fire-rated materials proposed for use, prior to their installation.
- 1.4.2. Contractor shall provide a six (6) foot high, chain link perimeter fence with post driven into the ground and fabric screen as a temporary barrier around construction area. Contractor shall provide and maintain temporary enclosures to prevent public entry and to protect persons using other buildings and portions of the Site and/or Premises. Contractor shall remove temporary fence, barriers and enclosure upon Completion of the Work.
- 1.4.3. Contractor shall provide site access to existing facilities for persons using other buildings and portions of the Site, the public, and for deliveries and other services and activities.

1.5. SECURITY

- 1.5.1. Contractor shall secure all construction equipment, machinery and vehicles, park and store only within fenced area, and render inoperable during non-work hours. Contractor is responsible for insuring that no construction materials, tools, equipment, machinery or vehicles can be used for unauthorized entry or other damage or interference to activities and security of existing facilities adjacent to and in the vicinity of the Project Site(s).
- 1.5.2. Contractor shall provide a security guard located on the Project Site(s) during non-working hours.

1.6. TEMPORARY CONTROLS

1.6.1. Noise Control

- 1.6.1.1. Contractor acknowledges that adjacent facilities may remain in operation during all or a portion of the Work, and it shall take all reasonable precautions to minimize noise as required by applicable laws and the Contract Documents.
- 1.6.1.2. Notice of proposed noisy operations, including without limitation, operation of pneumatic demolition tools, concrete saws, and other equipment, shall be submitted to District a minimum of forty-eight (48) hours in advance of their performance.

1.6.2. Noise and Vibration

- 1.6.2.1. Equipment and impact tools shall have intake and exhaust mufflers.
- 1.6.2.2. Contractor shall cooperate with District to minimize and/or cease the use of noisy and vibratory equipment if that equipment becomes objectionable by its longevity.

1.6.3. Dust and Dirt

- 1.6.3.1. Contractor shall conduct demolition and construction operations to minimize the generation of dust and dirt, and prevent dust and dirt from interfering with the progress of the Work and from accumulating in the Work and adjacent areas including, without limitation, occupied facilities, and off-site adjacent properties.
- 1.6.3.2. Contractor shall periodically water exterior demolition and construction areas to minimize the generation of dust and dirt.
- 1.6.3.3. Contractor shall ensure that all hauling equipment and trucks carrying loads of soil and debris shall have their loads sprayed with water or covered with tarpaulins, and as otherwise required by local and state ordinance.
- 1.6.3.4. Contractor shall prevent dust and dirt from accumulating on walks, roadways, parking areas, and planting, and from washing into sewer and storm drain lines.

1.6.4. Water

Contractor shall not permit surface and subsurface water, and other liquids, to accumulate in or about the vicinity of the Premises. Should accumulation develop, Contractor shall control the water or other liquid, and suitably dispose of it by means of temporary pumps, piping, drainage lines, troughs, ditches, dams, or other methods.

1.6.5. Pollution

- 1.6.5.1. No burning of refuse, debris, or other materials shall be permitted on or in the vicinity of the Premises.
- 1.6.5.2. Contractor shall comply with applicable regulatory requirements and anti-pollution ordinances during the conduct of the Work including, without limitation, demolition, construction, and disposal operations.

1.6.6. Lighting

If portable lights are used after dark, all light must be located so as not to direct light into neighboring property.

1.7. JOB SIGN(S)

1.7.1. General:

- 1.7.1.1. Contractor shall provide and maintain and locate a Project identification sign with the design, text, and colors designated by District and/or the Architect. Sign shall be protected in place and maintained by the Contractor.
- 1.7.1.2. Signs other than the specified Project sign and or signs required by law, for safety, or for egress, shall not be permitted, unless otherwise approved in advance by the District.

1.7.2. Materials:

- 1.7.2.1. Structure and Framing: Structurally sound, new or used wood or metal; wood shall be nominal 3/4-inch exterior grade plywood.
- 1.7.2.2. Sign Surface: Minimum 3/4-inch exterior grade plywood.
- 1.7.2.3. Sign shall be mounted on 4"x4" wooden posts embedded at least thirty six (36) inches into the soil or placed in concrete.
- 1.7.2.4. Paint: Exterior quality, of type and colors selected by the District and/or the Architect.

1.7.3. Fabrication:

- 1.7.3.1. Contractor shall fabricate to provide smooth, even surface for painting.
- 1.7.3.2. Size: 4'-0" x 8'-0", unless otherwise indicated.
- 1.7.3.3. Contractor shall paint exposed surfaces of supports, framing, and surface material with exterior grade paint: one coat of primer and one coat of finish paint.
- 1.7.3.4. Text and Graphics: As indicated.

1.8. PUBLICITY RELEASES

Contractor shall not release any information, story, photograph, plan, or drawing relating information about the Project to anyone, including press and other public communications medium, including, without limitation, on website(s). Contractor shall not bring anyone onto the Project Site(s) during or after construction for the purpose of publicity or marketing without prior written permission of the District.

SITE STANDARDS

1. GENERAL

1.1. REQUIREMENTS OF THE DISTRICT

1.1.1. Drug-Free Schools and Safety Requirements:

- 1.1.1.1. No drugs, alcohol, smoking or the use of tobacco products are allowed at any time in any buildings, Contractor-owned vehicles or vehicles owned by others while on District property. No students, staff, visitors, or contractors are to use drugs on these sites.
- 1.1.1.2. Contractor shall post: "Non-Smoking Area" in a highly visible location on Site. Contractor may designate a smoking area outside of District property within the public right-of-way, provided that this area remains quiet and unobtrusive to adjacent neighbors. This smoking area must be kept clean at all times.
- 1.1.1.3. Contractor shall ensure that no alcohol, firearms, weapons, or controlled substances enter or are used at the Site. Contractor shall immediately remove from the Site and terminate the employment of any employee(s) found in violation of this provision.

- 1.1.2. **Language:** Unacceptable and/or loud language will not be tolerated, "Cat calls" or other derogatory language toward students or public will not be allowed.

1.1.3. Disturbing the Peace (Noise and Lighting):

- 1.1.3.1. Contractor shall observe the noise ordinance of the Site at all times including, without limitation, all applicable local, city, and/or state laws, ordinances, and/or regulations regarding noise and allowable noise levels.
- 1.1.3.2. District reserves the right to prohibit the use of radios at the Site, except for handheld communication radios.
- 1.1.3.3. If portable lights are used after dark, the lights must be located so as not to direct light into neighboring properties.

1.1.4. Traffic:

- 1.1.4.1. Driving on the Premises shall be limited to periods when students and public are not present. If driving or deliveries must be made during the school hours, two (2) or more ground guides shall lead the vehicle across the area of travel. In no case shall driving take place across playgrounds or other pedestrian paths during recess, lunch, and/or class period changes. The speed limit on-the Premises shall be five (5) miles per hour (maximum) or less if conditions require. Contractor shall not have any deliveries to the Project during the hour before school begins at the Site and during the half hour after school ends at the Site without prior written permission from the Construction Manager or the District.
- 1.1.4.2. All paths of travel for deliveries, including without limitation, material, equipment, and supply deliveries, shall be reviewed and approved by District in advance.
- 1.1.4.3. District shall designate a construction entry to the Site. If Contractor requests, District determines it is required, and to the extent possible, District shall designate a staging area so as not to interfere with the normal functioning of school facilities. Location of gates and fencing shall be approved in advance with District and at Contractor's expense.
- 1.1.4.4. Parking areas shall be reviewed and approved by District in advance. No parking is to occur under the drip line of trees or in areas that could otherwise be damaged.
- 1.1.4.5. All of the above shall be observed and complied with by the Contractor and all workers on the Site. Failure to follow these directives could result in individual(s) being suspended or removed from the work force at the discretion of the District. The same rules and regulations shall apply equally to delivery

personnel, inspectors, consultants, and other visitors to the Site.

Form Agreement

TEMPORARY TREE AND PLANT PROTECTION

WHERE SUBSTANTIAL TREE PROTECTION WILL BE REQUIRED ON THE SITE, OBTAIN AN ARBORIST TO REVIEW THIS DOCUMENT PRIOR TO CONSTRUCTION.

1. GENERAL

1.1. SUMMARY

This Document includes the protection and trimming of existing trees that interfere with, or are affected by, execution of the Work, whether temporary or permanent construction.

1.2. DEFINITIONS

Tree Protection Zone: Area surrounding individual trees or groups of trees to remain during construction, and defined by the drip line of individual trees or the perimeter drip line of groups of trees, unless otherwise indicated.

1.3. SUBMITTALS

- 1.3.1. Product Data: For each type of product indicated.
- 1.3.2. Tree Pruning Schedule: Written schedule from arborist detailing scope and extent of pruning of trees to remain that interfere with or are affected by construction.
- 1.3.3. Qualification Data: For tree service firm and arborist.
- 1.3.4. Certification: From arborist, certifying that trees indicated to remain have been protected during construction according to recognized standards and that trees were promptly and properly treated and repaired when damaged.
- 1.3.5. Maintenance Recommendations: From arborist, for care and protection of trees affected by construction during and after completing the Work.

1.4. QUALITY ASSURANCE

- 1.4.1. Tree Service Firm Qualifications: An experienced tree service firm that has successfully completed tree protection and trimming work similar to that required for this Project and that will assign an experienced, qualified arborist to Project Site(s) during execution of tree protection and trimming.
- 1.4.2. Arborist Qualifications: An arborist certified by ISA (International Society of Arboriculture) or licensed in the jurisdiction where Project is located.
- 1.4.3. Tree Pruning Standard: Comply with ANSI A300 (Part 1), "Tree, Shrub, and Other Woody Plant Maintenance--Standard Practices (Pruning)."
 - 1.4.3.1. Before tree protection and trimming operations begin, meet with District to review tree protection and trimming procedures and responsibilities.

2. PRODUCTS

2.1. MATERIALS

- 2.1.1. Drainage Fill: Selected crushed stone, or crushed or uncrushed gravel, washed, ASTM D 448, Size 24, with 90 to 100 percent passing a 2-1/2-inch (63-mm) sieve and not more than 10 percent passing a 3/4-inch (19-mm) sieve.
- 2.1.2. Topsoil: Natural or cultivated surface-soil layer containing organic matter and sand, silt, and clay particles; friable, pervious, and black or a darker shade of brown, gray, or red than underlying subsoil; reasonably free of subsoil, clay lumps, gravel, and other objects more than 1 inch (25 mm) in diameter; and free of weeds, roots, and toxic and other nonsoil materials.
 - 2.1.2.1. Obtain topsoil only from well-drained sites where topsoil is 4 inches (100 mm) deep or more; do not obtain from bogs or marshes.
- 2.1.3. Filter Fabric: Manufacturer's standard, nonwoven, pervious, geotextile fabric of polypropylene, nylon, or polyester fibers.
- 2.1.4. Chain-Link Fence: Metallic-coated steel chain-link fence fabric of 0.120-inch- (3-mm-) diameter wire; a minimum of 48 inches (1200 mm) high; with 1.9-inch- (48-mm-) diameter line posts; 2-3/8-inch- (60-mm-) diameter terminal and corner posts; 1-5/8-inch- (41-mm-) diameter top rail; and 0.177-inch- (4.5-mm-) diameter bottom tension wire; with tie wires, hog ring ties, and other accessories for a complete fence system.

- 2.1.5. Select mulch as recommended by arborist or landscape architect.
- 2.1.6. Organic Mulch: Use shredded hardwood, ground or shredded bark, or wood and bark chips, all free of deleterious materials.

3. EXECUTION

3.1. PREPARATION

- 3.1.1. Temporary Fencing: Install temporary fencing around tree protection zones to protect remaining trees and vegetation from construction damage. Maintain temporary fence and remove when construction is complete.
- 3.1.2. Install chain-link fence according to ASTM F 567 and manufacturer's written instructions.
- 3.1.3. Protect tree root systems from damage caused by runoff or spillage of noxious materials while mixing, placing, or storing construction materials. Protect root systems from ponding, eroding, or excessive wetting caused by dewatering operations.
- 3.1.4. Mulch areas inside tree protection zones and other areas indicated.
 - 3.1.4.1. Select mulch as recommended by arborist or landscape architect.
 - 3.1.4.2. Apply 2-inch (50-mm) to 3-inch (75-mm) average thickness of organic mulch. Do not place mulch within 6 inches (150 mm) of tree trunks.
- 3.1.5. Do not store construction materials, debris, or excavated material inside tree protection zones. Do not permit vehicles or foot traffic within tree protection zones; prevent soil compaction over root systems.
- 3.1.6. Maintain tree protection zones free of weeds and trash.
- 3.1.7. Do not allow fires within tree protection zones.

3.2. EXCAVATION

- 3.2.1. Install shoring or other protective support systems to minimize sloping or benching of excavations where construction or utility excavation is near trees to be protected.
- 3.2.2. Do not excavate within tree protection zones, unless otherwise indicated.
- 3.2.3. Where excavation for new construction is required within tree protection zones, hand clear and excavate to minimize damage to root systems. Use narrow-tine spading forks and comb soil to expose roots.
 - 3.2.3.1. Do not allow exposed roots to dry out before placing permanent backfill. Provide temporary earth cover or pack with peat moss and wrap with burlap. Water and maintain in a moist condition. Temporarily support and protect roots from damage until they are permanently relocated and covered with soil.
- 3.2.4. Where utility trenches are required within tree protection zones, tunnel under or around roots by drilling, auger boring, pipe jacking, or digging by hand.
 - 3.2.4.1. Root Pruning: Do not cut main lateral roots or taproots; cut only smaller roots that interfere with installation of utilities. Cut roots with sharp pruning instruments; do not break or chop.

3.3. REGRADING

- 3.3.1. Grade Lowering: Where new finish grade is indicated below existing grade around trees, slope grade beyond tree protection zones. Maintain existing grades within tree protection zones.
- 3.3.2. Grade Lowering: Where new finish grade is indicated below existing grade around trees, slope grade away from trees as recommended by arborist, unless otherwise indicated.
 - 3.3.2.1. Root Pruning: Prune tree roots exposed during grade lowering. Do not cut main lateral roots or taproots; cut only smaller roots. Cut roots with sharp pruning instruments; do not break or chop.
- 3.3.3. Minor Fill: Where existing grade is 6 inches (150 mm) or less below elevation of finish grade, fill with topsoil. Place topsoil in a single uncompacted layer and hand grade to required finish elevations.
- 3.3.4. Moderate Fill: Where existing grade is more than 6 inches (150 mm) but less than 12 inches (300 mm) below elevation of finish grade, place drainage fill, filter fabric, and

topsoil on existing grade as follows:

- 3.3.4.1. Carefully place drainage fill against tree trunk approximately 2 inches (50 mm) above elevation of finish grade and extend not less than 18 inches (450 mm) from tree trunk on all sides. For balance of area within drip-line perimeter, place drainage fill up to 6 inches (150 mm) below elevation of grade.
- 3.3.4.2. Place filter fabric with edges overlapping 6 inches (150 mm) minimum.
- 3.3.4.3. Place fill layer of topsoil to finish grade. Do not compact drainage fill or topsoil. Hand grade to required finish elevations.

3.4. TREE PRUNING

- 3.4.1. Prune trees to remain that are affected by temporary and permanent construction.
- 3.4.2. Prune trees to remain to compensate for root loss caused by damaging or cutting root system. Provide subsequent maintenance during Contract period as recommended by arborist.
- 3.4.3. Pruning Standards: Prune trees according to ANSI A300 (Part 1), as recommended by arborist report.
- 3.4.4. Adjust pruning requirements per arborist's recommendations.
- 3.4.5. Cut branches with sharp pruning instruments; do not break or chop.
- 3.4.6. Modify below to specific project requirements.
- 3.4.7. Chip removed tree branches and dispose of or spread over areas identified by District.

3.5. TREE REPAIR AND REPLACEMENT

- 3.5.1. Promptly repair trees damaged by construction operations within 24 hours. Treat damaged trunks, limbs, and roots according to arborist's written instructions.
- 3.5.2. Remove and replace trees indicated to remain that die or are damaged during construction operations or that are incapable of restoring to normal growth pattern.
 - 3.5.2.1. Provide new trees of 6-inch (150-mm) caliper size and of a when damaged trees more than 6 inches (150 mm) in caliper size, measured 12 inches (300 mm) above grade, are required to be replaced. Plant and maintain new trees as specified in Contract Documents.
- 3.5.3. Where recommended by arborist report, aerate surface soil, compacted during construction, 10 feet (3 m) beyond drip line and no closer than 36 inches (900 mm) to tree trunk. Drill 2-inch (50-mm) diameter holes a minimum of 12 inches (300 mm) deep at 24 inches (600 mm) o.c. Backfill holes with an equal mix of augered soil and sand.

3.6. DISPOSAL OF WASTE MATERIALS

- 3.6.1. Burning is not permitted.
- 3.6.2. Disposal: Remove excess excavated material and displaced trees from Site.

STORM WATER POLLUTION PREVENTION PLAN – CONSTRUCTION

PURSUANT TO THE PROVISIONS OF EXHIBIT D AND THE CONTRACT DOCUMENTS, CONTRACTOR SHALL PERFORM THE WORK OF THE PROJECT RELATED TO BEING THE DISTRICT'S QUALIFIED SWPPP (STORM WATER POLLUTION PREVENTION PLAN) PRACTITIONER ("QSP"). THE CONTRACTOR SHALL COMPLY WITH THE FOLLOWING PROVISIONS AND THE SWPPP. IF THE SWPPP CONTAINS OTHER MORE DETAILED OR CONFLICTING PROVISIONS AND/OR REQUIRES THE CONTRACTOR TO TAKE OTHER ACTIONS OR ACTIVITIES, THE CONTRACTOR MUST COMPLY WITH THE SWPPP.

1. INTRODUCTION

- 1.1. In order to enroll in the construction storm water permit and before construction activities begin, the District will file certain submittals referred to as Permit Registration Documents (PRDS) with the Regional Water Quality Control Board.

2. GENERAL

The Clean Water Act and Porter Cologne Water Quality Act prohibit the discharge of any water containing pollutants from certain construction sites unless a National Pollutant Discharge Elimination System permit is first obtained and followed. The National Pollutant Discharge Elimination System General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities (Construction Storm Water Permit) Order No. 2009-0009-DWQ as amended by Order No. 2010-0014-DWQ (NPDES No. CAS000002) issued by the California State Water Resources Control Board (State Water Board) authorizes the discharge of storm water and certain non-storm water from construction sites if certain conditions and measures are taken. The District has determined that the construction of this Project requires enrollment in the Construction Storm Water Permit.

3. SUBMITTALS

3.1. GENERAL

All submittals shall be made in a form conducive for the District to electronically upload the approved submittals to the Storm water Multi-Application Reporting and Tracking System (SMARTS).

3.2. RAIN EVENT ACTION PLAN (REAP)

- 3.2.1. A Rain Event Action Plan (REAP) is a written document, specific for each rain event. A REAP should be designed that when implemented it protects all exposed portions of the site within 48 hours of any likely. The General Permit requires Risk Level 2 and 3 dischargers to develop and implement a REAP designed to protect all exposed portions of their sites within 48 hours prior to any likely precipitation event. The REAP requirement is designed to ensure that the discharger has adequate materials, staff, and time to implement erosion and sediment control measures that are intended to reduce the amount of sediment and other pollutants generated from the active site. A REAP must be developed when there is likely a forecast of 50% or greater probability of precipitation in the project area. (The National Oceanic and Atmospheric Administration (NOAA) defines a chance of precipitation as a probability of precipitation of 30% to 50% chance of producing precipitation in the project area.¹⁴ NOAA defines the probability of precipitation (PoP) as the likelihood of occurrence (expressed as a percent) of a measurable amount (0.01 inch or more) of liquid precipitation (or the water equivalent of frozen precipitation) during a specified period of time at any given point in the forecast area.) Forecasts are normally issued for 12- hour time periods.
- 3.2.2. If the District's QSD determines that the site is a Risk Level 2 or 3 the Contractor's QSP shall prepare the REAP for the Work in compliance with the General Permit and the SWPPP.

3.3. RECORDS

All electronic and hardcopy records required by the Construction Storm Water Permit shall be submitted to the District within seven (7) days of Completion of the Project.

4. PERMIT REGISTRATION DOCUMENTS

Prior to any activities on Site that disturb the Site's surface, the Permit Registration Documents (PRDs) required by the Construction Storm Water Permit must be filed with the Regional Water Quality Control Board. The District shall file the PRDs with the Regional Water Quality Control Board to activate coverage under the Construction

Storm Water Permit.

5. IMPLEMENTATION REQUIREMENTS

- 5.1. Contractor shall not conduct any activities that may affect the Site's construction runoff water quality until the District provides Contractor with the Waste Discharger Identification Number (WDID) assigned to this Project by the State Water Board.
- 5.2. Contractor shall keep a copy of the approved SWPPP at the job site. The SWPPP shall be made available when requested by a representative of the Regional Water Quality Control Board, State Water Resources Control Board, United States Environmental Protection Agency, or the local storm water management agency. Requests from the public shall be directed to the District for response.
- 5.3. Contractor shall designate in writing to the District a Qualified SWPPP Practitioner (QSP) who shall be responsible for implementing the SWPPP, REAP (if applicable), ATS (if applicable), conducting non-storm water and storm water visual observations, and for ensuring that all best management practices (BMPs) required by the SWPPP and General Permit are properly implemented and maintained.
- 5.4. All measures required by the SWPPP shall be implemented concurrent with the commencement of construction. Pollution practices and devices shall be followed or installed as early in the construction schedule as possible with frequent upgrading of devices as construction progresses.
- 5.5. Contractor shall ensure that all measures are properly maintained and repaired to protect the water quality of discharges.

6. INSPECTION, SAMPLING, ANALYSIS, AND RECORD KEEPING REQUIREMENTS

The Contractor's QSP shall conduct all required visual observations, sampling, analysis, reporting, and record keeping required by the SWPPP and the Construction Storm Water Permit.

7. REPORTING REQUIREMENTS

Contractor shall prepare and provide all the reports, which include, but are not limited to the Annual Report and any NEL Violation Reports or NAL Exceedance Reports, all of which are required by the SWPPP and the Construction Storm Water Permit.

8. ANNUAL REPORT

By August 1 of each year (defined as July 1 to June 30) that had at least one continuous three (3) month period coverage under the General Permit, Contractor shall complete and submit to the District an Annual Report, as required by the General Permit. If the Project is complete prior to August 1, Contractor shall submit the report prior to acceptance of the Project.

9. COMPLETION OF WORK

- 9.1. Clean-up shall be performed as each portion of the work progresses. All refuse, excess material, and possible pollutants shall be disposed of in a legal manner off-site and all temporary and permanent SWPPP devices shall be in place and maintained in good condition.
- 9.2. At Completion of Work, Contractor shall inspect installed SWPPP devices, and present the currently implemented SWPPP with all backup records to the District.

10. NOTICE OF TERMINATION (NOT)

A Notice of Termination (NOT) must be submitted by the Contractor to the District for electronic submittal by the Legally Responsible Person via SMARTS to terminate coverage under the General Permit. The NOT must include a final Site Map and representative photographs of the Project Site(s) that demonstrate final stabilization has been achieved. The NOT shall be submitted to the District on or before the Contractor submits its final application for payment. If the Regional Water Board rejects the NOT for any reason, the Contractor shall revise the NOT as many times as necessary to get the Regional Water Board's approval. The Regional Water Board will consider a construction site complete when the conditions of the General Permit, Section II.D have been met.

11. QUALITY ASSURANCE

- 11.1. Before performing any of the obligations indicated herein, the Contractor's QSP shall meet the training and certification requirements in the Construction Storm Water Permit.
- 11.2. Contractor shall perform the Work in strict compliance with the approved SWPPP, REAP, ATS, and the Construction Storm Water Permit.
- 11.3. Contractor shall conduct at least a one-hour training session on the requirements of the SWPPP for each employee before an employee conducts any construction on the Site. Contractor shall

maintain documentation of this employee training at the site for review by the District or any regulatory agency.

12. **PERFORMANCE REQUIREMENTS**

- 12.1. The Storm Water Pollution Prevention Plan is a minimum requirement. Revisions and modifications to the SWPPP are acceptable only if they maintain levels of protection equal to or greater than originally specified.
- 12.2. Read and be thoroughly familiar with all of the requirements of the SWPPP.
- 12.3. Inspect and monitor all work and storage areas for compliance with the SWPPP prior to any anticipated rain.
- 12.4. Complete any and all corrective measures as may be directed by the regulatory agency.
- 12.5. **Penalties:** Contractor shall pay any fees and any penalties that may be imposed by the regulatory agency for non-compliance with SWPPP during the course of Work.
- 12.6. **Costs:** Contractor to pay all costs associated with the implementation of the requirements of the SWPPP in order to maintain compliance with the Permit. This includes installation of all Housekeeping BMPs, General Site and Material Management BMPs, Inspection requirements, maintenance requirements, and all other requirements specified in the SWPPP.

13. **MATERIALS**

All temporary and permanent storm water pollution prevention facilities, equipment, and materials as required by or as necessary to comply with the SWPPP as described in the BMP Handbook.

MATERIALS AND EQUIPMENT

1. GENERAL

1.1. MATERIAL AND EQUIPMENT

- 1.1.1. Only items approved by the District and/or Architect shall be used.
- 1.1.2. Contractor shall submit lists of Products and other Product information in accordance with the Contract Documents, including, without limitation, the provisions regarding the submittals.

1.2. MATERIAL AND EQUIPMENT COLORS

- 1.2.1. The Contractor shall comply with all schedule(s) of colors provided by the District and/or Architect.
- 1.2.2. No individual color selections will be made until after approval of all pertinent materials and equipment and after receipt of appropriate samples in accordance with the Contract Documents, including, without limitation, the provisions regarding the submittals.
- 1.2.3. Contractor shall request priority in writing for any item requiring advance ordering to maintain the approved Construction Schedule.

1.3. DELIVERY, STORAGE, AND HANDLING

- 1.3.1. Contractor shall deliver manufactured materials in original packages, containers, or bundles (with seals unbroken), bearing name or identification mark of manufacturer.
- 1.3.2. Contractor shall deliver fabrications in as large assemblies as practicable; where specified as shop-primed or shop-finished, package or crate as required to preserve such priming or finish intact and free from abrasion.
- 1.3.3. Contractor shall store materials in such a manner as necessary to properly protect them from damage. Materials or equipment damaged by handling, weather, dirt, or from any other cause will not be accepted.
- 1.3.4. Except for items that the District has approved, in writing, for Contractor to store off-site, all materials are not be acceptable that have been warehoused for long periods of time, stored or transported in improper environment, improperly packaged, inadequately labeled, poorly protected, excessively shipped, deviated from normal distribution pattern, or reassembled.
- 1.3.5. Contractor shall store material so as to cause no obstructions of sidewalks, roadways, and underground services. Contractor shall protect material and equipment furnished pursuant to the Contract Documents.
- 1.3.6. Contractor may store materials on Site with prior written approval by the District, all material shall remain under Contractor's control and Contractor shall remain liable for any damage to the materials. Should the Project Site(s) not have storage area available, the Contractor shall provide for off-site storage at no cost to District.
- 1.3.7. When any room in Project is used as a shop or storeroom, the Contractor shall be responsible for any repairs, patching, or cleaning necessary due to that use. Location of storage space shall be subject to prior written approval by District.

2. PRODUCTS

2.1. MANUFACTURERS

- 2.1.1. Manufacturers listed in various sections of Contract Documents are names of those manufacturers that are believed to be capable of supplying one or more of items specified therein.
- 2.1.2. The listing of a manufacturer does not imply that every product of that manufacturer is acceptable as meeting the requirements of the Contract Documents.

2.2. FACILITIES AND EQUIPMENT

Contractor shall provide, install, maintain, and operate a complete and adequate facility for handling, the execution, disposal, and distribution of material and equipment as required for proper and timely performance of Work.

2.3. MATERIAL REFERENCE STANDARDS

Where material is specified solely by reference to "standard specifications" and if requested by District, Contractor shall submit for review data on actual material proposed to be incorporated into Work, listing name and address of vendor, manufacturer, or producer, and trade or brand names of those materials, and data substantiating compliance with standard specifications.

3. EXECUTION

3.1. WORKMANSHIP

3.1.1. Where not more specifically described in any other Contract Documents, workmanship shall conform to methods and operations of best standards and accepted practices of trade or trades involved and shall include items of fabrication, construction, or installation regularly furnished or required for completion (including finish and for successful operation, as intended).

3.1.2. Work shall be executed by tradespersons skilled in their respective field of work. When completed, parts shall have been durably and substantially built and present a neat appearance.

3.2. COORDINATION

3.2.1. Contractor shall coordinate installation of materials and equipment so as to not interfere with installation of other work. Adjustment or rework because of Contractor's failure to coordinate will be at no additional cost to District.

3.2.2. Contractor shall examine in-place materials and equipment for readiness, completeness, fitness to be concealed or to receive Work, and compliance with Contract Documents. Concealing or covering work constitutes acceptance of additional cost which will result should in-place materials and equipment be found unsuitable for receiving other work or otherwise deviating from the requirements of the Contract Documents.

3.3. COMPLETENESS

Contractor shall provide all portions of the Work, unless clearly stated otherwise, installed complete and operational with all elements, accessories, anchorages, utility connections, etc., in manner to assure well-balanced performance, in accordance with manufacturer's recommendations and in accordance with Contract Documents. For example, electric water coolers require water, electricity, and drain services; roof drains require drain system; sinks fit within countertop, etc. Terms such as "installed complete," "operable condition," "for use intended," "connected to all utilities," "terminate with proper cap," "adequately anchored," "patch and refinish," "to match similar," should be assumed to apply in all cases, except where completeness of functional or operable condition is specifically stated as not required.

3.4. APPROVED INSTALLER OR APPLICATOR

Contractor shall ensure that all installations are only performed by a manufacturer's approved installer or applicator.

3.5. MANUFACTURER'S RECOMMENDATIONS

All installations shall be in accordance with manufacturer's published recommendations and specific written directions of manufacturer's representative. Should Contract Documents differ from recommendations of manufacturer or directions of manufacturer's representative, Contractor shall analyze differences, make recommendations to the District and the Architect in writing, and shall not proceed until interpretation or clarification has been issued by the District and/or the Architect.

DELIVERY, STORAGE AND HANDLING

1. GENERAL

1.1. PRODUCTS

- 1.1.1. Products are as defined in the General Construction Provisions (Exhibit D to the Facilities Lease).
- 1.1.2. Contractor shall not use and/or reuse materials and/or equipment removed from existing Premises, except as specifically permitted by the Contract Documents.
- 1.1.3. Contractor shall provide interchangeable components of the same manufacturer, for similar components.

1.2. TRANSPORTATION AND HANDLING

- 1.2.1. Contractor shall transport and handle Products in accordance with manufacturer's instructions.
- 1.2.2. Contractor shall promptly inspect shipments to confirm that Products comply with Contract requirements, are of correct quantity, and are undamaged.
- 1.2.3. Contractor shall provide equipment and personnel to properly handle Products to prevent soiling, disfigurement, or damage.

1.3. STORAGE AND PROTECTION

- 1.3.1. Contractor shall store and protect Products in accordance with manufacturer's instructions, with seals and labels intact and legible. Contractor shall store sensitive Products in weather-tight, climate controlled enclosures.
- 1.3.2. Contractor shall place fabricated Products that are stored outside, on above-ground sloped supports.
- 1.3.3. Contractor shall provide off-site storage and protection for Products when Site does not permit on-site storage or protection.
- 1.3.4. Contractor shall cover Products subject to deterioration with impervious sheet covering and provide ventilation to avoid condensation.
- 1.3.5. Contractor shall store loose granular materials on solid flat surfaces in a well-drained area and prevent mixing with foreign matter.
- 1.3.6. Contractor shall provide equipment and personnel to store Products by methods to prevent soiling, disfigurement, or damage.
- 1.3.7. Contractor shall arrange storage of Products to permit access for inspection and periodically inspect to assure Products are undamaged and are maintained under specified conditions.

CONTRACT CLOSEOUT AND FINAL CLEANING

1. GENERAL

1.1. CLOSEOUT PROCEDURES

Contractor shall comply with all closeout provisions as indicated in the General Construction Provisions (Exhibit D to the Facilities Lease).

1.2. FINAL CLEANING

- 1.2.1. Contractor shall execute final cleaning prior to final inspection.
- 1.2.2. Contractor shall clean interior and exterior glass and surfaces exposed to view; remove temporary labels, tape, stains, and foreign substances, polish transparent and glossy surfaces, wax and polish new vinyl floor surfaces, vacuum carpeted and soft surfaces.
- 1.2.3. Contractor shall clean equipment and fixtures to a sanitary condition.
- 1.2.4. Contractor shall replace filters of operating equipment.
- 1.2.5. Contractor shall clean debris from roofs, gutters, down spouts, and drainage systems.
- 1.2.6. Contractor shall clean Site, sweep paved areas, and rake clean landscaped surfaces.
- 1.2.7. Contractor shall remove waste and surplus materials, rubbish, and construction facilities from the Site.

1.3. ADJUSTING

Contractor shall adjust operating products and equipment to ensure smooth and unhindered operation.

1.4. RECORD DOCUMENTS AND SHOP DRAWINGS

Contractor shall legibly mark each item to record actual construction, including:

- 1.4.1. Measured depths of foundation in relation to finish floor datum.
- 1.4.2. Measured horizontal and vertical locations of underground utilities and appurtenances, referenced to permit surface improvements.
- 1.4.3. Measured locations of internal utilities and appurtenances concealed in construction, referenced to visible and accessible features of the Work.
- 1.4.4. Field changes of dimension and detail.
- 1.4.5. Details not on original Contract Drawings
- 1.4.6. Changes made by modification(s).
- 1.4.7. References to related Shop Drawings and modifications.
- 1.4.8. Contractor will provide one set of Record Drawings to District in an electronic format and one set on paper.
- 1.4.9. Contractor shall submit all required documents to District and/or Architect prior to or with its final Application for Payment.

1.5. INSTRUCTION OF DISTRICT PERSONNEL

- 1.5.1. Before final inspection, at agreed upon times, Contractor shall instruct District's designated personnel in operation, adjustment, and maintenance of products, equipment, and systems.
- 1.5.2. For equipment requiring seasonal operation, Contractor shall perform instructions for other seasons within six (6) months.
- 1.5.3. Contractor shall use operation and maintenance manuals as basis for instruction. Contractor shall review contents of manual with personnel in detail to explain all aspects of operation and maintenance.
- 1.5.4. Contractor shall prepare and insert additional data in Operation and Maintenance Manual when need for such data becomes apparent during instruction.
- 1.5.5. Contractor shall use operation and maintenance manuals as basis for instruction. Contractor shall review contents of manual with personnel in detail to explain all aspects of operation and maintenance.
- 1.5.6. Contractor shall be available for up to two (2) four-hour sessions of additional training of District personnel at any time within the first year of operation of the Site.

1.6. SPARE PARTS AND MAINTENANCE MATERIALS

- 1.6.1. Contractor shall provide products, spare parts, maintenance, and extra materials in

- quantities specified in the Specifications and in Manufacturer's recommendations.
- 1.6.2. Contractor shall provide District all required Operation and Maintenance Data.

Form Agreement

FIELD ENGINEERING

1. GENERAL

1.1. REQUIREMENTS INCLUDED

- 1.1.1. Contractor shall provide and pay for field engineering services by a California-registered engineer, required for the Project, including, without limitations:
 - 1.1.1.1. Survey work required in execution of the Project.
 - 1.1.1.2. Civil or other professional engineering services specified, or required to execute Contractor's construction methods.

1.2. QUALIFICATIONS OF SURVEYOR OR ENGINEERS

Contractor shall only use a qualified licensed engineer or registered land surveyor, to whom District makes no objection.

1.3. SURVEY REFERENCE POINTS

- 1.3.1. Existing basic horizontal and vertical control points for the Project are those designated on the Drawings.
- 1.3.2. Contractor shall locate and protect control points prior to starting Site Work and preserve all permanent reference points during construction. In addition Contractor shall:
 - 1.3.2.1. Make no changes or relocation without prior written notice to District and Architect.
 - 1.3.2.2. Report to District and Construction Manager when any reference point is lost or destroyed, or requires relocation because of necessary changes in grades or locations.
 - 1.3.2.3. Require surveyor to replace Project control points based on original survey control that may be lost or destroyed.

1.4. RECORDS

Contractor shall maintain a complete, accurate log of all control and survey work as it progresses.

1.5. SUBMITTALS

- 1.5.1. Contractor shall submit name and address of Surveyor and Professional Engineer to District and Construct Manager prior to its/their work on the Project.
- 1.5.2. On request of District and Construction Manager, Contractor shall submit documentation to verify accuracy of field engineering work, at no additional cost to the District.
- 1.5.3. Contractor shall submit a certificate signed by registered engineer or surveyor certifying that elevations and locations of improvements are in conformance or nonconformance with Contract Documents.

2. EXECUTION

2.1. COMPLIANCE WITH LAWS

Contractor is responsible for meeting all applicable codes, OSHA, safety and shoring requirements.

2.2. NONCONFORMING WORK

Contractor is responsible for any re-surveying required by correction of nonconforming work.

CUTTING AND PATCHING

1. GENERAL

1.1. CUTTING AND PATCHING

- 1.1.1. Contractor shall be responsible for all cutting, fitting, and patching, including associated excavation and backfill, required to complete the Work or to:
 - 1.1.1.1. Make several parts fit together properly.
 - 1.1.1.2. Uncover portions of Work to provide for installation of ill-timed Work.
 - 1.1.1.3. Remove and replace defective Work.
 - 1.1.1.4. Remove and replace Work not conforming to requirements of Contract Documents.
 - 1.1.1.5. Remove Samples of installed Work as specified for testing.
 - 1.1.1.6. Provide routine penetrations of non-structural surfaces for installation of piping and electrical conduit.
 - 1.1.1.7. Attaching new materials to existing remodeling areas – including painting (or other finishes) to match existing conditions.
- 1.1.2. In addition to Contract requirements, upon written instructions from District, Contractor shall uncover Work to provide for observations of covered Work in accordance with the Contract Documents; remove samples of installed materials for testing as directed by District; and remove Work to provide for alteration of existing Work.
- 1.1.3. Contractor shall not cut or alter Work, or any part of it, in such a way that endangers or compromises the integrity of the Work, the Project, or work of others.
- 1.1.4. Contractor shall not cut and patch operating elements and safety related components in a manner that results in reducing their capacity to perform as intended or that results in increased maintenance or decreased operational life or safety. Operating elements include the following:
 - 1.1.4.1. Primary operational systems and equipment.
 - 1.1.4.2. Air or smoke barriers.
 - 1.1.4.3. Fire-suppression systems.
 - 1.1.4.4. Mechanical systems piping and ducts.
 - 1.1.4.5. Control systems.
 - 1.1.4.6. Communication systems.
 - 1.1.4.7. Conveying systems.
 - 1.1.4.8. Electrical wiring systems.
- 1.1.5. Contractor shall not cut and patch miscellaneous elements or related components in a manner that could change their load-carrying capacity, that results in reducing capacity to perform as intended, or that results in increased maintenance or decreased operational life of safety. Miscellaneous elements include the following:
 - 1.1.5.1. Water, moisture or vapor barriers.
 - 1.1.5.2. Membranes and flashings.
 - 1.1.5.3. Exterior curtain-wall construction.
 - 1.1.5.4. Equipment supports.
 - 1.1.5.5. Piping, ductwork, vessels and equipment.
 - 1.1.5.6. Noise and vibration control elements and systems.
 - 1.1.5.7. Shoring, bracing and sheeting.

1.2. SUBMITTALS

- 1.2.1. Contractor shall submit written notice to District pursuant to the applicable notice provisions of the Contract Documents, requesting consent to proceed with the cutting or alteration (Request) at least ten (10) days prior to any cutting or alterations that may affect the structural safety of Project, or work of others, including the following:
 - 1.2.1.1. The work of the District or other trades.

- 1.2.1.2. Structural value or integrity of any element of Project.
- 1.2.1.3. Integrity or effectiveness of weather-exposed or weather-resistant elements or systems.
- 1.2.1.4. Efficiency, operational life, maintenance or safety of operational elements.
- 1.2.1.5. Visual qualities of sight-exposed elements.
- 1.2.2. Contractor's Request shall also include:
 - 1.2.2.1. Identification of Project.
 - 1.2.2.2. Description of affected Work.
 - 1.2.2.3. Necessity for cutting, alteration, or excavations.
 - 1.2.2.4. Affects of Work on District, other trades, or structural or weatherproof integrity of Project.
 - 1.2.2.5. Description of proposed Work:
 - 1.2.2.5.1. Scope of cutting, patching, alteration, or excavation.
 - 1.2.2.5.2. Trades that will execute Work.
 - 1.2.2.5.3. Products proposed to be used.
 - 1.2.2.5.4. Extent of refinishing to be done.
 - 1.2.2.6. Alternates to cutting and patching.
 - 1.2.2.7. Cost proposal, when applicable.
 - 1.2.2.8. The scheduled date the Contractor intends to perform the Work and the duration of time to complete the Work.
 - 1.2.2.9. Written permission of other trades whose Work will be affected.

1.3. QUALITY ASSURANCE

- 1.3.1. Contractor shall ensure that cutting, fitting, and patching shall achieve security, strength, weather protection, appearance for aesthetic match, efficiency, operational life, maintenance, safety of operational elements, and the continuity of existing fire ratings.
- 1.3.2. Contractor shall ensure that cutting, fitting, and patching shall successfully duplicate undisturbed adjacent profiles, materials, textures, finishes, colors, and that materials shall match existing construction. Where there is dispute as to whether duplication is successful or has been achieved to a reasonable degree, the District's decision shall be final.

1.4. PAYMENT FOR COSTS

- 1.4.1. Cost caused by ill-timed or defective Work or Work not conforming to Contract Documents, including costs for additional services of the District, its consultants, including but not limited to the Construction Manager, the Architect, the Project Inspector(s), Engineers, and Agents, will be paid by Contractor and/or deducted from the Contract by the District.
- 1.4.2. District shall only pay for cost of Work if it is part of the original Contract Price or if a change has been made to the contract in compliance with the provisions of the General Construction Provisions (Exhibit D to the Facilities Lease). Cost of Work performed upon instructions from the District, other than defective or nonconforming Work, will be paid by District on approval of written Change Order. Contractor shall provide written cost proposals prior to proceeding with cutting and patching.

2. PRODUCTS

2.1. MATERIALS

- 2.1.1. Contractor shall provide for replacement and restoration of Work removed. Contractor shall comply with the Contract Documents and with the Industry Standard(s), for the type of Work, and the Specification requirements for each specific product involved. If not specified, Contractor shall first recommend a product of a manufacturer or appropriate trade association for approval by the District.
- 2.1.2. Materials to be cut and patched include those damaged by the performance of the Work.

3. EXECUTION

3.1. INSPECTION

- 3.1.1. Contractor shall inspect existing conditions of the Site and the Work, including elements subject to movement or damage during cutting and patching, excavating and backfilling. After uncovering Work, Contractor shall inspect conditions affecting installation of new products.
- 3.1.2. Contractor shall report unsatisfactory or questionable conditions in writing to District as indicated in the General Construction Provisions (Exhibit D to the Facilities Lease) and shall proceed with Work as indicated in the General Construction Provisions (Exhibit D to the Facilities Lease) by District.

3.2. PREPARATION

- 3.2.1. Contractor shall provide shoring, bracing and supports as required to maintain structural integrity for all portions of the Project, including all requirements of the Project.
- 3.2.2. Contractor shall provide devices and methods to protect other portions of Project from damage.
- 3.2.3. Contractor shall, provide all necessary protection from weather and extremes of temperature and humidity for the Project, including without limitation, any work that may be exposed by cutting and patching Work. Contractor shall keep excavations free from water.

3.3. ERECTION, INSTALLATION AND APPLICATION

- 3.3.1. With respect to performance, Contractor shall:
 - 3.3.1.1. Execute fitting and adjustment of products to provide finished installation to comply with and match specified tolerances and finishes.
 - 3.3.1.2. Execute cutting and demolition by methods that will prevent damage to other Work, and provide proper surfaces to receive installation of repairs and new Work.
 - 3.3.1.3. Execute cutting, demolition excavating, and backfilling by methods that will prevent damage to other Work and damage from settlement.
 - 3.3.1.4. Contractor shall employ original installer or fabricator to perform cutting and patching for:
 - 3.3.1.5. Weather-exposed surfaces and moisture-resistant elements such as roofing, sheet metal, sealants, waterproofing, and other trades.
 - 3.3.1.6. Sight-exposed finished surfaces.
- 3.3.2. Contractor shall execute fitting and adjustment of products to provide a finished installation to comply with specified products, functions, tolerances, and finishes as shown or specified in the Contract Documents including, without limitation, the Drawings and Specifications.
- 3.3.3. Contractor shall fit Work airtight to pipes, sleeves, ducts, conduit, and other penetrations through surfaces. Contractor shall conform to all Code requirements for penetrations or the Drawings and Specifications, whichever calls for a higher quality or more thorough requirement. Contractor shall maintain integrity of both rated and non-rated fire walls, ceilings, floors, etc.
- 3.3.4. Contractor shall restore Work which has been cut or removed. Contractor shall install new products to provide completed Work in accordance with requirements of the Contract Documents and as required to match surrounding areas and surfaces.
- 3.3.5. Contractor shall refinish all continuous surfaces to nearest intersection as necessary to match the existing finish to any new finish.

OPERATION AND MAINTENANCE DATA

1. GENERAL

1.1. QUALITY ASSURANCE

Contractor shall prepare instructions and data by personnel experienced in maintenance and operation of described products.

1.2. FORMAT

- 1.2.1. Contractor shall prepare data in the form of an instructional manual entitled "OPERATIONS AND MAINTENANCE MANUAL & INSTRUCTIONS" ("Manual").
- 1.2.2. Binders: Contractor shall use commercial quality, 8-1/2 by 11 inch, three-side rings, with durable plastic covers; two inch maximum ring size. When multiple binders are used, Contractor shall correlate data into related consistent groupings.
- 1.2.3. Cover: Contractor shall identify each binder with typed or printed title "OPERATION AND MAINTENANCE MANUAL & INSTRUCTIONS"; and shall list title of Project and identify subject matter of contents.
- 1.2.4. Contractor shall arrange content by systems process flow under section numbers and sequence of Table of Contents of the Contract Documents.
- 1.2.5. Contractor shall provide tabbed fly leaf for each separate Product and system, with typed description of Product and major component parts of equipment.
- 1.2.6. Text: The content shall include Manufacturer's printed data, or typewritten data on 24 pound paper.
- 1.2.7. Drawings: Contractor shall provide with reinforced punched binder tab and shall bind in with text; folding larger drawings to size of text pages.

1.3. CONTENTS, EACH VOLUME

- 1.3.1. Table of Contents: Contractor shall provide title of Project; names, addresses, and telephone numbers of the Architect, any engineers, subconsultants, Subcontractor(s), and Contractor with name of responsible parties; and schedule of Products and systems, indexed to content of the volume.
- 1.3.2. For Each Product or System: Contractor shall list names, addresses, and telephone numbers of Subcontractor(s) and suppliers, including local source of supplies and replacement parts.
- 1.3.3. Product Data: Contractor shall mark each sheet to clearly identify specific Products and component parts, and data applicable to installation. Delete inapplicable information.
- 1.3.4. Drawings: Contractor shall supplement Product data to illustrate relations of component parts of equipment and systems, to show control and flow diagrams. Contractor shall not use Project Record Documents as maintenance drawings.
- 1.3.5. Text: The Contractor shall include any and all information as required to supplement Product data. Contractor shall provide logical sequence of instructions for each procedure, incorporating manufacturer's instructions.

1.4. MANUAL FOR MATERIALS AND FINISHES

- 1.4.1. Building Products, Applied Materials, and Finishes: Contractor shall include Product data, with catalog number, size, composition, and color and texture designations. Contractor shall provide information for re-ordering custom manufactured Products.
- 1.4.2. Instructions for Care and Maintenance: Contractor shall include Manufacturer's recommendations for cleaning agents and methods, precautions against detrimental agents and methods, and recommended schedule for cleaning and maintenance.
- 1.4.3. Moisture Protection and Weather Exposed Products: Contractor shall include Product data listing applicable reference standards, chemical composition, and details of installation. Contractor shall provide recommendations for inspections, maintenance, and repair.
- 1.4.4. Additional Requirements: Contractor shall include all additional requirements as specified in the Specifications.
- 1.4.5. Contractor shall provide a listing in Table of Contents for design data, with tabbed fly

sheet and space for insertion of data.

1.5. MANUAL FOR EQUIPMENT AND SYSTEMS

- 1.5.1. Each Item of Equipment and Each System: Contractor shall include description of unit or system, and component parts and identify function, normal operating characteristics, and limiting conditions. Contractor shall include performance curves, with engineering data and tests, and complete nomenclature, and commercial number of replaceable parts.
- 1.5.2. Panelboard Circuit Directories: Contractor shall provide electrical service characteristics, controls, and communications.
- 1.5.3. Contractor shall include color coded wiring diagrams as installed.
- 1.5.4. Operating Procedures: Contractor shall include start-up, break-in, and routine normal operating instructions and sequences. Contractor shall include regulation, control, stopping, shut-down, and emergency instructions. Contractor shall include summer, winter, and any special operating instructions.
- 1.5.5. Maintenance Requirements: Contractor shall include routine procedures and guide for trouble-shooting; disassembly, repair, and reassembly instructions; and alignment, adjusting, balancing, and checking instructions.
- 1.5.6. Contractor shall provide servicing and lubrication schedule, and list of lubricants required.
- 1.5.7. Contractor shall include manufacturer's printed operation and maintenance instructions.
- 1.5.8. Contractor shall include sequence of operation by controls manufacturer.
- 1.5.9. Contractor shall provide original manufacturer's parts list, illustrations, assembly drawings, and diagrams required for maintenance.
- 1.5.10. Contractor shall provide control diagrams by controls manufacturer as installed.
- 1.5.11. Contractor shall provide Contractor's coordination drawings, with color coded piping diagrams as installed.
- 1.5.12. Contractor shall provide charts of valve tag numbers, with location and function of each valve, keyed to flow and control diagrams.
- 1.5.13. Contractor shall provide list of original manufacturer's spare parts, current prices, and recommended quantities to be maintained in storage.
- 1.5.14. Additional Requirements: Contractor shall include all additional requirements as specified in Specification(s).
- 1.5.15. Contractor shall provide a listing in Table of Contents for design data, with tabbed fly sheet and space for insertion of data.

1.6. SUBMITTAL

- 1.6.1. Concurrent with the Submittal Schedule as indicated in the General Construction Provisions (Exhibit D to the Facilities Lease), Contractor shall submit to the District for review two (2) copies of a preliminary draft of proposed formats and outlines of the contents of the Manual.
- 1.6.2. For equipment, or component parts of equipment put into service during construction and to be operated by District, Contractor shall submit draft content for that portion of the Manual within ten (10) days after acceptance of that equipment or component.
- 1.6.3. On or before the Contractor submits its final application for payment, Contractor shall submit two (2) copies of a complete Manual in final form. The District will provide comments to Contractor and Contractor must revise the content of the Manual as required by District prior to District's approval of Contractor's final Application for Payment.
- 1.6.4. Contractor must submit two (2) copies of revised Manual in final form within ten (10) days after receiving District's comments. Failure to do so will be a basis for the District withholding funds sufficient to protect itself for Contractor's failure to provide a final Manual to the District. All final documents to be concurrently provided to the District in an electronic format.

WARRANTIES

1. GENERAL

1.1. FORMAT

- 1.1.1. Binders: Contractor shall use commercial quality, 8-1/2 by 11 inch, three-side rings, with durable plastic covers; two inch maximum ring size.
- 1.1.2. Cover: Contractor shall identify each binder with typed or printed title "WARRANTIES" and shall list title of Project.
- 1.1.3. Table of Contents: Contractor shall provide title of Project; name, address, and telephone number of Contractor and equipment supplier, and name of responsible principal. Contractor shall identify each item with the number and title of the specific Specification, document, provision, or section in which the name of the Product or work item is specified.
- 1.1.4. Contractor shall separate each warranty with index tab sheets keyed to the Table of Contents listing, providing full information and using separate typed sheets as necessary. Contractor shall list each applicable and/or responsible Subcontractor(s), supplier(s), and/or manufacturer(s), with name, address, and telephone number of each responsible principal(s).

1.2. PREPARATION

- 1.2.1. Contractor shall obtain warranties, executed in duplicate by each applicable and/or responsible subcontractor(s), supplier(s), and manufacturer(s), within ten (10) days after completion of the applicable item or work. Except for items put into use with District's permission, Contractor shall leave date of beginning of time of warranty until the date of completion is determined.
- 1.2.2. Contractor shall verify that warranties are in proper form, contain full information, and are notarized, when required.
- 1.2.3. Contractor shall co-execute submittals when required.
- 1.2.4. Contractor shall retain warranties until time specified for submittal.

1.3. TIME OF SUBMITTALS

- 1.3.1. For equipment or component parts of equipment put into service during construction with District's permission, Contractor shall submit a draft warranty for that equipment or component within ten (10) days after acceptance of that equipment or component.
- 1.3.2. On or before the Contractor submits its final application for payment, Contractor shall submit all warranties and related documents in final form. The District will provide comments to Contractor and Contractor must revise the content of the warranties as required by District prior to District's approval of Contractor's final Application for Payment.
- 1.3.3. For items of Work that are not completed until after the date of Completion, Contractor shall provide an updated warranty for those item(s) of Work within ten (10) days after acceptance, listing the date of acceptance as start of warranty period.

RECORD DOCUMENTS

1. RECORD DRAWINGS

1.1. GENERAL

- 1.1.1. "Record Drawings" may also be referred to in the Contract as "As-Built Drawings."
- 1.1.2. As indicated in the Contract Documents, District will provide Contractor with one set of reproducible plans of the original Contract Drawings.
- 1.1.3. Contractor shall maintain at each Project Site(s) one (1) set of marked-up plans and shall transfer all changes and information to those marked-up plans, as often as required in the Contract Documents, but in no case less than once each month. Contractor shall submit to the Project Inspector one set of the Project Record Drawings ("As-Built") showing all changes incorporated into the Work since the preceding monthly submittal. The As-Built shall be available at the Project Site(s). The Contractor shall submit reproducible documents at the conclusion of the Project following review of the red-lined prints.
- 1.1.4. Label and date each Record Drawing "RECORD DOCUMENT" in legibly printed letters.
- 1.1.5. All deviations in construction, including but not limited to pipe and conduit locations and deviations caused by without limitation Change Orders, Construction Directives, RFI's, and Addenda, shall be accurately and legibly recorded by Contractor
- 1.1.6. Locations and changes shall be done by Contractor in a neat and legible manner and, where applicable, indicated by drawing a "cloud" around the changed or additional information.

1.2. RECORD DRAWING INFORMATION

- 1.2.1. Contractor shall record the following information:
 - 1.2.1.1. Locations of Work buried under or outside each building, including, without limitation, all utilities, plumbing and electrical lines, and conduits.
 - 1.2.1.2. Actual numbering of each electrical circuit.
 - 1.2.1.3. Locations of significant Work concealed inside each building whose general locations are changed from those shown on the Contract Drawings.
 - 1.2.1.4. Locations of all items, not necessarily concealed, which vary from the Contract Documents.
 - 1.2.1.5. Installed location of all cathodic protection anodes.
 - 1.2.1.6. Deviations from the sizes, locations, and other features of installations shown in the Contract Documents.
 - 1.2.1.7. Locations of underground work, points of connection with existing utilities, changes in direction, valves, manholes, catch basins, capped stubouts, invert elevations, etc.
 - 1.2.1.8. Sufficient information to locate Work concealed in each building with reasonable ease and accuracy.
- 1.2.2. In some instances, this information may be recorded by dimension. In other instances, it may be recorded in relation to the spaces in the building near which it was installed.
- 1.2.3. Contractor shall provide additional drawings as necessary for clarification.
- 1.2.4. Contractor shall provide reproducible record drawings, made from final Shop Drawings marked "No Exceptions Taken" or "Approved as Noted."

2. RECORD SPECIFICATIONS

Contractor shall mark each section legibly to record manufacturer, trade name, catalog number, and supplier of each Product and item of equipment actually installed.

3. MAINTENANCE OF RECORD DOCUMENTS

- 3.1. Contractor shall store Record Documents apart from documents used for construction as follows:
 - 3.1.1. Provide files and racks for storage of Record Documents.
 - 3.1.2. Maintain Record Documents in a clean, dry, legible condition and in good order.
- 3.2. Contractor shall not use Record Documents for construction purposes.

COMMISSIONING

1. RELATED DOCUMENTS AND PROVISIONS

Contractor shall review all Contract Documents for applicable provisions related to the provisions in this document, including without limitation:

1.1. LEED Certification Sustainable Design Requirements.

2. SUMMARY

- 2.1. Commissioning is a process for validating and documenting that the facility and its systems are constructed and perform in conformity with the Contract Documents.
- 2.2. The objective of the commissioning process is to verify that the performance of the facility and its systems meet or exceed the design intent.
- 2.3. Commissioning includes special facility start-up processes used to bring the facility to a fully operational state, free of deficiencies in an efficient and timely manner.
- 2.4. Training on related systems and equipment operation and maintenance shall be scheduled to commence only after start-up is complete and systems are verified to be 100% complete and functional.

3. DESCRIPTION

The following applies to all Contract Documents:

- 3.1. **Contractor Startup:** Sub-phase of Contractor's work ending with Acceptance of Work, during which Contractor performs a pre-planned program of activities including starting, testing, inspecting, adjusting balancing, correcting deficiencies and other similar activities.
 - 3.1.1. The District, Construction Manager and Architect and the Inspector shall be present to observe, inspect and identify deficiencies in building systems operations.
- 3.2. The completion of startup means the entire Construction Project including startup and fine tuning has been performed to the requirements of the Contract Documents and is verified in writing by the District, Construction Manager and Architect.
- 3.3. **Fine Tuning:** Fine tuning is the responsibility of Contractors after District occupancy and ending one (1) year after District occupancy. During this time, the Contractor is responsible for optimizing systems and correcting deficiencies arising under normal operating conditions.
 - 3.3.1. Includes a period after occupancy where systems are optimized under "live" operating conditions and any outstanding construction deficiencies are corrected.
 - 3.3.2. Fine Tuning shall extend from date of District occupancy to one year after occupancy.

4. DEFINITION OF TERMS

- 4.1. **Contractor's Pre-Commissioning Checklists:** Includes installation and start-up items as specified to be completed by the appropriate contractors prior to operational verification through the functional testing process.
- 4.2. **Installation Verification Process:** Includes the on-site inspection and review of related system components for conformance to Contract Documents. The Contractor shall verify systems readiness for functional testing procedures prior to the start of functional testing. Deficiencies will be documented by the Inspector for future resolution.
- 4.3. **Functional Performance Testing Process:** Includes the documented testing of system parameters, under actual or simulated operating conditions. Final performance commissioning of systems will begin only after the appropriate Contractor certifies that systems are 100% complete and ready for functional testing. The Contractor will be required to schedule, coordinate and perform device tests, calibration and functional performance test procedures.
- 4.4. **Deficiencies and Resolutions List:** Includes a list of noted deficiencies discovered as a result of the commissioning process. This list also includes the current disposition of issues, and the date of final resolution as confirmed by the Construction Manager and Inspector. Deficiencies are defined as those issues where products execution or performance does not satisfy the Project Contract Documents and/or the design intent.

5. COMMISSIONING SCHEDULE

- 5.1. Provide schedules for Contractor Start-Up work.
- 5.2. Incorporate in overall construction schedule.

- 5.3. Contractor's activities, which will be performed as specified under Fine Tuning, shall be completed within one (1) year from date of occupancy by the District.

6. CONTRACTOR RESPONSIBILITIES

- 6.1. Provide utility services required for the commissioning process.
- 6.2. Contractor is responsible for construction means, methods, job safety, and/or management function related to commissioning on the Project Site.
- 6.3. Contractor shall assign representatives with expertise and authority to act on behalf of Contractor and schedule the representatives to participate in and perform commissioning team activities including, but not limited to, the following:
 - 6.3.1. Participate in design and construction-phase coordination meetings.
 - 6.3.2. Participate in maintenance orientation and inspection.
 - 6.3.3. Participate in operation and maintenance training sessions.
 - 6.3.4. Participate in final review.
 - 6.3.5. Certify that Work is complete and systems are operational according to the Contract Documents, including calibration of instrumentation and controls.
 - 6.3.6. Evaluate performance deficiencies identified in test reports and, in collaboration with entity responsible for system and equipment installation, recommend corrective action.
 - 6.3.7. Review and comment on final commissioning documentation.
- 6.4. Contractor shall integrate all commissioning activities into Contractor's Construction Schedule.
- 6.5. Contractor's Subcontractors shall assign representatives with expertise and authority to act on behalf of subcontractors and schedule the representatives to participate in and perform commissioning team activities including, but not limited to, the following:
 - 6.5.1. Participate in design and construction-phase coordination meetings.
 - 6.5.2. Participate in maintenance orientation and inspection.
 - 6.5.3. Participate in procedures meeting for testing.
 - 6.5.4. Participate in final review.
 - 6.5.5. Provide schedule for operation and maintenance data submittals, equipment startup, and testing to Commissioning Authority for incorporation into the commissioning plan. Update schedule on a weekly basis throughout the construction period.
 - 6.5.6. Provide information to the Commissioning Authority for developing construction phase commissioning plan.
 - 6.5.7. Participate in training sessions for District's operation and maintenance personnel.
 - 6.5.8. Provide updated Project Record Documents to Commissioning Authority on a daily basis.
 - 6.5.9. Gather and submit operation and maintenance data for systems, subsystems, and equipment to the Commissioning Authority, as specified in Division 01 Document "Operation and Maintenance Data."
 - 6.5.10. Provide technicians who are familiar with the construction and operation of installed systems, who shall execute the test procedures developed by the Commissioning Authority, and who shall participate in testing of installed systems, subsystems, and equipment.

7. SUBMITTALS

- 7.1. Submit Draft and Final Contractor Start-up Forms as described in this Document. Submit Draft Report for Construction Manager and Architect's review and comment prior to Final Submission. Submit Final Report not later than twenty weeks before scheduled date of Acceptance of Work.
- 7.2. Prepare and submit one copy of report form to be used in preparation of system reports for:
 - 7.2.1. Food Service Equipment.
 - 7.2.2. Gymnasium Equipment and Scoreboards
 - 7.2.3. Laboratory Fume Hoods
 - 7.2.4. Elevators
 - 7.2.5. Each mechanical system specified in Division 15.
 - 7.2.6. Each Electrical system specified in Division 16.
- 7.3. Each System Report shall be submitted including the following:

- 7.3.1. Project Name
- 7.3.2. Name of System
- 7.3.3. Index of report's content
- 7.3.4. Adjacent to list of equipment, columns to indicate status of equipment operation, to date and to sign off equipment start-up.
- 7.3.5. Space to record equipment and operational problems which cannot be corrected with scheduled Contractor Start-Up program and which may delay Acceptance of Work.
- 7.3.6. Manufacturer's equipment start-up reports.
- 7.3.7. Systems' testing, balancing, and adjusting reports.
- 7.3.8. Equipment Report Forms shall include the following: Project name, name of equipment, starting and testing procedures to be performed and observations and test results to be recorded.

8. QUALITY ASSURANCE

- 8.1. Training Instructor Qualifications: Contractor shall provide factory-authorized service representatives, experienced in training, operation, and maintenance procedures for installed systems, subsystems, and equipment.
- 8.2. Test Equipment Calibration: Comply with test equipment manufacturer's calibration procedures and intervals. Recalibrate test instruments (per NIST requirements if applicable) immediately whenever instruments have been repaired following damage or dropping. Affix calibration tags to test instruments. Instruments shall have been calibrated within six months prior to use.

9. EQUIPMENT & SYSTEM SCHEDULE

The following equipment shall be commissioned in this Project:

System	Equipment	Note	Req'd by LEED
HVAC System	Chillers		X
	Boilers		X
	Pumps		X
	Cooling towers		X
	Variable frequency drives		X
	Air handlers		X
	Packaged AC units		X
	Terminal units for Office areas	2	X
	Unit heaters		X
	Heat exchangers		X
	Exhaust fans		X
	Supply fans		X
	Return fans		X
Building Management System	Sequences of Operation, Monitored Points, and Alarms		X
	Metering/Monitoring Devices and Equipment		X
	Software Commissioning, GUI presentation commissioning, system access performance criteria, software tools/source code commissioning, instrument data sheets, middleware commissioning, Internet Protocol commissioning		
Electrical System	Sweep or scheduled lighting controls	2	X
	Daylight dimming controls		X
	Lighting occupancy sensors		X
	Electrical grounding		

Plumbing System	Domestic water heaters		X
Security Alarm Systems	Security cameras and monitoring system personal duress alarm system; Intercom system; Paging System.		
System	Equipment	Note	Req'd by LEED
Security Electronics	Security plumbing fixture water management system.		
	Door Controls.		
	Fire alarm system.		
	Distributed radio antenna system.		
	Access control system.		
Courtroom Systems	Room acoustics.		
	Sound masking system.		
	Assisted listening.		
	Video projection.		
	Audio system.		
	Lighting and lighting controls.		X
Fire/Life Safety Systems	All devices		
	Alarm drivers		
	HVAC/Fire System Integration		
	Event Notifying and Reporting Systems		
Communication System			

9.1. SYSTEM FAILURES

- 9.2.** After a second failure of a system to successfully meet the criteria as set for in the functional performance testing process, the Contractor shall reimburse the District for cost associated with any additional retesting required due to uncorrected deficiencies. Costs shall include salary, benefits, overhead, travel costs and per diem lodging costs if applicable.

EXHIBIT J
TO FACILITIES LEASE

PLANS, TECHNICAL SPECIFICATIONS, AND DRAWINGS

[IF PLANS ARE FINAL – PROVIDE A COMPLETE LIST OF ALL PLANS, TECHNICAL SPECS, AND OTHER DRAWINGS]

OR

[INCLUDE IF CONTRACTOR PERFORMS PRELIMINARY SERVICES AND PARTIES AMEND FOR GPC]: IF THE PARTIES AGREE TO A GUARANTEED PROJECT COST AND AMEND THE CONTRACT, THE PARTIES SHALL ALSO AMEND THIS EXHIBIT AND INCLUDE THE PLANS, TECHNICAL SPECIFICATIONS, AND DRAWINGS FOR THE PROJECT PURSUANT TO THE CONTRACT.

**EXHIBIT K
TO FACILITIES LEASE**

REVISIONS TO CONTRACT DOCUMENTS

[MUST BE REVISED / SPECIFIED FOR EACH PROJECT]

FACILITIES LEASE

Section 3.4 (Operating School): The phasing plan shall be as follows:

- _____
- _____
- _____

Section 3.6 (No Work During Student Testing): The following dates and times apply to this section:

- Each January: Two (2) days (Finals)
- Each March: Two (2) days (CAHSEE)
- Each June: Two (2) days (Finals)
- Each April - May: Ten (10) days (STAR and AP)

EXHIBIT D TO FACILITIES LEASE

Section 6.2.1 [Staffing Requirement]: The minimum staffing for the Project shall be a competent:

- Project Manager,
- Full-time Construction Superintendent on each active component/project,
- Project Engineer, and
- Project Administrator

Contractor shall provide with its proposal the name and resume for each specific individual that it is proposing for each position. Those persons shall be made available for interviews with the District, if requested.

Section 7.3 Bidding for Subcontractor Work

7.3.1 CONTRACTOR SHALL SOLICIT AND PROCURE SUBCONTRACTORS PURSUANT TO THE SUBCONTRACTOR PROCUREMENT PROCESS ATTACHED TO THE FACILITIES LEASE AS EXHIBIT H.

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

Article 10 – CONTRACTOR’S SUBMITTALS AND SCHEDULES

Item	Description	Due Date
Construction Schedule	Must be in Microsoft Project or Primavera or Equivalent	Within 30 days of District’s Notice to Proceed.
Schedule of Values	With all the detail as required in	Prior to the District’s

	Exhibit D.	approval of the Contractor's first Application for Tenant Improvement Payment
Shop Drawings		Within 30 days of District's Notice to Proceed.
Safety Plan		Within 30 days of District's Notice to Proceed.
Complete Subcontractor List		Within 30 days of District's Notice to Proceed.
Logistics Plan		Within 30 days of District's Notice to Proceed.

Section 15.1.1.4: The number of days that must be exceeded to claim extra time for "Adverse Weather":

[ALTERNATIVELY: THE DISTRICT AND CONTRACTOR MAY NEGOTIATE A CUMULATIVE NUMBER OF DAYS FOR THE DURATION OF THE PROJECT.]

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

END OF DOCUMENT

**EXHIBIT L
TO FACILITIES LEASE**

AGREEMENT FOR PRELIMINARY SERVICES

This Agreement for Preliminary Services ("**Agreement**") dated _____, 20_____
 ("**Effective Date**"), is made and entered into by and between the **Alameda Unified School District** ("**District**") and
 @Contractor ("**Contractor**") (together, the "**Parties**").

WHEREAS, the District's Governing Board, in order to enable the District to utilize the lease-leaseback delivery method for future construction projects, adopted procedures for a fair and impartial solicitation process to evaluate qualifications and proposals to determine which proposer provides the "best value" pursuant to Education Code section 17406(a)(2) ("**Lease-Leaseback Procedures**"); and

WHEREAS, Education Code section 17406(a)(1) permits the District to utilize the lease-leaseback delivery method to enter into a lease whereby the District leases the project site to the contractor to construct the project, and the contractor then leases the project site back to the District; and

WHEREAS, prior to entering into the lease to construct the project, Education Code section 17406(b)(1) permits the District to enter into a contract for the performance of preliminary services before the Division of the State Architect ("**DSA**") approves the plans and specifications for a project so long as the contractor does not perform any services for which a contractor's license is required; and

WHEREAS, consistent with the Lease-Leaseback Procedures, the District issued a request for qualifications and proposals ("**RFQ/P**") to solicit proposals from qualified firms to perform both preliminary services and construction services for the District's **@Project Name** ("**Project**"), and through the RFQ/P the District intended to award both the performance of preliminary phase services and construction phases services to the successful contractor; and

WHEREAS, after receiving and scoring the proposals, the District determined that the Contractor presented the District the "best value" to the District and the District's Governing Board awarded the Project to the Contractor; and

WHEREAS, the District seeks to have the Contractor perform preliminary services as more fully described in **Attachment A** attached hereto ("**Preliminary Services**") pursuant to Education Code section 17406(b)(1), and the Contractor represents that it is able and qualified to perform Preliminary Services for the Lease-Leaseback Project prior to the Contractor providing construction phase services; and

WHEREAS, after the Contractor performs Preliminary Services, the Parties acknowledge that Contractor shall procure subcontractors, propose a Guaranteed Maximum Price / Guaranteed Project Cost ("**GMP**" or "**GPC**"), and the Parties shall enter into a Site Lease and Facilities Lease for the construction of the Lease-Leaseback Project based on the Contractor's response to the RFQ/P.

AGREEMENT

NOW, THEREFORE, for good and sufficient consideration, receipt of which is acknowledged, the Parties agree as follows:

1. **Services.** The Contractor shall provide the services as described in **Attachment A**, attached hereto and incorporated herein by this reference ("**Services**" or "**Work**"). The scope of services will generally consist of the following:

Contractor shall perform Preliminary Services for the Project upon the District's issuance of a Notice to Proceed consistent with the Schedule.

- 1.1. The Services shall be performed at _____ School, _____, as further described in the Scope of Work for Preliminary Services attached hereto as **Attachment A ("Project")**.
2. **Term.** Unless terminated or otherwise cancelled as permitted herein, the term of this Agreement shall be for the duration of the Services provided under this Agreement consistent with the Schedule.
- 2.1. **Notice to Proceed.** Within a reasonable time after the Parties execute this Agreement, the District shall issue a Notice to Proceed to Contractor at which time Contractor shall commence the performance of the Services.
- 2.2. **Schedule.** The schedule for the Preliminary Services is as follows ("**Schedule**"):
- 2.2.1. Contractor shall commence the Preliminary Services on or before **[Date]**, and
- 2.2.2. Contractor shall complete the Preliminary Services on or before **[Date]**.
3. **One Project.** The Parties agree and acknowledge, consistent with the RFQ/P and relevant law, that upon the District's award to the Contractor of the Lease-Leaseback Project, the Parties intended the Contractor to perform Preliminary Services and construction services for the Lease-Leaseback Project as one continuous project, and, except insofar as the Parties cannot agree on a GPC for the Lease-Leaseback Project at the conclusion of Preliminary Services, the District intends, and always has intended, for the Contractor to construct the Lease-Leaseback Project.
4. **Submittal of Documents.** The Contractor shall not commence the Work under this Agreement until the Contractor has submitted and the District has approved the certificate(s) and affidavit(s), and the endorsement(s) of insurance required as indicated below:
- _____ X Signed Agreement
- _____ X Workers' Compensation Certification
- _____ X Fingerprinting/Criminal Background Investigation Certification
- _____ X Insurance Certificates and Endorsements
- _____ X W-9 Form
- _____ Bonds (as required or requested by District)
5. **Compensation.** The District shall pay Contractor for Contractor's performance of Preliminary Services a total fee **not to exceed** _____ Dollars (\$) based on the amount of Work satisfactorily performed and approved by the District pursuant to the scope and provisions in **Attachment A** attached hereto and as indicated herein ("**Fee**"):

[BY SCOPE]

Item	Amount
General Services	\$ _____
Review of Design Documents	\$ _____
Value Engineering	\$ _____
Constructability Review	\$ _____
Confirm Modifications to Design Drawings	\$ _____
Budget of Project Costs	\$ _____
Construction Schedule and Phasing Plan	\$ _____
Construction Planning and Bidding	\$ _____
Total	\$ _____

[MONTHLY FEE OPTION]

Month	Fee
January	\$ _____
February	\$ _____
March	\$ _____
April	\$ _____
May	\$ _____
June	\$ _____
July	\$ _____
August	\$ _____
September	\$ _____
October	\$ _____
November	\$ _____
December	\$ _____
Etc.	\$ _____

[HOURLY FEE OPTION]

Job Title	Hourly Rate
Principal in Charge	\$ _____
Director	\$ _____
Consultant(s)	\$ _____
Administrative Personnel	\$ _____
Other	\$ _____
Other	\$ _____

- 5.1. The Fee includes 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 Lease-Leaseback Project, Plans and Specifications, review and preparation of necessary documentation relating to the development of the Lease-Leaseback 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.
- 5.2. The Contractor shall submit a monthly itemized statement of Service charges and expenses to the District on the fifth (5th) day of each month. The itemized statement shall reflect the hours spent, or scopes of work performed, by the Contractor in performing its Services, and, if applicable, the statements shall reflect expenses and materials. The itemized statement shall show the days and hours worked each workday Contractor performs Services for the previous month. District will permit a one (1) month grace period beyond this time for the Contractor to submit its invoice for a particular month's work. No amounts shall be due or owing to the Contractor if it fails to submit an invoice to the District at or before the end of that grace period.
- 5.3. Payment for the Work shall be made for all undisputed amounts in monthly installment payments within forty five (45) days after the Contractor submits an itemized statement to the District for Work actually completed and after the District's written approval of the Work, or the portion of the Work for which payment is to be made.
6. **Expenses.** District shall not be liable to Contractor for any costs or expenses paid or incurred by Contractor in performing the Services, except as expressly provided for in this Agreement.

7. **Independent Contractor.** Contractor, in the performance of this Agreement, shall be and act as an independent contractor. Contractor understands and agrees that it and all of its employees shall not be considered officers, employees, agents, partner, or joint venture of the District, and are not entitled to benefits of any kind or nature normally provided employees of the District and/or to which District's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker's Compensation. Contractor shall assume full responsibility for payment of all federal, state and local taxes or contributions, including unemployment insurance, social security and income taxes with respect to Contractor's employees. In the performance of the work herein contemplated, Contractor is an independent contractor or business entity, with the sole authority for controlling and directing the performance of the details of Contractor's Work, District being interested only in the results obtained.
8. **Contractor and Subcontractor Registration and Compliance.**
- 8.1. Contractor acknowledges that, for purposes of Labor Code section 1725.5, all or some of the Work is a public work to which Labor Code section 1771 applies and that the Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. Contractor shall comply with Labor Code section 1725.5, including without limitation the registration requirements for itself and its subcontractors. Contractor represents that all of its subcontractors are registered pursuant to Labor Code section 1725.5.
- 8.2. Labor Code section 1771.1(a) states the following:
- "A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work Contractor to Section 1725.5 at the time the contract is awarded."
- 8.3. Contractor shall comply with the registration and compliance monitoring provisions of Labor Code section 1771.4, including furnishing its CPRs to the Labor Commissioner of California and complying with any applicable enforcement by the Department of Industrial Relations.
- 8.4. Contractor shall post job site notices, as required by law, including without limitation Labor Code section 1771.4.
- 8.5. Contractor shall comply with all requirements of Labor Code section 1771.4, except the requirements that are exempted by the Labor Commissioner for the Project.
9. **Designated Representatives.** Contractor shall coordinate with District personnel and/or its designated representatives as may be requested and desirable, including with other professionals employed by the District for the design, coordination or management of other work related to the Project.
10. **Materials.** Contractor shall furnish, at its own expense, all labor, materials, equipment, supplies and other items necessary to complete the services to be provided pursuant to this Agreement, except as expressly provided for in this Agreement.
11. **Performance of Services.**

11.1. Standard of Care.

11.1.1. Contractor represents that Contractor has the qualifications and ability to perform the Services in a professional manner, without the advice, control or supervision of District. Contractor's Services will be performed, findings obtained, reports and recommendations prepared in accordance with generally and currently accepted principles and practices of its profession for services to California school districts. Contractor's Services will be performed with due care and in accordance with applicable law, code, rule, regulation, and/or ordinance.

11.1.2. Contractor hereby represents, to the extent applicable, that it possesses the necessary professional capabilities, qualifications, licenses, skilled personnel, experience, expertise, and financial resources, and it has available and will provide the necessary equipment, materials, tools, and facilities to perform the Services in an efficient, professional, and timely manner in accordance with the terms and conditions of the Agreement.

11.1.3. Contractor shall be responsible for the professional quality, technical accuracy, completeness, and coordination of the Services, and Contractor understands that the District relies upon such professional quality, accuracy, completeness, and coordination by Contractor in performing the Services.

11.1.4. Contractor shall ensure that any individual performing work under the Agreement requiring a California license shall possess the appropriate license required by the State of California. All personnel shall have sufficient skill and experience to perform the work assigned to them.

11.2. **Meetings.** In addition to all public hearings and meetings, Contractor agrees to participate in coordination meetings to discuss District strategies, timetables, implementations of Services, and any other issues deemed relevant to the Project.

11.3. District Approval.

11.3.1. The District has the right to inspect and supervise to secure satisfactory completion of the Services.

11.3.2. Prior to any documents being made public, Contractor shall provide in draft form to District staff and District legal counsel, all documents that it or its subcontractors prepare.

12. Information.

12.1. **Furnished by District.** Upon request by Contractor, District shall furnish Contractor any information and documents readily available to District that the Contractor determines may be of use to the Contractor in the performance of the Services. District shall rely upon Contractor to determine which information and documents may be of use to the Contractor in performance of the Services. District makes no representations with respect to the reliability, accuracy, or completeness of any information or documents furnished by the District. Contractor shall determine if it is appropriate to rely on the District furnished information or documents. Contractor shall determine if clarification, additional information, or additional data is needed, and if so, to seek it out.

12.2. **Furnished by Others.** Contractor is to obtain, utilizing its own personnel, any required information that has been developed by other public or private entities that are not under contract to District. Contractor shall determine if it is appropriate to rely on the information or data developed by these other public or private entities. Contractor shall determine if clarification, additional information, or additional data is needed.

13. **Originality of Services.** Except as to standard generic details, Contractor agrees that all technologies, formulae, procedures, processes, methods, writings, ideas, dialogue, compositions, recordings, teleplays and video productions prepared for, written for, or submitted to the District and/or used in connection with this Agreement, shall be wholly original to Contractor and shall not be copied in whole or in part from any other source, except that submitted to Contractor by District as a basis for such services.
14. **Copyright/Trademark/Patent.** Contractor understands and agrees that all matters produced under this Agreement shall become the property of District and cannot be used without District's express written permission. District shall have all right, title and interest in said matters, including the right to secure and maintain the copyright, trademark and/or patent of said matter in the name of the District. Contractor consents to use of Contractor's name in conjunction with the sale, use, performance and distribution of the matters, for any purpose and in any medium.
15. **Audit.** Contractor shall establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business operations of Contractor transacted under this Agreement. Contractor shall retain these books, records, and systems of account during the Term of this Agreement and for five (5) years thereafter. Contractor shall permit the District, its agent, other representatives, or an independent auditor to audit, examine, and make excerpts, copies, and transcripts from all books and records, and to make audit(s) of all billing statements, invoices, records, and other data related to the Services covered by this Agreement. Audit(s) may be performed at any time, provided that the District shall give reasonable prior notice to Contractor and shall conduct audit(s) during Contractor's normal business hours, unless Contractor otherwise consents. For a period of three (3) years after final payment under this Agreement, all expenditures of public funds in excess of ten thousand dollars (\$10,000) shall be subject to examination and audit by the State Auditor. The audit shall be confined to those matters connected with the performance of this Agreement, including, but not limited to, the costs of administering the Agreement.
16. **Termination.**
- 16.1. **Without Cause by District.** District may, at any time, with or without reason, terminate this Agreement and compensate Contractor only for the Services satisfactorily rendered to the date of termination. Written notice by District shall be sufficient to stop further performance of Services by Contractor. Notice shall be deemed given when received by the Contractor or no later than three (3) days after the day the notice was mailed, whichever is sooner.
- 16.2. **Without Cause by Contractor.** Contractor cannot terminate this Agreement without cause.
- 16.3. **With Cause by District.** District may terminate this Agreement upon giving of written notice of intention to terminate for cause. Cause shall include:
- 16.3.1. material violation of this Agreement by the Contractor; or
- 16.3.2. any act by Contractor exposing the District to liability to others for personal injury or property damage; or
- 16.3.3. Contractor is adjudged a bankrupt, Contractor makes a general assignment for the benefit of creditors or a receiver is appointed on account of Contractor's insolvency.

Written notice by District shall contain the reasons for such intention to terminate and unless within three (3) calendar days after that notice the condition or violation shall cease, or satisfactory arrangements for the correction thereof be made, this Agreement shall upon the expiration of the three (3) calendar days cease and terminate. In the event of this termination, the District may secure the Services from another Contractor. If the expense, fees, and/or costs to the District exceeds the cost of providing the Services pursuant to this Agreement, the Contractor shall immediately pay the excess

expense, fees, and/or costs to the District upon the receipt of the District's notice of these expense, fees, and/or costs. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to District.

- 16.4. **With Cause by Contractor.** Contractor may only terminate this Agreement after giving written notice of intention to terminate for cause and the expiration of the time to cure. Cause shall only include:

16.4.1. Material violation of this Agreement by the District, or

16.4.2. Failure of the District to timely pay undisputed Contractor invoices.

Written notice by Contractor shall contain the reasons for such intention to terminate and unless within thirty (30) calendar days after that notice the condition or violation shall cease, or satisfactory arrangements for the correction thereof be made, this Agreement shall upon the expiration of the thirty (30) calendar days cease and terminate. During the thirty (30) calendar days the Inspector shall continue providing Services to the District until the Agreement ceases and terminates. In the event of this termination, the District may secure the Services from another Contractor.

- 16.5. **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 which is not Contractor privileged information, as defined by law, or Contractor's personnel information.

17. **Indemnification.** The Contractor shall indemnify, defend with legal counsel reasonably acceptable to the District, keep and hold harmless the District, and their respective board members, officers, representatives, and employees, in both individual and official capacities ("Indemnitees"), against all suits, claims, damages, losses, and expenses, caused by, arising out of, resulting from, or incidental to, the performance of the Work under this Contract by the Contractor or its subcontractors to the full extent allowed by the laws of the State of California, and not to any extent that would render these provisions void or unenforceable, including, without limitation, any such suit, claim, damage, loss, or expense attributable to, without limitation, bodily injury, sickness, disease, death, alleged patent violation or copyright infringement, or to injury to or destruction of tangible property, except to the extent caused by the negligence or willful misconduct of the Indemnitees. This agreement and obligation of the Contractor shall not be construed to negate, abridge, or otherwise reduce any right or obligation of indemnity that would otherwise exist as to any party or person described herein.

18. **Insurance.**

- 18.1. The Contractor shall procure and maintain at all times it performs any portion of the Services the following insurance with minimum limits equal to the amount indicated below.

18.1.1. **Commercial General Liability and Automobile Liability Insurance.** Commercial General Liability Insurance and Any Auto Automobile Liability Insurance that shall protect the Contractor, the District, and the State from all claims of bodily injury, property damage, personal injury, death, advertising injury, and medical payments arising performing any portion of the Services. (Form CG 0001 and CA 0001, or forms substantially similar, if approved by the District.)

18.1.2. **Workers' Compensation and Employers' Liability Insurance.** Workers' Compensation Insurance and Employers' Liability Insurance for all of its employees performing any portion of

the Services. In accordance with provisions of section 3700 of the California Labor Code, the Contractor shall be required to secure workers' compensation coverage for its employees. If any class of employee or employees engaged in performing any portion of the Services under this Agreement are not protected under the Workers' Compensation Statute, adequate insurance coverage for the protection of any employee(s) not otherwise protected must be obtained before any of those employee(s) commence performing any portion of the Services.

18.1.3. Professional Liability (Errors and Omissions). This insurance shall cover the Contractor and his/her subcontractors(s) for two million dollars (\$2,000,000) aggregate limit subject to no more than twenty-five thousand dollars (\$25,000) per claim deductible, coverage to continue through completion of construction plus two years thereafter. The policy must contain terms or endorsements extending coverage that requires the insurer to defend and indemnify for acts which happen before the effective date of the policy provided the claim is first made during the policy period.

Type of Coverage	Minimum Requirement
Commercial General Liability Insurance , including Bodily Injury, Personal Injury, Property Damage, Advertising Injury, and Medical Payments	
Each Occurrence	\$ 1,000,000
General Aggregate	\$ 2,000,000
Automobile Liability Insurance - Any Auto	
Each Occurrence	\$ 1,000,000
Professional Liability	\$ 2,000,000
Workers Compensation	Statutory Limits
Employer's Liability	\$ 1,000,000

18.2. Proof of Carriage of Insurance. The Contractor shall not commence performing any portion of the Services until all required insurance has been obtained and certificates indicating the required coverage have been delivered in duplicate to the District and approved by the District. Certificates and insurance policies shall include the following:

18.2.1. A clause stating: "This policy shall not be canceled or reduced in required limits of liability or amounts of insurance until notice has been mailed to the District, stating date of cancellation or reduction. Date of cancellation or reduction shall not be less than thirty (30) days after date of mailing notice."

18.2.2. Language stating in particular those insured, extent of insurance, location and operation to which insurance applies, expiration date, to whom cancellation and reduction notice will be sent, and length of notice period.

18.2.3. An endorsement stating that the District and the State and their agents, representatives, employees, trustees, officers, consultants, and volunteers ("Additional Insureds") are named Additional Insureds under all policies except Workers' Compensation Insurance, Professional Liability, and Employers' Liability Insurance. The coverage shall contain no special limitations on the scope of protection afforded to the Additional Insureds. An endorsement shall also state that Contractor's insurance policies shall be primary to any insurance or self-insurance maintained by District.

18.2.4. All policies except the Professional Liability Policy shall be written on an occurrence form.

18.3. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no

less than A: VII, unless otherwise acceptable to the District.

19. **Assignment.** The obligations and liabilities of the Contractor pursuant to this Agreement shall not be assigned voluntarily by the Contractor nor assigned by operation of law, without express written consent of the District.
20. **Binding Contract.** This Agreement shall be binding upon the Parties hereto and upon their successors and assigns and shall inure to the benefit of the Parties and their successors and assigns.
21. **Compliance with Laws.** Contractor shall observe and comply with all rules and regulations of the governing board of the District and all federal, state, and local laws, ordinances and regulations. Contractor shall give all notices required by any law, ordinance, rule and regulation bearing on conduct of the Work as indicated or specified. If Contractor observes that any of the Work required by this Agreement is at variance with any such laws, ordinance, rules or regulations, Contractor shall notify the District, in writing, and, at the sole option of the District, any necessary changes to the scope of the Work shall be made and this Agreement shall be appropriately amended in writing, or this Agreement shall be terminated effective upon Contractor's receipt of a written termination notice from the District. If Contractor performs any work that is in violation of any laws, ordinances, rules or regulations, without first notifying the District of the violation, Contractor shall bear all costs arising therefrom.
22. **Certificates/Permits/Licenses.** Contractor and all Contractor's employees or agents shall secure and maintain in force such certificates, permits and licenses as are required by law in connection with the furnishing of the Services. Except for any license or permits furnished by District, Contractor shall be fully responsible for identifying and obtaining all necessary licenses and permits for the timely prosecution of the Services.
23. **Anti-Discrimination.** It is the policy of the District that in connection with all work performed under contracts there be no discrimination against any employee engaged in the work because of race, color, ancestry, national origin, religious creed, physical disability, medical condition, marital status, sexual orientation, gender, or age and therefore the Contractor agrees to comply with applicable Federal and California laws including, but not limited to the California Fair Employment and Housing Act beginning with Government Code Section 12900 and District policy. Contractor and each subcontractor shall comply with Chapter 1 of Division 2, Part 7 of the Labor Code, beginning with § 1720, and including §§ 1735, 1777.5 and 1777.6, forbidding discrimination, and §§ 1776, 1777.5 and 1777.6 concerning the employment of apprentices by Contractor or subcontractors. Willful failure to comply may result in penalties, including loss of the right to bid on or receive public works contracts. In addition, the Contractor agrees to require like compliance by all its subcontractor(s).
24. **Fingerprinting of Employees.** The Fingerprinting/Criminal Background Investigation Certification must be completed and attached to this Agreement prior to Contractor's performing of any portion of the Services.
25. **Disabled Veteran Business Enterprises.** Section 17076.11 of the Education Code requires school districts using funds allocated pursuant to the State of California School Facility Program for the construction or modernization of a school building to have a participation goal of at least three percent (3%), per year, of the overall dollar amount expended each year by the school district, for disabled veteran business enterprises (DVBE). In accordance therewith, the Contractor must submit, upon request by District, appropriate documentation to the District identifying the steps the Contractor has taken to solicit DVBE participation in conjunction with this Agreement, if applicable.
26. **Interaction with the Media and Public.** Contractor shall promptly refer all inquiries from the news media or public to District and shall not make any statements to the media or the public relating to the Services. If Contractor receives a complaint from a citizen or the community, Contractor shall promptly inform the District about the complaint.
27. **Taxes.** Contractor shall be liable and solely responsible for paying all required taxes and other obligations, including but not limited to federal and state income taxes and social security taxes payable in connection with

the Services and this Agreement. Contractor agrees to release, indemnify, defend, and hold District harmless from and against any worker's compensation or any tax liability which District may incur to any Federal or State governments with jurisdiction as a consequence of this Agreement. All payments made to Contractor may be reported to the Internal Revenue Service.

28. **No Rights in Third Parties.** This Agreement does not create any rights in, or inure to the benefit of, any third party except as expressly provided herein.
29. **District's Evaluation of Contractor and Contractor's Employees and/or Subcontractors.** The District may evaluate the Contractor in any way the District is entitled pursuant to applicable law. The District's evaluation may include, without limitation:
- 29.1. Requesting that District employee(s) evaluate the Contractor and the Contractor's employees and subcontractors and each of their performance.
- 29.2. Announced and unannounced observance of Contractor, Contractor's employee(s), and/or subcontractor(s).
30. **Limitation of District Liability.** Other than as provided in this Agreement, District's financial obligations under this Agreement shall be limited to the payment of the compensation provided in this Agreement. Notwithstanding any other provision of this Agreement, in no event, shall District be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement for the services performed in connection with this Agreement.
31. **Disputes.** In the event of a dispute between the Parties as to performance of Work, Agreement interpretation, or payment, the Parties shall attempt to resolve the dispute by negotiation and/or mediation, if agreed to by the Parties. Pending resolution of the dispute, Contractor shall neither rescind the Agreement nor stop performing the Services.
32. **Confidentiality.** The Contractor and all Contractor's agents, personnel, employee(s), and/or subcontractors(s) shall maintain the confidentiality of all information received in the course of performing the Services. Contractor understands that student records are confidential and agrees to comply with all state and federal laws concerning the maintenance and disclosure of student records. This requirement to maintain confidentiality shall extend beyond the termination of this Agreement.
33. **Employment with Public Agency.** Contractor, if an employee of another public agency, agrees that Contractor will not receive salary or remuneration, other than vacation pay, as an employee of another public agency for the actual time in which Services are actually being performed pursuant to this Agreement.
34. **Notice.** Any notice required or permitted to be given under this Agreement shall be deemed to have been given, served, and received if given in writing and either personally delivered or sent by overnight delivery service, addressed as follows:

Alameda Unified School District

_____, CA 9_____

ATTN: _____

@Contractor

_____, CA 9_____

ATTN: _____

Any notice personally given shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the business day next following delivery thereof to the overnight delivery service.

35. **Integration/Entire Agreement of Parties.** This Agreement constitutes the entire agreement between the Parties and supersedes all prior discussions, negotiations, and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by both Parties.
36. **California Law.** This Agreement is entered into in California and shall be governed by and the rights, duties and obligations of the Parties, and shall be determined and enforced in accordance with the laws of the State of California. The Parties further agree that any action or proceeding brought to enforce the terms and conditions of this Agreement shall be maintained in the county in which the District's administrative offices are located. Contractor waives any claim or right to remove an action on this Agreement to federal court.
37. **Waiver.** The waiver by either Party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.
38. **Severability.** If any term, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force and effect, and shall not be affected, impaired or invalidated in any way.
39. **Authority to Bind Parties.** Neither Party in the performance of any and all duties under this Agreement, except as otherwise provided in this Agreement, has any authority to bind the other to any agreements or undertakings.
40. **Attorney Fees/Costs.** Should litigation be necessary to enforce any terms or provisions of this Agreement, then each Party shall bear its own litigation and collection expenses, witness fees, court costs and attorney's fees.
41. **Captions and Interpretations.** Paragraph headings in this Agreement are used solely for convenience and shall be wholly disregarded in the construction of this Agreement. No provision of this Agreement shall be interpreted for or against a Party because that Party or its legal representative drafted such provision, and this Agreement shall be construed as if jointly prepared by the Parties.
42. **Calculation of Time.** For the purposes of this Agreement, "days" refers to calendar days unless otherwise specified.
43. **Signature Authority.** Each Party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each Party has been properly authority and empowered to enter into this Agreement.
44. **Counterparts.** This Agreement and all amendments and supplements to it may be executed in counterparts, and all counterparts together shall be construed as one document.
45. **Incorporation of Recitals and Attachments.** The Recitals and each attachment attached hereto are hereby incorporated herein by reference.
46. **Provisions Required by Law Deemed Inserted.** Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein and this Agreement shall be read and enforced as though it were included herein.
47. **Incorporation of RFQ/RFP & Proposal and Interpretation of Documents.** If the Parties enter into this Agreement as a result of a Request for Qualifications and/or a Request for Proposal ("**RFQ/RFP**"), the RFQ/RFP is incorporated into this Agreement, except that if there is any conflict between the RFQ/RFP and any provision of this Agreement, the Agreement shall prevail.

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

Alameda Unified School District

@Contractor

Signature: _____

Signature: _____

Print Name: _____

Print Name: _____

Print Title: _____

Print Title: _____

Form Agreement

Attachment A to Agreement for Preliminary Services

Scope of 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 **four (4)** times: 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 Contract Document 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 Contract Documents.

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.

- 1.6. **Bidding for Subcontractor Work.** CONTRACTOR SHALL SOLICIT AND PROCURE SUBCONTRACTORS PURSUANT TO THE SUBCONTRACTOR PROCUREMENT PROCESS ATTACHED TO THE FACILITIES LEASE AS EXHIBIT H.
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.

**EXHIBIT M
TO FACILITIES LEASE
PROJECT LABOR AGREEMENT**

Form Agreement

ALAMEDA UNIFIED SCHOOL DISTRICT PROJECT LABOR AGREEMENT

PREAMBLE

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

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

RECITALS

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 1. DEFINITIONS

1.1 "Agreement" means this Project Labor Agreement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 2.
SCOPE OF AGREEMENT

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

2.2 Project Description:

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

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

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

2.4 Covered Work:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 3. EFFECT OF AGREEMENT

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

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

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

ARTICLE 4.

WORK STOPPAGES, STRIKES, SYMPATHY STRIKES AND LOCKOUTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 5. PRE-CONSTRUCTION CONFERENCE

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

5.1.1 The commencement of any Project Work, and

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

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

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

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

5.2.2 The craft assignments;

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

5.2.4 Transportation arrangements;

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

5.2.6 Discussion of pre-fabricated materials.

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

ARTICLE 6. NO DISCRIMINATION

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

ARTICLE 7. UNION SECURITY

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

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

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

ARTICLE 8. REFERRAL

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

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

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

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

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

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

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

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

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

**ARTICLE 9.
WAGE AND BENEFITS**

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

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

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

**ARTICLE 10.
EMPLOYEE GRIEVANCE PROCEDURE**

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

**ARTICLE 11.
COMPLIANCE**

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

ARTICLE 12.
JOINT ADMINISTRATIVE COMMITTEE

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

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

ARTICLE 13.
GRIEVANCE ARBITRATION PROCEDURE

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

13.2 Grievances shall be settled according to the following procedures:

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

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

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

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

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

ARTICLE 14.
JURISDICTIONAL DISPUTES

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

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

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

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

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

ARTICLE 15.
MANAGEMENT RIGHTS

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

ARTICLE 16.
SAVINGS CLAUSE

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

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

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

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

ARTICLE 17.

TERM

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

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

ARTICLE 18.

ALAMEDA HIRE REQUIREMENTS

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

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

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

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

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

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

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

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

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

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

18.7 Apprenticeship Provision:

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

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

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

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

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

18.9.1 Assisting the District's CTE program by:

18.9.2 Providing speakers at least twice a year,

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

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

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

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

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

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

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

ARTICLE 19. HELMETS TO HARDHATS

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

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

ARTICLE 20. MISCELLANEOUS PROVISIONS

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

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

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

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

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

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

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

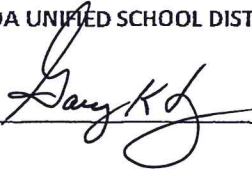
20.8 **Counterparts.** This Agreement may be executed in counterparts, each of which shall constitute an original of the Agreement. Facsimile or email PDF signature pages transmitted to other parties to this Agreement shall be deemed equivalent to original signatures on counterparts.

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

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

ALAMEDA UNIFIED SCHOOL DISTRICT

By: _____

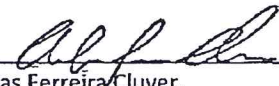


Date: _____

02.09.17

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

By: _____


Andreas Ferreira Cluver,
Secretary-Treasurer

Date: _____

6/10/16

[Trade signatures follow below]

Addendum A: Agreed To Letter of Assent

[Addressee]
[Address]
[City and State]

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

Dear Mr. /Ms. _____:

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

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

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

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

CONTRACTOR/SUBCONTRACTOR: _____

Project Contract Number: _____

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

DIR Public Works Registration # _____

Name and Signature of Authorized Person: _____

(Print Name)

(Title)

(Signature)

(Date)

ALAMEDA UNIFIED SCHOOL DISTRICT
BOARD AGENDA ITEM

Item Title: Approval of Project Award of Wood Middle School HVAC Measure I Modernization Project Pursuant to Request for Proposal Dated July 27, 2021

Item Type: Action

Background: Pursuant to Education Code section 17406, school districts must award lease-leaseback contracts based on a competitive solicitation process, to the proposer providing the best value to the district. On October 24, 2017, the Board of Trustees approved Resolution No. 2017-2018.22 and adopted the procedures for evaluating qualifications of lease leaseback contractors.

On October 13, 2020, the District passed Resolution No. 2020-2021.15 in which the lease-leaseback contractor evaluation procedures were updated. The update was part of the creation of a new pool of qualified contractors for upcoming District projects. As part of that process, on May 1, 2020, the District issued a Request to Prequalify and for Statement of Qualifications for Preliminary and Construction Services (“RFQ”) The District’s intent was to create a pool of qualified contractors from which proposals on certain projects would be solicited.

District staff advertised and issued the RFQ, which identified all criteria that the District would consider in evaluating the proposals and qualifications of the proposers. A total of four firms submitted prequalification packets. Their submissions were scored and each of the four firms qualified to be placed in the pool of qualified contractors.

On July 27, 2021, the District issued a Request for Proposals to the pool of qualified contractors for the HVAC modernization at Wood Middle School. On August 30, 2021, two of the qualified contractors submitted proposals for the project. Based upon the proposals submitted and the scoring of the respective proposals, it was determined that BHM Construction, Inc. provided the best value for the project. Staff recommends awarding the project to BHM Construction, Inc.

Because of the project is in the preconstruction phase, the price criteria component of the award of the project is based upon the proposing contractor’s cost of performing services. When the preconstruction work has reached the point where a Guaranteed Project Cost (“GPC”) is negotiated, the final agreements for the project will be approved by the Board. In the event agreement on a GPC cannot be reached, then, as required by the Education Code, the District will then enter into negotiations to perform the construction of that project with the second highest ranked contractor.

The lease-leaseback contract will come back to the Board for ratification at a future meeting.

AUSD LCAP Goals: 4. Ensure that all students have access to basic services.

Fund Codes: 21 Building – Bond Fund

Fiscal Analysis

Amount (Savings) (Cost):

Recommendation: Approve as submitted.

AUSD Guiding Principle: #5 - Accountability, transparency, and trust are necessary at all levels of the organization. | #6 - Allocation of funds must support our vision, mission, and guiding principles. | #7 - All employees must receive respectful treatment and professional support to achieve district goals.

Submitted By: Shariq Khan, Assistant Superintendent of Business Services

ATTACHMENTS:

Description	Upload Date	Type
□ RFP Dated July 27, 2021 - Wood MS HVAC	9/21/2021	Backup Material

Alameda Unified School District
2060 Challenger Drive
Alameda, California 94501

July 27, 2021

REQUEST FOR PROPOSALS
FOR PRELIMINARY AND CONSTRUCTION SERVICES (LEASE-LEASEBACK)
FOR THE WOOD MIDDLE SCHOOL HVAC MODERNIZATION PROJECT

Your firm is part of the Alameda Unified School District's ("District") pool of contractors qualified pursuant to the District's Request to Prequalify and Qualifications to Perform Preliminary and Construction Services (Lease-Leaseback) for certain district projects dated July 27, 2021 (the "RFQ"). As indicated in the RFQ, the District intends to award the District's Wood Middle School HVAC Modernization Project as further described in **Attachment 1** attached hereto and incorporated herein by reference ("Project") utilizing the lease-leaseback delivery method. (Ed. Code, § 17406.)

The District issues this Request for Proposals to ("RFP") to request that the contractors the District qualified ("Contractor(s)") submit proposals to perform preliminary and construction services for the Project ("Proposal(s)"). Proposals shall include price information that are consistent with the Contractor's Response to the RFQ and this RFP ("RFP").

MEP Prequalification. Subcontractors with the following license classifications (C-4, C-7, C-10, C-16, C-20, C-34, C-36, C-38, C-42, C-43, and/or C-46) ("MEP Subcontractors") **shall not** be required to prequalify at this specific time. At the conclusion of Preliminary Services, **prior to the** District and Contractor negotiating final pricing, MEP Subcontractors performing work on the Project under one of those licenses must prequalify with the District to be eligible to be included in the Contractor's final pricing. MEP Subcontracts may prequalify by submitting the MEP Subcontractor Prequalification Questionnaire attached hereto as **Attachment 3 ("Prequalification Questionnaire")**. **MEP Subcontractors that have prequalified with the District in the last year and are in good standing with the District need not submit a Prequalification Questionnaire.**

Skilled and Trained Workforce Notice. These projects will be subject to the skilled and trained workforce requirements pursuant to Public Contract Code section 2600, et seq. and Education Code section 17407.5 ("SWF Statutes"). **By submitting a Proposal, Contractors agree to be bound by the District's Project Labor Agreement attached to the Contract (defined below) as Exhibit M.**

Federal Funding Notice. This Project will be funded in whole or in part by Elementary and Secondary School Emergency Relief Program III funds ("ESSER III Funds"). The Contract (as defined below) includes mandated federal contracting provisions in Exhibit N of the Facilities lease. It is recommended that Contractors review these provisions. **Contractor shall be required to comply with all laws applicable to ESSER III Funds when performing Services for the Project.**

Proposal. Each Proposal must be submitted by the date indicated in the RFP Schedule and must include one (1) original and six (6) copies of requested materials as well as one (1) electronic copy, in PDF format with bookmarks on a thumb drive to: **Alameda Unified School District; 2060 Challenger Drive, Alameda, CA 94501; Attn: Robbie Lyng; Telephone: 510-337-7000.**

Questions. Questions regarding this RFP must be submitted by the date indicated in the RFP Schedule and must be in writing and directed only to **Robbie Lyng at construction@alamedaunified.org**. **Any attempt by a Contractor to visit this the Project site or contact any other employee, agent, or board member of the District, other than the person identified here, may result in a Proposal being deemed nonresponsive and rejected.**

Mandatory Site Visit. There is a **mandatory** site visit for the Project on the date and at the time indicated in the RFP Schedule. All Contractors that intend to submit a Proposal must attend the site visit. **The failure of any Contractor to attend the mandatory site visit shall be grounds for the District to deem the Contractor's Proposal non-responsive.**

List of Attachments. The following attachments are part of this RFP:

Attachment 1	Description of Project and Construction Schedule
Attachment 2	Contractor's Cost Proposal Form
Attachment 3	Subcontractor Prequalification Form
Attachment 4	Form Lease-Leaseback Contract

RFP Schedule. Below is the anticipated RFP Schedule. The District reserves the right to modify this RFP Schedule via an addendum.

Event / Occurrence	Time / Date / Deadline
District Issues RFP	July 27, 2021
Mandatory Site Visit	August 9, 2021
Deadline for Contractors to submit questions regarding this RFP	August 13, 2021
District to respond to Contractors' questions regarding this RFP	August 20, 2021
DEADLINE FOR CONTRACTORS TO SUBMIT PROPOSALS	August 30, 2021
District to interview some or all Contractors (at discretion of District)	September 6, 2021
District to award Project	September 28, 2021

The District reserves the right to reject Contractor's Proposal. The District also reserves the right to amend this RFP as necessary. The Proposal and attachments submitted to the District in response to this RFP shall remain property of the District.

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

1. **Contractor's Proposal.** Contractor shall provide the information requested below. The Proposal must include the following:
 - 1.1. **Preliminary Services Costs.** State on the Cost Proposal Form attached to this RFP in **Attachment 2** as a **lump sum** what Contractor will charge to provide the Preliminary Phase Services as identified in the Contract attached hereto as **Attachment 4** to this RFP, which is based on either identified hourly fees, or for specific sums for identified tasks.
 - 1.2. **Detailed Guaranteed Project Cost.** Utilizing the table in the Cost Proposal Form attach to the RFP in Attachment 2, provide the Firm's charges for the items identified therein for this Project. **These percentages shall be fixed through the Contractor's tenure on the Project and will not be subject to negotiation.**
 - 1.3. **Financing Charges.** Utilizing the table in the Cost Proposal Form attach to the RFP in Attachment 2, provide the Firm's financing charge for this Project.
 - 1.4. **General Conditions.**
 - 1.4.1. **Components.** Provide a detailed list of **ALL** items that Contractor would include in its general conditions or general requirements on the Project for the District.
 - 1.4.2. **Amount.** Indicate as a percentage of direct construction costs, the amount that the Contractor would charge on the Project for the District.
 - 1.5. **Contractor's Personnel.** In Contractor's RFQ, Contractor identified key personnel who would be performing services for the District's Projects. The District expects that the same personnel identified in the Contractor's RFQ shall be assigned to the Project upon award. Contractor shall again identify Contractor's personnel, along with their resumes, who will be assigned to the Project. **Contractor must note any changes to the key personnel identified in Contractor's Response to the RFQ.**
 - 1.6. **Construction Schedule.** Discuss the Contractor's ability to meet the construction schedule for the Project set forth in **Attachment 1**.
 - 1.7. **Work Commitments.** Please specify the workload of the Contractor that will, or Contractor anticipates will, run concurrently with the Project. If applicable, provide a statement of all contractual obligations that relate in any way to similar work for the District that may run concurrently with the Project and may have a potential to impede Contractor's ability to construct the Project.
 - 1.8. **Subcontractor Procurement.**
 - 1.8.1. **Subcontractors Prequalification.** As noted, MEP Subcontractors **shall not** be required to prequalify at this time. At the conclusion of Preliminary Services, **prior to the** District and Contractor negotiating final pricing, MEP Subcontractors performing work on the Project under one of those licenses, must prequalify with the District to be eligible to be included in the Contractor's final pricing. MEP Subcontracts may prequalify by submitting the Prequalification Questionnaire. **MEP Subcontractors that have prequalified with the District in the last year and are in good standing with the District need not submit a Prequalification Questionnaire. The District highly recommends that all Contractors inform all of their potential MEP Subcontractors to immediately complete the prequalification process to ensure their eligibility to be included for the Project.**
 - 1.8.2. Contractor shall solicit and procure Subcontractors pursuant to the Subcontractor Procurement Process attached as Exhibit H of the Facilities Lease of the Contract in **Attachment 4**.

- 1.8.3. Describe Contractor's process for soliciting subcontractors for a lease-leaseback project and how the Contractor works collaboratively with a school district to ensure transparency in the pricing of the GPC and that the District receives a competitive GPC.
 - 1.8.4. Describe the Contractor's process for ensuring that all subcontractor bid packages are full and complete, and how Contractor minimizes scope gaps.
 - 1.8.5. Please indicate Contractor's ability and willingness on future lease-leaseback projects, to comply with the Subcontractor Procurement Process attached as Exhibit H of the Facilities Lease of the Contract in **Attachment 4**.
 - 1.9. **Accessories, Additional Components, or Upgrades.** Please list any accessories, additional components, warranties, or upgrades that Contractor intends to utilize in performing its construction work that might increase the value of Contractor's work. **The District reserves the right to negotiate the inclusion or exclusion of any such items at the time the District finalizes the Contract.**
 - 1.10. **Comments to Lease-Leaseback Contract.** The District has updated its form lease-leaseback contract since the District issued the RFQ. The District will utilize the form lease-leaseback contract attached hereto as **Attachment 4** and incorporated herein by reference ("**Contract**"). If Contractor has any comments or objections to the Contract, it must provide those comments or objections, with specificity, in its Proposal. **PLEASE NOTE: The District will not consider any changes to the Contract if they are not specifically submitted with the Contractor's Proposal.**
2. **District's Best Value Selection Process.** The District shall evaluate Contractors' Proposals based on a best value determination process for each project.
 - 2.1. The District will notify Contractors of their status upon completion of the process via email from the District.
 - 2.2. During the evaluation of the Proposals, contact shall only be through the individual identified in the RFP. Contractors shall neither contact nor lobby evaluators during the evaluation process. Attempts by a Contractor to contact and/or influence the District may result in disqualification of that Contractor.
 - 2.3. The District reserves the right to reject any Proposal as non-responsive, and not to contract with any Contractor for the Project. The District makes no representation that participation in the RFP process will lead to an award of contract or any consideration whatsoever. The District reserves the right to seek Proposals from or to contract with any Contractor not participating in this process. The District shall in no event be responsible for the cost of preparing any Proposal.
 - 2.4. All Proposals will become the property of the District and subject to the California Public Records Act, Government Code sections 6250, et seq. Those elements in a Proposal that are trade secrets as that term is defined in Civil Code section 3426.1(d) or otherwise exempt by law from disclosure and which are prominently marked as "TRADE SECRET," "CONFIDENTIAL," or "PROPRIETARY" may not be subject to disclosure. The District shall not be liable or responsible for the disclosure of any such records including, without limitation, those so marked if disclosure is deemed to be required by law or by an order of a Court. A Contractor that indiscriminately identifies all or most of its Proposal as exempt from disclosure without justification may be deemed non-responsive. In the event the District is required to defend an action on a Public Records Act request for any of the contents of a Proposal marked "Confidential," "Proprietary," or "Trade Secret," the Contractor agrees, by submission of its Proposal, to defend and indemnify the District from all costs and expenses, including attorneys' fees, in any action or liability arising under the Public Records Act.
3. **District's Appeal Process.** A Contractor may appeal the District's "best value" determination. If a Contractor decides to appeal the District's determination, it must follow the following procedure. Failure of a Contractor to timely follow all appeal steps shall be a waiver of the Contractor's right to appeal the District's determination.

- 3.1. The Contractor shall submit, in writing, within two (2) business days after receipt of notice of the District's determination, a written request for a response from the District to explain the District's determination.
- 3.2. Within two (2) business days from receipt of the District's response to the Contractor's request, Contractors may request in writing a meeting, which will be restricted to no more than two (2) persons from the Contractor to have a discussion with District staff regarding that Contractor's Proposal. All meetings will take place via a conference call or an in-person meeting, at the District's sole discretion. Contractors may submit with the request any and all information that it believes supports a finding that District's determination should be changed.
- 3.3. If the Contractor continues to contest the District's determination after that meeting with District staff, then the Contractor may address the Board at the next public noticed meeting of the District's governing board, pursuant to the governing board's procedures for public comment. In order for a Contractor to preserve its right to challenge the District's determination, the Contractor must address the Board at the next public noticed meeting of the Board after the Contractor's meeting with District staff.

ATTACHMENT 1

DESCRIPTION OF THE PROJECT AND CONSTRUCTION SCHEDULE

Wood Middle School HVAC Modernization Project

- **Estimated Budget:** The Estimated Budget is not yet set and is subject to revision at the conclusion of value engineering.

- **Scope of Services**

Modernization of Mechanical System to Classroom Building A & Multi-purpose Building B. Includes selective demolition, replacement of the mechanical system, surface and underground utilities related to the mechanical installation. Contractor shall also patch, repair and paint all surfaces to match existing where work was performed.

- **Construction Schedule**

Preliminary Services. Preliminary services shall be for three (3) months commencing as soon as the District's Board awards the Contract.

Construction Services. The District anticipates the duration of this Project to be three (3) months. **PLEASE BE ADVISED: THESE DATES ARE SUBJECT TO CHANGE AT THE TIMES THE DISTRICT AND SELECTED CONTRACTOR FINALIZE THE CONTRACT. THE CONTRACT SHALL SET FORTH THE DATES ON WHICH THE DISTRICT SHALL HAVE BENEFICIAL OCCUPANCY AND CONTRACTOR SHALL COMPLETE THE PROJECT.**

- **Plans and Specifications**

The Project's Plans and Specifications may be found at: **East Bay Blue Print**
<https://www.ipdservices.com/clients/eastbay/?eastbay&Show=Planroom&Project=All>

ATTACHMENT 2

CONTRACTOR'S COST PROPOSAL FORM

Preliminary Services. Contractor submits the following lump sum proposal to perform Preliminary Services. If the Contractor should identify whether the lump sum proposal is based upon specific scopes of work, or hourly rates based upon anticipated hours performing work. **If Contractor proposes a lump sum based upon specific scopes of work, Contractor should also provide a rate sheet which shall be used for any extra services outside the Scope of Preliminary Services in the Contract.**

Lump Sum Proposal for Preliminary Services	
	\$ _____
Review of Design Documents	\$ _____
Value Engineering	\$ _____
Constructability Review	\$ _____
Confirm Modifications to Design Drawings	\$ _____
Review of Budget for Project Costs	\$ _____
Preparation of Construction Schedule and Phasing Plan	\$ _____
Construction Planning and Bidding	\$ _____
[Other] _____	\$ _____
Staffing that would be part of Preliminary Services (<i>at or below the rates indicated in your RFQ response</i>)	
Project Manager (hourly rate)	\$ _____
Constructability Reviewer (hourly rate)	\$ _____
Estimator (hourly rate)	\$ _____
Scheduler (hourly rate)	\$ _____

Construction / Financing Charges. Contractor proposes the following construction charges for the Project.

NOTE: ALL PERCENTAGES SHALL BE AT OR BELOW THE CONTRACTOR'S PERCENTAGES INDICATED IN ITS RESPONSE TO THE RFQ.

Item	Percentage
Mark-up on Subcontractor work	_____ %
Mark-up on self-performed work	_____ %
Mark-up on Subcontractor change order work	_____ %
Mark-up on self-performed change order work	_____ %

Fee / overhead & profit (as a percentage of direct costs) if any, that is in addition to any mark-up	_____ %
Bond cost (as a percentage of direct costs)	_____ %
Insurance cost (as a percentage of direct costs)	_____ %
Other costs (identify in sufficient detail for evaluation, either as a lump sum or a percentage of direct costs. If there are no additional charges, then please state zero (0) here.)	\$ ____ or ____ %

<p>Financing Charge. Contractor will finance a portion of the GPC for a period of time. Although the exact amount may be adjusted at the District's discretion, it is anticipated that the financing for this Project will be for less than 10% of the total GPC. During the Project, the District will make Tenant Improvement Payments for work performed, and after Completion of the District will make monthly Lease Payments of one-twelfth (1/12) of the total financed amount for the Project, plus an agreed-upon interest charge for the Project. Please provide the District with your proposed interest charge for the financed portion of the GPC in Attachment 1, <u>at or below</u> the Contractor's proposed finance charge it indicated in its response to the RFQ.</p>	_____ %
---	---------

ATTACHMENT 3

MEP PREQUALIFICATION QUESTIONNAIRE

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

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

Name	Position	Years with Co.	% Ownership

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

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

CONTRACTOR'S BONDING COMPANY (SURETY) INFORMATION

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

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

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

--	--	--

Name of broker/agent:

Address of broker/agent:

Telephone number of broker/agent:

E-mail of broker/agent:


Contractor's total current bonding capacity: \$

CONTRACTOR'S INSURANCE INFORMATION

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

Address of those insurance company(ies):		
"Best" rating(s) for those insurance company(ies):		
Number of years Contractor has been with those insurance company(ies):		
Name of broker/agent:		
Address of broker/agent:		
Telephone number of broker/agent:		
E-mail of broker/agent:		
Contractor's current insurance limits for the following types of coverage:		
Commercial General Liability	Combined Single Limit (per occurrence)	\$
	Combined Single Limit (aggregate)	\$
Product Liability & Completed Operations	(aggregate)	\$
	(per occurrence)	\$
Automobile Liability – Any Auto	Combined Single Limit (aggregate)	\$
Automobile Liability – Any Auto	Combined Single Limit (per occurrence)	\$
Employers' Liability		\$
Builder's Risk (Course of Construction)		
Workers' Compensation Experience Modification Rate for the past five (5) premium years:		
(1) Current year:	(2)	(3)
	(4)	(5)

QUESTIONS

Pass/Fail Questions (Essential Criteria)		
1.	<p>Has your Firm contracted for and completed construction of a minimum of the following:</p> <ul style="list-style-type: none"> ○ Three (3) California K-12 public school district construction projects, ○ Each with a value of at least \$500,000, and ○ All within the past five (5) years? (Please circle one). <p>NOTE: You must list these projects in the "Contractor Project References" Section.</p>	<p style="text-align: center;"><u>YES</u> <u>NO</u></p> <p>NO = cannot prequalify</p>
2.	<p>Does your Firm currently hold all contractors license(s) necessary to perform the Work and have those license(s) been consistently active for at least five (5) years without revocation or suspension? (Please circle one).</p>	<p style="text-align: center;"><u>YES</u> <u>NO</u></p> <p>NO = cannot prequalify</p>
3.	<p>Has your Firm or an Associated Firm been found non-responsible, debarred, disqualified, forbidden, or otherwise prohibited from performing work and/or bidding on work for any public agency within California within the past five (5) years? (Please circle one).</p>	<p style="text-align: center;"><u>YES</u> <u>NO</u></p> <p>YES = cannot prequalify</p>
4.	<p>Has your Firm or an Associated Firm defaulted on a contract or been terminated for cause by any public agency on any project within California within the past five (5) years and, if so and if challenged, has that default or termination been upheld by a court or an arbitrator? (Please circle one).</p>	<p style="text-align: center;"><u>YES</u> <u>NO</u></p> <p>YES = cannot prequalify</p>
5.	<p>Has your Firm or an Associated Firm or any of their owners or officers been convicted of a crime under federal, state, or local law involving:</p> <ul style="list-style-type: none"> (1) Bidding for, awarding of, or performance of a contract with a public entity; (2) Making a false claim(s) to any public entity; or (3) Fraud, theft, or other act of dishonesty <p>to any contracting party within the past ten (10) years? (Please circle one).</p>	<p style="text-align: center;"><u>YES</u> <u>NO</u></p> <p>YES = cannot prequalify</p>
6.	<p>Has a performance bond surety for your Firm or a performance bond surety for an Associated Firm had to:</p> <ul style="list-style-type: none"> (1) Take over or complete a project, (2) Supervise the work of a project, or (3) Pay amounts to third parties, <p>related to construction activities of your Firm or an Associated Firm within the past five (5) years? (Please circle one).</p>	<p style="text-align: center;"><u>YES</u> <u>NO</u></p> <p>YES = cannot prequalify</p>
<div style="display: flex; align-items: center; justify-content: center;">  <div> <p>If you answered:</p> <p>"NO" to questions 1-2 or</p> <p>"YES" to questions 3-6, then STOP.</p> <p>You are not eligible for prequalification at this time.</p> </div> </div>		

Scored Questions		
1.	<p>Has your Firm paid liquidated damages pursuant to a contract for a project with either a public or private owner within the past five (5) years? (Please circle one).</p> <p>If YES, explain and indicate on separate signed sheet(s) the project name(s), damages(s), and date(s).</p>	<p><u>YES</u> <u>NO</u></p>
2.	<p>Has your Firm paid a premium of more than one percent (1%) for a performance and payment bond on any project(s) within the past five (5) years? (Please circle one).</p> <p>If YES, explain and indicate on separate signed sheet(s) the project name(s), the premium amount(s), and date(s).</p>	<p><u>YES</u> <u>NO</u></p>
3.	<p>Has any insurer had to pay amounts to third parties that were in any way related to construction activities of your Firm within the past five (5) years? (Please circle one).</p> <p>If YES, explain and indicate on separate signed sheet(s) the project name(s), the amount(s) paid, and date(s).</p>	<p><u>YES</u> <u>NO</u></p>
4.	<p>Has your Firm's Workers' Compensation Experience Modification Rate exceeded 1.0 at any time for the past five (5) premium years? (Please circle one).</p> <p>If YES, explain and indicate on separate signed sheet(s) the EMR(s) and the applicable date(s).</p>	<p><u>YES</u> <u>NO</u></p>
5.	<p>Has there been a period when your Firm had employees but was without workers' compensation insurance or state-approved self-insurance within the past five (5) years? (Please circle one).</p> <p>If YES, explain and indicate on separate signed sheet(s) the reason(s) for not having this insurance and the applicable date(s).</p>	<p><u>YES</u> <u>NO</u></p>
6.	<p>Has your Firm declared bankruptcy or been placed in receivership within the past five (5) years? (Please circle one).</p> <p>If YES, explain and indicate on separate signed sheet(s) the type of bankruptcy, the Firm's current recovery plan, and the applicable date(s).</p>	<p><u>YES</u> <u>NO</u></p>
7.	<p>Has your Firm been denied bond coverage by a surety company, or has there been a period of time when your Firm had no surety bond in place during a public construction project when one was required within the past five (5) years? (Please circle one).</p> <p>If YES, provide details on a separate signed sheet indicating the date(s) when your Firm was denied coverage and the name of the company or companies which denied coverage; and the period(s) during which you had no surety bond in place.</p>	<p><u>YES</u> <u>NO</u></p>
8.	<p>Has a project owner, general contractor, architect, or construction manager filed claim(s) in an amount exceeding \$50,000 against your Firm, or has your Firm filed claim(s) in an amount exceeding \$50,000 against a project owner, general contractor, architect, or construction manager in the past five (5) years?</p> <p>If YES, explain and indicate on separate signed sheet(s) the project name(s), claim(s) and the date(s) of claim(s).</p>	<p><u>YES</u> <u>NO</u></p>

9.	Has your Firm or an Associated Firm been cited and/or assessed any penalties for non-compliance with state and/or federal laws and/or regulations, including public bidding requirements and Labor Code violations, within the past five (5) years? If "YES," indicate on separate signed sheet(s) the project name(s), violation(s), and date(s) of citation(s) and/or assessment(s).	YES NO
10.	Has your Firm been cited and/or assessed penalties by the Environmental Protection Agency, any air quality management district, any regional water quality control board, or any other environmental agency within the past five (5) years? If "yes," indicate on separate signed sheet(s) the project name(s), violation(s), and date(s) of citation.	YES NO
11.	Has CAL OSHA and/or federal Occupational Safety and Health Administration cited and assessed penalties against your Firm, including any "serious," "willful" or "repeat" violations of safety or health regulations within the past five (5) years? If "yes," indicate on separate signed sheet(s) the project name(s), violation(s), and date(s) of citation. If the citation was appealed and a decision has been issued, state the case number and the date of the decision.	YES NO
12.	Has your Firm been required to pay either back wages or penalties for its failure to comply with California's prevailing wage laws, with California's apprenticeship laws or regulations, or with federal Davis-Bacon prevailing wage laws within the past five (5) years? If "yes," indicate on separate signed sheet(s) the project name(s), the nature of the violation(s), the name and owner of the project(s), the number of employees who were initially underpaid and the amount of back wages and penalties that your Firm was required to pay.	YES NO
13.	Does your Firm require weekly , documented safety meetings to be held for construction employees and field supervisors during the course of a project?	YES NO
14.	Provide the name, address and telephone number of the apprenticeship program (approved by the California Apprenticeship Council) from whom you intend to request the dispatch of apprentices to your Firm for use on any public work project for which you are awarded a contract by the District.	

CONTRACTOR PROJECT REFERENCES	
<ul style="list-style-type: none"> List <u>ALL</u> projects in which your Firm has participated as a contractor or first-tier subcontractor during the past <u>five (5) years</u> with a Firm contract value of more than <u>\$250,000.</u> You may limit your response to the twenty (20) most-recently completed projects, but you <u>must</u> include at least the three (3) most recent California K-12 public school projects with a contract value of more than \$500,000 performed by your Firm. Include all information indicated below on separate signed sheets as necessary, and explain or clarify any response as necessary. 	
Project Name/Identification:	
Project address/location:	
Project owner, contact person, and telephone:	
Project architect name and telephone number:	
If contractor was a subcontractor on the project, name of general contractor and telephone number:	
Scope of work:	
Original completion date:	
Date completed:	
Initial contract value (as of time of bid award):	
Final contract value:	
Did the project include constructing or modernizing an earthquake resistant building?	

CERTIFICATION

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

Date: _____

Proper Name of Contractor: _____

Signature: _____

By: _____ (Print Name)

Title: _____

ATTACHMENT 4

FORM LEASE-LEASEBACK CONTRACT

SITE LEASE

This Site lease ("**Site Lease**") dated _____, 20____ ("Effective Date"), is made and entered into by and between the **Alameda Unified School District**, as lessor ("**District**"), and **@Contractor**, as lessee ("**Contractor**") (together, the "**Parties**").

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

School Site(s) or Site(s)	Address
_____ School	_____, CA 9 _____

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

WHEREAS, the District desires to provide for the construction of **@Project Name** ("**Project(s)**"); and

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

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

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

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

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

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

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

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

1. **Definitions.** Unless the context clearly otherwise requires, or expressly stated otherwise, all words and phrases defined in the Facilities Lease, and attachments thereto, shall have the same meaning in this Site Lease.
2. **Exhibits.** The following Exhibits are attached to and by reference incorporated and made a part of this Site Lease.
 - 2.1. **Exhibit A:** Descriptions of the Site(s)
 - 2.2. **Exhibit B:** Descriptions of the Project Site(s) and Descriptions of the Project(s)
3. **Lease of the Project Site(s).** The District hereby leases to the Contractor, and the Contractor hereby leases from the District, the Project Site(s), subject only to Permitted Encumbrances, in accordance with the provisions of this Site Lease, to have and to hold for the term of this Site Lease. This Site Lease shall only take effect if the Facilities Lease is executed by the District and Contractor within three (3) days of execution of this Site Lease.
 - 3.1. **Work in Phases.** If the Work of the Project is to be performed in phases, then the only areas bound by the terms of this Site Lease are:
 - 3.1.1. As indicated to be within specific phases of the Project and
 - 3.1.2. For which portions of the Lease Payments as provided for in the Facilities Lease are still owing,
4. **Leaseback of the Project Site(s).** The Parties agree that the Project Site(s) will be leased back to the District pursuant to the Facilities Lease for the term thereof.
5. **Term.** The term of this Site Lease shall commence as of the Effective Date and shall terminate on the last day of the Term of the Facilities Lease, provided the District has paid to the Contractor, or its assignee, all payments which may be due under the Facilities Lease, and provided this Site Lease has not been terminated pursuant to the termination provisions of the Facilities Lease.
6. **Payment.** In consideration for the lease of the Project Site(s) by the District to the Contractor and for other good and valuable consideration, the Contractor shall pay One Dollar (\$1.00) per year to the District upon execution of this Site Lease until the expiration or early termination of this Site Lease and/or the Facilities Lease.
7. **Termination.** This Site Lease may be terminated only as permitted in the Facilities Lease. If the District terminates the Facilities Lease pursuant to the provisions in the Facilities Lease, then this Site Lease shall also terminate.
8. **Title to Site(s).** During the term of this Site Lease, the District shall hold fee title to the Site(s), including the Project Site(s), and nothing in this Site Lease or the Facilities Lease shall change, in any way, the District's ownership interest in the Site(s).
9. **Improvements.** Title to all improvements made on the Project Site(s) during the term hereof shall be held, vest and transfer pursuant to the terms of the Facilities Lease.

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

15.6. Condemnation Proceedings.

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

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

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

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

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

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

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

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

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

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

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

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

the indemnity requirements as indicated in the Facilities Lease.

18. Assignment and Subleasing. This Site Lease may be assigned and/or the Project Site(s) subleased, as a whole or in part, by the Contractor only upon the prior written consent of the District to such assignment or sublease, which shall not be unreasonably withheld.

19. Restrictions on District. The District agrees that it will not mortgage, sell, encumber, assign, transfer or convey the Project Site(s) or any portion thereof during the term of this Site Lease in any way that would interfere with or diminish Contractor's interests indicated in this Site Lease.

20. Liens and Further Encumbrances. Contractor agrees to keep the Project Site(s) and every part thereof free and clear of any and all encumbrances and/or liens, including without limitation, pledges, charges, encumbrances, claims, mechanic liens and/or other liens for or arising out of or in connection with work or labor done, services performed, or materials or appliances used or furnished for or in connection with the Project Site(s) or the Project. Pursuant to the Facilities Lease, Contractor further agrees to pay promptly and fully and discharge any and all claims on which any encumbrance and/or lien may or could be based, and to save and hold District free and harmless from any and all such liens, mortgages, and claims of liens and suits or other proceedings pertaining thereto. This subsection does not apply to Permitted Encumbrances.

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

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

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

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

If to Contractor:
@Contractor

_____, CA 9_____
ATTN: _____

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

With a copy to:

_____, CA 9_____
ATTN: _____

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

22. Binding Effect. This Site Lease shall inure to the benefit of and shall be binding upon the Contractor and the District and their respective successors and assigns.

23. No Additional Waiver Implied by One Waiver. In the event any agreement contained in this Site Lease should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive future compliance with any term hereof or any other breach hereunder.

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

Lease or the Facilities Lease.

- 25. Amendments, Changes and Modifications.** Except as to the termination rights of both Parties as indicated in the Facilities Lease, this Site Lease may not be amended, changed, modified, altered or terminated without the written agreement of both Parties hereto.
- 26. Execution in Counterparts.** This Site Lease may be executed in several counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.
- 27. Contractor and District Representatives.** Whenever under the provisions of this Site Lease approval by the Contractor or the District is required, or the Contractor or the District is required to take some action at the request of the other, such approval or such request shall be given for the Contractor by the Contractor Representative and for the District by the District Representative, and any party hereto shall be authorized to rely upon any such approval or request.
- 28. Applicable Law.** This Site Lease shall be governed by and construed in accordance with the laws of the State of California, and venue shall be in the County within which the Site(s) is located.
- 29. Attorney's Fees.** If either party brings an action or proceeding involving the Site(s) or to enforce the terms of this Site Lease or to declare rights hereunder, each party shall bear the cost of its own attorneys' fees.
- 30. Captions.** The captions or headings in this Site Lease are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Site Lease.
- 31. Prior Agreements.** This Site Lease and the corresponding Facilities Lease collectively contain all of the agreements of the Parties hereto with respect to any matter covered or mentioned in this Site Lease and no prior agreements or understanding pertaining to any such matter shall be effective for any purpose.
- 32. Further Assurances.** Parties shall promptly execute and deliver all documents and instruments reasonably requested to give effect to the provisions of this Site Lease.
- 33. Recitals Incorporated.** The Recitals set forth at the beginning of this Site Lease are hereby incorporated into its terms and provisions by this reference.
- 34. Time of the Essence.** Time is of the essence with respect to each of the terms, covenants, and conditions of this Site Lease.
- 35. Force Majeure.** A party shall be excused from the performance of any obligation imposed in this Site Lease as indicated in the Facilities Lease.
- 36. Interpretation.** None of the Parties hereto, nor their respective counsel, shall be deemed the drafters of this Site Lease or the Facilities Lease for purposes of construing the provisions of each. The language in all parts of this Site Lease shall in all cases be construed according to its fair meaning, not strictly for or against any of the Parties hereto.

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

Alameda Unified School District

@Contractor

Signature: _____

Signature: _____

Print Name: _____

Print Name: _____

Print Title: _____

Print Title: _____

**EXHIBIT A
TO SITE LEASE**

(IDENTICAL TO EXHIBIT A TO THE FACILITIES LEASE)

**EXHIBIT B
TO SITE LEASE**

(IDENTICAL TO EXHIBIT B TO THE FACILITIES LEASE)

FACILITIES LEASE

This Facilities lease ("**Facilities Lease**"), dated _____, 20____ ("Effective Date"), is made and entered into by and between **@Contractor**, as, as sublessor ("**Contractor**"), and the **Alameda Unified School District**, as sublessee ("**District**") (together, the "**Parties**").

RECITALS

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

School Site(s) or Site(s)	Address
_____ School	_____, CA 9 _____

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

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

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

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

- _____ [Architect Name]

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

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

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

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

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

WHEREAS, the Parties have performed all acts, conditions and things required by law to exist, to have happened and to have been performed precedent to and in connection with the execution and entering into of this Facilities

Lease and all those conditions precedent do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the Parties hereto are now duly authorized to execute and enter into this Facilities Lease; and

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

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

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

1.1. "Contractor" or "Lessor" means **@Contractor**, a Corporation, organized and existing under the laws of the State of California, and its successors and assigns.

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

1.3. "Contract Documents" are defined in **Exhibit D** to this Facilities Lease.

1.4. "District" or "Lessee" means the **Alameda Unified School District**, a school district duly organized and existing under the laws of the State of California.

1.5. "District Representative" means the Superintendent of the District, or any other person authorized by the Board of Trustees of the District to act on behalf of the District under or with respect to this Facilities Lease.

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

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

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

2.1. Exhibit A: Descriptions of the Site(s): The descriptions of the real property constituting the Site(s).

2.2. Exhibit B: Descriptions of The Project Site(s) and Descriptions of the Project(s): The description of the

Project Site(s) and the Project.

2.3. Exhibit C: Guaranteed Project Cost and Other Project Cost(s), Funding, and Payment Provisions for Each of the Leased Project Site(s): A detailed description of the Guaranteed Project Cost and the provisions related to the payment of that amount by the District to the Contractor.

2.4. Exhibit D: General Construction Provisions: The provisions generally describing the Project's construction.

2.5. Exhibit E: Memorandum of Commencement Date for the Facilities Lease for Each of the Leased Project Site(s): The Memorandum which will memorialize the commencement and expiration dates of the Term.

2.6. Exhibit F: Construction Schedules for each of the Project Site(s): The Construction Schedule(s) shall be submitted in computer generated network format and shall be organized by Activity Codes representing the Contractor's intended sequencing of the Work, and with time scaled network diagrams of activities. The Preliminary Construction Schedule(s) shall include activities such as mobilization, preparation of submittals, specified review periods, procurement items, fabrication items, milestones, and all detailed construction activities.

2.7. Exhibit G: Schedule(s) of Values for Each of the Project Site(s)

2.8. Exhibit H: Subcontractor Procurement Process

2.9. Exhibit I: Certificates and Bonds to Lease-Leaseback Documents and Division 1 Documents to Lease-Leaseback Documents

2.10. Exhibit J: Plans, Technical Specifications, and Drawings

2.11. Exhibit K: Revisions to Contract Documents

2.12. Exhibit L: Agreement for Preliminary Services [IF APPLICABLE]

2.13. Exhibit M: Project Labor Agreement between the District and the Alameda Building and Trades Council dated [REDACTED].

2.14. Exhibit N: Federal Contracting Provisions.

3. Lease of Project and Project Site(s).

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

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

3.3. As to the Project Site(s), this Facilities Lease shall be deemed and constitute a sublease.

3.4. No Disruption to Educational Activities

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

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

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

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

4. Term.

4.1. Facilities Lease is Legally Binding. This Facilities Lease is legally binding on the Parties upon execution by the Parties and the District Board's approval of this Facilities Lease. The Term of this Facilities Lease for the purposes of District's occupancy shall commence after the Parties have satisfied all preconditions for the Parties execution of the Memorandum of Commencement as set forth in "Timing of Lease Payments" in **Exhibit C**, and then on the earlier of the following two (2) events ("**Commencement Date**"), and shall terminate **twelve (12) months** after the Commencement Date (the "**Term**"):

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

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

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

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

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

4.5. The Term may be extended or shortened upon the occurrence of the earliest of any of the following events, which shall constitute the end of the Term:

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

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

- 4.5.3. A third-party taking of the Project under Eminent Domain, only if the Term is ended as indicated more specifically herein.
- 4.5.4. Damage or destruction of the Project, only if the Term is ended as indicated more specifically herein.
- 5. **Payment.** In consideration for the lease of the Project Site(s) by the Contractor back to the District and for other good and valuable consideration, the District shall make the Tenant Improvements Payments and Lease Payments pursuant to the "Payment of the Guaranteed Project Cost" Provisions as indicated in **Exhibit C**.
- 6. **Termination.**

6.1. Termination Due to Default of the Contractor.

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

6.1.2. Default of Contractor includes, without limitation:

- 6.1.2.1. Contractor refuses or fails to execute the Work or any separable part thereof with sufficient diligence as will ensure its completion within the time specified or any extension thereof, or
- 6.1.2.2. Contractor fails to complete said Work within the time specified or any extension thereof, or
- 6.1.2.3. Contractor persistently fails or refuses to perform Work or provide material of sufficient quality as to be in compliance with Contract Documents; or
- 6.1.2.4. Contractor files a petition for relief as a debtor, or a petition is filed against the Contractor without its consent, and the petition is not dismissed within sixty (60) days; or
- 6.1.2.5. Contractor makes a general assignment for the benefit of its creditors, or a receiver is appointed on account of its insolvency; or
- 6.1.2.6. Contractor persistently or repeatedly refuses or fails, except in cases for which extension of time is provided, to supply enough properly skilled workers or proper materials to complete the Work in the time specified; or
- 6.1.2.7. Contractor fails to make prompt payment to Subcontractors, or for material, or for labor; or
- 6.1.2.8. Contractor persistently disregards laws, or ordinances, or instructions of District; or
- 6.1.2.9. Contractor fails to supply labor, including that of Subcontractors, that can work in harmony with all other elements of labor employed or to be employed on the Work; or
- 6.1.2.10. Contractor or its Subcontractor(s) is/are otherwise in breach, default, or in substantial violation of any provision of this Contract.

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

- 6.1.3.1. Within three (3) days after service upon it of the notice of tender, gives District written

notice of Surety's intention to takeover and perform this Contract; and

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

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

6.2. Termination Due to Default by District. If District defaults pursuant to the provision(s) of the Facilities Lease, the Contractor, or its assignee, will have the right, for the then remaining term of the Site Lease, to:

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

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

6.2.3. Relet the Project Site(s).

6.3. Termination of Contractor for Convenience. The District in its sole discretion may terminate for convenience this Facilities Lease upon three (3) days written notice to the Contractor. In case of a termination for convenience, the Contractor shall have no claims against the District except the actual portion of the Guaranteed Project Cost expended for labor, materials, and services performed that is unpaid and can be documented through timesheets, invoices, receipts, or otherwise, up to and until the date of termination, plus necessary and reasonable documented demobilization costs. If the District terminates for convenience this Facilities during or after completion of Contractor's performance of the Preliminary Services, the Contractor will be entitled to payment for all undisputed amounts for the performance of Preliminary Services as provided for in **Exhibit C**, but shall not be entitled to any additional compensation.

6.4. Lease Terminable Only as Set Forth Herein. Except as otherwise expressly provided in this Facilities Lease and the "Termination and Suspension and Scope Reduction" section of **Exhibit D** to this Facilities Lease, this Facilities Lease shall not terminate, nor shall District have any right to terminate this Facilities Lease or be entitled to the abatement of any all necessary payments pursuant to the "Payment of Guaranteed Project Cost" Provisions as indicated in **Exhibit C** or any reduction thereof. The obligations hereunder of District shall not be otherwise affected by reason of any damage to or destruction of all or any part of the Project; the taking of the Project or any portion thereof by condemnation or otherwise; the prohibition, limitation or restriction of District's use of the Project; the interference with such use by any private person or Contractor; the District's acquisition of the ownership of the Project (other than pursuant to an express provision of this Facilities Lease); any present or future law to the contrary notwithstanding. It is the intention of the Parties hereto that all necessary payments pursuant to the "Payment of Guaranteed Project Cost Provisions" as indicated in **Exhibit C** shall continue to be payable in all events, and the obligations of the District hereunder shall continue unaffected unless the requirement to pay or perform the same shall be terminated or modified pursuant to an express provision of this Facilities Lease.

6.5. Nothing contained herein shall be deemed a waiver by the District of any rights that it may have to bring a separate action with respect to any Event of Default by Contractor hereunder or under any other agreement to recover the costs and expenses associated with that action. The District covenants and agrees that it will remain obligated under this Facilities Lease in accordance with its terms.

6.6. Following Project Completion, and to the extent applicable, the District will not take any action to terminate, rescind or avoid this Facilities Lease, notwithstanding the bankruptcy, insolvency, reorganization, composition, readjustment, liquidation, dissolution, winding-up or other proceeding affecting Contractor or any assignee of Contractor in any such proceeding, and notwithstanding any action with respect to this Facilities Lease which may be taken by any trustee or receiver of Contractor or of any assignee of Contractor in any such proceeding or by any court in any such proceeding. Following Project Completion, except as otherwise expressly provided in this Facilities Lease, District waives all rights now or hereafter conferred by law to quit, terminate or surrender this Facilities Lease or the Project or any part thereof.

6.7. District acknowledges that Contractor may assign an interest in some or all of the necessary payments pursuant to the "Payment of Guaranteed Project Cost Provisions" as indicated in **Exhibit C** to a lender in order to obtain financing for the cost of constructing the Project and that the lender may rely on the foregoing covenants and provisions in connection with such financing.

7. Title.

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

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

7.3. During the Term of this Facilities Lease, the Contractor shall hold title to the Project improvements provided by Contractor which comprise fixtures, repairs, replacements or modifications thereto.

7.4. If the District makes all necessary payments under the Guaranteed Project Cost Provisions indicated in **Exhibit C**, all right, title and interest of Contractor, its assigns and successors in interest in and to the Project and the Project Site(s) shall be transferred to and vested in the District at the end of the Term. Title shall be transferred to and vested in the District hereunder without the necessity for any further instrument of transfer; provided, however, that Contractor agrees to execute any instrument requested by District to memorialize the termination of this Facilities Lease and transfer of title to the Project.

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

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

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

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

9.3. No Violations. Neither the execution and delivery of this Facilities Lease nor the Site Lease, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or

provisions of any restriction or any agreement or instrument to which the District is now a party or by which the District is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the District, or upon the Project Site(s), except Permitted Encumbrances

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

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

9.6. Condemnation Proceedings.

- 9.6.1. District covenants and agrees, but only to the extent that it may lawfully do so, that so long as this Facilities Lease remains in effect, the District will not seek to exercise the power of eminent domain with respect to the Project so as to cause a full or partial termination of this Facilities Lease.
- 9.6.2. If for any reason the foregoing covenant is determined to be unenforceable or in some way invalid, or if District should fail or refuse to abide by such covenant, then, to the extent it may lawfully do so, District agrees that the financial interest of Contractor shall be as indicated in Section 6.1 of this Facilities Lease.

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

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

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

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

10.4. No Bankruptcy. Contractor is not now and has never been in bankruptcy or receivership.

10.5. No Litigation. There is no pending or, to the knowledge of Contractor, threatened action or

proceeding before any court or administrative agency which will materially adversely affect the ability of Contractor to perform its obligations under this Facilities Lease.

10.6. No Encumbrances. Contractor shall not pledge any District payments of any kind, related to the Site Lease, this Facilities Lease, or in any way derived from the Project Site(s), and shall not mortgage or encumber the Project Site(s), except as may be specifically permitted pursuant to the provisions of this Facilities Lease related to Contractor's financing the construction of the Project.

10.7. Continued Existence. Contractor shall not voluntarily commence any act intended to dissolve or terminate the legal existence of Contractor, at or before the latest of the following:

10.7.1. Eighteen (18) months following Project Completion,

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

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

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

11. Preliminary Services [IF APPLICABLE]

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

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

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

12. Construction of Project

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

12.2. Federal Funding.

12.2.1. Contractor acknowledges that this Project is funded, in whole or part, by federal Elementary and Secondary School Emergency Relief Fund ("ESSER") funds. This Project is subject to federal procurement requirements. Contractor agrees to fully comply with all federal requirements applicable to ESSER funds, including, without limitation, the federally required contract provisions hereto as **Exhibit N**.

12.3. Construction of Project.

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

12.3.2. Contract Time / Construction Schedule.

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

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

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

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

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

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

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

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

12.3.5. **Guaranteed Project Cost.** Contractor will cause the Project to be constructed within the

Guaranteed Project Cost as set forth and defined in the Guaranteed Project Cost Provisions indicated in **Exhibit C** and Contractor will not seek additional compensation from District in excess of that amount.

12.3.6. **Modifications.** If the DSA requires changes to the Contract Documents submitted by District to Contractor, and those changes change the construction costs and/or construction time for the Project, then those changed costs will be handled as a change in the Work pursuant to the provisions of **Exhibit D**.

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

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

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

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

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

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

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

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

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

15. Taxes and Other Impositions. All ad valorem real property taxes, special taxes, possessory interest taxes, bonds and special lien assessments or other impositions of any kind with respect to the Project, the Project Site(s) and the improvements thereon, charged to or imposed upon either Contractor or the District or their respective interests or estates in the Project, shall at all times be paid by District. In the event any possessory interest tax is levied on Contractor, its successors and assigns, by virtue of this Facilities Lease or the Site Lease, District shall pay such possessory interest tax directly, if possible, or shall reimburse Contractor, its successors and assigns for the full amount thereof within thirty (30) days after presentation of proof of payment by Contractor.

16. Insurance

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

16.1.1. Commercial General Liability and Automobile Liability Insurance. Contractor shall procure and maintain, during the life of the Project, Commercial General Liability Insurance and Automobile Liability Insurance that shall protect Contractor, District, and the State, from all claims for bodily injury, property damage, personal injury, death, advertising injury, and medical payments arising from operations under the Project. Contractor shall ensure that Products Liability and Completed Operations coverage, Fire Damage Liability, and Any auto including owned and non-owned, are included within the above policies and at the required limits, or Contractor shall procure and maintain these coverages separately.

16.1.2. Umbrella Liability Insurance

16.1.2.1. Contractor may procure and maintain, during the life of the Project, an Umbrella Liability Insurance Policy to meet the policy limit requirements of the required policies if Contractor's underlying policy limits are less than required.

16.1.2.2. There shall be no gap between the per occurrence amount of any underlying policy and the start of the coverage under the Umbrella Liability Insurance Policy. Any Umbrella Liability Insurance Policy shall protect Contractor, District, and the State, in amounts and including the provisions and requirements for Commercial General Liability and Automobile Liability and Employers' Liability Insurance.

16.1.3. Subcontractor: Contractor shall require its Subcontractor(s), if any, to procure and maintain Commercial General Liability Insurance, Automobile Liability Insurance, and Umbrella Liability Insurance with minimum limits as agreed to by the District's risk manager.

16.1.4. Workers' Compensation and Employers' Liability Insurance

16.1.4.1. In accordance with provisions of section 3700 of the California Labor Code, the Contractor and every Subcontractor shall be required to secure the payment of compensation to its employees.

16.2. Contractor shall procure and maintain, during the life of the Project, Workers' Compensation Insurance and Employers' Liability Insurance for all of its employees engaged in work under the Project, on/or at the Site of the Project. This coverage shall cover, at a minimum, medical and surgical treatment, disability benefits, rehabilitation therapy, and survivors' death benefits. Contractor shall require its Subcontractor(s), if

any, to procure and maintain Workers' Compensation Insurance and Employers' Liability Insurance for all employees of Subcontractor(s). Any class of employee or employees not covered by a Subcontractor's insurance shall be covered by Contractor's insurance. If any class of employee or employees engaged in Work under the Project, on or at the Site of the Project, is not protected under the Workers' Compensation Insurance, Contractor shall provide, or shall cause a Subcontractor to provide, adequate insurance coverage for the protection of any employee(s) not otherwise protected before any of those employee(s) commence work.

16.2.1. **Contractor's Risk Insurance: Contractor's Risk "All Risk" Insurance.** Contractor shall procure and maintain, during the life of the Project, Contractor's Builders Risk (Course of Construction), or similar first party property coverage acceptable to the District, issued on a replacement cost value basis. The cost shall be consistent with the total replacement cost of all insurable Work of the Project included within the Contract Documents. Coverage is to insure against all risks of accidental physical loss and shall include without limitation the perils of vandalism and/or malicious mischief (both without any limitation regarding vacancy or occupancy), sprinkler leakage, civil authority, sonic disturbance, earthquake, flood, collapse, wind, fire, lightning, and smoke. Coverage shall include debris removal, demolition, increased costs due to enforcement of all applicable ordinances and/or laws in the repair and replacement of damaged and undamaged portions of the property, and reasonable costs for the Architect's and engineering services and expenses required as a result of any insured loss upon the Work and Project, including completed Work and Work in progress, to the full insurable value thereof. The deductible for this insurance shall be paid by Contractor.

16.2.2. **Professional Liability Insurance.** This insurance shall cover the Contractor and his/her sub-consultant(s) for professional liability in at least the amounts set forth herein below. Additionally, the policy must contain terms or endorsements extending coverage that requires the insurer to defend and indemnify for acts which happen before the effective date of the policy provided the claim is first made during the policy period, coverage to continue through Project Completion plus "tail" coverage for two (2) years thereafter.

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

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

16.2.4.1. Contractor shall not commence Work nor shall it allow any Subcontractor to commence Work under the Project, until Contractor and its Subcontractor(s) have procured all required insurance and Contractor has delivered in duplicate to the District all insurance certificates indicating the required coverages have been obtained, and the District has approved these documents. If the District requests copies of Contractor's insurance policies and/or endorsements from Contractor, Contractor shall provide them within fourteen (14) days.

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

16.2.4.2.1. A clause stating:

“This policy shall not be amended, canceled or modified and the coverage amounts shall not be reduced until notice has been mailed to the District and Construction Manager stating date of amendment, modification, cancellation or reduction. Date of amendment, modification, cancellation or reduction may not be less than thirty (30) days after date of mailing notice.”

16.2.4.2.2. Language stating in particular those insured, extent of insurance, location and operation to which insurance applies, expiration date, to whom cancellation and reduction notice will be sent, and length of notice period.

16.2.4.3. All endorsements, certificates and insurance policies shall state that District, its Board members, employees and agents, and the State of California, are named additional insureds under all policies except Workers’ Compensation Insurance, Professional Liability Insurance, and Employers’ Liability Insurance. After the Project has reached Completion, the Contractor need only retain the named additional insureds on the Completed Operations Policy.

16.2.4.4. Contractor’s and Subcontractors’ insurance policy(s) shall be primary and non-contributory to any insurance or self-insurance maintained by District, its trustees, employees and/or agents, the State of California, Construction Manager(s), Project Manager(s), Inspector(s), and/or Architect(s).

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

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

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

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

Commercial General Liability	Combined Single Limit	\$2,000,000
	General Aggregate	\$4,000,000
	Product Liability and Completed Operations	\$2,000,000
Automobile Liability – Any Auto	Combined Single Limit NO General Aggregate	\$2,000,000
Workers Compensation		Statutory limits pursuant to State law
Employers’ Liability		\$3,000,000
Contractors Risk (Course of Construction)		Issued for the value and scope of Work indicated herein, until the Project has reached Completion
Excess Liability		\$5,000,000

Property of Others	Combined Single Limit General Aggregate	Issued for the value and scope of Work stored off-site.
Professional Liability, if required by the District and either: - the premium is approved by the District, or - by each subconsultant and/or designer of documents produced by Contractor.		\$1,000,000 per occurrence and annual aggregate

16.3. District's Insurance.

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

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

17. Indemnification.

17.1. Contractor's Indemnity Obligation. The Contractor shall indemnify, defend with legal counsel reasonably acceptable to the District, protect and hold harmless the District, and their respective board members, officers, representatives, and employees, in both individual and official capacities ("Indemnitees"), against all suits, claims, damages, losses, and expenses, caused by, arising out of, resulting from, or incidental to, the performance of the Work under this Contract by the Contractor or its Subcontractors to the full extent allowed by the laws of the State of California, and not to any extent that would render these provisions void or unenforceable, including, without limitation, any such suit, claim, damage, loss, or expense attributable to, without limitation, bodily injury, sickness, disease, death, subcontractor procurement/selection, alleged patent violation or copyright infringement, or to injury to or destruction of tangible property (including damage to the Work itself not covered by Contractor's and/or District's insurance policy(s) and including the loss of use resulting therefrom), except to the extent caused by the negligence or willful misconduct of any Indemnatee. This agreement and obligation of the Contractor shall not be construed to negate, abridge, or otherwise reduce any right or obligation of indemnity that would otherwise exist as to any party or person described herein. This indemnification, defense, and hold harmless obligation includes any failure or alleged failure by Contractor to comply with any provision of law or the Contract Documents, including, without limitation, any stop notice actions, stop payment notice actions, or liens by the California Department of Labor Standards Enforcement.

17.1.1. The Contractor shall give prompt notice to the District in the event of any injury (including death), loss, or damage included herein. Without limitation of the provisions herein, if the Contractor's agreement to indemnify, defend, and hold harmless the Indemnitees as provided herein against liability for damage arising out of bodily injury to persons or damage to property caused by or resulting from the negligence of any of the Indemnitees shall to any extent be or be determined to be void or unenforceable, it is the intention of the Parties that these circumstances shall not otherwise affect the validity or enforceability of the Contractor's agreement to indemnify, defend, and hold harmless the rest of the Indemnitees, as provided herein, and in the case of any such suits, claims, damages, losses, or expenses caused in part by the default, negligence, or act or omission of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, and in part by any of the Indemnitees, the Contractor shall be and remain fully liable on its

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

- 17.1.2. In any and all claims against any of the Indemnitees by any employee of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the Contractor's indemnification obligation herein shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Contractor or any Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

17.2. District's Indemnity Obligation.

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

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

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

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

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

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

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

18. Eminent Domain.

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

18.1.1. The financial interest of Contractor shall be limited to the amount of principal payments pursuant to the Guaranteed Project Cost Provisions indicated in **Exhibit C** that are then due or past due together with all remaining and succeeding principal payments pursuant to the Guaranteed Project Cost Provisions indicated in **Exhibit C** for the remainder of the original Term.

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

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

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

18.3.1. This Facilities Lease shall continue in full force and effect and shall not be terminated by virtue of that partial taking and the Parties waive the benefit of any law to the contrary, and

18.3.2. There shall be a partial abatement of any principal payments pursuant to the Guaranteed Project Cost Provisions indicated in **Exhibit C** as a result of the application of the net proceeds of any eminent domain award to the prepayment of those payments hereunder. The Parties agree to negotiate, in good faith, for an equitable split of the net proceeds of any eminent domain award and a corresponding reduction in the payments required pursuant to the Guaranteed Project Cost Provisions indicated in **Exhibit C**, and

19. Damage and Destruction. If, following delivery of possession of the Project by Contractor to District, the Project is totally or partially destroyed due to fire, acts of vandalism, flood, storm, earthquake, Acts of God, or other casualty beyond the control of either party hereto, the Term shall end and District shall no longer be required to make any payments required pursuant to the Guaranteed Project Cost Provisions indicated in **Exhibit C** that are then due or past due or any remaining and succeeding principal payments pursuant to the Guaranteed Project Cost Provisions indicated in **Exhibit C** for the remainder of the original Term. The Contractor shall still be due any funds, payments, or disbursements from the District's rental interruption insurance to pay for the amounts that would otherwise have been due and owing from the District under **Exhibit C**.

20. Abatement.

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

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

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

20.3.1. Repair the Project to full use;

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

20.4. The District shall notify the Contractor of which course of action it desires to take within thirty (30)

days after the occurrence of the destruction or damage. The Net Proceeds of all insurance payable with respect to the Project shall be available to the District and shall be used to discharge the District's obligations under this Section.

21. Access

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

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

22. Assignment, Subleasing

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

22.1.1. This Facilities Lease and the obligation of the District to make the payments required pursuant to the Guaranteed Project Cost Provisions indicated in **Exhibit C** shall remain obligations of the District; and

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

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

23. Events of Default of District

23.1. Events of Default by District Defined. The following shall be "Events of Default" of the District under this Facilities Lease. The terms "Event of Default" and "Default" shall mean, whenever they are used as to the District in the Site Lease or this Facilities Lease, shall only be one or more of the following events:

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

23.1.2. Failure by the District to perform any material covenant, condition or agreement in this Facilities Lease and that failure continues for a period of forty-five (45) days after Contractor provides District with written notice specifying that failure and requesting that the failure be remedied; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, Contractor shall not unreasonably withhold its consent to an extension of such time if corrective action is instituted by the District within the applicable period and diligently pursued until the default is corrected.

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

Lease; provided, however, there shall be no right under any circumstances to accelerate any of the payments required pursuant to the Guaranteed Project Cost Provisions indicated in **Exhibit C** or otherwise declare those payments not then past due to be immediately due and payable.

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

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

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

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

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

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

- 23.2.3. The District agrees that the terms of this Facilities Lease constitute full and sufficient notice of the right of Contractor to re-rent the Project Site(s) in the Event of Default without effecting a surrender of this Facilities Lease, and further agrees that no acts of Contractor in performing a re-renting as permitted herein shall constitute a surrender or termination of this Facilities Lease, but that, on the contrary, in the event of an Event of Default by the District the right to re-rent the Project Site(s) shall vest in Contractor as indicated herein.

23.3. District's Continuing Obligation. Unless there has been damage, destruction, a Taking as described above, or the Contractor is in Default as indicated herein, the District shall continue to remain liable for the payments required pursuant to the Guaranteed Project Cost Provisions indicated in **Exhibit C** and those amounts shall be payable to Contractor at the time and in the manner as therein provided.

23.4. No Remedy Exclusive. No remedy herein conferred upon or reserved to Contractor is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Facilities Lease or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle Contractor to exercise any remedy reserved herein, it shall be necessary to give notice, as indicated in this Facilities Lease and by law.

24. Events of Default of Contractor

24.1. Events of Default by Contractor Defined. The following shall be "Events of Default" of the Contractor under this Facilities Lease. The terms "Event of Default" and "Default" shall mean, whenever they are used as to the Contractor in the Site Lease or this Facilities Lease, shall only be one or more of the following events:

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

- 24.1.2. Prior to Project Completion, Contractor is adjudged a bankrupt, or files for bankruptcy, or if it

should make a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of its insolvency;

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

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

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

24.2.1. If District terminates the Site Lease and the Facilities Lease pursuant to this section, the Project Site(s) and any improvements built upon the Project Site(s) shall vest in District upon termination of the Site Lease and Facilities Lease, and District shall thereafter be required to pay only the principal amounts then due and owing pursuant to the Guaranteed Project Cost Provisions indicated in **Exhibit C**, less any damages incurred by District due to Contractor's Default.

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

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

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

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

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

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

If to District:

Alameda Unified School District

2060 Challenger Drive

Alameda, CA 94501

ATTN: _____

If to Contractor:

@Contractor

_____, CA 9 _____

ATTN: _____

With a copy to:

Orbach Huff & Henderson LLP

6210 Stoneridge Mall Rd., Ste. 210

Pleasanton, CA 94588

ATTN: Glenn Gould

With a copy to:

_____, CA 9 _____

ATTN: _____

The Contractor and the District, by notice given hereunder, may designate different addresses to which

subsequent notices, certificates or other communications will be sent.

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

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

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

29. Amendments, Changes and Modifications. Except as to the termination rights of both Parties as indicated herein, this Facilities Lease may not be amended, changed, modified, altered or terminated without the written agreement of both Parties hereto.

30. Net-Net-Net Lease. This Facilities Lease shall be deemed and construed to be a “net-net-net lease” and the District hereby agrees that all payments it makes pursuant to the Guaranteed Project Cost Provisions indicated in **Exhibit C** shall be an absolute net return to Contractor, free and clear of any expenses, charges or set-offs.

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

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

33. Applicable Law. This Facilities Lease shall be governed by and construed in accordance with the laws of the State of California, and venued in the County within which the School Site(s) is located.

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

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

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

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

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

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

40. Force Majeure.

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

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

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

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

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

Alameda Unified School District

@Contractor

Signature: _____

Signature: _____

Print Name: _____

Print Name: _____

Print Title: _____

Print Title: _____

EXHIBIT A
TO FACILITIES LEASE

DESCRIPTION OF DISTRICT SITE(S)

_____ School

_____, CA 9 _____

[INSERT ARCHITECT DRAWING, AERIAL PHOTO / SCREEN-SHOT OF ENTIRE SCHOOL SITE]

EXHIBIT B
TO FACILITIES LEASE

DESCRIPTION OF PROJECT SITE(S)
AND
DESCRIPTIONS OF THE PROJECTS AT SCHOOL SITE(S)

[INCLUDE IF CONTRACTOR PERFORMS PRELIMINARY SERVICES AND PARTIES AMEND FOR GPC]

CONTRACTOR SHALL NOT BEGIN WORK ON THE CONSTRUCTION PHASE OF THE PROJECT UNTIL THE PARTIES HAVE AMENDED THE AGREEMENT TO INCLUDE A GUARANTEED PROJECT COST, AND THE DISTRICT HAS ISSUED A NOTICE TO PROCEED FOR CONSTRUCTION TO THE CONTRACTOR.

PROJECT SITE(S) DESCRIPTION:

Attached is a site diagram for the portions of School Site(s) that are subject to the Site Lease and the Facilities Lease and upon which Contractor will construct the Project(s).

[DESCRIBE PROJECT SITE(S) AND INSERT PICTURE/DRAWING/SCREEN SHOT OF PROJECT SITE(S)]

PROJECT(S) DESCRIPTION:

[EXAMPLE]: _____ Project consists of _____ phases. Phase _____ is demolition of _____ . Phase _____ is the Construction of _____

[Describe Project(s)]

**EXHIBIT C
TO
FACILITIES LEASE**

**GUARANTEED PROJECT COST AND
OTHER PROJECT COST, FUNDING, AND PAYMENT PROVISIONS**

1. Preliminary Services Payments. **[IF APPLICABLE]** The terms and conditions pertaining to the payment for Preliminary Services, if any, under the Facilities Lease, are set forth in the Agreement for Preliminary Services (**Exhibit L** to the Facilities Lease).

2. Site Lease Payments. As indicated in the Site Lease, Contractor shall pay One Dollar (\$1.00) per year to the District as consideration for the Site Lease until the expiration or early termination of the Site Lease and/or the Facilities Lease.

3. Guaranteed Project Cost (or Guaranteed Maximum Price). Pursuant to the Facilities Lease, Contractor will cause the Project to be constructed for Dollars (\$), ("**Guaranteed Project Cost**" or "**GPC**" or "**Guaranteed Maximum Price**" or "**GMP**"). Except as indicated herein for modifications to the Project approved by the District pursuant to **Exhibit D**, or by written amendment, Contractor will not seek additional compensation from District in excess of Guaranteed Project Cost. District shall pay the Guaranteed Project Cost to Contractor in the form of Tenant Improvement Payments and Lease Payments plus Interest as indicated herein. The Guaranteed Project Cost includes the following components and as further detailed herein:

3.1. Cost to Perform Work.

3.1.1. Subcontract Costs. Payments made by the Contractor to Subcontractors, which payments shall be made in accordance with the requirements of the Contract Documents. The final, contracted-for amount between the Contractor and each Subcontractor shall be the exact amount that is put into the final GPC, after all leveling between trades and subcontractors and without any added allowances or contingencies, unless specifically identified and approved, in advance, by the District.

3.1.2. Contractor-Performed Work. Costs incurred by the Contractor for self-performed work, if approved in advance by the District and procured pursuant to the Contract Documents.

3.2. General Conditions. The fixed amount to be paid for all costs for labor, equipment and materials for the items identified therein which are necessary for the proper management of the Project, and shall include all costs paid or incurred by the Contractor (except for insurance); all fees, permits, assessments and charges that are required to be paid to other agencies or entities to permit, authorize or entitle construction, reconstruction or completion of the Project; taxes; and all contributions, assessments and benefits, holidays, vacations, retirement benefits, and incentives, whether required by law or collective bargaining agreements or otherwise paid or provided by Contractor to its employees. The District reserves the right to request changes to the personnel, equipment, or facilities provided as General Conditions as may be necessary or appropriate for the proper management of the Project, in which case, the cost of General Conditions shall be increased or reduced accordingly.

3.3. Bonds and Insurance.

3.4. Overhead and Profit.

3.5. Contingency.

[OPTIONAL. AMOUNTS OF THE CONTINGENCY ARE TO BE NEGOTIATED AT THE TIME THE GUARANTEED PROJECT

COST IS SET.].

3.5.1. A contingency of [REDACTED] Dollars (\$) ("Contingency") is included in the Guaranteed Project Cost and may be used at the Contractor's request only upon obtaining the District's prior written approval. Prior to requesting the payment for any portion of the Contingency, Contractor must submit to the District a written request for the Contractor's use of the Contingency that shall include a description of the requested use of the Contingency and why it is necessary to complete the Project with sufficient detail and, if necessary, substantiation enabling the District to determine that the proposed use of the Contingency covers one of the items below. The Contingency shall only be for the following items:

3.5.1.1. Scope gaps;

3.5.1.2. Costs to address unforeseen safety items not contemplated by the Parties at the time of the execution of the Contract;

3.5.1.3. Construction associated with the refinement of incomplete design information within the Plans and Specifications that could have been identified and corrected prior to the District's issuance of the solicitation for this Project as part of a reasonable constructability review of the Documents on which the Guaranteed Project Cost is based; provided that the incomplete design information could not have been identified by Contractor's constructability review during Preliminary Phase, if any constructability review was performed by Contractor;

3.5.1.4. Damage that has occurred between trades during construction, excluding (a) costs of repairing or correcting Work damaged or improperly executed by workers, (b) work that was improperly or incorrectly performed by Contractor or its subcontractors or suppliers, or (c) damage that is covered by Contractor's or Subcontractor's insurance, excluding the District's insurance; or

3.5.1.5. Other items requested by the Contractor if approved by the District and in the District's sole discretion.

3.5.2. The Contingency shall only be used:

3.5.2.1. Upon Contractor demonstrating that the item was not otherwise in its or its Subcontractors' pricing for the Project; and

3.5.2.2. Only if the cost of the Work is not recoverable by Contractor from any other available funding source, including, without limitation, from others, by insurance or otherwise.

3.5.3. Contractor shall prepare documents for its use of Contingency through the "Changes in the Work" section of **Exhibit D**. Any PCO shall identify that Contractor shall be compensated out of the Contingency. The Contractor is entitled to mark-up its pricing in the same structure it can for a Change Order (see the "Format for Proposed Change Order" section in **Exhibit D**) when it uses the Contingency, but only if the Contractor did not include the Contingency amount when it priced its Fee, bonds and insurance, overhead or profit to establish the GPC. Contractor shall prepare an updated Schedule of Values that includes a line item for the Work approved by the District in connection with the PCO.

3.5.4. If Contractor depletes the Contingency, any costs for items referenced in this "Contingency" section shall be at the Contractor's sole expense.

3.5.5. The unused portion of the Contingency shall be retained by the District at the end of the Project.

3.6. Allowances. [IDENTIFY SPECIFIC SCOPES AND AMOUNTS.]. Allowances, as indicated below _____ Dollars (\$ _____) ("Allowance(s)") are included in the Guaranteed Project Cost and may be used at the Contractor's request only upon obtaining the District's prior written approval.

[LIST ANY, IF APPLICABLE]

Allowance to _____ [LIST SCOPE OF ALLOWANCE, IF APPLICABLE]	\$ _____ [LIST AMOUNT OF ALLOWANCE]
Allowance to _____ [LIST SCOPE OF ALLOWANCE, IF APPLICABLE]	\$ _____ [LIST AMOUNT OF ALLOWANCE]
Allowance to _____ [LIST SCOPE OF ALLOWANCE, IF APPLICABLE]	\$ _____ [LIST AMOUNT OF ALLOWANCE]

3.6.1. Prior to requesting the payment for any use of an Allowance, Contractor must submit to the District a written request for the Allowance that shall include a description of the requested use of the Allowance and why it is necessary to complete the Project.

3.6.2. Contractor shall prepare documents for its use of an Allowance through the "Changes in the Work" section of **Exhibit D**. Any PCO shall identify that Contractor shall be compensated out of an Allowance. The Contractor is entitled to mark-up its pricing in the same structure it can for a Change Order (see the "Format for Proposed Change Order" section in **Exhibit D**) when it uses an Allowance, but only if the Contractor did not include the Allowances amount when it priced its Fee, bonds and insurance, overhead or profit to establish the GPC. Contractor shall prepare an updated Schedule of Values that includes a line item for the Work approved by the District in connection with the PCO.

3.6.3. The unused portion of the Allowances shall be retained by the District at the end of the Project.

4. Payment of Guaranteed Project Cost. District shall pay the Guaranteed Project Cost to Contractor in the form of Tenant Improvement Payments and Lease Payments plus interest as indicated herein.

4.1. Tenant Improvement Payments. Prior to the District's taking delivery or occupancy of the Project, the District shall pay to Contractor _____ Dollars (\$ _____) ("Tenant Improvement Payment(s)"), based on the amount of Work satisfactorily performed and approved by the District less the total amount to be paid as Lease Payments, according to the Contractor's Schedule of Values (**Exhibit G** to the Facilities Lease) and pursuant to the provisions in **Exhibit D** to the Facilities Lease.

4.2. Lease Payments Plus Interest. Thirty (30) days after the Parties execute the Memorandum of Commencement Date attached to the Facilities Lease as **Exhibit E** and the Contractor has completed and satisfied the conditions indicated below, the District shall pay to Contractor _____ Dollars (\$ _____) ("Lease Payment(s)") plus interest, as indicated below.

4.2.1. It is the intent of the Parties that the Lease Payments plus interest will be kept from the Contractor's final payment application(s), including payment application(s) seeking payment of any Retention held pursuant to the Contract Documents.

4.2.2. The Lease Payments plus interest shall be consideration for the District's rental, use, and occupancy of the Project and the School Site(s) and shall be made in equal monthly installments for the duration of the Term.

4.2.3. The District represents that the total annual Lease Payment plus interest obligation does not surpass the District's annual budget and will not require the District to increase or impose additional taxes

or obligations on the public that did not exist prior to the execution of the Facilities Lease.

4.2.4. Fair Rental Value. District and Contractor have agreed and determined that the total Lease Payments plus interest constitute adequate consideration for the lease term in the Facilities Lease and are reasonably equivalent to the fair rental value of the Project. In making such determination, consideration has been given to the obligations of the Parties under the Facilities Lease and Site Lease, the uses and purposes which may be served by the Project and the benefits therefrom which will accrue to the District and the general public.

4.2.5. Each Payment Constitutes a Current Expense of the District.

4.2.5.1. The District and Contractor understand and intend that the obligation of the District to pay Lease Payments plus interest and other payments hereunder constitutes a current expense of the District and shall not in any way be construed to be a debt of the District in contravention of any applicable constitutional or statutory limitation or requirement concerning the creation of indebtedness by the District, nor shall anything contained herein constitute a pledge of the general tax revenues, funds or moneys of the District.

4.2.5.2. Lease Payments plus interest due hereunder shall be payable only from current funds which are budgeted and appropriated or otherwise made legally available for this purpose. This Facilities Lease shall not create an immediate indebtedness for any aggregate payments that may become due hereunder.

4.2.5.3. The District covenants to take all necessary actions to include the estimated Lease Payments plus interest in each of its final approved annual budgets.

4.2.5.4. The District further covenants to in good faith make all necessary appropriations (including any supplemental appropriations) from any source of legally available funds of the District for the actual amount of Lease Payments plus interest that come due and payable during the period covered by each such budget. Contractor acknowledges that the District has not pledged the full faith and credit of the District, State of California or any state agency or state department to the payment of Lease Payments plus interest or any other payments due hereunder. The covenants on the part of District contained in this Facilities Lease constitute duties imposed by law and it shall be the duty of each and every public official of the District to take such action and do such things as are required by law in the performance of the official duty of such officials to enable the District to carry out and perform the covenants and agreements in this Facilities Lease agreed to be carried out and performed by the District.

4.2.5.5. The Contractor cannot, under any circumstances, accelerate the District's payments under the Facilities Lease, but the District may elect to buyout the Facilities Lease as provided for herein.

4.2.6. Timing of Lease Payments. The first Lease Payment is due only after the following conditions have been completed and satisfied:

4.2.6.1. The Final Tenant Improvement Payment has been paid;

4.2.6.2. All applicable Retention (less the Lease Payments) has been paid pursuant to the terms of the Contract Documents;

4.2.6.3. The Parties have executed the Memorandum of Commencement Date, attached to the Facilities Lease as **Exhibit E**; and

4.2.6.4. The Contractor has provided a duly completed and executed "**Unconditional Waiver and Release upon Final Payment**" compliant with Civil Code section 8138 from all subcontractors of any tier and suppliers that each has been paid all amounts owing to it from the Contractor for all work on the Project.

4.2.7. The Lease Payment Amount shall be paid pursuant to the following structure and the annual interest rate shall be at percent. To the extent that the Term runs into a subsequent calendar year, the interest rate shall not adjust, unless agreed upon by the District in writing.

Date of Payment	(A) Lease Payments	(B) Interest Due on Lease Payment	Lease Payment plus interest due by District to Contractor (A + B)
30 Days after execution of Memorandum of Commencement and the above conditions have been completed and satisfied	1/12 of Lease Payment	\$__	\$__
30 days thereafter	1/12 of Lease Payment	\$__	\$__
30 days thereafter	1/12 of Lease Payment	\$__	\$__
30 days thereafter	1/12 of Lease Payment	\$__	\$__
30 days thereafter	1/12 of Lease Payment	\$__	\$__
30 days thereafter	1/12 of Lease Payment	\$__	\$__
30 days thereafter	1/12 of Lease Payment	\$__	\$__
30 days thereafter	1/12 of Lease Payment	\$__	\$__
30 days thereafter	1/12 of Lease Payment	\$__	\$__
30 days thereafter	1/12 of Lease Payment	\$__	\$__
30 days thereafter	1/12 of Lease Payment	\$__	\$__
30 days thereafter	1/12 of Lease Payment	\$__	\$__
Total	\$__	\$__	\$__

4.2.8. **Financed Portion of Lease Payments.** The District requires the Contractor to finance a portion of the Lease Payments and that financing is reflected in the table above.

4.3. In no event shall the cumulative total of the Tenant Improvement Payments and the Lease Payments plus interest ever exceed the Guaranteed Project Cost as defined herein, unless modified pursuant to **Exhibit D** to the Facilities Lease.

5. Changes to Guaranteed Project Cost.

5.1. As indicated in the Facilities Lease, the Parties may add or remove specific scopes of work from the Project. Based on these change(s), the Parties may agree to a reduction or increase in the Guaranteed Project Cost. If a cost impact or a change is agreed to by the Parties, it shall be reflected as a reduction or increase in the Tenant Improvement Payments and paid upon the payment request from the Contractor when the work is performed or deducted from the next payment request from the Contractor, as applicable. Any change to the Guaranteed Project Cost shall not affect the Lease Payments, nor the interest rate, unless expressly agreed upon by the District in writing.

5.2. The Parties acknowledge that the Guaranteed Project Cost is based on the Construction Documents, including the Plans and Specifications, as identified in **Exhibit J** to the Facilities Lease.

5.3. Cost Savings. Contractor shall work cooperatively with Architect, subcontractors and District, in good faith, to identify appropriate opportunities to reduce Project costs and promote cost savings. Any identified cost savings from the Guaranteed Project Cost shall be identified by Contractor, and if approved in writing by the District, that cost savings shall be deducted from the Guaranteed Project Cost. If any cost savings require revisions to the Construction Documents, Contractor shall work with the District with respect to revising the Construction Documents and, if necessary, obtaining the approval of DSA with respect to those revisions. At the District's discretion, any reasonable cost incurred by District and/or the Contractor for those revisions may be paid for out of the identified savings before it is deducted from the Guaranteed Project Cost. Contractor shall be entitled to an extension of Contract Time equal to the delay in Project Completion caused by any cost savings adopted by District, if requested in writing before the approval of the cost savings.

5.4. Insurance and Bond Reimbursements. At Project Completion, Contractor shall require reimbursement from its insurance brokers and/or insurers and its bond brokers and/or sureties, all portions of Contractor's bond premiums, either paid or to be paid, that are not at-risk due to a reduction in the Guaranteed Project Cost. All amounts of premium reimbursement that Contractor receives from the Contractor's insurance brokers and/or insurers and its bond brokers and or sureties, shall be withheld by District from Contractor's Lease Payment(s). The District shall estimate this amount until Contractor indicates what the total amount of this reimbursement.

6. Future Buyout of Facilities Lease. The District may choose to buyout the Lease Payments in a lump sum during the term of the Facilities Lease. The Parties agree that any buyout will be memorialized in writing and serve to terminate the Site Lease and the Facilities Lease and will reduce the interest owed based on the time of the buyout. Under no circumstances can this buyout occur until at least sixty (60) days after Project Completion or the Execution of the Memorandum of Commencement Date, whichever is later. In no event shall any buyout increase the total amount of Lease Payment amounts, plus interest in excess of the amounts included in the Project's Guaranteed Project Cost.

EXHIBIT D
TO
FACILITIES LEASE

GENERAL CONSTRUCTION PROVISIONS

TABLE OF CONTENTS

1.	CONTRACT TERMS AND DEFINITIONS	35
1.1.	Definitions.....	35
1.2.	Laws Concerning The Contract.....	38
1.3.	No Oral Agreements	38
1.4.	No Assignment	38
1.5.	Notice And Service Thereof	39
1.6.	No Waiver	39
1.7.	Substitutions for Specified Items.....	39
1.8.	Materials and Work.....	39
2.	[RESERVED]	40
3.	ARCHITECT.....	41
4.	CONSTRUCTION MANAGER	41
5.	INSPECTOR, INSPECTIONS, AND TESTS.....	41
5.1.	Project Inspector	41
5.2.	Tests and Inspections	43
5.3.	Costs for After Hours and/or Off Site Inspections	43
6.	CONTRACTOR	43
6.1.	Status of Contractor	44
6.2.	Contractor's Supervision	44
6.3.	Duty to Provide Fit Workers / Required Personnel.....	45
6.4.	Prohibition on Harassment.....	46
6.5.	Conferences and Meetings.	47
6.6.	Purchase of Materials and Equipment	48
6.7.	Documents on Work.....	49
6.8.	Preservation of Records.....	49
6.9.	Integration of Work.....	50
6.10.	Obtaining Licenses.....	50
6.11.	Work to Comply With Applicable Laws and Regulations.....	50
6.12.	Safety/Protection of Persons and Property	51
6.13.	Working Evenings and Weekends.....	53
6.14.	Noise and Dust Control.....	53
6.15.	Cleaning Up	54
7.	SUBCONTRACTORS	55
7.3.	Bidding for Subcontractor Work	55
8.	OTHER CONTRACTS/CONTRACTORS	56
9.	DRAWINGS AND SPECIFICATIONS	56
9.3.	Trade Name or Trade Term.....	57
9.6.	Interpretation of Contract Documents/Order of Precedence:	57
9.7.	Integration / Modification.	57
9.9.	Ownership of Drawings	58
10.	CONTRACTOR'S SUBMITTALS AND SCHEDULES	58
10.1.	Construction Schedule.....	58
10.2.	Schedule of Values	58
10.3.	Safety Plan.	59
10.4.	Complete Subcontractor List.	60

10.5.	Monthly Progress Schedule(s)	60
10.6.	Safety Data Sheets (SDS) (formerly known as Material Safety Data Sheets, or MSDSs.	60
10.7.	Logistics Plan.	60
11.	SITE ACCESS, CONDITIONS, AND REQUIREMENTS.....	60
11.1.	Site Investigation	60
11.2.	Soils Investigation Report & Site Due Diligence	60
11.3.	Access to Work	63
11.4.	Layout and Field Engineering.....	63
11.5.	Utilities & Sanitary Facilities	63
11.6.	Surveys	63
11.7.	Regional Notification Center.....	63
11.8.	Existing Utility Lines.....	64
11.9.	Notification	64
11.10.	Hazardous Materials	64
11.11.	No Signs	64
12.	TRENCHES.....	65
12.1.	Trenches Greater Than Five Feet	65
12.2.	Excavation Safety	65
12.3.	No Tort Liability of District.....	65
12.4.	No Excavation Without Permits.....	65
12.5.	Discovery of Hazardous Waste, Unusual Conditions and /or Unforeseen Conditions	65
13.	INSURANCE AND BONDS	66
13.1.	Contractor's Insurance.....	66
13.2.	Contract Security - Bonds	66
14.	WARRANTY/GUARANTEE/INDEMNITY	66
14.1.	Warranty/Guarantee.....	66
14.2.	Indemnity	67
15.	TIME	67
15.1.	Computation of Time / Adverse Weather	67
15.2.	Hours of Work	68
15.3.	Progress and Project Completion.....	68
15.4.	Schedule.....	68
15.5.	Expeditious Completion.....	68
16.	EXTENSIONS OF TIME – LIQUIDATED DAMAGES	68
16.1.	Contractor's Notice of Delay.....	68
16.2.	Excusable and Compensable Delay(s)	70
16.3.	Excusable and Non-Compensable Delay(s)	71
16.4.	Unexcused Delay(s) – Liquidated Damages.....	72
16.5.	Float or Slack in the Schedule	72
17.	CHANGES IN THE WORK.....	72
17.1.	No Changes Without Authorization	72
17.2.	Architect Authority.....	73
17.3.	Change Orders.....	73
17.4.	Unilateral Change Orders	74
17.5.	Force Account Directives	74
17.6.	Price Request.....	75
17.7.	Proposed Change Order.....	75
17.8.	Format for Proposed Change Order	77
17.9.	Change Order Certification	81
17.10.	Determination of Change Order Cost	81
17.11.	Deductive Change Orders.....	82
17.12.	Discounts, Rebates, and Refunds	82
17.13.	Accounting Records	82

17.14.	Notice Required	83
17.15.	Applicability to Subcontractors	83
17.16.	Alteration to Change Order Language	83
17.17.	Failure of Contractor to Execute Change Order	83
18.	REQUESTS FOR INFORMATION	83
19.	PAYMENTS.....	84
19.1.	Guaranteed Project Cost.....	84
19.2.	Applications for Tenant Improvement Payments	84
19.3.	District's Approval of Application for Tenant Improvement Payment.....	86
19.4.	Subcontractor Payments	90
20.	COMPLETION OF THE WORK.....	90
20.1.	Completion.....	90
20.2.	Closeout Procedures.....	91
20.3.	Final Inspection	92
20.4.	Costs of Multiple Inspections.....	93
20.5.	Beneficial Occupancy or Use Prior to Project Completion.....	93
21.	FINAL PAYMENT AND RETENTION	93
21.1.	Final Payment.....	93
21.2.	Prerequisites for Final Tenant Improvement Payment	93
21.3.	Retention	94
21.4.	Claims Asserted After Final Tenant Improvement Payment.....	95
22.	UNCOVERING WORK, CORRECTION OF WORK AND RIGHT TO TAKEOVER WORK	95
22.1.	Uncovering Work.....	95
22.2.	Rejection of Work.....	95
22.3.	Nonconforming Work	95
22.4.	Correction of Work	95
22.5.	District's Right to Takeover Work	96
23.	TERMINATION AND SUSPENSION AND SCOPE REDUCTION	96
23.1.	Emergency Termination of Public Contracts Act of 1949.....	97
23.2.	Suspension of Work.....	97
23.3.	Scope Reduction.....	97
24.	CLAIMS RESOLUTION	98
24.1.	Exclusive Remedy.	98
24.2.	Performance during Claim Resolution Process.....	98
24.3.	Waiver	98
24.4.	Intention.	98
24.5.	Other Provisions.	98
24.6.	Claim Presentation	99
24.7.	Subcontractors.	99
24.8.	Documentation of Resolution.....	103
24.9.	Claim Resolution Process – Non-Applicability.....	103
25.	LABOR, WAGE & HOUR, APPRENTICE AND RELATED PROVISIONS	104
25.1.	Compliance Monitoring and Enforcement by the DIR	104
25.2.	Wage Rates, Travel and Subsistence.....	104
25.3.	Hours of Work	105
25.4.	Payroll Records.....	106
25.5.	Apprentices	107
25.6.	Non-Discrimination	108
25.7.	Labor First Aid	109
25.8.	Skilled and Trained Workforce Requirement	109
26.	MISCELLANEOUS.....	109
26.1.	Assignment of Antitrust Actions	109
26.2.	Excise Taxes.....	110

26.3.	Taxes	110
26.4.	Shipments	110

[TABLE OF CONTENTS NEEDS TO BE UPDATED WHEN DOCUMENT IS FINALIZED]

Form Agreement

This Exhibit D constitutes the “General Construction Provisions” (sometimes called the “General Conditions”) that govern the overall construction and Project Completion by Contractor.

1. CONTRACT TERMS AND DEFINITIONS

1.1. Definitions

Wherever used in the Contract Documents, the following terms shall have the meanings indicated, which shall be applicable to both the singular and plural thereof:

1.1.1. Adverse Weather: Shall be only weather that satisfies all of the following conditions: (1) unusually severe precipitation, sleet, snow, hail, heat, or cold conditions in excess of the norm for the location and time of year it occurred, and (2) at the Project Site(s).

1.1.2. Allowance(s): Amount(s) that are within the GPC that, if used at all, will be to pay for the cost or construction of a scope of work identified at the time the Allowance is utilized.

1.1.3. Approval, Approved, and/or Accepted: Refer to written authorization, unless stated otherwise.

1.1.4. Architect: The individual, partnership, corporation, joint venture, or any combination thereof, named as Architect, who will have the rights and authority assigned to the Architect in the Contract Documents. The term Architect means the District's Architect on this Project or the Architect's authorized representative.

1.1.5. Beneficial Occupancy: Occupancy of the Project by the District for its intended purpose and which produces relatively little interference with the Contractor in completing construction.

1.1.6. Change Order: A written order to the Contractor authorizing an addition to, deletion from, or revision in the Work, and/or authorizing an adjustment in the Guaranteed Project Cost or Contract Time. If a Change Order is required to be approved by DSA, the District may call it a Construction Change Document.

1.1.7. Completion (or “Project Completion”): Where the Work to construct the Project is 100% complete, including all punch list items. Final DSA approval of the Project is not required for Project Completion.

1.1.8. Construction Manager (or “Project Manager”): The individual, partnership, corporation, joint venture, or any combination thereof, or its authorized representative, named as such by the District. If no Construction Manager is used on the Project that is the subject of this Contract, then all references to Construction Manager herein shall be read to refer to District.

1.1.9. Construction Schedule: The progress schedule of construction of the Project as provided by Contractor and approved by District.

1.1.10. Contract, Contract Documents: The Contract consists exclusively of the documents evidencing the agreement of the District and Contractor, identified as the Contract Documents. The Contract Documents consist of the following documents:

- 1.1.10.1. Site Lease
- 1.1.10.2. Facilities Lease, with all of its Exhibits
- 1.1.10.3. These General Construction Provisions
- 1.1.10.4. Noncollusion Declaration

- 1.1.10.5. Certifications to be Completed by Contractor
- 1.1.10.6. Disabled Veterans Business Enterprise Participation Certification
- 1.1.10.7. Criminal Background Investigation/Fingerprinting Certification
- 1.1.10.8. Roofing Contract Financial Interest Certification
- 1.1.10.9. Performance Bond
- 1.1.10.10. Payment Bond (Contractor's Labor & Material Bond)
- 1.1.10.11. All Division 1 Documents, which shall only supplement these General Construction Provisions, but shall not control if their provisions contradict these Construction Provisions
- 1.1.10.12. All Plans, Technical Specifications, and Drawings
- 1.1.10.13. Any and all addenda to any of the above documents
- 1.1.10.14. Any and all change orders or written modifications to the above documents if approved in writing by the District

1.1.11. Contract Time: The time period stated in the Facilities Lease for Project Completion.

1.1.12. Contractor (or "Contractor"): The licensed person, entity, or entities identified in the Facilities Lease as contracting to perform the Work to be done under this Contract.

1.1.13. Daily Job Report(s): Daily Project reports prepared by the Contractor's employee(s) who are present on Site, which shall include the information required herein.

1.1.14. Day(s): Unless otherwise designated, day(s) means calendar day(s). "**Business Days**" shall mean days except Saturday, Sunday, a day that is federally-recognized holiday, or a day that is a California-recognized holiday

1.1.15. Defective or Nonconforming Work. Defective or nonconforming Work is any Work which is unsatisfactory, faulty or deficient by: (a) not conforming to the requirements of the Contract Documents; (b) not conforming to the standards of workmanship of the applicable trade; (c) not being in compliance with the requirements of any inspection, reference, standard, test, or approval required by the Contract Documents; or (d) not conforming with applicable codes or regulations; or (e) damage to Work occurring prior to Completion.

1.1.16. District (or "Owner"): The public agency or the school district for which the Work is performed. The governing board of the District or its designees will act for the District in all matters pertaining to the Contract. The District may, at any time,

1.1.16.1. Direct the Contractor to communicate with or provide notice to the Construction Manager or the Architect on matters for which the Contract Documents indicate the Contractor will communicate with or provide notice to the District; and/or

1.1.16.2. Direct the Construction Manager or the Architect to communicate with or direct the Contractor on matters for which the Contract Documents indicate the District will communicate with or direct the Contractor.

1.1.17. Drawings (or "Plans"): The graphic and pictorial portions of the Contract Documents showing the design, location, scope and dimensions of the work, generally including plans, elevations, sections, details, schedules, sequence of operation, and diagrams.

1.1.18. DSA: Division of the State Architect.

1.1.19. Force Account Directive: A process that may be used when the District and the Contractor cannot agree on a price for a specific scope of work or before Contractor prepares a price for the scope of work, Contractor performs on a time and materials basis.

1.1.20. Guaranteed Project Cost (or “GPC” or “Contract Price” or “Guaranteed Maximum Price” or “GMP”): The total monies payable to the Contractor under the terms and conditions of the Contract Documents.

1.1.21. Product(s): New material, machinery, components, equipment, fixtures and systems forming the Work, including existing materials or components required and approved by the District for reuse.

1.1.22. Product Data: Illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate a material, product, or system for some portion of the Work.

1.1.23. Project: The planned undertaking as provided for in the Contract Documents.

1.1.24. Project Inspector (or “Inspector” or “IOR”): The individual(s) retained by the District in accordance with title 24 of the California Code of Regulations to monitor and inspect the Project.

1.1.25. Program Manager: The individual, partnership, corporation, joint venture, or any combination thereof, or its authorized representative, named as such by the District. If no Program Manager is designated for Project that is the subject of this Contract, then all references to Project Manager herein shall be read to refer to District.

1.1.26. Provide: Shall include “provide complete in place,” that is, “furnish and install,” and “provide complete and functioning as intended in place” unless specifically stated otherwise.

1.1.27. Request for Information (or “RFI”): A written request prepared by the Contractor requesting that the Architect provide additional information necessary to clarify or amplify an item in the Contract Documents that the Contractor believes is not clearly shown or called for in the Drawings or Specifications or other portions of the Contract Documents, or to address problems that have arisen under field conditions.

1.1.28. Request for Substitution: A request by Contractor to substitute an equal or superior material, product, thing, or service for a specific material, product, thing, or service that has been designated in the Contract Documents by a specific brand or trade name.

1.1.29. Safety Orders: Written and/or verbal orders for construction issued by the California Division of Industrial Safety (“CalOSHA”) or by the United States Occupational Safety and Health Administration (“OSHA”).

1.1.30. Safety Plan: Contractor’s safety plan specifically adapted for the Project. Contractor's Safety Plan shall comply with all provisions regarding Project safety, including all applicable provisions in these General Construction Provisions.

1.1.31. Samples: Physical examples that illustrate materials, products, equipment, finishes, colors, or workmanship and that, when approved in accordance with the Contract Documents, establish standards by which portions of the Work will be judged.

1.1.32. Shop Drawings: All drawings, prints, diagrams, illustrations, brochures, schedules, and other data that are prepared by the Contractor, a subcontractor, manufacturer, supplier, or distributor, that illustrate how specific portions of the Work shall be fabricated or installed.

1.1.33. Site: The Project Site(s) as shown on the Drawings.

1.1.34. Specifications: That portion of the Contract Documents, Division 1 through Division 49, and all technical sections, and addenda to all of these, if any, consisting of written descriptions and requirements of a technical nature of materials, equipment, construction methods and systems, standards, and workmanship.

1.1.35. Standard of Care. Contractor shall perform all of its Services, including all due diligence tasks, constructability reviews, value engineering recommendations and Preliminary Services, pursuant to the standard of care of a contractor performing similar tasks for California school districts, which shall not include any design, architectural, or engineering responsibility for the Project.

1.1.36. Subcontractor: A contractor and/or supplier who is under contract with the Contractor or with any other subcontractor, regardless of tier, to perform a portion of the Work of the Project.

1.1.37. Submittal Schedule: The schedule of submittals as provided by Contractor and approved by District.

1.1.38. Surety: The person, firm, or corporation that executes as surety the Contractor's Performance Bond and Payment Bond, and must be a California admitted surety insurer as defined in the Code of Civil Procedure section 995.120.

1.1.39. Terms. The term "provide" means "provide complete in place" or to "furnish and install" such item. Unless otherwise provided in the Contract Documents, the terms "approved;" "directed;" "satisfactory;" "accepted;" "acceptable;" "proper;" "required;" "necessary" and "equal" shall mean as approved, directed, satisfactory, accepted, acceptable, proper, required, necessary and equal, in the opinion of the District. The term "typical" as used in the Drawings shall require the installation or furnishing of such item(s) of the Work designated as "typical" in all other areas similarly marked as "typical"; Work in such other areas shall conform to that shown as "typical" or as reasonably inferable therefrom.

1.1.40. Unilateral Change Order: A written order prepared and issued by the District, the Construction Manager, and/or the Architect and signed by the District and the Architect, directing a change in the Work. **A Unilateral Change Order is NOT a Construction Change Document (which is defined above as a Change Order that DSA must approve).**

1.1.41. Work: All labor, materials, equipment, components, appliances, supervision, coordination, and services required by, or reasonably inferred from, the Contract Documents, that are necessary for Project Completion.

1.2. Laws Concerning The Contract

Contract is subject to all provisions of the Constitution and laws of California governing, controlling, or affecting District, or the property, funds, operations, or powers of District, and such provisions are by this reference made a part hereof. Any provision required by law to be included in this Contract shall be deemed to be inserted.

1.3. No Oral Agreements

No oral agreement or conversation with any officer, agent, or employee of District, either before or after execution of Contract, shall affect or modify any of the terms or obligations contained in any of the documents comprising the Contract.

1.4. No Assignment

Except as specifically permitted in the Facilities Lease, Contractor shall not assign this Contract or any part thereof including, without limitation, any services or money to become due hereunder without the prior written consent of the District. Assignment without District's prior written consent shall be null and void. Any assignment of money due or to 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

Any notice from one party to the other or otherwise under Contract shall be in writing and shall be dated and signed by the party giving notice or by a duly authorized representative of that party. Any notice shall not be effective for any purpose whatsoever unless served as indicated in the Facilities Lease.

1.6. No Waiver

The failure of District in any one or more instances to insist upon strict performance of any of the terms of this Contract or to exercise any option herein conferred shall not be construed as a waiver or relinquishment to any extent of the right to assert or rely upon any such terms or option on any future occasion. No action or failure to act by the District, Architect, or Construction Manager shall constitute a waiver of any right or duty afforded the District under the Contract, nor shall any action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

1.7. Substitutions for Specified Items

Contractor shall not substitute any items identified in the Contract Documents without complying with the procedures indicated in the Contract Documents and without prior written approval of the District.

1.8. Materials and Work

1.8.1. Except as otherwise specifically stated in this Contract, Contractor shall provide and pay for all materials, labor, tools, equipment, transportation, supervision, temporary constructions of every nature, and all other services, management, and facilities of every nature whatsoever necessary to execute and complete this Contract within the Contract Time.

1.8.2. COVID-19. Contractor shall comply with all applicable and existing federal, state, and/or local statutes, orders, rules, regulations, ordinances, and/or directives relating to construction site safety in connection with COVID-19, and/or any similar virus or derivative strain including, without limitation, providing personal protective equipment ("PPE") to its employees and to ensure that its subcontractors provide PPE equipment to its employees to prevent the spread of COVID-19 or any other similar virus or derivative strain at the Project Site(s). Contractor shall ensure it has supervisor employees onsite that are trained and knowledgeable of all of these requirements to ensure full compliance on Project Site(s).

1.8.3. Unless otherwise specified, all materials shall be new and the best of their respective kinds and grades as noted or specified, and workmanship shall be of good quality.

1.8.4. Materials shall be furnished in ample quantities and at such times as to ensure uninterrupted progress of Work and shall be stored properly and protected as required.

1.8.5. For all materials and equipment specified or indicated in the Drawings, the Contractor shall

provide all labor, materials, equipment, and services necessary for complete assemblies and complete working systems, functioning as intended, including incidental items not indicated on Drawings, nor mentioned in the Specifications, that can legitimately and reasonably be inferred to belong to the Work described, or be necessary in good practice to provide a complete assembly or system. In all instances, material and equipment shall be installed in strict accordance with each manufacturer's most recent published recommendations and specifications.

1.8.6. Contractor shall, after award of Contract by District and after relevant submittals have been approved, place orders for materials and/or equipment as specified so that delivery of same may be made without delays to the Work. Contractor shall, upon demand from District, present documentary evidence showing that orders have been placed. Failure of Contractor to comply with this provision shall not be a basis for an extension to the Contract Time.

1.8.7. District reserves the right but has no obligation, for any neglect in complying with the above instructions, to place orders for such materials and/or equipment as it may deem advisable in order that the Work may be completed at the date specified in the Facilities Lease, and all expenses incidental to the procuring of said materials and/or equipment shall be paid for by Contractor or withheld from payment(s) to Contractor.

1.8.8. Contractor warrants good title to all material, supplies, and equipment installed or incorporated in Work and agrees upon Project Completion to deliver the Site to District, together with all improvements and appurtenances constructed or placed thereon by it, and free from any claims, liens, or charges. Contractor further agrees that neither it nor any person, firm, or corporation furnishing any materials or labor for any work covered by the Contract shall have any right to lien any portion of the Premises or any improvement or appurtenance thereon, except that Contractor may install metering devices or other equipment of utility companies or of political subdivision, title to which is commonly retained by utility company or political subdivision. In the event of installation of any such metering device or equipment, Contractor shall advise District as to owner thereof.

1.8.9. Nothing contained in this Article, however, shall defeat or impair the rights of persons furnishing materials or labor under any bond given by Contractor for their protection or any rights under any law permitting such protection or any rights under any law permitting such persons to look to funds due Contractor in hands of District (e.g., stop payment notices), and this provision shall be inserted in all subcontracts and material contracts and notice of its provisions shall be given to all persons furnishing material for work when no formal contract is entered into for such material.

1.8.10. Title to new materials and/or equipment for the Work of this Contract and attendant liability for its protection and safety shall remain with Contractor until incorporated in the Work of this Contract and Title is transferred to the District pursuant to the Facilities Lease. No part of any materials and/or equipment shall be removed from its place of storage except for immediate installation in the Work of this Contract. Contractor shall keep an accurate inventory of all materials and/or equipment in a manner satisfactory to District or its authorized representative and shall, at the District's request, forward it to the District.

1.8.11. Storage of Items Off-Site. The District may request that Contractor procure and store off-site certain equipment, supplies, and or materials. In addition, the Contractor may request that it be permitted to procure and store off-site certain equipment, supplies, and or materials. In either case, and before the District issues payment for those item(s), the Contractor shall comply with the insurance and/or bond requirements herein related to the storage of off-site items that the District has paid for and that the Contractor remains in possession of.

2. [RESERVED]

3. ARCHITECT

3.1. The Architect shall represent the District during the Project and will observe the progress and quality of the Work on behalf of the District. Architect shall have the authority to act on behalf of District to the extent expressly provided in the Contract Documents and to the extent determined by District. Architect shall have authority to reject materials, workmanship, and/or the Work whenever rejection may be necessary, in Architect's reasonable opinion, to insure the proper execution of the Contract.

3.2. Architect shall, with the District and on behalf of the District, determine the amount, quality, acceptability, and fitness of all parts of the Work, and interpret the Specifications, Drawings, and shall, with the District, interpret all other Contract Documents.

3.3. Architect shall have all authority and responsibility established by law, including title 24 of the California Code of Regulations.

3.4. Contractor shall provide District and the Construction Manager with a copy of all written communication between Contractor and Architect at the same time as that communication is made to Architect, including, without limitation, all RFIs, correspondence, submittals, claims, and proposed change orders.

4. CONSTRUCTION MANAGER

4.1. If a construction manager is used on this Project ("Construction Manager" or "CM"), the Construction Manager will provide administration of the Contract on the District's behalf. After execution of the Contract, all correspondence and/or instructions from Contractor and/or District shall be forwarded through the Construction Manager. The Construction Manager will not be responsible for and will not have control or charge of construction means, methods, techniques, sequences, or procedures or for safety precautions in connection with the Work, which shall all remain the Contractor's responsibility.

4.2. The Construction Manager, however, will have authority to reject materials and/or workmanship not conforming to the Contract Documents, as determined by the District, the Architect, and/or the Project Inspector. The Construction Manager shall also have the authority to require special inspection or testing of any portion of the Work, whether it has been fabricated, installed, or fully completed. Any decision made by the Construction Manager, in good faith, shall not give rise to any duty or responsibility of the Construction Manager to the Contractor, any Subcontractor, their agents, employees, or other persons performing any of the Work. The Construction Manager shall have free access to any or all parts of Work at any time.

4.3. If the District does not use a Construction Manager on this Project, all references to Construction Manager or CM shall be read as District.

5. INSPECTOR, INSPECTIONS, AND TESTS

5.1. Project Inspector

5.1.1. One or more Project Inspector(s), including special Project Inspector(s), as required, will be assigned to the Work by District, in accordance with requirements of title 24, part 1, of the California Code of Regulations, to enforce the building code and monitor compliance with Plans and Specifications for the Project previously approved by the DSA. Duties of Project Inspector(s) are specifically defined in section 4-342 of said part 1 of title 24.

5.1.2. No Work shall be carried on except with the knowledge and under the inspection of the Project Inspector(s). The Project Inspector(s) shall have free access to any or all parts of Work at any time. Contractor shall furnish Project Inspector(s) reasonable opportunities for obtaining such information as may be necessary to keep Project Inspector(s) fully informed respecting progress and manner of work and

character of materials. Inspection of Work shall not relieve Contractor from an obligation to fulfill this Contract. Project Inspector(s) and the DSA are authorized to stop work whenever the Contractor and/or its Subcontractor(s) are not complying with the Contract Documents. Any work stoppage by the Project Inspector(s) and/or DSA shall be without liability to the District. Contractor shall instruct its Subcontractors and employees accordingly.

5.1.3. If Contractor and/or any Subcontractor requests that the Project Inspector(s) perform any inspection off-site, this shall only be done if it is allowable pursuant to applicable regulations and DSA. If the off-site inspections are more frequent than are reasonable for the type of off-site inspection, those inspections shall be at the expense of the Contractor.

5.1.4. Limitations on Project Inspector Authority. The Project Inspector does not have authority to interpret the Contract Documents or to modify the Work depicted in the Contract Documents. No Work inconsistent with the Contract Documents shall be performed solely on the basis of the direction of the Project Inspector, and the Contractor shall be liable to the District for the consequences of all Work performed on such basis.

5.1.5. In addition to the requirements in the Contract Documents related to cooperation with and authority of the DSA Project Inspector(s) for the Project, Contractor must comply with the requirements of the most recent versions of DSA document PR 13-01. Below are provisions of this document from PR 13-01 (rev 08/21/17).

5.1.5.1. The contractor shall carefully study the DSA-approved documents and shall plan a schedule of operations well ahead of time.

5.1.5.2. If at any time it is discovered that work is being done which is not in accordance with the DSA-approved construction documents, the contractor shall correct the work immediately.

5.1.5.3. Verify that DSA 152 and, when applicable, DSA 152-IPI forms were issued for the project prior to the commencement of construction.

5.1.5.4. Meet with the design team, the Laboratory of Record and the project inspector to mutually communicate and understand the structural/material and fire/life safety testing and inspection program, and the methods of communication appropriate for the project.

5.1.5.5. Notify the project inspector and, when applicable, in-plant inspector, in writing, of the commencement of construction of each and every aspect of the work at least 48 hours in advance by submitting Commencement/Completion of Work Notification (form DSA 156), or other agreed-upon written documents, to the project inspector.

5.1.5.6. Notify the project inspector and, when applicable, the in-plant inspector, of the completion of construction of each and every aspect of the work by submitting form DSA 156 (or other agreed-upon written documents) to the project inspector.

5.1.5.7. Consider the relationship of the signed-off blocks and sections of the form DSA 152 and the commencement of subsequent work. Until the project inspector has signed off applicable blocks and sections of the form DSA 152, the contractor may be prohibited from proceeding with subsequent construction activities that cover up the unapproved work. Any subsequent construction activities that cover up the unapproved work will be subject to a "Stop Work Order" from DSA or the school district (see IR A-13 for additional information), and are subject to removal and remediation if found to be in noncompliance with the DSA-approved construction documents.

5.1.5.8. Submit the final verified report. All prime contractors are required to submit final Contractor

Verified Reports (form DSA 6-C).

5.2. Tests and Inspections

5.2.1. Tests and Inspections shall comply with title 24, part 1, California Code of Regulations, group 1, article 5, section 4-335, and with the provisions of the Specifications.

5.2.2. If the Contract Documents, laws, ordinances or any public authority with jurisdiction over the Work requires the Work, or any portion thereof, to be specially tested, inspected or approved, the Contractor shall give the Architect, the Construction Manager and the Project Inspector written notice of the readiness of such Work for observation, testing or inspection at least seventy-two (72) hours prior to the time for the conducting of such test, inspection or observation. If inspection, testing or observation is by authority other than the District, the Contractor shall inform the Project Inspector and the Construction Manager not less than seventy-two (72) hours prior to the date fixed for such inspection, test or observation. The Contractor shall not cover up any portion of the Work subject to tests, inspections or observations prior to the completion and satisfaction of the requirements of such test, inspection or observation. In the event that any portion of the Work subject to tests, inspection or approval shall be covered up by Contractor prior to completion and satisfaction of the requirements of such tests, inspection or approval, Contractor shall be responsible for the uncovering of such portion of the Work as is necessary for performing such tests, inspection or approval without adjustment of the Contract Price or the Contract Time on account thereof.

5.2.3. The District will select an independent testing laboratory to conduct the tests. Selection of the materials required to be tested shall be by the laboratory or the District's representative and not by the Contractor. The Contractor shall notify the District's representative a sufficient time in advance of its readiness for required observation or inspection.

5.2.4. The Contractor shall notify the District's representative a sufficient time in advance of the manufacture of material to be supplied under the Contract Documents, that must by terms of the Contract Documents be tested, in order that the District may arrange for the testing of same at the source of supply. This notice shall be, at a minimum, seventy-two (72) hours prior to the manufacture of the material that needs to be tested. These notifications shall be submitted in all instances via hard copy and, if requested by the Project Inspector(s), also electronically via an internet-based notification/reporting system.

5.2.5. Any material shipped by the Contractor from the source of supply prior to having satisfactorily passed such testing and inspection or prior to the receipt of notice from said representative that such testing and inspection will not be required, shall not be incorporated into and/or onto the Project.

5.2.6. The District will select and pay testing laboratory costs for all tests and inspections. Costs of tests of any materials found to be not in compliance with the Contract Documents shall be paid for by the District and reimbursed by the Contractor or deducted from the Guaranteed Project Cost.

5.3. Costs for After Hours and/or Off Site Inspections

If the Contractor performs Work outside the Inspector's regular working hours, over a period of more than eight (8) hours per day by any single person, on weekends/holidays or requests the Inspector to perform inspections off Site, then the costs of any inspections required outside regular working hours, over a period of more than eight (8) hours per day by any single person, on weekends/holidays or off Site, shall be borne by the Contractor and may be invoiced to the Contractor by the District or the District may deduct those expenses from the next Tenant Improvement Payment.

6. CONTRACTOR

Contractor shall construct the Work for the Contract price including any adjustment(s) to the Guaranteed Project Cost pursuant to provisions herein regarding changes to the Guaranteed Project Cost. Except as otherwise indicated herein, Contractor shall provide and pay for all labor, materials, equipment, permits, fees, licenses, facilities, transportation, taxes, and services necessary for the proper execution and Project Completion..

6.1. Status of Contractor

6.1.1. Contractor is and shall at all times be deemed to be an independent contractor and shall be wholly responsible for the manner in which it and its Subcontractors perform the services required of it by the Contract Documents. Nothing herein contained shall be construed as creating the relationship of employer and employee, or principal and agent, between the District, or any of the District's employees or agents, and Contractor or any of Contractor's Subcontractors, agents or employees. Contractor assumes exclusively the responsibility for the acts of its employees as they relate to the services to be provided during the course and scope of their employment. Contractor, its Subcontractors, agents, and its employees shall not be entitled to any rights or privileges of District employees. District shall be permitted to monitor the Contractor's activities to determine compliance with the terms of this Contract.

6.1.2. As required by law, Contractor and all Subcontractors shall be properly licensed and regulated by the Contractors State License Board, located at 9821 Business Park Drive, Sacramento, California 95827, with a mailing address of Post Office Box 26000, Sacramento, CA 95826, and with a website at <http://www.cslb.ca.gov>.

6.2. Contractor's Supervision

6.2.1. During progress of the Work, Contractor shall keep on the Premises, and at all other appropriate locations where any Work related to the Contract is being performed, minimum staffing as indicated in **Exhibit K** to the Facilities Lease. These persons shall each comply with the following:

6.2.1.1. Each shall be an employee of the Contractor, to whom the District does not object.

6.2.1.2. Each shall speak fluently English, written and verbal, and the predominant language of the Contractor's employees.

6.2.2. Before commencing the Work herein, Contractor shall give written notice to District of the name of its project manager and construction superintendent. Neither the Contractor's project manager nor construction superintendent shall be changed except with prior written notice to District, unless the Contractor's project manager and/or construction superintendent proves to be unsatisfactory to Contractor, District, any of the District's employees, agents, the Construction Manager, or the Architect, in which case, Contractor shall notify District in writing or if such project manager or construction superintendent are no longer employed by Contractor. The Contractor's project manager and construction superintendent shall each represent Contractor, and all directions given to Contractor's project manager and/or construction superintendent shall be as binding as if given to Contractor.

6.2.3. Contractor shall give efficient supervision to the Work, using its best skill and attention. Contractor shall carefully study and compare all Contract Documents, Drawings, Specifications, and other instructions and shall at once report to District, Construction Manager, and Architect any error, inconsistency, or omission that Contractor or its employees and Subcontractors may discover, in writing, with a copy to District's Project Inspector(s).

6.2.4. The Contractor's project manager shall devote sufficient time to the Project on site, and in the Contractor's home office to pre-plan activities to meet the Construction Schedule and fulfill all Contract obligations. This includes making timely submittals, issuing and disseminating necessary RFI's, promptly

processing and distributing bulletins, change orders and payments, keeping required logs current etc. If any of these activities fall behind contract requirements or dates necessary to complete the Project on time, the Contractor must provide a full time project manager on site dedicated solely to the Project, until the deficiencies are corrected.

6.2.5. The Contractor shall verify all indicated dimensions before ordering materials or equipment, or before performing work. The Contractor shall take field measurements, verify field conditions, and shall carefully compare such field measurements and conditions and other information known to the Contractor with the Project Documents before commencing work. Errors, inconsistencies or omissions discovered shall be reported to the District at once. Upon commencement of any item of work, the Contractor shall be responsible for dimensions related to such item of work and shall make any corrections necessary to make work properly fit at no additional cost to District. This responsibility for verification of dimensions is a non-delegable duty and may not be delegated to subcontractors or agents.

6.2.6. Contractor shall not be relieved from performing work related to omissions from the plans, drawings or specifications, or misdescriptions of details of work which are manifestly necessary to carry out the intent of the plans, drawings and specifications, or which are customarily performed. Contractor shall perform this work as if fully and correctly set forth and described in the plans, drawings and specifications.

6.2.7. The Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction. The Contractor shall be responsible to see that the finished work complies accurately with the Contract Documents.

6.3. Duty to Provide Fit Workers / Required Personnel

6.3.1. Contractor and Subcontractor(s) shall at all times enforce strict discipline and good order among their employees and shall not employ or work any unfit person or anyone not skilled in work assigned to that person. It shall be the responsibility of Contractor to ensure compliance with this requirement. District may require Contractor to permanently remove unfit persons from Project Site(s).

6.3.2. COVID-19. Contractor shall ensure that all its employees and employees of its subcontractors shall comply with all applicable and existing federal, state, and/or local statutes, orders, rules, regulations, ordinances, and/or directives relating to construction site safety in connection with COVID-19, and/or any similar virus or derivative strain.

6.3.3. Any person in the employ of Contractor or Subcontractor(s) whom District may deem incompetent or unfit shall be excluded from working on the Project and shall not again be employed on the Project except with the prior written consent of District.

6.3.4. The Contractor shall furnish labor that can work in harmony with all other elements of labor employed or to be employed in the Work.

6.3.5. If Contractor intends to make any change in the name or legal nature of the Contractor's entity, Contractor must first notify the District. The District shall determine if Contractor's intended change is permissible while performing this Contract.

6.3.6. All persons working for Contractor and Subcontractor(s) shall refrain from using profane or vulgar language, or any other language that is inappropriate on the job site.

6.3.7. The Contractor shall employ a full-time superintendent and necessary assistants who shall have complete authority to represent and act on behalf on the Contractor on all matters pertaining to the Work. The superintendent shall be competent and have a minimum of five (5) years experience in

construction supervision on projects of similar scale and complexity. The superintendent shall be satisfactory to the District and, if not satisfactory, shall be replaced by the Contractor with one that is acceptable. The superintendent shall not be changed without the written consent of the District unless the superintendent ceases to be employed by the Contractor.

6.3.8. The Contractor shall employ a competent estimator and necessary assistants, or contract for sufficient services of an estimating consultant and to process proposed change orders. The estimator shall have a minimum of five (5) years experience in estimating. The estimator shall be satisfactory to the District and, if not satisfactory, shall be replaced by the Contractor with one that is acceptable. The estimator shall not be changed without the written consent of the District unless the estimator ceases to be employed by the Contractor. The Contractor shall submit PCO's requested by the District within fourteen (14) calendar days.

6.3.9. The Contractor shall employ a competent scheduler and necessary assistants, or contract for sufficient services of a scheduling consultant. The scheduler shall have a minimum of five (5) years' experience in scheduling. The scheduler shall be satisfactory to the District and, if not satisfactory, shall be replaced by the Contractor with one that is acceptable. The scheduler shall not be changed without the written consent of the District unless the scheduler ceases to be employed by the Contractor.

6.3.10. Contractor shall at all times enforce strict discipline and good order among Contractor's employees, and shall not employ on the Project any unfit person or anyone not skilled in the task assigned.

6.3.11. If Contractor or any Subcontractor on the Project site fails to comply with any provision of paragraph 6.4, the District may have the offending person(s) immediately removed from the site, and such person(s) shall be replaced within three (3) days, at no additional expense to the District. Contractor, on behalf of it and its subcontractors, hereby waives any claim that the provisions of this paragraph or the enforcement thereof interferes, or has the potential to interfere, with its right to control the means and methods of its performance and duties under this Contract.

6.4. Prohibition on Harassment

6.4.1. In addition to the non-discrimination requirements in the Contract Documents, the Contractor and all Subcontractors must comply with these provisions prohibiting harassment at the Site.

6.4.2. The District is committed to providing a campus and workplace free of sexual harassment and harassment based on factors such as race, color religion, national origin, ancestry, age, medical condition, marital status, disability or veteran status. Harassment includes without limitation, verbal, physical or visual conduct which creates an intimidating, offensive or hostile environment such as racial slurs; ethnic jokes; posting of offensive statements, posters or cartoons or similar conduct. Sexual harassment includes without limitation the solicitation of sexual favors, unwelcome sexual advances, or other verbal, visual or physical conduct of a sexual nature.

6.4.3. Contractor shall take all reasonable steps to prevent harassment from occurring, including without limitation affirmatively raising the subject of harassment among its employees, expressing strong disapproval of any form of harassment, developing appropriate sanctions, informing employees of their right to raise and how to raise the issue of harassment and informing complainants of the outcome of an investigation into a harassment claim.

6.4.4. Contractor shall not permit any person, whether employed by Contractor or a Subcontractor or any other person or entity, performing any Work at or about the Site to engage in any prohibited form of harassment. Any person performing or providing Work on or about the Site engaging in a prohibited form of harassment directed to any student, faculty member or staff of the District or directed to any other

person on or about the Site shall be subject to immediate removal and shall be prohibited thereafter from providing or performing any portion of the Work. Upon the District's receipt of any notice or complaint that any person employed directly or indirectly by Contractor on any Subcontractor in performing or providing the Work has engaged in a prohibited form of harassment, the District will promptly undertake an investigation of such notice or complaint. In the event that the District, after such investigation, reasonably determines that a prohibited form of harassment has occurred, the District shall promptly notify the Contractor of the same and direct that the person engaging in such conduct be immediately removed from the Site. Unless the District's determination that a prohibited form of harassment has occurred is grossly negligent or without reasonable cause, District shall have no liability for directing the removal of any person determined to have engaged in a prohibited form of harassment nor shall the Contract Price or the Contract Time be adjusted on account thereof. The indemnity provisions of the Contract Documents apply to any assertion by any person dismissed from performing or providing work at the direction of the District pursuant to this provision; or (ii) the assertion by any person that any person directly or indirectly under the employment or direction of the Contractor has engaged in a prohibited form of harassment directed to or affecting such person. The obligations of the Contractor and the Surety under the preceding sentence are in addition to, and not in lieu of, any other obligation of defense, indemnity and hold harmless whether arising under the Contract Documents, at law or otherwise; these obligations survive completion of the Work or the termination of the Contract.

6.5. Conferences and Meetings.

6.5.1. In addition to the conference and meeting requirements in the Specifications, Contractor's supervisory personnel for the Work and the Contractor's management personnel shall attend all required meetings as required by the Contract Documents or as requested by the District. The Contractor's personnel participating in conferences and meetings relating to the Work shall be authorized to act on behalf of the Contractor and to bind the Contractor. The Contractor is solely responsible for arranging for the attendance by Subcontractors and Material Suppliers at meetings and conferences relating to the Work as necessary, appropriate or as requested by the District.

6.5.2. Preconstruction Conference. The Contractor's representatives (and representatives of Subcontractors as requested by the District) shall attend a preconstruction conference at such time and place as designated by the District. The preconstruction conference will generally address the requirements of the Work and Contract Documents, and to establish construction procedures. Subject matters of the preconstruction conference will include as appropriate: (a) administrative matters, including an overview of the respective responsibilities of the District, Architect, Construction Manager, Contractor, Subcontractors, Project Inspector, and others performing any part of the Work or services relating to the Work; (b) Submittals; (c) Changes; (d) employment practices, including Certified Payroll preparation and submission and prevailing wage rate responsibilities of the Contractor and Subcontractors; (e) Progress Schedule development and maintenance; (f) development of Schedule of Values and payment procedures; (g) implementation of BIM, if applicable; (h) communication procedures, including the handling of Requests for Information; (i) emergency and safety procedures; (j) Site visitor policies; (k) conduct of Contractor/Subcontractor personnel at the Site; and (l) Completion, Punchlist and closeout procedures.

6.5.3. Progress Meetings. Progress meetings will be conducted on regular intervals (weekly unless otherwise expressly indicated elsewhere in the Contract Documents). The Contractor's representatives and representatives of Subcontractors (as requested by the District) shall attend progress meetings. Progress Meetings will be chaired by the District or the Construction Manager and will generally include as agenda items: Site safety, field issues, coordination of Work, construction progress and impacts to timely Completion, if any. The purposes of the progress meetings include: a formal and regular forum for discussion of the status and progress of the Work by all Project participants, a review of progress or resolution of previously raised issues and action items assigned to the Project participants, and reviews of the Progress schedule and submittals. Contractor shall prepare and submit at each progress meeting a

three (3) week look-ahead schedule identifying all planned activities for the next three (3) weeks and any deviations from activities in the current Construction Schedule.

6.5.4. Special Meetings. As deemed necessary or appropriate by the District, special meetings will be conducted with the participation of the Contractor, Subcontractors and other Project participants as requested by the District.

6.5.5. Minutes of Meetings. following conclusion of the preconstruction conference, progress meetings and special meetings, the Architect or the Construction Manager will prepare and distribute minutes reflecting the items addressed and actions taken at a meeting or conference. Unless the Contractor notifies the Architect and the Construction Manager in writing of objections or corrections to minutes prepared hereunder within five (5) days of the date of distribution of the minutes, the minutes as distributed shall constitute the official record of the meeting or conference. No objections or corrections of any Subcontractor or Material Supplier shall be submitted directly to the Architect or the Construction Manager; such objections or corrections shall be submitted to the Architect and the Construction Manager through the Contractor. If the Contractor timely interposes objections or notes corrections, the resolution of such matters shall be addressed at the next scheduled progress meeting.

6.6. Purchase of Materials and Equipment

6.6.1. The Contractor is required to order and obtain materials and equipment sufficiently in advance of its Work at no additional cost or advance payment from District to assure that there will be no delays.

6.6.2. Off-Site Storage of Materials and Equipment Only Upon District's Written Consent. Contractor shall not store materials and/or equipment off site without first obtaining the District's express, written consent. If Contractor receives District's consent to store materials and/or equipment off site ("Stored Materials"), Contractor shall comply with all of the following:

6.6.2.1. **Property of Others Insurance.** Contractor shall procure and maintain, during the entire time Stored Materials are in off-site storage, insurance coverage acceptable to the District that shall protect Contractor and District from all claims for Stored Materials that are lost, stolen, or damaged. The District shall be named as a loss payee for this insurance coverage. The insurance coverage shall include a "loss payable endorsement" stating that all amounts payable will be paid as a joint-check to the Contractor and District. If approved in advance by District, this required insurance may be obtained by an "Employee Theft Protection Insurance Policy" or an "Employee Theft Protection Bond."

6.6.2.2. **Payment for Stored Materials.** District shall only make payment to Contractor for Stored Materials if agreed upon in advance, in writing, by the District and provided that Contractor submits an itemized list of all Stored Materials with Contractor's Application for Payment. Contractor's itemized list of all Stored Materials shall be supported by all of the following:

6.6.2.2.1. Itemized breakdown of the Stored Materials for the purpose of requesting partial payment, identifying the serial numbers and exact storage location of each piece of equipment and material; and

6.6.2.2.2. Verified invoices for the Stored Materials; and

6.6.2.2.3. Original copy of Property of Others Insurance, Employee Theft Protection Insurance Policy, or an Employee Theft Protection Bond based on the type of insurance required by the District. These documents shall include certificates and endorsements stating the coverage and that the District is a loss payee or obligee, as appropriate.

The Contractor is required to order, obtain, and store materials and equipment sufficiently in advance of its Work at no additional cost or advance payment from District to assure that there will be no delays.

6.7. Documents on Work

6.7.1. Contractor shall at all times keep on the Work Site, or at another location as the District may authorize in writing, one legible copy of all Contract Documents, including Addenda Change Orders, Unilateral Change Orders, Construction Change Documents, and titles 19 and 24 of the California Code of Regulations, the specified edition(s) of the Uniform Building Code, all approved Drawings, Plans, Schedules, and Specifications, and all codes referred to in the Specifications, and made part thereof. These documents shall be kept in good order and available to District, Construction Manager, Architect, Architect's representatives, the Project Inspector(s), and all authorities having jurisdiction. Contractor shall be acquainted with and comply with the provisions of these titles as they relate to this Project. (See particularly the duties of Contractor, title 24, part 1, California Code of Regulations, § 4-343.) Contractor shall also be acquainted with and comply with all California Code of Regulations provisions relating to conditions on this Project, particularly titles 8 and 17. Contractor shall coordinate with Architect and Construction Manager and shall submit its verified report(s) according to the requirements of title 24.

6.7.2. Daily Job Reports.

6.7.2.1. Contractor shall maintain, at a minimum, at least one (1) set of Daily Job Reports on the Project. These must be prepared by the Contractor's employee(s) who are present on Site, and must include, at a minimum, the following information:

- 6.7.2.1.1. A detailed description of all Work performed by the Contractor and Subcontractor(s) on that day.
- 6.7.2.1.2. A summary of all other pertinent events and/or occurrences on that day.
- 6.7.2.1.3. The weather conditions on that day.
- 6.7.2.1.4. A list of all Subcontractor(s) working on that day,
- 6.7.2.1.5. A list of each Contractor employee working on that day and the total hours worked for each employee.
- 6.7.2.1.6. A complete list of all major equipment on Site that day, whether in use or not.
- 6.7.2.1.7. All complete list of all materials, supplies, and equipment delivered on that day.
- 6.7.2.1.8. A complete list of all inspections and tests performed on that day.

6.7.2.2. On or before 8:00 A.M. each day, Contractor shall provide a copy of the previous day's Daily Job Report to the District or the District's Construction Manager.

6.8. Preservation of Records

The District shall have the right to examine and audit all Daily Job Reports or other Project records of Contractor's project manager(s), project superintendent(s), and/or project foreperson(s), all certified payroll records and/or related documents including, without limitation, payroll, payment, timekeeping and tracking documents; all books, estimates, records, contracts, documents, cost data, subcontract job cost reports, and other data of the Contractor, any Subcontractor, and/or supplier, including computations and projections related to estimating, negotiating, pricing, or performing the Work or Contract modification, in order to evaluate the accuracy, completeness, and currency of the cost, manpower, coordination, supervision, or pricing data at no additional cost to the District. These documents may be duplicative and/or be in addition to any documents held in escrow by the District. The Contractor shall make available at all reasonable times the materials described in this paragraph for the examination, audit, or reproduction until three (3) years after final payment under this Contract. Notwithstanding the provisions above, Contractor shall provide any records requested by any governmental agency, if available, after the time set forth above.

6.9. Integration of Work

6.9.1. Contractor shall do all cutting, fitting, patching, and preparation of Work as required to make its several parts come together properly, to fit it to receive or be received by work of other contractors, and to coordinate tolerances to various pieces of work, showing upon, or reasonably implied by, the Drawings and Specifications for the completed structure, and shall conform them as District and/or Architect may direct.

6.9.2. All cost caused by defective or ill-timed Work shall be borne by Contractor, inclusive of repair work.

6.9.3. Contractor shall not endanger any work performed by it or anyone else by cutting, excavating, or otherwise altering work and shall not cut or alter work of any other contractor except with consent of District.

6.10. Obtaining Licenses

Except for DSA fees or charges, Contractor shall secure and pay for all of its required licenses, and certificates necessary for prosecution of Work before the date of the commencement of the Work or before the licenses, and certificates are legally required to continue the Work without interruption. The Contractor shall obtain and pay, only when legally required, for all licenses and certificates required to be obtained from or issued by any authority having jurisdiction over any part of the Work included in the Contract. All final permits and certificates shall be delivered to District before demand is made for final payment.

6.11. Work to Comply With Applicable Laws and Regulations

6.11.1. Contractor shall give all notices and comply with the following specific laws, ordinances, rules, and regulations and all other applicable laws, ordinances, rules, and regulations bearing on conduct of Work as indicated and specified, including but not limited to the appropriate statutes and administrative code sections. If Contractor observes that Drawings and Specifications are at variance therewith, or should Contractor become aware of the development of conditions not covered by Contract Documents that will result in finished Work being at variance therewith, Contractor shall promptly notify District in writing and any changes deemed necessary by District shall be made as provided in Contract for changes in Work.

- 6.11.1.1. National Electrical Safety Code, U. S. Department of Commerce
- 6.11.1.2. National Board of Fire Underwriters' Regulations
- 6.11.1.3. Uniform Building Code, latest addition, and the California Code of Regulations, title 24, including amendments
- 6.11.1.4. Manual of Accident Prevention in Construction, latest edition, published by A.G.C. of America
- 6.11.1.5. Industrial Accident Commission's Safety Orders, State of California
- 6.11.1.6. Regulations of the State Fire Marshall (title 19, California Code of Regulations) and Pertinent Local Fire Safety Codes
- 6.11.1.7. Americans with Disabilities Act
- 6.11.1.8. Education Code of the State of California
- 6.11.1.9. Government Code of the State of California
- 6.11.1.10. Labor Code of the State of California, division 2, part 7, Public Works and Public Agencies
- 6.11.1.11. Public Contract Code of the State of California
- 6.11.1.12. California Art Preservation Act
- 6.11.1.13. U. S. Copyright Act
- 6.11.1.14. U. S. Visual Artists Rights Act

6.11.2. Contractor shall comply with all applicable mitigation measures, if any, adopted by any public agency with respect to this Project pursuant to the California Environmental Quality Act (Public Resources Code section 21000 et seq.)

6.11.3. If Contractor performs any Work that it knew, or through exercise of reasonable care should have known, to be contrary to any applicable laws, ordinance, rules, or regulations, Contractor shall bear all costs arising therefrom.

6.11.4. Where Specifications or Drawings state that materials, processes, or procedures must be approved by the DSA, State Fire Marshall, or other body or agency, Contractor shall be responsible for satisfying requirements of such bodies or agencies.

6.12. Safety/Protection of Persons and Property

6.12.1. Contractor will be solely and completely responsible for conditions of the Work Site, including safety of all persons and property during performance of the Work. This requirement will apply continuously and not be limited to normal working hours.

6.12.2. COVID-19. Contractor is responsible for complying with all applicable and existing federal, state, and/or local statutes, orders, rules, regulations, ordinances, and/or directives relating to construction site safety in connection with COVID-19, and/or any similar virus or derivative strain. Contractor shall ensure it has supervisor employees onsite that are trained and knowledgeable of all of these requirements to ensure full compliance on Project Site(s).

6.12.3. The wearing of hard hats will be mandatory at all times for all personnel on Site. Contractor shall supply sufficient hard hats to properly equip all employees and visitors.

6.12.4. Any construction review of the Contractor's performance is not intended to include review of the adequacy of the Contractor's safety measures in, on, or near the Work Site.

6.12.5. Implementation and maintenance of safety programs shall be the sole responsibility of the Contractor.

6.12.6. The Contractor shall furnish to the District a copy of the Contractor's safety plan within the time frame indicated in the Contract Documents and specifically adapted for the Project.

6.12.7. Contractor shall be responsible for all damages to persons or property that occur as a result of its fault or negligence in connection with the prosecution of this Contract and shall take all necessary measures and be responsible for the proper care, Project Completion and final acceptance by District. Contractor shall not be responsible for damage to the Work caused by "acts of God" as defined in Public Contract Code section 7105.

6.12.8. Contractor shall take, and require Subcontractors to take, all necessary precautions for safety of workers on the Project and shall comply with all applicable federal, state, local, and other safety laws, standards, orders, rules, regulations, and building codes to prevent accidents or injury to persons on, about, or adjacent to premises where Work is being performed and to provide a safe and healthful place of employment. Contractor shall furnish, erect, and properly maintain at all times, all necessary safety devices, safeguards, construction canopies, signs, nets, barriers, lights, and watchmen for protection of workers and the public and shall post danger signs warning against hazards created by such features in the course of construction.

6.12.9. Hazards Control – Contractor shall store volatile wastes in covered metal containers and remove them from the Site regularly, which shall be daily when appropriate for the type of hazardous wastes to

be removed. Contractor shall prevent accumulation of wastes that create hazardous conditions. Contractor shall provide adequate ventilation during use of volatile or noxious substances.

6.12.10. Contractor shall designate a responsible member of its organization on the Project, whose duty shall be to post information regarding protection and obligations of workers and other notices required under occupational safety and health laws, to comply with reporting and other occupational safety requirements, and to protect the life, safety, and health of workers. Name and position of person so designated shall be reported to District by Contractor.

6.12.11. Contractor shall correct any violations of safety laws, rules, orders, standards, or regulations. Upon the issuance of a citation or notice of violation by the Division of Occupational Safety and Health, Contractor shall correct such violation promptly.

6.12.12. Storm Water Permits. Contractor shall comply with any District storm water requirements that are approved by the District and applicable to the Project, at no additional cost to the District.

6.12.12.1. Contractor shall perform the Work of the Project related to being the District's Qualified SWPPP (Storm Water Pollution Prevention Plan) Practitioner ("QSP").

6.12.12.2. As the District's QSP, Contractor shall be responsible for storm water and non-storm water visual observations, sampling, and analysis per the District's SWPPP.

6.12.12.3. Contractor shall strictly follow the requirements to implement all the provisions of the SWPPP including, without limitation, preparation of monitoring and recording reports and providing those to the District.

6.12.12.4. Contractor's indemnity obligations as indicated in the Facilities Lease are applicable to any damages, penalties, fees, charges, or related expenses assessed or charged to the District by any water boards or agencies with jurisdiction related to compliance with the Storm Water Permits.

6.12.13. In an emergency affecting safety of life or of work or of adjoining property, Contractor, without special instruction or authorization, shall act, at its discretion, to prevent such threatened loss or injury. Any compensation claimed by Contractor on account of emergency work shall be determined by agreement.

6.12.14. All salvage materials will become the property of the Contractor and shall be removed from the Site unless otherwise called for in the Contract Documents. However, the District reserves the right to designate certain items of value that shall be turned over to the District unless otherwise directed by District.

6.12.15. All connections to public utilities and/or existing on-site services shall be made and maintained in such a manner as to not interfere with the continuing use of same by the District during the entire progress of the Work.

6.12.16. Contractor shall provide such heat, covering, and enclosures as are necessary to protect all Work, materials, equipment, appliances, and tools against damage by weather conditions, such as extreme heat, cold, rain, snow, dry winds, flooding, or dampness.

6.12.17. The Contractor shall protect and preserve the Work from all damage or accident, providing any temporary roofs, window and door coverings, boxing, or other construction as required by the District. The Contractor shall be responsible for existing structures, walks, roads, trees, landscaping, and/or improvements in working areas; and shall provide adequate protection therefore. If temporary removal is necessary of any of the above items, or damage occurs due to the Work, the Contractor shall replace

same at his expense with same kind, quality, and size of Work or item damaged. This shall include any adjoining property of the District and others.

6.12.18. Contractor shall take adequate precautions to protect existing roads, sidewalks, curbs, pavements, utilities, adjoining property, and structures (including, without limitation, protection from settlement or loss of lateral support), and to avoid damage thereto, and repair any damage thereto caused by construction operations of the Contractor.

6.12.19. Contractor shall confine apparatus, the storage of materials, and the operations of workers to limits indicated by law, ordinances, permits, or directions of District, Construction Manager or Architect, and shall not interfere with the Work or unreasonably encumber Premises or overload any structure with materials. Contractor shall enforce all instructions of District and Architect regarding signs, advertising, fires, and smoking, and require that all workers comply with all regulations while on Project Site(s).

6.12.20. Contractor, Contractor's employees, Subcontractors, Subcontractors' employees, or any person associated with the Work shall conduct themselves in a manner appropriate for a School Site(s). No verbal or physical contact with neighbors, students, and faculty, profanity, or inappropriate attire or behavior will be permitted. District may require Contractor to permanently remove non-complying persons from Project Site(s).

6.12.21. Contractor shall take care to prevent disturbing or covering any survey markers, monuments, or other devices marking property boundaries or corners. If such markers are disturbed, Contractor shall have a civil engineer, registered as a professional engineer in California, replace them at no cost to District.

6.12.22. In the event that the Contractor enters into any agreement with owners of any adjacent property to enter upon the adjacent property for the purpose of performing the Work, Contractor shall fully indemnify, defend, and hold harmless each person, entity, firm, or agency that owns or has any interest in adjacent property. The form and content of the agreement of indemnification shall be approved by the District prior to the commencement of any Work on or about the adjacent property. The Contractor shall also indemnify the District as provided in the indemnification provision herein. These provisions shall be in addition to any other requirements of the owners of the adjacent property.

6.12.23. Photos, Videos and Use of Drones. Contractor may photograph or video the progress of the Work and shall provide all of those photos and videos to the District at the District's request. Contractor may utilize drones or similar aerial equipment to photograph, video or monitor the progress of the Work and for security purposes, but Contractor must comply with all legal requirements of the Federal government, the State of California, and the County and City in which the Project is located, applicable to the use of drones or similar aerial equipment. In addition, Contractor shall ensure that no photographs, videos or digital recordings of any kind are taken of District students or staff.

6.13. Working Evenings and Weekends

Contractor may be required to work evenings and/or weekends at no additional cost to the District. Contractor shall give the District seventy-two (72) hours notice prior to performing any evening and/or weekend work. Contractor shall perform all evening and/or weekend work only upon District's approval and in compliance with all applicable rules, regulations, laws, and local ordinances including, without limitation, all noise and light limitations. Contractor shall reimburse the District for any Inspector charges necessitated by the Contractor's evening, weekend and/or legal holiday work, unless the District has agreed to be responsible for such costs at the District's expense in advance of the evening and/or weekend work.

6.14. Noise and Dust Control

6.14.1. In addition to the noise control, dust control and related requirements in the Specifications, Contractor shall control the noise and dust at the Site as indicated here.

6.14.2. Noise Control. The Contractor shall install noise reducing devices on construction equipment. Contractor shall comply with the requirements of the city and county having jurisdiction with regard to noise ordinances governing construction sites and activities. Construction equipment noise at the Site shall be limited as required by applicable law, rule or regulation. If classes are in session at any point during the progress of the Work, and, in the District's reasonable discretion, the noise from any Work disrupts or disturbs the students or faculty or the normal operation of the school at the Site, at the District's request, the Contractor shall schedule the performance of that Work around normal school hours or make other arrangements so that the Work does not cause disruption or disturbance. In no event shall those arrangements result in adjustment of the Contract Price or the Contract Time.

6.14.3. Dust Control. The Contractor shall be fully and solely responsible for maintaining and upkeeping all areas of the Site and adjoining areas, outdoors and indoors, free from flying debris, grinding powder, sawdust, dirt and dust as well as any other product, product waste or work waste, that by becoming airborne may cause respiratory inconveniences to persons, particularly to students and District personnel. Additionally, the Contractor shall take specific care to avoid deposits of airborne dust or airborne elements. Those protection devices, systems or methods shall be in accordance with the regulations set forth by the EPA and OSHA, and other applicable law, rule or regulation. Additionally, the Contractor shall be responsible to regularly and routinely clean up and remove any and all deposits of dust and other elements. Damage and/or any liability derived from the Contractor's failure to comply with these requirements shall be exclusively at the cost of the Contractor, including, without limitation, any and all penalties that may be incurred for violations of applicable law, rule or regulation, and any amounts expended by the District to pay such damages shall be due and payable to the District on demand. Contractor shall replace any damages property or part thereof and professionally clean any and all items that become covered or partially covered to any degree by dust or other airborne elements. If classes are in session at any point during the progress of Work, and, in the District's reasonable discretion, flying debris, grinding powder, sawdust, dirt or dust from any Work disrupts or disturbs the students or faculty or the normal operation of the school, at the District's request, the Contractor shall schedule the performance of all that Work around normal school hours and make other arrangements so that the Work does not cause disruption or disturbance. In no event shall those arrangements result in adjustment of the Contract Price or the Contract Time.

6.14.4. Contractor Failure to Comply. If the Contractor fails to comply with the requirements for dust control, noise control, or any other maintenance or clean up requirement of the Contract Documents, the District, Architect, Project Inspector, or Construction Manager shall notify the Contractor in writing and the Contractor shall take immediate action. Should the Contractor fail to respond with immediate and responsive action and not later than twenty-four (24) hours from that notification, the District shall have the absolute right to proceed as it may deem necessary to remedy such matter. Any and all costs incurred by the District in connection with those actions shall be the sole responsibility of, and be borne by, the Contractor; the District may deduct those amounts from the Contract Price then or thereafter due the Contractor.

6.15. Cleaning Up

6.15.1. The Contractor shall provide all services, labor, materials, and equipment necessary for protecting the Work, all school occupants, furnishings, equipment, and building structure from damage until Project Completion and final acceptance by District. Dust barriers shall be provided to isolate dust and dirt from construction operations. Upon Project Completion, Contractor shall clean to the original state any areas beyond the Work area that become dust laden as a result of the Work. The Contractor must erect the necessary warning signs and barricades to ensure the safety of all school occupants. The

Contractor at all times must maintain good housekeeping practices to reduce the risk of fire damage and must make a fire extinguisher, fire blanket, and/or fire watch, as applicable, available at each location where cutting, braising, soldering, and/or welding is being performed or where there is an increased risk of fire.

6.15.2. Contractor at all times shall keep Site free from debris such as waste, rubbish, and excess materials and equipment caused by the Work. Contractor shall not leave debris under, in, or about the Premises, but shall promptly remove same from the Premises on a daily basis. If Contractor fails to clean up, District may do so and the cost thereof shall be charged to Contractor. If Contract is for work on an existing facility, Contractor shall also perform specific clean-up on or about the Premises upon request by the District as it deems necessary for the continuing education process. Contractor shall comply with all related provisions of the Specifications.

6.15.3. If the Construction Manager, Architect, or District observes the accumulation of trash and debris, the District will give the Contractor a 24-hour written notice to mitigate the condition.

6.15.4. Should the Contractor fail to perform the required clean-up, or should the clean-up be deemed unsatisfactory by the District, the District will then perform the clean-up. All cost associated with the clean-up work (including all travel, payroll burden, and costs for supervision) will be deducted from the Guaranteed Project Cost, or District may withhold those amounts from payment(s) to Contractor.

7. SUBCONTRACTORS

7.1. Contractor shall provide the District with information for all of Contractor's Subcontracts and Subcontractors.

7.2. No contractual relationship exists between the District and any Subcontractor, supplier, or sub-subcontractor by reason of this Contract.

7.3. Bidding for Subcontractor Work

7.3.1. CONTRACTOR SHALL SOLICIT AND PROCURE SUBCONTRACTORS PURSUANT TO THE SUBCONTRACTOR PROCUREMENT PROCESS ATTACHED TO THE FACILITIES LEASE AS EXHIBIT H.

7.3.2. Contractor agrees and acknowledges that the Subcontractor Procurement Process is integral to the Parties negotiating in good faith to agree upon a GMP. If Contractor fails to comply with any of its obligations to procure Subcontractors in the Contract Documents, it will be considered a material breach and Default of the Facilities Lease, and the District shall have the right to terminate the Facilities Lease.

7.4. Contractor agrees to bind every Subcontractor by terms of Contract as far as those terms are applicable to Subcontractor's work. If Contractor shall subcontract any part of this Contract, Contractor shall be as fully responsible to District for acts and omissions of any Subcontractor and of persons either directly or indirectly employed by any Subcontractor, as it is for acts and omissions of persons directly employed by Contractor. The divisions or sections of the Specifications are not intended to control the Contractor in dividing the Work among Subcontractors or limit the work performed by any trade.

7.5. District's consent to, or approval of, or failure to object to, any Subcontractor under this Contract shall not in any way relieve Contractor of any obligations under this Contract and no such consent shall be deemed to waive any provisions of this Contract.

7.6. Contractor is directed to familiarize itself with sections 1720 through 1861 of the Labor Code of the State of California, as regards the payment of prevailing wages and related issues, and to comply with all applicable requirements therein all including, without limitation, section 1775 and the Contractor's and Subcontractors'

obligations and liability for violations of prevailing wage law and other applicable laws. Prevailing wage rates are on file with the District and are available to any interested party on request or at www.dir.ca.gov/oprl/statistics_and_databases.html.

7.7. The Contractor shall be responsible for the coordination of the trades, Subcontractors, sub-subcontractors, and material or equipment suppliers working on the Project.

7.8. Contractor is solely responsible for settling any differences between the Contractor and its Subcontractor(s) or between Subcontractors.

7.9. Contractor must include in all of its subcontracts the assignment provisions as indicated in the Termination section of these General Construction Provisions.

8. OTHER CONTRACTS/CONTRACTORS

8.1. District reserves the right to let other contracts, and/or to perform work with its own forces, in connection with other portions of the Project or other construction or operations at or about the Site. Contractor shall afford other contractors reasonable opportunity for introduction and storage of their materials and execution of their work and shall properly coordinate and connect Contractor's Work with the work of other contractors.

8.2. In addition to Contractor's obligation to protect its own Work, Contractor shall protect the work of any other contractor that Contractor encounters while working on the Site.

8.3. If any part of Contractor's Work depends for proper execution or results upon work of District or any other contractor, the Contractor shall inspect and promptly report to the District in writing before proceeding with its Work any defects in District's or any other contractor's work that render Contractor's Work unsuitable for proper execution and results. Contractor shall be held accountable for damages to District for District's or any other contractor's work that Contractor failed to inspect or should have inspected. Contractor's failure to inspect and report shall constitute Contractor's acceptance of all District's or any other contractor's work as fit and proper for reception of Contractor's Work, except as to defects that may develop in District's or any other contractor's work after execution of Contractor's Work.

8.4. To ensure proper execution of its subsequent work, Contractor shall measure and inspect work already in place and shall at once report to the District in writing any discrepancy between that executed work and the Contract Documents.

8.5. Contractor shall ascertain to its own satisfaction the scope of the Project and nature of District's or any other contracts that have been or may be awarded by District in prosecution of the Project to the end that Contractor may perform this Contract in light of the other contracts, if any.

8.6. Nothing herein contained shall be interpreted as granting to Contractor exclusive occupancy of the Site, the Premises, or of the Project. Contractor shall not cause any unnecessary hindrance or delay to the use and/or school operation(s) of the Premises and/or to District or any other contractor working on the Project. If simultaneous execution of any contract or school operation is likely to cause interference with performance of Contractor's Contract, Contractor shall coordinate with those contractor(s), person(s), and/or entity(s) and shall notify the District of the resolution.

9. DRAWINGS AND SPECIFICATIONS

9.1. A complete list of all Drawings for the Project is to be found as an index on the Drawings themselves, and/or may be provided to the Contractor and/or in the Table of Contents.

9.2. Materials or Work described in words that so applied have a well known technical or trade meaning shall be deemed to refer to recognized standards, unless noted otherwise.

9.3. Trade Name or Trade Term.

9.3.1. It is not the intention of this Contract to go into detailed descriptions of any materials and/or methods commonly known to the trade under “trade name” or “trade term.” The mere mention or notation of “trade name” or “trade term” shall be considered a sufficient notice to Contractor that it will be required to complete the work so named, complete, finished, and operable, with all its appurtenances, according to the best practices of the trade.

9.3.2. The naming of any material and/or equipment shall mean furnishing and installing of same, including all incidental and accessory items thereto and/or labor therefor, as per best practices of the trade(s) involved, unless specifically noted otherwise.

9.3.3. Contract Documents are complementary, and what is called for by one shall be binding as if called for by all. As such, Drawings and Specifications are intended to be fully cooperative and to agree. However, if Contractor observes that Drawings and Specifications are in conflict, Contractor shall promptly notify District and Architect in writing, and any necessary changes shall be made as provided in the Contract Documents.

9.4. Interpretation of Contract Documents/Order of Precedence:

Questions concerning the intent, precedence, or meaning of the Contract Documents, including the Drawings or Specifications, shall be submitted to the District for interpretation. Inconsistencies in the Contract Documents shall be resolved by giving precedence in the following order:

- 9.4.1.** District-approved modifications, beginning with the most recent (if any);
- 9.4.2.** Exhibit K: Revisions to Contract Documents
- 9.4.3.** Exhibit D: General Construction Provisions
- 9.4.4.** Facilities Lease
- 9.4.5.** Site Lease
- 9.4.6.** Exhibit C: GPC and Other Project Costs
- 9.4.7.** Remaining Exhibits to the Facilities Lease
- 9.4.8.** Division 1 Documents (Documents beginning with “01”);
- 9.4.9.** Division 2 through Division 49 documents (Technical Specifications);
- 9.4.10.** Figured dimensions;
- 9.4.11.** Large-scale drawings;
- 9.4.12.** Small-scale drawings.

In case of conflict, the greater quantity and/or higher standard of workmanship shall apply unless the District expressly in writing (e.g., via a Change Order) accepts a lesser quantity or lower quality of workmanship and the Contract Price is adjusted accordingly. The decision of the District in the matter shall be final.

9.5. Integration / Modification.

The Contract Documents and any documents specifically incorporated by reference are completely integrated as the complete and exclusive statement of the terms of the Agreement. This Facilities Lease and Site Lease supersedes all previous contracts, agreements, and / or communications, both oral and written, and constitutes the entire understanding of the District and Contractor. No extrinsic evidence whatsoever shall be admissible or used to explain or supplement the terms of the Contract, Contract Documents, or any items incorporated by reference. No changes, amendments or alterations shall be effective unless in writing, signed

by both Parties, and unless provided otherwise by the Contract Documents.

9.6. Drawings and Specifications are intended to comply with all laws, ordinances, rules, and regulations of constituted authorities having jurisdiction, and where referred to in the Contract Documents, the laws, ordinances, rules, and regulations shall be considered as a part of the Contract within the limits specified. Contractor shall bear all expense of correcting work done contrary to said laws, ordinances, rules, and regulations and for which the Contractor knew or reasonably should have known did not comply with those laws, ordinances, rules, and regulations.

9.7. Ownership of Drawings

All copies of Plans, Drawings, Designs, Specifications, and copies of other incidental architectural and engineering work, or copies of other Contract Documents furnished by District, are the property of District. They are not to be used by Contractor in other work and, with the exception of signed sets of Contract Documents, are to be returned to District on request at completion of Work, or may be used by District as it may require without any additional costs to District. Neither the Contractor nor any Subcontractor, or material or equipment supplier shall own or claim a copyright in the Drawings, Specifications, and other documents prepared by the Architect. District hereby grants the Contractor, Subcontractors, sub-subcontractors, and material or equipment suppliers a limited license to use applicable portions of the Drawings prepared for the Project in the execution of their Work under the Contract Documents.

10. CONTRACTOR'S SUBMITTALS AND SCHEDULES

Contractor's submittals shall comply with the provisions and requirements of the Contract Documents including, without limitation Submittals. No submittal, unless approved in writing by the District as acceptable and complete, shall be a Contract Document.

10.1. Construction Schedule

The Contractor shall prepare a Construction Schedule that complies with the construction schedule attached to the Facilities Lease as **Exhibit F** ("Construction Schedule") and in compliance with the provisions of the "**Construction Schedule – Network Analysis**" provisions indicated in **Exhibit I** and shall provide all schedules and construction progress documentation as required in the Contract Documents.

10.1.1. All items on the Schedule of Values must have a specific completion date on the Construction Schedule, or District has approved the Construction Schedule and the Construction Schedule is fully cost-loaded and resource-loaded, unless waived by the District in writing, and detailed as required by the Contract Documents.

10.1.2. Contractor must provide all schedules both in hard copy and electronically, in a format (e.g., Microsoft Project or Primavera) approved in advance by the District.

10.1.3. The District will review the schedules submitted and the Contractor shall make changes and corrections in the schedules as requested by the District and resubmit the schedules until approved by the District.

10.2. Schedule of Values

The Contractor has provided and the District has approved a Schedule of Values as **Exhibit G** ("Schedule(s) of Values") for all of the Work, which is comprised of quantities and prices of items aggregating the Guaranteed Project Cost and subdivided into component parts. The Schedule of Values includes, at a minimum, the following information and the following structure:

10.2.1. The District expects the Schedule of Values to follow the most current breakdown of scope and categories found in the most recent Construction Specifications Institute ("CSI") MasterFormat documentation. At a minimum, the Contractor must include at least the following categories:

- 10.2.1.1. Overhead and profit;
- 10.2.1.2. Supervision;
- 10.2.1.3. General conditions;
- 10.2.1.4. Layout;
- 10.2.1.5. Mobilization;
- 10.2.1.6. Submittals;
- 10.2.1.7. Bonds and insurance;
- 10.2.1.8. Closeout documentation;
- 10.2.1.9. Demolition;
- 10.2.1.10. Installation;
- 10.2.1.11. Rough-in;
- 10.2.1.12. Finishes;
- 10.2.1.13. Testing;
- 10.2.1.14. Punch list and acceptance.

10.2.2. Divided by each of the following areas:

- 10.2.2.1. Site work;
- 10.2.2.2. By each building and phase;
- 10.2.2.3. By each floor.
- 10.2.2.4. By division of work.

10.2.3. The Schedule of Values shall not provide for values any greater than the following percentages of the Guaranteed Project Cost:

- 10.2.3.1. Mobilization and layout combined to equal not more than 1%;
- 10.2.3.2. Submittals, samples and shop drawings combined to equal not more than 2%;
- 10.2.3.3. Bonds and insurance combined to equal not more than 3%.
- 10.2.3.4. Punchlist and acceptance value combined to equal not less than 1%.
- 10.2.3.5. No item on the Schedule of Value (except noted above) to equal more than 3%.

10.2.4. Closeout Documentation shall have a value in the schedule of values of not less than 5%. The value for Closeout Documentation shall be in addition to and shall not be a part of the Lease Payments.

10.2.5. The Schedule of Values shall not be modified or amended by the Contractor without the prior consent and approval of the District, which may be granted or withheld in the sole discretion of the District. The Schedule of Values shall only be modified by an executed Change Order.

10.2.6. The District shall have the right at any time to revise the Schedule of Values if, in the District's sole opinion, the Schedule of Values does not accurately reflect the value of the Work performed.

10.3. Safety Plan.

Contractor's Safety Plan specifically adapted for the Project. Contractor's Safety Plan shall comply with the following requirements and shall be submitted to the District for information purposes only:

10.3.1. All applicable requirements of California Division of Industrial Safety ("CalOSHA") and/or of the United States Occupational Safety and Health Administration ("OSHA").

10.3.2. All provisions regarding Project safety, including all applicable provisions in these General Construction Provisions.

10.3.3. Contractor's Safety Plan shall be in English and in the language(s) of the Contractor's and its Subcontractors' employees.

10.4. Complete Subcontractor List.

The name, address, telephone number, facsimile number, California State Contractors License number, classification, and monetary value of all Subcontracts for parties furnishing labor, material, or equipment for Project Completion, plus all information required in the Contract Documents. This includes the subcontractor Bid and fully executed Contract.

10.5. Monthly Progress Schedule(s)

10.5.1. Contractor shall provide Monthly Progress Schedule(s) to the District. A Monthly Progress Schedule shall update the approved Construction Schedule or the last Monthly Progress Schedule, showing all work completed and to be completed. The monthly Progress Schedule shall be in a format (e.g., Microsoft Project or Primavera) approved in advance by the District and contain a written narrative of the progress of work that month and any changes, delays, or events that may affect the work. The process for District approval of the Monthly Progress Schedule shall be the same as the process for approval of the Construction Schedule.

10.5.2. Contractor shall also submit Monthly Progress Schedule(s) with all payment applications.

10.6. Safety Data Sheets (SDS) (formerly known as Material Safety Data Sheets, or MSDSs.

Contractor is required to ensure Safety Data Sheets are available in a readily accessible place at the Work Site for any material requiring a Safety Data Sheet per the Federal "Hazard Communication" standard, or employees right to know law. The Contractor is also required to ensure proper labeling on substance brought onto the job site and that any person working with the material or within the general area of the material is informed of the hazards of the substance and follows proper handling and protection procedures. Two additional copies of the Safety Data Sheets shall also be submitted directly to the District.

10.7. Logistics Plan.

Contractor shall provide a staging and logistics plan identifying laydown areas, loading and unloading areas, crane locations, fence locations, temporary utility connections, trailer locations, and emergency evacuation meeting area. This Logistics Plan must be approved by the District prior to the Contractor mobilizing on the Site and shall be updated and revised upon the District's request.

11. SITE ACCESS, CONDITIONS, AND REQUIREMENTS

11.1. Site Investigation

Contractor has made a careful investigation of the Site and is familiar with the requirements of the Contract and has accepted the known existing conditions of the Site.

11.2. Soils Investigation Report & Site Due Diligence

11.2.1. When a soils investigation report obtained from test holes at Site is available, that report shall be available to the Contractor but shall not be a part of this Contract. Any information obtained from that report or any information given on Drawings as to subsurface soil condition or to elevations of existing

grades or elevations of underlying rock is approximate only, is not guaranteed, does not form a part of this Contract. Contractor may reasonably rely thereon, however the District makes no warranty regarding the completeness or accuracy of any such report or other information regarding subsurface conditions. Contractor acknowledges that it has made visual examination of Site and has made whatever tests Contractor deems appropriate to determine underground condition of soil.

11.2.2. If Contractor encounters subsurface or latent conditions at Site materially differing from those shown on Drawings or indicated in Specifications, or for unknown conditions of an unusual nature that differ materially from those ordinarily encountered in the Work of the character provided for in the Contract Documents, Contractor shall give notice to the District immediately before conditions are disturbed and in no event later than ten (10) days after first observance of the conditions.

11.2.2.1. The District will promptly investigate such conditions and, if they differ materially and cause an increase or decrease in Contractor's cost of, or time required for, performance of any part of the Work, will equitably adjust the Contract Sum or Contract Time, or both.

11.2.2.2. If the District determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the District will notify Contractor in writing, stating the reasons.

11.2.2.3. If after receiving the response, Contractor still intends to pursue a Claim, it shall provide written notice within ten (10) days after it has received the decision.

11.2.2.4. Conditions will not be qualified as concealed or unknown if they were readily visible or reasonably observable.

11.2.3. Contractor's Diligence. Contractor's agreement to the Contract Price confirms that it has made a careful examination of the Contract Documents, that it has a complete understanding of the nature, extent, and location of Work to be performed and that it expressly represents that it has fully completed the following:

11.2.3.1. Contractor has visited the Project Site(s), and has examined thoroughly and understood the nature and extent of the Contract Documents, Work, Site, locality, actual conditions, as-built conditions, and all local conditions and federal, state and local laws, and regulations that in any manner may affect cost, progress, performance, or furnishing of Work or that relate to any aspect of the means, methods, techniques, sequences, or procedures of construction to be employed by Contractor and safety precautions and programs incident thereto;

11.2.3.2. Contractor has conducted or obtained and has understood all examinations, investigations, explorations, tests, reports, and studies that pertain to the subsurface conditions, as-built conditions, underground facilities, and all other physical conditions at or contiguous to the Site or otherwise that may affect the cost, progress, performance, or furnishing of Work, as Contractor considers necessary for the performance or furnishing of Work at the Guaranteed Project Cost, within the Contract Time, and in accordance with the other terms and conditions of Contract Documents, including specifically the provisions of the General Construction Provisions; and no additional examinations, investigations, explorations, tests, reports, studies, or similar information or data are or will be required by Contractor for such purposes;

11.2.3.3. Contractor has correlated its knowledge and the results of all such observations, examinations, investigations, explorations, tests, reports, and studies with the terms and conditions of the Contract Documents;

11.2.3.4. Contractor has given the District prompt written notice of all conflicts, errors, ambiguities, or

discrepancies that it has discovered in or among the Contract Documents and the actual conditions, and the written resolution thereof by the District is acceptable to Contractor;

11.2.3.5. Contractor has made a complete disclosure in writing to the District of all facts bearing upon any possible interest, direct or indirect, that Contractor believes any representative of the District or other officer or employee of the District presently has or will have in this Contract or in the performance thereof or in any portion of the profits thereof;

11.2.3.6. Contractor is charged with all information and knowledge that a reasonable contractor would ascertain from having performed this required work, investigation, research, and analysis. The Guaranteed Project Cost includes entire cost of all work "incidental" to completion of the Work.

11.2.3.7. Conditions Shown on the Contract Documents: Information as to underground conditions, as-built conditions, or other conditions or obstructions, indicated in the Contract Documents, e.g., on Drawings or in Specifications, has been obtained with reasonable care, and has been recorded in good faith. However, District only warrants, and Contractor may only rely, on the accuracy of limited types of information.

11.2.3.7.1. As to above-ground conditions or as-built conditions shown or indicated in the Contract Documents, there is no warranty, express or implied, or any representation express or implied, that such information is correctly shown or indicated. This information is verifiable by independent investigation and Contractor is required to make such verification. Contractor shall rely on the results of its own independent investigation. Contractor shall not rely on District-supplied information regarding above-ground conditions or as-built conditions. Subject to Public Contract Code section 7104, Contractor shall be responsible for all repairs of any utilities underground damaged by Contractor.

11.2.3.7.2. As to any subsurface condition shown or indicated in the Contract Documents, Contractor may rely only upon the general accuracy of actual reported depths, actual reported character of materials, actual reported soil types, actual reported water conditions, or actual obstructions shown or indicated. District is not responsible for the completeness of such information for preparing a proposal or construction; nor is District responsible in any way for any conclusions or opinions of Contractor drawn from such information; nor is District responsible for subsurface conditions that are not specifically shown (for example, District is not responsible for soil conditions in areas contiguous to areas where a subsurface condition is shown).

11.2.4. Conditions Shown in Reports and Drawings Supplied for Informational Purposes: Reference is made to the document entitled Geotechnical Data (if attached), and the document entitled Existing Conditions (if attached), for identification of:

11.2.4.1. **Subsurface Conditions:** Those reports of explorations and tests of subsurface conditions at or contiguous to the Project Site(s) that have been utilized by Architect in preparing the Contract Documents; and

11.2.4.2. **Physical Conditions:** Those drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Project Site(s) that has been utilized by Architect in preparing the Contract Documents.

11.2.4.3. These reports and drawings are not Contract Documents and, except for any "technical" data regarding subsurface conditions specifically identified in Geotechnical Data and Existing Conditions, and underground facilities data, Contractor may not in any manner rely on the information in these reports and drawings. Subject to the foregoing, Contractor must make its own

independent investigation of all conditions affecting the Work and must not rely on information provided by District.

11.3. Access to Work

District and its representatives shall at all times have access to Work wherever it is in preparation or progress, including storage and fabrication. Contractor shall provide safe and proper facilities for such access so that District's representatives may perform their functions.

11.4. Layout and Field Engineering

11.4.1. All field engineering required for layout of this Work and establishing grades for earthwork operations shall be furnished by Contractor at its expense. This Work shall be done by a qualified, California-registered civil engineer and/or licensed surveyor (as appropriate) approved in writing by District and Architect.

11.4.2. The Contractor shall be responsible for having ascertained pertinent local conditions such as location, accessibility, and general character of the Site and for having satisfied itself as to the conditions under which the Work is to be performed. District shall not be liable for any claim for allowances because of Contractor's error or negligence in acquainting itself with the conditions at the Site.

11.4.3. Contractor shall protect and preserve established benchmarks and monuments and shall make no changes in locations without the prior written approval of District. Contractor shall replace any benchmarks or monuments that are lost or destroyed subsequent to proper notification of District and with District's approval.

11.5. Utilities & Sanitary Facilities

Utilities necessary to complete the Work and to completely perform all of the Contractors' obligations shall be obtained by the Contractor without adjustment of the Guaranteed Project Cost. The Contractor shall furnish and install necessary or appropriate temporary distributions of utilities, including utilities furnished by the District. Any such temporary distributions shall be removed by the Contractor upon completion of the Work. The costs of all such utility services, including the installation and removal of temporary distributions thereof, shall be borne by the Contractor and included in the Guaranteed Project Cost. Also refer to other utility requirements as indicated in the Specifications. At all times during Work at the Site, the Contractor shall obtain and maintain temporary sanitary facilities in conformity with applicable law, rule or regulation. The Contractor shall maintain temporary sanitary facilities in a neat and clean manner with sufficient toilet room supplies. Personnel engaged in the Work are not permitted to use toilet facilities at the Site. Also refer to other Sanitary facility requirements as indicated in the Specifications.

11.6. Surveys

Contractor shall provide surveys done by a qualified, California-registered civil engineer and/or licensed surveyor (as appropriate) to determine locations of construction, grading, and site work as required to perform the Work.

11.7. Regional Notification Center

The Contractor, except in an emergency, shall contact the appropriate regional notification center at least two (2) days prior to commencing any excavation if the excavation will be conducted in an area or in a private easement that is known, or reasonably should be known, to contain subsurface installations other than the underground facilities owned or operated by the District, and obtain an inquiry identification number from that notification center. No excavation shall be commenced and/or carried out by the Contractor unless an

inquiry identification number has been assigned to the Contractor or any Subcontractor and the Contractor has given the District the identification number. Any damages arising from Contractor's failure to make appropriate notification shall be at the sole risk and expense of the Contractor. Any delays caused by failure to make appropriate notification shall be at the sole risk of the Contractor and shall not be considered for an extension of the Contract time.

11.8. Existing Utility Lines

11.8.1. Pursuant to Government Code section 4215, District assumes the responsibility for removal, relocation, and protection of main or trunk utility lines and facilities located on the construction Site at the time of commencement of construction under this Contract with respect to any such utility facilities that are not identified in the Plans and Specifications. Contractor shall not be assessed for liquidated damages for delay in Project Completion caused by failure of District or the owner of a utility to provide for removal or relocation of such utility facilities.

11.8.2. Locations of existing utilities provided by District shall not be considered exact, but approximate within reasonable margin and shall not relieve Contractor of responsibilities to exercise reasonable care nor costs of repair due to Contractor's failure to do so. District shall compensate Contractor for the costs of locating, repairing damage not due to the failure of Contractor to exercise reasonable care, and removing or relocating such utility facilities not indicated in the Plans and Specifications with reasonable accuracy, and for equipment necessarily idle during such work.

11.8.3. No provision herein shall be construed to preclude assessment against Contractor for any other delays in Project Completion. Nothing in this Section shall be deemed to require District to indicate the presence of existing service laterals, appurtenances, or other utility lines, with the exception of main or trunk utility lines, whenever the presence of these utilities on the Site of the construction Project can be inferred from the presence of other visible facilities, such as buildings, meter junction boxes, trenches on or adjacent to the Site of the construction.

11.8.4. If Contractor, while performing Work under this Contract, discovers utility facilities not identified by District in Contract Plans and Specifications, Contractor shall immediately, but in no case longer than two (2) Business Days, notify the District and the utility in writing. The cost of repair for damage to above-mentioned visible facilities without prior written notification to the District shall be borne by the Contractor.

11.9. Notification

Contractor understands, acknowledges and agrees that the purpose for prompt notification to the District pursuant to these provisions is to allow the District to investigate the condition(s) so that the District shall have the opportunity to decide how the District desires to proceed as a result of the condition(s). Accordingly, failure of Contractor to promptly notify the District in writing, pursuant to these provisions, shall constitute Contractor's waiver of any claim for damages or delay incurred as a result of the condition(s).

11.10. Hazardous Materials

Contractor shall comply with all provisions and requirements of the Contract Documents related to hazardous materials including, without limitation, certifications related to hazardous materials in the document entitled Certifications to be Completed by Contractor.

11.11. No Signs

Neither the Contractor nor any other person or entity shall display any signs not required by law or the Contract Documents at the Site, fences trailers, offices, or elsewhere on the Site without specific prior written

approval of the District.

12. TRENCHES

12.1. Trenches Greater Than Five Feet

Pursuant to Labor Code section 6705, if the Guaranteed Project Cost exceeds \$25,000 and involves the excavation of any trench or trenches five (5) feet or more in depth, the Contractor shall, in advance of excavation, promptly submit to the District and/or a registered civil or structural engineer employed by the District or Architect, a detailed plan showing the design of shoring for protection from the hazard of caving ground during the excavation of such trench or trenches.

12.2. Excavation Safety

If such plan varies from the Shoring System Standards established by the Construction Safety Orders, the plan shall be prepared by a registered civil or structural engineer, but in no case shall such plan be less effective than that required by the Construction Safety Orders. No excavation of such trench or trenches shall be commenced until said plan has been accepted by the District or by the person to whom authority to accept has been delegated by the District.

12.3. No Tort Liability of District

Pursuant to Labor Code section 6705, nothing in this Article shall impose tort liability upon the District or any of its employees.

12.4. No Excavation Without Permits

The Contractor shall not commence any excavation Work until it has secured all necessary permits including the required CAL OSHA excavation/shoring permit. Any permits shall be prominently displayed on the Site prior to the commencement of any excavation.

12.5. Discovery of Hazardous Waste, Unusual Conditions and /or Unforeseen Conditions

12.5.1. Pursuant to Public Contract Code section 7104, if the Work involves digging trenches or other excavations that extend deeper than four feet below the Surface, the Contractor shall immediately, but in no case longer than two (2) Business Days, and before the following conditions are disturbed, notify the District, in writing, of any:

12.5.1.1. Material that the Contractor believes may be material that is hazardous waste, as defined in section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.

12.5.1.2. Subsurface or latent physical conditions at the Site differing from those indicated.

12.5.1.3. Unknown physical conditions at the Site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract.

12.5.2. The District shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in the Contractor's cost of, or the time required for, performance of any part of the Work, shall issue a Change Order under the procedures described herein.

12.5.3. In the event that a dispute arises between District and the Contractor whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Contractor's cost of, or time required for, performance of any part of the Work, the Contractor shall not be excused from any scheduled Completion date provided for by the Contract, but shall proceed with all work to be performed under the Contract. The Contractor shall retain any and all rights provided by the Contract or by law that pertain to the resolution of disputes and protests, which include the requirement that Contractor complies with the notice and PCO provisions of the Contract Documents. Contractor's failure to submit a proposed change order pursuant to the terms of the Contract Documents shall be deemed a waiver of Contractor's right to an adjustment of the GPC of Contract Time.

13. INSURANCE AND BONDS

13.1. Contractor's Insurance

The Contractor shall comply with the insurance requirements as indicated in the Facilities Lease.

13.2. Contract Security - Bonds

13.2.1. Contractor shall furnish two surety bonds issued by a California admitted surety insurer as follows:

13.2.1.1. Performance Bond: A bond in an amount at least equal to one hundred percent (100%) of Contract Price as security for faithful performance of this Contract.

13.2.1.2. Payment Bond: A bond in an amount at least equal to one hundred percent (100%) of the Contract Price as security for payment of persons performing labor and/or furnishing materials in connection with this Contract.

13.2.2. Cost of bonds shall be included in the Guaranteed Project Cost.

13.2.3. All bonds related to this Project shall be on the forms provided in the Contract Documents and shall comply with all requirements of the Contract Documents.

14. WARRANTY/GUARANTEE/INDEMNITY

14.1. Warranty/Guarantee

14.1.1. The Contractor shall obtain and preserve for the benefit of the District, manufacturer's warranties on materials, fixtures, and equipment incorporated into the Work.

14.1.2. In addition to guarantees required elsewhere, Contractor shall, and hereby does guarantee and warrant all Work furnished on the Project against all defects for a period of **ONE (1) year** after the later of the following dates:

14.1.2.1. Project Completion,

14.1.2.2. The final commissioning date for all systems, equipment and components that are within the Project, if any.

At the District's sole option, Contractor shall repair or replace any and all of that Work, together with any other Work that may be displaced in so doing, that may prove defective in workmanship and/or materials within a **ONE (1) year** period from date of Project Completion as defined above without expense whatsoever to District. In the event of failure of Contractor and/or Surety to commence and pursue with

diligence said replacements or repairs within ten (10) days after being notified in writing, Contractor and Surety hereby acknowledge and agree that District is authorized to proceed to have defects repaired and made good at expense of Contractor and/or Surety who hereby agree to pay costs and charges therefore immediately on demand.

14.1.3. If, in the opinion of District, defective work creates a dangerous condition or requires immediate correction or attention to prevent further loss to District or to prevent interruption of operations of District, District will attempt to give the notice required above. If Contractor or Surety cannot be contacted or neither complies with District's request for correction within a reasonable time as determined by District, District may, notwithstanding the above provision, proceed to make any and all corrections and/or provide attentions the District believes are necessary. The costs of correction or attention shall be charged against Contractor and Surety of the guarantees provided in this Article or elsewhere in this Contract.

14.1.4. The above provisions do not in any way limit the guarantees on any items for which a longer guarantee is specified or on any items for which a manufacturer gives a guarantee for a longer period. Contractor shall furnish to District all appropriate guarantee or warranty certificates as indicated in the Specifications or upon request by District.

14.1.5. Nothing herein shall limit any other rights or remedies available to District.

14.2. Indemnity

Contractor shall indemnify the District as indicated in the Facilities Lease.

15. TIME

15.1. Computation of Time / Adverse Weather

15.1.1. The Contractor will only be allowed a time extension for Adverse Weather conditions if requested by Contractor and only if all of the following conditions are met:

15.1.1.1. The weather conditions constitute Adverse Weather, as defined herein;

15.1.1.2. Contractor can verify that the Adverse Weather caused delays in excess of five hours of the indicated labor required to complete the scheduled tasks of Work on the day affected by the Adverse Weather;

15.1.1.3. The Contractor's crew is dismissed as a result of the Adverse Weather; and

15.1.1.4. The number of days of delay for the month exceeds the following parameters, or twenty nine (29) days annually. The District and Contractor may negotiate a different minimum number of days or a cumulative number of days for the duration of the Project, which shall be as indicated in **Exhibit K** to the Facilities Lease:

January	<u>7</u>	July	<u>0</u>
February	<u>7</u>	August	<u>0</u>
March	<u>4</u>	September	<u>0</u>
April	<u>3</u>	October	<u>2</u>
May	<u>1</u>	November	<u>2</u>
June	<u>1</u>	December	<u>2</u>

15.1.2. A day-for-day extension will only be allowed for those days in excess of those indicated herein.

15.1.3. The Contract Time has been determined with consideration given to the average climate weather conditions prevailing in the County in which the Project is located.

15.2. Hours of Work

Work shall be performed during regular working hours as permitted by the appropriate governmental agency except that in the event of an emergency, or when required to complete the Work in accordance with job progress, Work may be performed outside of regular working hours with the advance written consent of the District and approval of any required governmental agencies (e.g., the city within which the Project is located). Contractor shall confirm with the governmental agencies what the permitted work hours are for the jurisdiction in which the Project is located.

15.3. Progress and Project Completion

15.3.1. Time of the Essence

Time limits stated in the Contract Documents are of the essence to the Contract. By executing the Facilities Lease, the Contractor confirms that the Contract Time is a reasonable period for Project Completion.

15.3.2. No Commencement Without Insurance

The Contractor shall not commence operations on the Project or elsewhere prior to the effective date of insurance and bonds. The date of commencement of the Work shall not be changed by the effective date of such insurance. If Contractor commences Work without insurance and bonds, all Work is performed at Contractor's peril and shall not be compensable until and unless Contractor secures bonds and insurance pursuant to the terms of the Contract Documents and subject to District claim for damages.

15.3.3. Sufficient Forces

Contractor and Subcontractors shall continuously furnish sufficient forces to ensure the prosecution of the Work in accordance with the Construction Schedule to obtain Project Completion within the Contract Time.

15.4. Schedule

Contractor shall provide to District, Construction Manager, and Architect a schedule in conformance with the Contract Documents and as required in these General Construction Provisions.

15.5. Expeditious Completion

The Contractor shall proceed expeditiously with adequate forces and shall achieve Completion within the Contract Time.

16. EXTENSIONS OF TIME – LIQUIDATED DAMAGES

16.1. Contractor's Notice of Delay

16.1.1. In addition to the requirements indicated in this subsection, Contractor shall submit any request for an adjustment of the Contract Price or the Contract Time through the Change Order provisions in

these General Construction Provisions.

16.1.2. Contractor shall, within **FIVE (5)** calendar days of any delay impacting the critical path in completing the Work, notify District in writing of the causes of the delay including documentation and facts explaining the delay.

16.1.3. Any request by Contractor for an adjustment of the Contract Price or the Contract Time for a delay shall be submitted in accordance with the provisions in the Contract Documents governing changes in Work. When requesting time, requests must be submitted with full justification and documentation. Such justification must be based on the official Construction Schedule as updated at the time of occurrence of the delay or execution of Work related to any changes to the Scope of Work.

16.1.4. Any claim for delay must include the following information as support, without limitation:

16.1.4.1. Duration. The duration of the activity relating to the changes in the Work and the resources (manpower, equipment, material, etc.) required to perform the activities within the stated duration.

16.1.4.2. Logical Ties / Fragnets. Specific logical ties to the Contract Schedule for the proposed changes and/or delay showing the activity/activities in the Construction Schedule that are affected by the change and/or delay. (A portion of any delay of seven (7) days or more must be provided.) Include a "fragnet" analysis for the portion of the schedule and the activities the Contractor contends are impacted by the delay and a detailed time impact analysis in compliance with the provisions of the "**Construction Schedule – Network Analysis**" provisions indicated in **Exhibit I**.

16.1.4.3. Updated Construction Schedule. A recovery or updated Construction Schedule must be submitted.

16.1.5. District shall review the facts and extent of any noticed delay and may grant Contract Time extension(s) of time for completing Work when, in the District's judgment, the findings of fact justify an extension.

16.1.6. Extension(s) of time shall apply only to that portion of Work affected by delay, and shall not apply to other portions of Work not so affected.

16.1.7. An extension of time may only be granted if Contractor has timely submitted the updated Construction Schedule as required herein.

16.1.8. Following submission of a notice of delay, the District may determine whether the delay is to be considered:

16.1.8.1. Excusable and Compensable, Excusable and Non-Compensable, or Unexcused;

16.1.8.2. How long the delay continues; and

16.1.8.3. To what extent the prosecution and Completion of the Work might be delayed thereby.

16.1.9. Contractor's failure to request adjustment(s) of the Contract Time in strict conformity with applicable provisions of the Contract Documents shall be deemed Contractor's waiver of its right to assert a claim for a delay.

16.1.10. Limitations Upon Adjustment of Contract Time on Account of Delays. Any adjustment of the Contract Time on account of an Excusable Delay or a Compensable Delay shall be limited as set forth herein. No adjustment of the Contract Time shall be made on account of any Excusable Delays or

Compensable Delays unless those delay(s) actually and directly impact Work or Work activities on the critical path of the then current and updated approved Construction Schedule as of the date on which a delay first occurs. The District shall not be deemed in breach of, or otherwise in default of any obligation hereunder, if the District shall deny a request by the Contractor for an adjustment of the Contract Time for any delay that does not actually and directly impact Work on the then current and updated approved Construction Schedule. In submitting a request for an adjustment of Contract Time, and as a condition precedent to the District's review of that request, Contractor shall insert into the then current and updated approved Construction Schedule a "fragnet" analysis and a detailed time impact analysis representing the event that Contractor claims to result in delay to the critical path as depicted in the updated approved Construction Schedule. If an Excusable Delay and a Compensable Delay occur concurrently, the maximum extension of the Contract Time shall be the number of days from the commencement of the first delay to the cessation of the delay that ends last. If an Unexcused Delay occurs concurrently with either an Excusable Delay or a Compensable Delay, the maximum extension of the Contract Time shall be the number of days, if any, which the Excusable Delay or the Compensable Delay exceeds the period of time of the Unexcused Delay.

16.2. Excusable and Compensable Delay(s)

16.2.1. Contractor is **not** entitled to additional compensation for any delay, even a delay caused by Adverse Weather or an Excusable Delay, unless **all** of the following conditions are met:

16.2.1.1. The District is responsible for the delay;

16.2.1.2. The delay is unreasonable under the circumstances involved and impacts the critical path of the Work and extends the most current Contract Completion date;

16.2.1.3. The delay was not within the contemplation of District and Contractor;

16.2.1.4. Contractor complies with the Change Order procedures, and if necessary, the Claims procedures of the Contract Documents;

16.2.1.5. The delay could not have been avoided or mitigated by the Contractor's care, prudence, foresight, and diligence;

16.2.1.6. The delay extends the most current Contract Completion date; and

16.2.1.7. The Delay is not concurrent with a Contractor-caused delay or other type of Excusable Delay.

16.2.2. In accordance with California Public Contract Code section 7102, if the Contractor's progress is delayed by the events described in the preceding subsection, Contractor shall not be precluded from the recovery of damages directly and proximately resulting therefrom. In that event, Contractor's damages, if any, shall be limited to direct, actual and unavoidable additional costs of labor, materials or construction equipment directly resulting from that delay, and shall exclude special, indirect or consequential damages. In no event shall Contractor seek costs or damages for delays, interruptions, hindrances or disruptions to the Work for on-Site or off-Site costs or damages based upon formulas, e.g. Eichleay or other formula. Except as expressly provided for herein, Contractor shall not have any other claim, demand or right to adjustment of the Contract Price arising out of delay, interruption, hindrance or disruption to the progress of the Work. Adjustments to the Contract Price and the Contract Time, if any, on account of Changes to the Work or Suspension of the Work shall be governed by the applicable provisions of the Contract Documents, including without limitation, the **"Changes in the Work"** section and the percentages in the **"Format for Proposed Change"** section of these General Construction Provisions.

16.3. Excusable and Non-Compensable Delay(s)

16.3.1. An "Excusable Delay" shall mean an interruption of the Work beyond the reasonable control of the Contractor and that:

16.3.1.1. Could have not been avoided by the Contractor exercising care, prudence, foresight, and diligence, and

16.3.1.2. Actually extended the most current Project Completion date.

16.3.2. The Contractor may be entitled to an extension of the Project Completion date if there is an Excusable Delay, but the Contractor shall not be entitled to additional compensation for an Excusable Delay.

16.3.3. Excusable Delays are limited to interruptions that satisfy the above requirements and that are Force Majeure Events as indicated in the Facilities Lease.

16.3.4. Contractor is aware that governmental agencies and utilities, including, without limitation, the Division of the State Architect, the Department of General Services, gas companies, electrical utility companies, water districts, cities, counties and other agencies may have to approve Contractor-prepared drawings or approve a proposed installation. Contractor shall include in its bid, time for possible review of its drawings and for reasonable delays and damages that may be caused by such agencies. Contractor is not entitled to make a claim for damages or delays or an Excusable Delay arising from the review of Contractor's drawings or other approvals from the Division of the State Architect, the Department of General Services, gas companies, electrical utility companies, water districts, and other agencies.

16.3.5. Neither the financial resources of the Contractor or any person or entity directly or indirectly engaged by the Contractor in performance of any portion of the Work shall be deemed conditions beyond the control of the Contractor. If an event of Excusable Delay occurs, the Contract Time shall be subject to adjustment hereunder only if the Contractor establishes: (i) full compliance with all applicable provisions of the Contract Documents relative to the method, manner and time for Contractor's notice and request for adjustment of the Contract Time; (ii) that the event(s) forming the basis for Contractor's request to adjust the Contract Time are outside the reasonable control and without any fault or neglect of the Contractor or any person or entity directly or indirectly engaged by Contractor in performance of any portion of the Work; and (iii) that the event(s) forming the basis for Contractor's request to adjust the Contract Time directly and adversely impacted the critical path of the Work as indicated in the approved Construction Schedule or the most recent updated approved Construction Schedule relative to the date(s) of the claimed event(s) of Excusable Delay.

16.3.6. Computation of Time / Adverse Weather

16.3.6.1. The Contractor will only be allowed a time extension for Adverse Weather conditions if requested by Contractor within five (5) calendar days of the Adverse Weather event, and only if all of the following conditions are met – thereby making the resulting delay an Excusable Delay.

16.3.6.1.1. The weather conditions constitute Adverse Weather, as defined herein and further specified in **Exhibit K**;

16.3.6.1.2. Contractor can verify that the Adverse Weather caused delays in excess of five (5) hours of the indicated labor required to complete the scheduled tasks of Work on the day affected by the Adverse Weather;

16.3.6.1.3. The Contractor's crew is dismissed as a result of the Adverse Weather; and

16.3.6.1.4. The number of days of delay for the month exceed those indicated in the **Exhibit K**.

16.3.6.2. A day-for-day extension will only be allowed for those days in excess of those indicated in the **Exhibit K**.

16.3.6.3. The Contractor shall work seven (7) days per week, if necessary, irrespective of inclement weather, to maintain access and the Construction Schedule, and to protect the Work under construction from the effects of Adverse Weather, all at no further cost to the District.

16.4. Unexcused Delay(s) – Liquidated Damages

16.4.1. Unexcused Delays refer to any delay to the progress of the Work caused by events or factors other than those specifically identified in the “Excusable and Compensable Delay(s)” or the “Excusable and Non-Compensable Delay(s)” sections above. Neither the Contract Price nor the Contract Time shall be adjusted on account of Unexcused Delays.

16.4.2. Contractor and District hereby agree that the exact amount of damages for failure to complete the Work within the time specified is extremely difficult or impossible to determine. If the Work is not completed within the time specified in the Contract Documents, it is understood that the District will suffer damage. It being impractical and unfeasible to determine the amount of actual damage, it is agreed the Contractor shall forfeit and pay to District as fixed and liquidated damages, and not as a penalty, the amount set forth in the Contract Documents for each calendar day of delay in Completion. Contractor and its Surety shall be liable for the amount thereof pursuant to Government Code section 53069.85.

16.4.3. Contractor shall not forfeit or pay liquidated damages for an Excusable Delay or an Excusable and Compensable Delay.

16.5. Float or Slack in the Schedule

Float or slack is the amount of time between the early start date and the late start date, or the early finish date and the late finish date, of any of the activities in the schedule. Float or slack is not for the exclusive use of or benefit of either the District or the Contractor, however it shall be used as necessary to accommodate delays in the progress of the Work which may occur during the course of construction, as determined by the District. Contractor shall not be entitled to an extension of time for any claimed delays to the extent that such delays may be covered by the float.

17. CHANGES IN THE WORK

17.1. No Changes Without Authorization

17.1.1. There shall be no change whatsoever in the Drawings, Specifications, or in the Work without an executed Change Order authorized by the District as herein provided. District shall not be liable for the cost of any extra work or any substitutions, changes, additions, omissions, or deviations from the Drawings and Specifications unless the District's governing board has authorized the same and the cost thereof has been approved in writing by Change Order. No extension of time for performance of the Work shall be allowed hereunder unless claim for such extension is made at the time changes in the Work are ordered, and such time duly adjusted in writing in the Change Order. The provisions of the Contract Documents shall apply to all such changes, additions, and omissions with the same effect as if originally embodied in the Drawings and Specifications.

17.1.2. Verbal Order of Change in the Work. Any verbal order, direction, instruction, interpretation, or

determination from the District, the Project Inspector or the Architect which in the opinion of the Contractor causes any change to the scope of the Work, or otherwise requires an adjustment to the Contract Price or the Contract Time, shall be treated as a Change only if the Contractor gives the District written notice within three (3) Business Days of the order, directions, instructions, interpretation or determination and prior to acting in accordance therewith. Time is of the essence in Contractor's written notice pursuant to the preceding sentence so that the District can promptly investigate and consider alternative measures to address the order, direction, instruction, interpretation or determination giving rise to Contractor's notice. Accordingly, Contractor acknowledges that its failure, for any reason, to give written notice within three (3) Business Days of any right to assert or claim any entitlement to an adjustment of the Contract Time or the Contract Price on account of that verbal order, direction, instruction, interpretation or determination shall constitute a waiver of its right to make that claim. The written notice shall state the date, circumstances, extent of adjustment to the Contract Price or the Contract Time, if any, requested, and the source of the verbal order, directions, instructions, interpretation or determination that the Contractor regards as a Change. Unless the Contractor acts in strict accordance with this procedure, any verbal order, direction, instruction, interpretation or determination shall not be treated as a Change and the Contractor hereby waives any claim for any adjustment to the Contract Price or the Contract Time on account thereof.

17.1.3. Contractor shall perform immediately all work that has been authorized by a fully executed Change Order, Unilateral Change Order, or Force Account Directive. Contractor shall be fully responsible for any and all delays and/or expenses caused by Contractor's failure to expeditiously perform this Work and Contractor's failure or refusal to proceed with that Work may be deemed to be Contractor's default of a material obligation of the Contractor under the Contract Documents.

17.1.4. Should any Change Order result in an increase in the Guaranteed Project Cost, the cost of that Change Order shall be agreed to, in writing, in advance by Contractor and District. In the event that Contractor proceeds with any change in Work without a Change Order executed by the District, Contractor waives any claim of additional compensation or time for that additional work.

17.1.5. Contractor understands, acknowledges, and agrees that the reason for District authorization is so that District may have an opportunity to analyze the Work and decide whether the District shall proceed with the Change Order or alter the Project so that a change in Work becomes unnecessary.

17.1.6. In an emergency affecting safety of life or of work or of adjoining property, Contractor, without special instruction or authorization, shall act, at its discretion, to prevent all threatened loss or injury. Any compensation or time claimed by Contractor on account of emergency work shall be determined as indicated herein as a PCO.

17.2. Architect Authority

The Architect will have authority to order minor changes in the Work not involving any adjustment in the Guaranteed Project Cost, or an extension of the Contract Time, or a change that is inconsistent with the intent of the Contract Documents. These changes shall be effected by written Change Order, Unilateral Change Order, or by Architect's response(s) to RFI(s).

17.3. Change Orders

17.3.1. A Change Order is a written instrument prepared and issued by the District and signed by the District (as authorized by the District's governing board), the Contractor, the Architect, and approved by the Project Inspector (if necessary) and DSA (if necessary), stating their agreement regarding all of the following. If a Change Order is required to be approved by DSA, the District may call it a "*Construction Change Document*":

17.3.1.1. A description of a change in the Work;

17.3.1.2. The amount of the adjustment in the Guaranteed Project Cost, if any; and

17.3.1.3. The extent of the adjustment in the Contract Time, if any.

17.4. Unilateral Change Orders

17.4.1. A Unilateral Change Order is a written order prepared and issued by the District, the Construction Manager, and/or the Architect and signed by the District, directing a change in the Work. The District may as provided by law, by Unilateral Change Order and without invalidating the Contract, order changes in the Work consisting of additions, deletions, or other revisions. If all or a portion of the Project is being funded by funds requiring approval by the State Allocation Board (SAB), these revisions may be subject to compensation once approval of same is received and funded by the SAB, and funds are released by the Office of Public School Construction (OPSC). Any dispute as to the sum of the Unilateral Change Order or timing of payment shall be resolved pursuant to the Payment and Claims and Disputes provisions herein. **A Unilateral Change Order is NOT a “Construction Change Document” (which is defined above as a Change Order that DSA must approve).**

17.4.2. The District may issue a Unilateral Change Order in the absence of agreement on the terms of a Change Order.

17.5. Force Account Directives

17.5.1. When work, for which a definite price has not been agreed upon in advance, is to be paid for on a time-and-material basis, all direct costs necessarily incurred and paid by the Contractor for labor, material, and equipment used in the performance of that Work, shall be subject to the approval of the District and compensation will be determined as set forth herein.

17.5.2. District will issue a Force Account Directive (which may also be called a “Construction Directive”) to proceed with the Work on a force account (time-and-material) basis, and a not-to-exceed budget will be established by District.

17.5.3. All requirements regarding direct cost for labor, labor burden, material, equipment, and markups on direct costs for overhead and profit described in this section shall apply to Force Account Directives. However, District will only pay for actual costs verified in the field by the District or its authorized representative(s) on a daily basis.

17.5.4. Contractor shall be responsible for all cost related to the administration of Force Account Directive. The markup for overhead and profit for Contractor modifications shall be full compensation to the Contractor to administer Force Account Directive.

17.5.5. Contractor shall notify District or its authorized representative(s) at least twenty-four (24) hours prior to proceeding with any of the Force Account Directive work. Furthermore, the Contractor shall notify the District when it has consumed eighty percent (80%) of the budget, and shall not exceed the budget unless specifically authorized in writing by the District. Contractor will not be compensated for force account work in the event that Contractor fails to timely notify the District regarding the commencement of Force Account Directive work, or to the extent exceeding the Force Account Directive budget.

17.5.6. Contractor shall diligently proceed with the work, and on a daily basis, submit a daily time-and-material report on a form supplied by the District no later than 5:00 p.m. each day. The report shall contain a detailed itemization of the daily labor, material, and equipment used on the time-and-material

work only. The names of the individuals performing the force account work shall be included on the daily time-and-material reports. The type and model of equipment shall be identified and listed. District will review the information contained in the reports, and sign the reports no later than the next work day, and return a copy of the report to Contractor for its records. District will not sign, nor will Contractor receive compensation for work District cannot verify. Contractor will provide a weekly Force Account Directive summary indicating the status of each Force Account Directive in terms of percent complete of the not-to-exceed budget and the estimated percent complete of the work.

17.5.7. In the event Contractor and District reach a written agreement on a set cost for the work while the work is proceeding based on a Force Account Directive, the Contractor's signed daily time-and-material reports shall be discontinued and all previously signed reports shall be invalid.

17.6. Price Request

17.6.1. Definition of Price Request. A Price Request ("PR") is a written request prepared by the District requesting the Contractor to submit to the District an estimate of the effect of a proposed change in the Work on the Guaranteed Project Cost and the Contract Time.

17.6.2. Scope of Price Request. A Price Request shall contain adequate information, including any necessary Drawings and Specifications, to enable Contractor to provide the cost breakdowns required herein. The Contractor shall not be entitled to any additional compensation for preparing a response to a Price Request, whether ultimately accepted or not.

17.6.3. Do not consider Price Requests to be instructions either to stop work in progress or to execute the proposed change.

17.6.4. Within the time specified in Price Request after receipt of Price Request, submit a quotation estimating cost adjustments to the Contract Price and the Contract Time necessary to execute the change.

17.6.4.1. Include a list of quantities of products required or eliminated and unit costs, with total amount of purchases and credits to be made. If requested, furnish survey data to substantiate quantities.

17.6.4.2. Indicate applicable taxes, delivery charges, equipment rental, and amounts of trade discounts.

17.6.4.3. Include costs of labor and supervision directly attributable to the change.

17.6.4.4. Include an updated Contractor's Construction Schedule that indicates the effect of the change, including, but not limited to, changes in activity duration, start and finish times, and activity relationship. Use available total float before requesting an extension of the Contract Time.

17.7. Proposed Change Order

17.7.1. Definition of Proposed Change Order. A Proposed Change Order ("PCO") is a written request prepared by the Contractor requesting that the District and the Architect issue a Change Order based upon a proposed change to the Work.

17.7.2. Changes in Guaranteed Project Cost. A PCO shall include breakdowns pursuant to the revisions herein to validate any change in Guaranteed Project Cost.

17.7.3. Changes in Time. A PCO shall also include any changes in time required to complete the Project. Include an updated Contractor's Construction Schedule that indicates the effect of the change, including,

but not limited to, changes in activity duration, start and finish times, and activity relationships. Use available total float before requesting an extension of the Contract Time. Any additional time requested shall not be the number of days to make the proposed change, but must be based upon the impact to the Construction Schedule as defined in the Contract Documents. If Contractor fails to request a time extension in a PCO, then the Contractor is thereafter precluded from requesting time and/or claiming a delay. If the Contractor is requesting additional time and believes that time is both Excusable and Compensable, then the Contractor must provide detailed documentation that supports its position and that addresses all the components of the "Excusable and Compensable Delay(s)" section above.

17.7.4. Unknown and/or Unforeseen Conditions. If Contractor submits a PCO requesting an increase in Guaranteed Project Cost and/or Contract Time that is based at least partially on Contractor's assertion that Contractor has encountered unknown and/or unforeseen condition(s) on the Project, then Contractor shall base the PCO on provable information that demonstrates that the unknown and/or unforeseen condition(s) were actually or reasonably unknown and/or unforeseen. If not, the District shall deny the PCO and the Contractor shall complete the Project without any increase in Guaranteed Project Cost and/or Contract Time based on that PCO.

17.7.5. Time to Submit PCO. Contractor shall submit its PCO within five (5) days of the date Contractor discovers, or reasonably should discover, the circumstances giving rise to the proposed change order, unless additional time to submit a proposed change order is granted in writing by the District. Time is of the essence in Contractor's written notice pursuant to the preceding sentence so that the District can promptly investigate and consider alternative measures to address the basis for the PCO. Accordingly, Contractor acknowledges that its failure, for any reason, to give written notice (with Supporting Documentation to permit the District's review and evaluation) within this time frame shall be deemed Contractor's waiver, release, discharge and relinquishment of any right to assert or claim any entitlement to an adjustment of the Contract Time or the Contract Price on account of the circumstances giving rise to the PCO.

17.7.6. COVID-19.

17.7.6.1. Contractor agrees that the Contract Price and the Contract Time are based on the Contractor's full compliance with all applicable and existing federal, state, and/or local statutes, orders, rules, regulations, ordinances, and/or directives relating to construction site safety in connection with COVID-19, and/or any similar virus or derivative strain at the time of Contract award. Therefore, any cost or delay associated with COVID-19, or any derivative or similar strain thereof, or any federal, state, or local order relating thereto, shall not be considered compensable unless:

17.7.6.1.1. It occurred after the date of the award of the Contract to Contractor;

17.7.6.1.2. It materially increases the Contract Price or the Contract Time; and

17.7.6.1.3. Contractor notifies the District within 10 days of notice of any new derivative, strain, or new public health order(s), including the anticipated increase to the Contract Price or Contract Time due to the new derivative, strain, or new public health order(s), and Contractor substantiates those costs with detailed supporting documentation as required for a PCO.

17.7.6.2. If, during the construction of the Project, the applicable and existing federal, state, and/or local statutes, orders, rules, regulations, ordinances, and/or directives relating to construction site safety in connection with COVID-19, and/or any similar virus or derivative strain, are changed or rescinded (e.g., by the reduction of potential exposure or risk due to vaccinations), the Parties agree to reduce the Contract Price and the Contract Time due to the removal of the required efforts. If the Parties cannot mutually agree on the appropriate reduction, the District may issue a Unilateral Change Order for an amount of time and money it determines to be both reasonable and

appropriate. The Parties agree that any dispute related to this provision will be resolved pursuant to the Claims Resolution Process herein.

17.8. Format for Proposed Change Order

The following format(s) on the following two (2) pages shall be used as applicable by the District and the Contractor (e.g. Change Orders, PCO's) to communicate proposed additions and deductions to the Contract, supported by attached documentation

FORMAT FOR PROPOSED CHANGE FOR SUBCONTRACTOR PERFORMED WORK

	<u>SUBCONTRACTOR PERFORMED WORK</u>	<i>ADD</i>	<i>DEDUCT</i>
(A)	<u>Labor Charge</u> 1. Hours. Attach total itemized hours. 2. Rate. This shall be no more than the Straight-Time Total Hourly Rate as determined by the Department of Industrial Relations ("DIR") for the applicable local labor category.		
(B)	<u>Labor Burden & Worker's Compensation Charge</u> 1. This shall be no more than twenty percent (20%) of item (A), the Labor Charge. 2. This shall be the total cumulative charge permitted for all Subcontractors or all labor performed by the Subcontractor or Subcontractor's Subcontractor(s) (i.e., all "lower-tier" Subcontractor(s)).		
(C)	<u>Subtotal (A+B)</u>		
(D)	<u>Material Charge</u> Attach itemized quantity and unit cost plus sales tax and invoice(s) from vendor(s)		
(E)	<u>Equipment Charge</u> Attach invoice(s) from supplier(s).		
(F)	<u>Subtotal (C+D+E)</u>		
(G)	<u>Subcontractor's Overhead and Profit Charge</u> 1. This shall be no more than eight percent (8%) of item (F). 2. This shall be the total cumulative mark-up permitted for the Subcontractor and Subcontractor's Subcontractor(s) (i.e., all "lower-tier" Subcontractor(s)).		
(H)	<u>Subtotal (F+G)</u>		
(I)	<u>General Contractor's "Mark-Up" and "Fee/Overhead & Profit"</u> At or below those amounts indicated in the Contractor's response to the RFQ and/or RFP for this Project.		
(J)	<u>General Contractor's Bond Cost</u> At or below the amount indicated in the Contractor's response to the RFQ and/or RFP for this Project.		
(K)	<u>General Contractor's Insurance Cost</u> At or below the amount indicated in the Contractor's response to the RFQ and/or RFP for this Project.		
(L)	<u>TOTAL (H+I+J+K)</u>		
(M)	<u>Time</u>	<u> </u> Days	

FORMAT FOR PROPOSED CHANGE FOR CONTRACTOR PERFORMED WORK

	<u>GENERAL CONTRACTOR PERFORMED WORK</u>	<i>ADD</i>	<i>DEDUCT</i>
(A)	<u>Labor Charge</u> 1. Hours. Attach total itemized hours. 2. Rate. This shall be no more than the Straight-Time Total Hourly Rate as determined by the Department of Industrial Relations ("DIR") for the applicable local labor category.		
(B)	<u>Labor Burden & Worker's Compensation Charge</u> 1. This shall be no more than twenty percent (20%) of item (A), the Labor Charge. 2. This shall be the total cumulative charge permitted for all labor performed by Contractor.		
(C)	<u>Subtotal (A+B)</u>		
(D)	<u>Material Charge</u> Attach itemized quantity and unit cost plus sales tax and invoice(s) from vendor(s).		
(E)	<u>Equipment Charge</u> Attach invoice(s) from supplier(s).		
(F)	<u>Subtotal (C+D+E)</u>		
(G)	<u>General Contractor's "Mark-Up" and "Fee/Overhead & Profit"</u> At or below those amounts indicated in the Contractor's response to the RFQ and/or RFP for this Project.		
(H)	<u>General Contractor's Bond Cost</u> At or below the amount indicated in the Contractor's response to the RFQ and/or RFP for this Project.		
(I)	<u>General Contractor's Insurance Cost</u> At or below the amount indicated in the Contractor's response to the RFQ and/or RFP for this Project.		
(J)	<u>TOTAL (F+G+H+I)</u>		
(K)	<u>Time</u>	<u> </u> Days	

17.8.1. All Proposed Change Order requests by Contractor for a change shall include a complete itemized breakdown with the following detail:

17.8.1.1. Labor. Labor breakdown by trade classification, wage rates, and estimated hours. Labor costs shall only include fringe benefits indicated by governing trade organizations. Wages shall not exceed current prevailing wages in the locality for performance of the changes.

17.8.1.1.1. The Contractor's or Subcontractors' labor burden and Workers' Compensation premium shall only be charged as indicated herein. In no event shall Contractor include any other charges than as indicated herein without the prior written approval of the District.

17.8.1.2. Material. Material quantities, and types of products, and transportation costs, if applicable.

17.8.1.3. Equipment. Equipment breakdown by make, type, size, rental rates, equipment hours and transportation costs, if applicable.

17.8.1.3.1. The equipment costs shall not exceed one hundred percent (100%) of the Association of Equipment Distributors (AED) rental rates or Caltrans rates, whichever is less. Hourly, daily, weekly, or monthly rates shall be used, whichever is lower. Hourly rates including operator shall not be used.

17.8.1.3.2. The actual time to be paid for equipment shall be the time that the equipment is in productive operation on the Work or idled as a result of the event or circumstance giving rise to the Proposed Change Order. In computing the hourly rental of equipment, any time less than thirty (30) minutes shall be considered one-half (1/2) hour. No payment will be made for time while equipment is inoperative due to breakdown, or for non-workdays. In addition, the rental time shall not include the time required to move the equipment to and from the Project Site(s). No mobilization or demobilization will be allowed for equipment already on site. If such equipment is not moved by its own power, then loading and transportation costs will be paid in lieu of rental time thereof. However, neither moving time nor loading and transportation costs will be paid if the equipment is used on the Project Site(s) in any other way than upon the work directly related to the event or circumstance giving rise to the Proposed Change Order.

17.8.1.3.3. Individual pieces of equipment having a replacement value of one thousand dollars (\$1,000) or less shall be considered to be small tools or small equipment, and no payment will be made since the costs of these tools and equipment is included as part of the markup for overhead and profit defined herein.

17.8.1.3.4. Payment to the Contractor for the use of equipment as set forth above shall constitute full compensation to the Contractor for the cost of fuel, power, oil, lubricants, supplies, small equipment, necessary attachments, repairs and maintenance of any kind, depreciation, storage, insurance, labor (except for equipment operators), and any and all costs to the Contractor incidental to the use of the equipment.

17.8.1.3.5. Should Contractor, or any of its owners, officers, directors or agents, hold any ownership interest in any company, organization, association or corporation from whom rental equipment is secured. Contractor shall immediately notify District of such and the price set for any such rental shall be agreed upon in advance by the Contractor and the District.

17.8.1.4. Mark-Up, Fee / Overhead and Profit. Markup for overhead and profit, which shall be used to compensate Contractor for all costs for all administration, general conditions, and supervision, including, without limitation:

17.8.1.4.1. All home office overhead, field office overhead, field office personnel including, but not limited to, principals, project managers, superintendents, supervisory foremen, estimators, project engineers, detailers, draftsmen, schedulers, consultants, watchmen, payroll clerks, administrative assistants, labor compliance costs and secretaries.

17.8.1.4.2. All field and field office expenses including, but not limited to, field trailers, parking, storage sheds, office equipment and supplies, telephone service and long distance telephone calls, computers, fax machines, temporary utilities, sanitary facilities and services, janitorial services, small tools and equipment with a cost under \$1000 each, portable scaffolding, blocking, shores, appliances, job vehicles, security and fencing, conformance to regulatory requirements including compliance to safety regulations, safety programs and meetings, cartage, warranties, As-Built Drawings, as well as any related maintenance costs.

17.8.1.4.3. Administrative functions such as, but not limited to, reviewing, coordinating, distributing, processing, posting, recording, estimating, negotiating, expediting, engineering, drawing, detailing, revising shop drawings, carting, cleaning, protecting the work, and other incidental Work related to the change.

17.8.1.4.4. All other costs and taxes required to be paid, but not included under direct costs as defined above including, without limitation, payroll taxes, social security, etc.

17.8.1.4.5. All costs for Contractor's bonds and insurance.

17.8.1.4.6. Taxes: Federal excise tax shall not be included. District will issue an exemption on request.

17.8.1.5. Contract Time. Justification for any adjustment in Contract Time including a schedule analysis identifying critical schedule activities delayed by the request. Contract Time shall be extended or reduced by Change Orders, Unilateral Change Orders, or Force Account Directives for a period of time commensurate with the time reasonably necessary to perform a Change. This time must be requested in writing by the Contractor with the Price Request, PCO, or expressly in writing as part of its documentation for Unilateral Change Orders, or Force Account Directives. The Contractor shall justify any Contract Time extension by submittal of a schedule analysis as required in this Changes section of these General Construction Provisions accurately portraying the impact of the change on the critical path of the Construction Schedule. Changes performed within available float shall not justify an extension to the Contract Time. The District shall make the final determination of the amount of Contract Time to allocate to any Change.

17.8.1.6. Supporting Documentation. Contractor shall include with each PCO, along with the itemized breakdown as required herein, reasonable documentation substantiating the requested change in the Contract Price and Contract Time. If the District deems Contractor's supporting documentation incomplete or inadequate to substantiate the requested change to the Contract Price and Contract Time, the District may request that Contractor supplement the PCO with additional, reasonable supporting documentation.

17.9. Change Order Certification

17.9.1. All Change Orders and PCOs shall include the following certification by the Contractor. The Parties acknowledged that if a Change Order is approved that does not include this language, that Change Order shall be deemed to include this certification language:

The undersigned Contractor approves the foregoing as to the changes, if any, and the Guaranteed Project Cost specified for each item and as to the extension of time allowed, if any, for Project Completion, and agrees to furnish all labor, materials, and service, and perform all work necessary to complete any additional work specified for the consideration stated herein. Submission of sums that have no basis in fact or which Contractor knows are false are at the sole risk of Contractor and may be a violation of the False Claims Act set forth under Government Code section 12650 et seq. It is understood that the changes herein to the Contract shall only be effective when approved by the governing board of the District. It is expressly understood that the value of the extra Work or changes expressly includes any and all of the Contractor's costs and expenses, both direct and indirect, resulting from additional time required on the Project or resulting from delay to the Project. Any costs, expenses, damages, or time extensions not included are deemed waived.

17.10. Determination of Change Order Cost

17.10.1. The amount of the increase or decrease in the Guaranteed Project Cost from a Change Order, if any, shall be determined in one or more of the following ways as applicable to a specific situation and at the District's discretion:

17.10.1.1. District acceptance of a PCO;

17.10.1.2. By agreement between District and Contractor.

17.10.1.3. By amounts contained in Contractor's schedule of values, if applicable;

17.10.1.4. By the District, based upon actual and necessary costs incurred by the Contractor as determined by the District on the basis of the Contractor's records. Promptly upon determining the extent of adjustment to the Contract Price, the District shall notify the Contractor in writing of the same; the Contractor shall be deemed to have accepted the District's determination of the amount of adjustment to the Contract Price on account of a Change to the Work unless Contractor shall notify the District, in writing, not more than fifteen (15) days from the date of the District's written notice, of any objection to the District's determination. Failure of the Contractor to timely notify the District of Contractor's objections to the District's determination of the extent of adjustment to the Contract Price shall be deemed Contractor's acceptance of the District's determination and a waiver of any right or basis of the Contractor to thereafter protest or otherwise object to the District's determination. Notwithstanding any objection of the Contractor to the District's determination of the extent of any adjustment to the Contract Price pursuant to this provision, Contractor shall diligently proceed to perform and complete any such Change.

17.10.2. If the District has put in contingency(s) and/or allowance(s) in **Exhibit C** to the Facilities Lease, then approved Change Order(s) may be paid out of those contingency(s) and/or allowance(s), pursuant to **Exhibit C** and if agreed to by the District.

17.11. Deductive Change Orders

All deductive Change Order(s) must be prepared pursuant to the provisions herein. If Contractor offers a proposed amount for a deductive Change Order(s), Contractor shall include a minimum of five percent (5%) total overhead, profit & general conditions to be deducted with the amount of the work of the Change Order(s). If Subcontractor work is involved, Subcontractors shall also include a minimum of five percent (5%) total overhead, profit & general conditions to be deducted with the amount of its deducted work. Any deviation from this provision shall only be permitted with the District's prior written approval.

17.12. Discounts, Rebates, and Refunds

For purposes of determining the cost, if any, of any change, addition, or omission to the Work hereunder, all trade discounts, rebates, refunds, and all returns from the sale of surplus materials and equipment shall accrue and be credited to the Contractor, and the Contractor shall make provisions so that such discounts, rebates, refunds, and returns may be secured, and the amount thereof shall be allowed as a reduction of the Contractor's cost in determining the actual cost of construction for purposes of any change, addition, or omission in the Work as provided herein. Such discounts and rebates generated as a result of early payments shall only be credited to the District, provided that the District provides Contractor with early payment in order to secure such discounts and rebates.

17.13. Accounting Records

With respect to portions of the Work performed by Change Orders, Unilateral Change Orders, or Force Account Directives, Contractor shall keep and maintain cost-accounting records satisfactory to the District, which shall be available to the District on the same terms as any other books and records the Contractor is

required to maintain under the Contract Documents.

17.14. Notice Required

If the Contractor desires to make a claim for an increase in the Guaranteed Project Cost, or any extension in the Contract Time for Project Completion, it shall notify the District pursuant to the provisions herein. No claim shall be considered unless made in accordance with the provisions herein. Contractor shall proceed to execute the Work even though the adjustment may not have been agreed upon. Any change in the Guaranteed Project Cost or extension of the Contract Time resulting from such claim shall be authorized by a Change Order.

17.15. Applicability to Subcontractors

Any requirements under this Article shall be equally applicable to Change Orders, Unilateral Change Orders, or Force Account Directives issued to Subcontractors by the Contractor to the extent as required by the Contract Documents.

17.16. Alteration to Change Order Language

Contractor shall not alter Change Orders or reserve time in Change Orders. Contractor shall execute finalized Change Orders and proceed under the provisions herein with proper notice.

17.17. Failure of Contractor to Execute Change Order

Contractor shall be in default of the Contract if Contractor fails to execute a Change Order when the Contractor agrees with the addition and/or deletion of the Work in that Change Order.

18. REQUESTS FOR INFORMATION

18.1. Any Request for Information ("RFI") shall reference all applicable Contract Document(s), including Specification section(s), detail(s), page number(s), drawing number(s), and sheet number(s), etc. The Contractor shall make suggestions and interpretations of the issue raised by each Request for Information. A Request for Information cannot modify the Guaranteed Project Cost, Contract Time, or the Contract Documents.

18.2. The Contractor shall be responsible for any costs incurred for professional services that District may deduct from any amounts owing to the Contractor, if Contractor makes multiple Requests for Information that request interpretation(s) or decision(s) of a matter where the information sought is equally available to the Contractor. District, at its sole discretion, shall deduct from and/or invoice Contractor for all the professional services arising herein.

18.3. Requests for Information shall comply with all requirements of the Contract Documents.

18.4. Prior to submitting the RFI, Contractor shall diligently review the Contract Documents for information responsive to the RFI, including information incorporated by reference. Contractor should not issue an RFI regarding information contained in or inferable from the Contract Documents, including information incorporated by reference. An RFI is invalid if the RFI response is contained in or inferable from the Contract Documents.

18.5. Contractor shall be responsible for preparing and submitting each RFI so as to not cause delay to the progress of the Work nor to cause any impact to the Contractor's labor productivity. An RFI may be considered untimely if not submitted within **Forty-Eight (48) hours** of receipt from a Contractor's subcontractor. Untimely submission of any RFI will preclude Contractor from asserting any claims for delay or

for labor impact against the District.

18.6. If the Contractor fails to timely notify the District and the Architect in writing of any Conditions encountered and the Contractor proceeds to perform any portion of the Work containing or affected by such Conditions the Contractor shall bear all costs associated with or required to correct, remove, or otherwise remedy any portion of the Work affected thereby without adjustment of the Contract Time or the Contract Price. In requesting information of the District to address and resolve any conditions, the Contractor shall act with promptness in submitting any written request so as to allow the District a reasonable period of time to review, evaluate and respond to any request, taking into account the then current status of the progress and completion of the Work and the actual or potential impact of any conditions upon the completion of the Work within the Contract Time. The Contract Time shall not be subject to adjustment in the event that the Contractor shall fail to timely request information from the District.

19. PAYMENTS

19.1. Guaranteed Project Cost

As compensation for Contractor's construction of the Project, the District shall pay Contractor pursuant to the terms of **Exhibit C** to the Facilities Lease.

19.2. Applications for Tenant Improvement Payments

19.2.1. Procedure for Applications for Tenant Improvement Payments

19.2.1.1. Not before the fifth (5th) day of each calendar month during the progress of the Work, Contractor shall submit to the District and the Architect an itemized Application for Payment for operations completed in accordance with the Schedule of Values. The Contractor shall include in the Application for Tenant Improvement Payments an itemized list of equipment and materials that are stored off-site and are in the Contractor's possession. Each Application for Tenant Improvement Payment shall be notarized, if required, and supported by the following or each portion thereof unless waived by the District in writing:

19.2.1.1.1. The amount paid to the date of the Application for Tenant Improvement Payment to the Contractor, to all its Subcontractors, and all others furnishing labor, material, or equipment for its Contract;

19.2.1.1.2. The amount being requested under the Application for Tenant Improvement Payment by the Contractor on its own behalf and separately stating the amount requested on behalf of each of the Subcontractors and all others furnishing labor, material, and equipment under the Contract;

19.2.1.1.3. The balance that will be due to each of such entities after said payment is made;

19.2.1.1.4. A certification that the As-Built Drawings and annotated Specifications are current;

19.2.1.1.5. Itemized breakdown of work done for the purpose of requesting partial payment;

19.2.1.1.6. An updated and acceptable construction schedule in conformance with the provisions herein;

19.2.1.1.7. The additions to and subtractions from the Guaranteed Project Cost and Contract Time;

19.2.1.1.8. A total of the cumulative Retention withheld prior to the current Application for Payment, and that to be withheld under the current Application for Payment (5% of the current Application for Payment);

19.2.1.1.9. Verified material invoices, evidence of equipment purchases, rentals, and other support and details of cost as the District may require from time to time;

19.2.1.1.10. The percentage of completion of the Contractor's Work by line item;

19.2.1.1.11. Schedule of Values updated from the preceding Application for Tenant Improvement Payment;

19.2.1.1.12. If Contractor includes in the Application for Tenant Improvement Payments an itemized list of equipment and materials that are stored off-site and are in the Contractor's possession, the Contractor's Application for Tenant Improvement Payment shall be supported by the following:

19.2.1.1.12.1. Itemized breakdown of equipment and materials that are stored off-site and are in the Contractor's possession for the purpose of requesting partial payment, identifying the serial numbers and exact storage location of each piece of equipment and material;

19.2.1.1.12.2. Verified invoices for equipment and materials that are stored off-site and are in the Contractor's possession;

19.2.1.1.12.3. Original copy of Property of Others Insurance, Employee Theft Protection Insurance Policy or an Employee Theft Protection Bond. These documents shall include for the itemized equipment and materials that are stored off-site and are in the Contractor's possession, certificates and endorsements stating the coverage and stating that the District is a loss payee or obligee, as appropriate;

19.2.1.1.13. A duly completed and executed "Conditional Waiver and Release on Progress Payment" compliant with Civil Code section 8132 from each subcontractor of any tier and supplier to be paid from the current Tenant Improvement Payment;

19.2.1.1.14. A duly completed and executed "Unconditional Waiver and Release on Progress Payment" compliant with Civil Code section 8134 from each subcontractor of any tier and supplier that was paid from the Tenant Improvement Payment from sixty (60) days prior; and

19.2.1.1.15. A certification by the Contractor of the following:

19.2.1.1.15.1.1. The Contractor warrants title to all Work performed as of the date of this payment application. The Contractor further warrants that all Work performed as of the date of this payment application is free and clear of liens, claims, security interests, or encumbrances in favor of the Contractor, Subcontractors, material and equipment suppliers, workers, or other persons or entities making a claim by reason of having provided labor, materials, and equipment relating to the Work, except those of which the District has been informed.

19.2.1.1.16. If requested by the District, a third party, or as required by the California Department of Industrial Relations, all requested or required certified payroll record ("CPR(s)") for each journeyman, apprentice, worker, or other employee employed by the Contractor and/or

each Subcontractor in connection with the Work for the period of the Application for Payment.

19.2.1.2. Except as expressly provided for herein, no payments shall be made by the District on account of any item of the Work, including without limitation, materials or equipment that, at the time of the Contractor's submittal of an Application for Tenant Improvement Payments, has/have not been incorporated into and made a part of the Work.

19.2.2. Prerequisites for Tenant Improvement Payments

19.2.2.1. First Payment Request: The following items, if applicable, must be completed before the District will accept and/or process the Contractor's first payment request:

- 19.2.2.1.1. Schedule of unit prices, if applicable;
- 19.2.2.1.2. Receipt by Architect of all submittals due as of the date of the payment application;
- 19.2.2.1.3. Copies of authorizations and licenses from governing authorities;
- 19.2.2.1.4. Initial progress report;
- 19.2.2.1.5. Surveyor qualifications;
- 19.2.2.1.6. Written acceptance of District's survey of rough grading, if applicable;
- 19.2.2.1.7. List of all Subcontractors, with names, license numbers, telephone numbers, and Scope of Work;
- 19.2.2.1.8. All bonds and insurance endorsements; and

19.2.2.2. No Waiver of Criteria. Any payments made to Contractor where criteria set forth herein have not been met shall not constitute a waiver of said criteria by District. The approval of any Application for Progress Payment or the disbursement of any Tenant Improvement Payment to the Contractor shall not be deemed nor constitute acceptance of defective Work or Work not in conformity with the Contract Documents. Instead, such payment shall be construed as a good faith effort by District to resolve differences so Contractor may pay its Subcontractors and suppliers. Contractor agrees that failure to submit such items may constitute a breach of contract by Contractor and may subject Contractor to termination.

19.3. District's Approval of Application for Tenant Improvement Payment

19.3.1. Upon receipt of an Application for Tenant Improvement Payment, The District shall act in accordance with both of the following:

19.3.1.1. Each Application for Tenant Improvement Payment shall be reviewed by the District as soon as practicable after receipt for the purpose of determining that the Application for Tenant Improvement Payment is a proper Application for Tenant Improvement Payment.

19.3.1.2. Any Application for Tenant Improvement Payment determined not to be a proper Application for Tenant Improvement Payment suitable for payment shall be returned to the Contractor as soon as practicable, but not later than seven (7) days, after receipt. An Application for Tenant Improvement Payment returned pursuant to this paragraph shall be accompanied by a document setting forth in writing the reasons why the Application for Tenant Improvement Payment is not proper. The number of days available to the District to make a payment without incurring

interest pursuant to this section shall be reduced by the number of days by which the District exceeds this seven-day return requirement.

19.3.1.3. An Application for Tenant Improvement Payment shall be considered properly executed if funds are available for each payment request from a Schedule of Value line item in the Application for Tenant Improvement Payment, and payment is not delayed due to an audit inquiry by a financial officer or auditor of the District, the County, or the State.

19.3.1.3.1. An Application for Tenant Improvement Payment shall be considered improperly executed and returned, if payment is requested from a Schedule of Value line item that exceeds the percentage of work performed in that pay period for that scope of work, or that does not have funds available or that have been exhausted for that Schedule of Value line item, or if an Application for Tenant Improvement Payment includes line items not shown in the Schedules of Values of **Exhibit G**.

19.3.2. The District's review of the Contractor's Application for Tenant Improvement Payment will be based on the District's and the Architect's observations at the Site and the data comprising the Application for Tenant Improvement Payment that the Work has progressed to the point indicated and that, to the best of the District's and the Architect's knowledge, information, and belief, the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to:

19.3.2.1. Observation of the Work for general conformance with the Contract Documents,

19.3.2.2. Results of subsequent tests and inspections,

19.3.2.3. Minor deviations from the Contract Documents correctable prior to Project Completion, and

19.3.2.4. Specific qualifications expressed by the Architect.

19.3.3. District's approval of the certified Application for Tenant Improvement Payment shall be based on Contractor complying with all requirements for a fully complete and valid certified Application for Tenant Improvement Payment.

19.3.4. If Contractor includes in its Application for Tenant Improvement Payments an itemized list of equipment and materials that are stored off-site and are in the Contractor's possession, Contractor shall provide all required supporting documentation.

19.3.5. Payments to Contractor

19.3.5.1. Within thirty (30) days after District approval of the Application for Tenant Improvement Payment, Contractor shall be paid a sum equal to ninety-five percent (95%) of the value of the Work performed (as verified by Architect and Inspector and certified by Contractor) up to the last day of the previous month, less the aggregate of previous payments and other amounts statutorily or contractually necessary to be withheld, including, without limitation, any item listed as "Reasons to Withhold Payment" herein below. Contractor shall continue to perform and shall complete the Project.

19.3.5.2. As the amount of the GPC that remains with the District approaches the total amount of the Lease Payments, the District shall ensure it maintains sufficient funds for the total Lease Payments and all other amounts statutorily or contractually necessary, including, without limitation, any item listed as "Reasons to Withhold Payment" herein below. Contractor shall continue to perform and shall complete the Project.

19.3.5.3. The value of the Work completed shall be Contractor's best estimate. No inaccuracy or error in said estimate shall operate to release the Contractor, or any Surety upon any bond, from damages arising from such Work, or from the District's right to enforce each and every provision of this Contract, and the District shall have the right subsequently to correct any error made in any estimate for payment.

19.3.6. No Waiver

No payment by District hereunder shall be interpreted so as to imply that District has inspected, approved, or accepted any part of the Work. Notwithstanding any payment, the District may enforce each and every provision of this Contract. The District may correct or require correction of any error subsequent to any payment.

19.3.7. Warranty of Title

19.3.7.1. If a lien or a claim based on a stop payment notice of any nature should at any time be filed against the Work or any District property, by any entity that has supplied material or services at the request of the Contractor, Contractor and Contractor's Surety shall promptly, on demand by District and at Contractor's and Surety's own expense, take any and all action necessary to cause any such lien or a claim based on a stop payment notice to be released or discharged immediately therefrom.

19.3.7.2. If the Contractor fails to furnish to the District within ten (10) calendar days after demand by the District, satisfactory evidence that a lien or a claim based on a stop payment notice has been so released, discharged, or secured, the District may discharge such indebtedness and deduct the amount required therefor, together with any and all losses, costs, damages, and attorney's fees and expense incurred or suffered by District from any sum payable to Contractor under the Contract.

19.3.8. Decisions to Withhold Payment

19.3.8.1. Reasons to Withhold Payment

The District may withhold payment to the extent reasonably necessary to protect the District if, in the District's opinion, the representations to the District required herein cannot be made. The District may withhold payment to such extent as may be necessary to protect the District from loss because of, but not limited to:

- 19.3.8.1.1. Defective Work not remedied within **FORTY-EIGHT (48)** hours of written notice to Contractor;
- 19.3.8.1.2. Stop payment notices or other liens served upon the District as a result of the Contract;
- 19.3.8.1.3. Liquidated damages assessed against the Contractor
- 19.3.8.1.4. The cost of Project Completion if there exists reasonable doubt that the Work can be completed for the unpaid balance of the Guaranteed Project Cost or by the Contract Time;
- 19.3.8.1.5. Damage to the District or other contractor(s);
- 19.3.8.1.6. Unsatisfactory prosecution of the Work by the Contractor;
- 19.3.8.1.7. Failure to store and properly secure materials;

19.3.8.1.8. Failure of the Contractor to submit, on a timely basis, proper, sufficient, and acceptable documentation required by the Contract Documents, including, without limitation, a Construction Schedule, Submittal Schedule, Schedule of Values, Monthly Progress Schedules, Shop Drawings, Product Data and samples, Proposed product lists, executed Change Orders, and/or verified reports;

19.3.8.1.9. Failure of the Contractor to submit As-Built Drawings;

19.3.8.1.10. Erroneous estimates by the Contractor of the value of the Work performed, or other false statements in an Application for Payment;

19.3.8.1.11. Unauthorized deviations from the Contract Documents;

19.3.8.1.12. Failure of the Contractor to prosecute the Work in a timely manner in compliance with the milestones within the Construction Schedule, established progress schedules, and/or completion dates;

19.3.8.1.13. The failure to provide certified payroll records acceptable to the District for each journeyman, apprentice, worker, or other employee employed by the Contractor and/or each Subcontractor in connection with the Work for the period of the Application for Payment;

19.3.8.1.14. Failure to properly pay prevailing wages as defined in Labor Code section 1720 et seq., and/or failure to comply with any other Labor Code requirements;

19.3.8.1.15. Failure to properly maintain or clean up the Site;

19.3.8.1.16. Payments to indemnify, defend, or hold harmless the District;

19.3.8.1.17. Any payments due to the District, including but not limited to payments for failed tests, utilities changes, or permits;

19.3.8.1.18. Failure to pay Subcontractor(s) or supplier(s) as required by law and by the Contract Documents;

19.3.8.1.19. Contractor is otherwise in breach, default, or in substantial violation of any provision of this Contract.

19.3.8.1.20. Extra services for Architect.

19.3.8.1.21. Extra services for the Inspector including but not limited to overtime tests and inspection or reinspection required due to Contractor's failed tests or installation of unapproved or defective materials and Contractor's requests for inspection and Contractor's failure to attend the inspection.

19.3.8.1.22. Any other obligation(s) of the District which the District is authorized and/or compelled by law to perform.

19.3.8.2. Reallocation of Withheld Amounts. District may, in its reasonable discretion, apply any withheld amount to pay outstanding claims or obligations as defined herein. In so doing, District shall make such payments on behalf of Contractor only after providing fourteen (14) days prior written notice to Contractor, requesting the Contractor provide information in response to same. District shall consider all information provided by Contractor in exercising its discretion to pay any such claim or obligation. These payments may be made without prior judicial determination of claim or

obligation. District will render Contractor an accounting of funds disbursed on behalf of Contractor.

19.3.8.3. If Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents or fails to perform any provision thereof, District may, after **FORTY-EIGHT (48)** hours written notice to the Contractor and, without prejudice to any other remedy, make good such deficiencies. The District shall adjust the total Guaranteed Project Cost by reducing the amount thereof by the cost of making good such deficiencies. If District deems it inexpedient to correct Work that is damaged, defective, or not done in accordance with Contract provisions, an equitable reduction in the Guaranteed Project Cost (of at least one hundred twenty-five percent (125%) of the estimated reasonable value of the nonconforming Work) shall be made therefor.

19.3.9. Payment After Cure

When Contractor removes the grounds for declining approval, payment shall be made for amounts withheld because of them. No interest shall be paid on any amounts withheld due to the failure of the Contractor to perform in accordance with the terms and conditions of the Contract Documents.

19.4. Subcontractor Payments

19.4.1. Payments to Subcontractors

No later than seven (7) days after receipt of each Tenant Improvement Payment, or pursuant to Business and Professions Code section 7108.5 and Public Contract Code section 7107, the Contractor shall pay to each Subcontractor, out of the amount paid to the Contractor on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to its Sub-subcontractors in a similar manner.

19.4.2. No Obligation of District for Subcontractor Payment

The District shall have no obligation to pay, or to see to the payment of, money to a Subcontractor except as may otherwise be required by law.

19.4.3. Joint Checks

Provided Contractor is in breach of its payment obligations to its subcontractors and after 14 days written notice, District shall have the right in its sole discretion, if necessary for the protection of the District, to issue joint checks made payable to the Contractor and Subcontractors and material or equipment suppliers. The joint check payees shall be responsible for the allocation and disbursement of funds included as part of any such joint payment. In no event shall any joint check payment be construed to create any contract between the District and a Subcontractor of any tier, any obligation from the District to such Subcontractor, or rights in such Subcontractor against the District.

20. COMPLETION OF THE WORK

20.1. Completion

20.1.1. Completion of the Project will be when 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.

20.1.2. Acceptance. The Project may only be accepted by action of the governing board of the District, or its Designee. District, at its sole option, may accept the Project when the Project is not yet at Completion, except for minor corrective items, as distinguished from incomplete items. If Contractor fails

to complete all minor corrective items within thirty (30) days after the date of the District's acceptance of the Project, the District shall withhold from the final Tenant Improvement Payment one hundred fifty percent (150%) of an estimate of the amount sufficient to complete the corrective items, as determined by District, until the item(s) are completed.

20.1.2.1. At the end of the thirty (30) day period, if there are any items remaining to be corrected, District may elect to proceed as provided herein related to adjustments to Guaranteed Project Cost, and/or District's right to perform the Work of the Contractor.

20.2. Closeout Procedures

20.2.1. In addition to the closeout procedures indicated herein, Contractor shall comply with all the closeout requirements, procedures, and actions as indicated in all Contract Documents.

20.2.2. Punch List

The Contractor shall notify the Architect when Contractor considers the Work complete. Upon notification, Architect will prepare a list of minor items to be completed or corrected ("Punch List"). The Contractor and/or its Subcontractors shall proceed promptly to complete and correct items on the Punch List. Failure to include an item on Punch List does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

20.2.3. Closeout Requirements

20.2.3.1. Utility Connections

Buildings shall be connected to water, gas, sewer, and electric services, complete and ready for use. Service connections shall be made and existing services reconnected.

20.2.3.2. As-Built Drawings

20.2.3.2.1. Contractor shall provide exact "as-built" of the Work upon Project Completion as indicated in the Contract Documents ("As-Built Drawings").

20.2.3.2.2. Contractor is liable and responsible for any and all inaccuracies in As-Built Drawings, even if inaccuracies become evident at a future date.

20.2.3.2.3. Upon Project Completion and as a condition precedent to approval of final payment, Contractor shall obtain the Inspector and the Architect's approval of the corrected prints and provide to the District the As-Built Drawings and information on disk. When completed, Contractor shall deliver corrected drawings and diskette/CD/other data storage device acceptable to District with AutoCAD file to the District.

20.2.3.3. Maintenance Manuals: Contractor shall prepare all operation and maintenance manuals and date as indicated in the Contract Documents.

20.2.3.4. Closeout Documentation: Contractor shall provide all Closeout Documentation, which shall include the following, without limitation:

- 20.2.3.4.1. A full set of final As-Built Drawings, as further defined herein.
- 20.2.3.4.2. All Operations & Maintenance Manuals and information, as further defined herein.
- 20.2.3.4.3. All Warranties, as further defined herein.
- 20.2.3.4.4. Verified report(s) for all scope(s) of work (most recent revision of DSA 6-C,).

20.3. Final Inspection

20.3.1. Contractor shall comply with Punch List procedures as provided herein and in all the Contract Documents and maintain the presence of its District-approved project superintendent and project manager until the Punch List is complete to ensure proper and timely completion of the Punch List. Under no circumstances shall Contractor demobilize its forces prior to completion of the Punch List. Upon receipt of Contractor's written notice that all of the Punch List items have been fully completed and the Work is ready for final inspection and acceptance, Architect and Project Inspector will inspect the Work and shall submit to Contractor and District a final inspection report noting the Work, if any, required in order to complete in accordance with the Contract Documents. Absent unusual circumstances, this report shall consist of the Punch List items not yet satisfactorily completed.

20.3.2. Upon Contractor's completion of all items on the Punch List and any other uncompleted portions of the Work, the Contractor shall notify the District, the Architect and the Project Inspector, who shall again inspect such Work. If the Architect and the Project Inspector find the Work complete and acceptable under the Contract Documents, the Architect will notify Contractor, who shall then jointly submit to the Architect and the District its final Application for Payment.

20.3.3. Final Inspection Requirements

20.3.3.1. Before calling for final inspection, Contractor shall determine that the following have been performed:

- 20.3.3.1.1. The Work has been completed.
- 20.3.3.1.2. All life safety items are completed and in working order.
- 20.3.3.1.3. Mechanical and electrical Work are complete and tested, fixtures are in place, connected, and ready for tryout.
- 20.3.3.1.4. Electrical circuits scheduled in panels and disconnect switches labeled.
- 20.3.3.1.5. Painting and special finishes complete.
- 20.3.3.1.6. Doors complete with hardware, cleaned of protective film, relieved of sticking or binding, and in working order.
- 20.3.3.1.7. Tops and bottoms of doors sealed.
- 20.3.3.1.8. Floors waxed and polished as specified.
- 20.3.3.1.9. Broken glass replaced and glass cleaned.
- 20.3.3.1.10. Grounds cleared of Contractor's equipment, raked clean of debris, and trash removed from Site.
- 20.3.3.1.11. Work cleaned, free of stains, scratches, and other foreign matter, of damaged and broken material replaced.
- 20.3.3.1.12. Finished and decorative work shall have marks, dirt, and superfluous labels removed.

20.3.3.1.13. Final cleanup, as provided herein.

20.4. Costs of Multiple Inspections

More than two (2) requests of the District to make a final inspection shall be considered an additional service of District, Architect, Construction Manager, and/or Project Inspector, and all subsequent costs will be invoiced to Contractor and if funds are available, withheld from remaining payments.

20.5. Beneficial Occupancy or Use Prior to Project Completion

20.5.1. District's Rights to Beneficial Occupancy or Use

The District may, at its sole discretion, have Beneficial Occupancy or use of any completed or partially completed portion of the Project at any stage. Neither the District's Final Acceptance, the making of Final Payment, nor the Beneficial Occupancy or use of the Project, in whole or in part, by District shall constitute acceptance of the Project not in accordance with the Contract Documents nor relieve the Contractor or the Contractor's Performance Bond Surety from liability with respect to any warranties or responsibility for faulty or defective Work or materials, equipment and workmanship incorporated therein. The District and the Contractor shall agree in writing to the responsibilities assigned to each of them for payments, security, maintenance, heat, utilities, damage to the Project, insurance, the period for correction of the Work, and the commencement of warranties required by the Contract Documents. Any dispute as to responsibilities shall be resolved pursuant to the Disputes and Claims provisions herein, with the added provision that during the dispute process, the District shall have the right to Beneficial Occupancy or use any portion of the Project that it needs or desires to use.

20.5.2. Inspection Prior to Beneficial Occupancy or Use

Immediately prior to partial Beneficial Occupancy or use of the Project, the District, the Contractor, and the Architect shall jointly inspect the area to be occupied or portion of the Project to be used in order to determine and record the condition of the Work.

20.5.3. No Waiver

Unless otherwise agreed upon, partial or entire occupancy or use of a portion or portions of the Project shall not in and of itself constitute an acceptance of the Project not complying with the requirements of the Contract Documents.

21. FINAL PAYMENT AND RETENTION

21.1. Final Payment

Upon receipt and approval of a valid and final Application for Tenant Improvement Payment, the Architect may issue a final Certificate of Tenant Improvement Payment. The District shall thereupon jointly inspect the Work and either accept the Project as complete or notify the Architect and the Contractor in writing of reasons why the Project is not complete. Upon acceptance of the Project, the District may record a Notice of Completion with the County Recorder, and the Contractor shall, upon receipt of final Tenant Improvement Payment from the District, pay the amount due Subcontractors. The amount of the final Tenant Improvement Payment shall be equal to the remaining value of the work performed, less the total amount to be paid as Lease Payments pursuant to Exhibit C.

21.2. Prerequisites for Final Tenant Improvement Payment

The following conditions must be fulfilled prior to Final Tenant Improvement Payment:

21.2.1. A full and final waiver or release of all Stop payment notices in connection with the Work shall be submitted by Contractor, including a release of Stop payment notice in recordable form, together with (to the extent permitted by law) a copy of the full and final release of all Stop payment notice rights.

21.2.2. A duly completed and executed “**Conditional Waiver and Release on Final Payment**” compliant with Civil Code section 8136 from each subcontractor of any tier and supplier to be paid from the **current** Tenant Improvement Payment;

21.2.3. A duly completed and executed “**Unconditional Waiver and Release upon Final Payment**” compliant with Civil Code section 8138 from each subcontractor of any tier and supplier that was paid from the **previous** Tenant Improvement Payment; and

21.2.4. The Contractor shall have made all corrections to the Work that are required to remedy any defects therein, to obtain compliance with the Contract Documents or any requirements of applicable codes and ordinances, or to fulfill any of the orders or directions of District required under the Contract Documents.

21.2.5. Each Subcontractor shall have delivered to the Contractor all written guarantees, warranties, applications, and bonds required by the Contract Documents for its portion of the Work.

21.2.6. Contractor must have completed all requirements set forth under “Closeout Procedures,” Including, without limitation, an approved set of complete As-Built Drawings.

21.2.7. Architect shall have issued its written approval that final payment can be made.

21.2.8. The Contractor shall have delivered to the District all manuals and materials required by the Contract Documents.

21.2.9. The Contractor shall have completed final clean up as provided herein.

21.3. Retention

21.3.1. The retention (5% of the total Contract Price; “**Retention**”), **less** the total Lease Payments and less any amounts disputed by the District or that the District has the right to withhold pursuant to provisions herein, shall be paid as follows:

21.3.1.1. After approval by the District of the Architect’s Certificate of Payment,

21.3.1.2. After the satisfaction of the conditions set forth herein, and

21.3.1.3. Within sixty (60) days following Project Completion pursuant to Public Contract Code section 7107.

21.3.1.4. No earlier than thirty-five (35) days of the recording of the Notice of Completion by District, if a Notice of Completion is recorded by the District.

21.3.2. No interest shall be paid on any amounts withheld due to a failure of the Contractor to perform, in accordance with the terms and conditions of the Contract Documents.

21.3.3. District and Contractor acknowledge that the District’s protections, restrictions and requirements outlined in the “retention” provisions of applicable California law (including, without limitation, Public Contract Code sections 7201 and 9203) are satisfied by the amount(s) the District will withhold as

Retention under this Contract, including the amounts that the District will pay as Lease Payments under this Contract.

21.4. Claims Asserted After Final Tenant Improvement Payment.

Any lien, stop payment notice or other claim filed or asserted after the Contractor's acceptance of the Final Payment by any Subcontractor, of any tier, laborer, Material Supplier or others in connection with or for Work performed under the Contract Documents shall be the sole and exclusive responsibility of the Contractor pursuant to the indemnification obligations of the Contract Documents. In the event any lien, stop payment notice or other claim of any Subcontractor, Laborer, Material Supplier or others performing Work under the Contract Documents remain unsatisfied after Final Tenant Improvement Payment is made, Contractor shall refund to District all monies that the District may pay or be compelled to pay in discharging any lien, stop payment notice or other claim, including, without limitation all costs and reasonable attorneys' fees incurred by District in connection therewith.

22. UNCOVERING WORK, CORRECTION OF WORK AND RIGHT TO TAKEOVER WORK

22.1. Uncovering Work.

If a portion of the Work is covered without Inspector or Architect approval or not in compliance with the Contract Documents, it must, if required in writing by the District, the Project Inspector, or the Architect, be uncovered for the Project Inspector's or the Architect's observation and be replaced at the Contractor's expense without change in the Guaranteed Project Cost or Contract Time.

22.2. Rejection of Work.

Prior to the District's Acceptance of the Work, any Work or materials or equipment forming a part of the Work or incorporated into the Work that is defective or not in conformity with the Contract Documents may be rejected by the District, the Architect or the Project Inspector and the Contractor shall correct all rejected Work without any adjustment to the Contract Price or the Contract Time, even if the Work, materials or equipment have been previously inspected by the Architect or the Project Inspector or even if they failed to observe the defective or non-conforming Work, materials or equipment.

22.3. Nonconforming Work

22.3.1. Contractor shall promptly remove from Premises all Work identified by District as failing to conform to the Contract Documents whether incorporated or not. Contractor shall promptly replace and re-execute its own Work to comply with the Contract Documents without additional expense to the District and shall bear the expense of making good all work of other contractors destroyed or damaged by any removal or replacement pursuant hereto and/or any delays to the District or other contractors caused thereby.

22.3.2. If Contractor does not remove or reasonably begin and diligently remove Work that District has identified as failing to conform to the Contract Documents within a reasonable time, not to exceed five (5) calendar days, District may remove it and may store any material at Contractor's expense. If Contractor does not pay expense(s) of that removal within ten (10) days' time thereafter, District may, upon ten (10) days' written notice, sell any material at auction or at private sale and shall deduct all costs and expenses incurred by the District and/or District may withhold those amounts from payment(s) to Contractor.

22.4. Correction of Work

22.4.1. Correction of Rejected Work

Pursuant to the notice provisions herein, the Contractor shall promptly correct the Work rejected by the District, the Architect, or the Project Inspector as failing to conform to the requirements of the Contract Documents, whether observed before or after Project Completion and whether or not fabricated, installed, or completed. The Contractor shall bear costs of correcting the rejected Work, including additional testing, inspections, and compensation for the Inspector's or the Architect's services and expenses made necessary thereby.

22.4.2. One-Year Warranty Corrections

If, within one (1) year after the date of Project Completion or a designated portion thereof, or after the date for commencement of warranties established hereunder, or by the terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the District to do so. This period of one (1) year shall be extended with respect to portions of the Work first performed after Project Completion by the period of time between Project Completion and the actual performance of the Work. This obligation hereunder shall survive acceptance of the Work under the Contract and termination of the Contract. The District shall give such notice promptly after discovery of the condition.

22.5. District's Right to Takeover Work

22.5.1. If the Contractor should neglect to prosecute or reasonably begin and diligently prosecute the Work properly or fail to perform any provisions of this contract, the District, after **five (5) calendar days** written notice to the Contractor, may, without prejudice to any other remedy it may have, make good such deficiencies and may deduct the cost thereof from the payment then or thereafter due the Contractor.

22.5.2. If it is found at any time, before or after Project Completion, that Contractor has varied from the Drawings and/or Specifications, including, but not limited to, variation in material, quality, form, or finish, or in the amount or value of the materials and labor used, District may require at its option:

22.5.2.1. That all such improper Work be removed, remade or replaced, and all work disturbed by these changes be made good by Contractor at no additional cost to the District;

22.5.2.2. That the District deduct from any amount due Contractor the sum of money equivalent to the difference in value between the work performed and that called for by the Drawings and Specifications; or

22.5.2.3. That the District exercise any other remedy it may have at law or under the Contract Documents, including but not limited to the District hiring its own forces or another contractor to replace the Contractor's nonconforming Work, in which case the District shall either issue a deductive Change Order, a Unilateral Change Order, or invoice the Contractor for the cost of that work. Contractor shall pay any invoices within thirty (30) days of receipt of same or District may withhold those amounts from payment(s) to Contractor.

22.5.3. Acceptance of Defective or Non-Conforming Work. The District may, in its sole and exclusive discretion, elect to accept Work that is defective or that is not in accordance with the requirements of the Contract Documents, instead of requiring its removal and correction, in which case the Contract Price shall be reduced as appropriate and equitable.

23. TERMINATION AND SUSPENSION AND SCOPE REDUCTION

The Parties' rights to terminate the Project are as indicated in the Facilities Lease. In the event of a termination of

the Facilities Lease and notwithstanding any other provision in the Contract Documents, the Surety shall remain liable to all obligees under the Payment Bond and to the District under the Performance Bond for any claim related to the Project.

23.1. Emergency Termination of Public Contracts Act of 1949

23.1.1. In addition to the Parties' right to termination under the Facilities Lease, this Contract is subject to termination as provided by sections 4410 and 4411 of the Government Code of the State of California, being a portion of the Emergency Termination of Public Contracts Act of 1949.

23.1.1.1. Section 4410 of the Government Code states:

In the event a national emergency occurs, and public work, being performed by contract, is stopped, directly or indirectly, because of the freezing or diversion of materials, equipment or labor, as the result of an order or a proclamation of the President of the United States, or of an order of any federal authority, and the circumstances or conditions are such that it is impracticable within a reasonable time to proceed with a substantial portion of the work, then the public agency and the contractor may, by written agreement, terminate said contract.

23.1.1.2. Section 4411 of the Government Code states:

Such an agreement shall include the terms and conditions of the termination of the contract and provision for the payment of compensation or money, if any, which either party shall pay to the other or any other person, under the facts and circumstances in the case.

23.1.1.3. Compensation to the Contractor shall be determined on the basis of the reasonable value of the Work done, including preparatory work. As an exception to the foregoing and at the District's discretion, in the case of any fully completed separate item or portion of the Work for which there is a separate previously submitted unit price or item on the accepted schedule of values, that price shall control. The District, at its sole discretion, may adopt the Guaranteed Project Cost as the reasonable value of the work done or any portion thereof.

23.2. Suspension of Work

23.2.1. District may, without cause, order Contractor in writing to suspend, delay or interrupt the Project in whole or in part for such period of time as District may determine. When the District resumes the Project, the Parties will attempt to negotiate an adjustment in the GPC for increases or decreases in the cost of performance of the Project caused by suspense, delay or interruption. If the parties cannot agree on an adjusted GPC, the District may terminate the leases as permitted herein.

23.2.2. In the event the District shall order suspension of the Work, an adjustment shall be made to the Contract Price for increases in the direct cost of performance of the Work of the Contract Documents, actually caused by suspension, delay or interruption ordered by the District; provided however that no adjustment of the Contract Price shall be made to the extent: (i) that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible under the Contract Documents; or (ii) that an equitable adjustment is made or denied under another provision of the Contract Documents. The foregoing notwithstanding, any adjustment of the Contract Price shall not include any adjustment to increase the Contractor's overhead, general administrative costs or profit, all of which will remain as reflected in the Schedule of Values submitted by the Contractor pursuant to the Contract Documents. In the event of the District's suspension of the Work, the Contract Time shall be equitably adjusted.

23.3. Scope Reduction.

In cases of suspension, partial or complete termination, or at the discretion of the District, the District reserves the right to unilaterally approve a deductive Change Order to reduce scope of work or perform work with other forces or its own forces.

24. CLAIMS RESOLUTION

24.1. Exclusive Remedy.

24.1.1. Compliance with the claim resolution process and timelines described in this Claims Resolution section as well as the notice provisions of the Contract are express conditions precedent to Contractor's right to commence litigation or arbitration, file a claim under the California Government Code, or commence any other legal action related to the Project ("Claims Resolution Process").

24.1.2. Contractor acknowledges that its failure, for any reason, to provide written notice and all required supporting documentation to permit the District's review and evaluation within the time frame required by this Claims Resolution Process, shall be deemed Contractor's waiver, release, discharge and relinquishment of any right to assert, request, or demand any entitlement to an adjustment of the Contract Time or the contract Price on account of any instruction, request, drawings, specifications, action, condition, omission, default or other situation.

24.1.3. To the extent any provision(s) of this Claims Resolution Process conflict with or otherwise impair the timeframes and procedures of Public Contract Code section 9204, the provisions of Section 9204 shall control. If provisions of this Claims Resolution Process are supplementary and/or in addition to the requirements of Section 9204, but do not conflict with or otherwise impair the timeframes and procedures of Section 9204, the provisions of this Claims Resolution Process and the Contract shall control.

24.2. Performance during Claim Resolution Process.

The Contractor shall diligently proceed with Work on the Project at the same time that Claims are addressed under the Claims Resolution Process. It is the intent of District to resolve Claims with the Contractor as close to the events giving rise to the Claims as possible, and to avoid stale or late Claims and the late documenting of Claims. Contractor's failure to diligently proceed in accordance with the District's instructions or the Contract terms will be considered a material breach of the Contract and a waiver of Contractor's rights under this Contract.

24.3. Waiver.

If Contractor fails to timely submit any written notices required under the terms of the Contract or in this Claims Resolution section, Contractor waives and releases its rights regarding further review of its Claim, unless Contractor and District mutually agree in writing to other time limits.

24.4. Intention.

The Claims Resolution Process required herein is intended to provide a concise mechanism for resolving Claims as they arise during the Project, while requiring accurate documentation related to contested issues as to those Claims that are not contemporaneously resolved.

24.5. Other Provisions.

If portions of the Contract, other than this Claims Resolution Process, establish a specific process regarding a specific subject, then that process shall govern and control the resolutions of any disagreements thereunder.

Otherwise, the provisions in this Claims Resolution Process shall control the resolution of all Claims.

24.6. Claim Presentation

24.6.1. Claim: A claim is a written demand by Contractor (or by Contractor on behalf of a Subcontractor) that the Contractor must submit by **registered mail or certified mail return receipt requested** for:

24.6.1.1. An extension to the Contract Time, including relief from damages or penalties assessed by the District for delay;

24.6.1.2. Payment of money or damages arising from work done by, or on behalf of, the Contractor pursuant to the Contract and payment that is not otherwise expressly provided for in the Contract Documents or the Contractor is not otherwise entitled; or

24.6.1.3. Payment that is disputed by the District.

24.6.2. A PCO may be a Claim, but the Parties agree that a PCO shall only be a Claim if:

24.6.2.1. The District states in writing that it disagrees with the terms of a PCO and directs the Contractor to utilize the Claim Resolution Process, or

24.6.2.2. The District rejects in whole or in part a PCO and the Contractor states in writing that it is utilizing the Claim Resolution Process for the portion of the PCO that the District rejected.

24.6.3. Subcontractors.

24.6.3.1. Public Contract Code section 9204(d)(5) states that the Contractor may present to the District a Claim on behalf of a Subcontractor or lower tier Subcontractor. A Subcontractor may request in writing, either on his or her own behalf or on behalf of a lower tier Subcontractor, that the Contractor present a claim for Work which was performed by the Subcontractor or by a lower tier Subcontractor on behalf of the Subcontractor. The Subcontractor requesting that the Claim be presented to the District shall furnish reasonable documentation to support the Claim. Within 45 days of receipt of this written request, the Contractor shall notify the Subcontractor in writing as to whether the Contractor presented the claim to the District and, if the Contractor did not present the Claim, provide the Subcontractor with a statement of the reasons for not having done so.

24.6.3.2. Contractor is responsible for providing this Claims Resolution Process to its Subcontractors and for ensuring that all Subcontractors or others who may assert Claims by and through Subcontractors and/or the Contractor are informed of this Claims Resolution Process. No Claim submitted by any party that fails to follow the provisions of this Claims Resolution Process will be considered. Contractor shall indemnify, keep and hold harmless the District and its consultants, against all suits, claims, damages, losses, and expenses, including but not limited to attorney's fees, caused by, arising out of, resulting from, or incidental to, the failure to provide this Claims Resolution Process to its Subcontractors or others who may assert Claims by and through Subcontractors and/or the Contractor.

24.6.4. Contractor Must Timely Identify, Present and Document Any Claim

24.6.4.1. Every Claim shall be stated with specificity in writing and signed by Contractor under penalty of perjury and presented to the District within ten (10) calendar days from the date Contractor

discovers or reasonably should discover, that an act, error or omission of District, its agents or employees, or action, condition or other situation has occurred that may entitle Contractor to make a Claim. This shall include the Contractor's actual or constructive knowledge of any instruction, request, drawings, specifications, action, condition, omission, default or other situation for which the contractor believes there should an adjustment of the Contract Price or Contract Time. Contractor shall provide this writing even if Contractor has not yet been damaged, delayed, or incurred extra cost when Contractor discovers, or reasonably should discover, the act, error, omission, action, condition or situation giving rise to the incidents giving rise to the Claim. The writing shall:

24.6.4.1.1. Identify all of the issues, events, conditions, circumstances and/or causes giving rise to the Claim;

24.6.4.1.2. Identify all pertinent dates and/or durations and all actual and/or anticipated effects on the Contract Price, milestones and/or Contract Time adjustments; and

24.6.4.1.3. Identify in detail line-item costs if the Claim seeks money.

24.6.4.1.4. If the Claim involves extra work, a detailed cost breakdown of the amounts the Contractor is seeking, including actual cost records (including without limitation, payroll records, material and rental invoices and the like) demonstrating that those costs have actually been incurred. To the extent costs have not yet been incurred at the time the Claim is submitted, actual cost records must be submitted on a current basis not less than once a week during any periods costs are incurred. A cost record will be considered current if submitted within seven (7) days of the date the cost reflected in the record is incurred. At the request of District, extra costs may be subject to further verification procedures (such as having an inspector verify the performance of alleged extra work on a daily basis).

24.6.4.1.5. If the Claim involves an error or omission in the Contract Documents:

24.6.4.1.5.1. An affirmative representation under penalty of perjury by Contractor and any affected Subcontractors and suppliers that the error or omission was not discovered prior to submitting a proposal for the Work, and

24.6.4.1.5.2. A detailed statement demonstrating that the error or omission reasonably should not have been discovered, by Contractor, its Subcontractors and suppliers, prior to submitting a proposal for the Work.

24.6.4.1.6. If the Claim involves a request for additional compensation for escalation of materials costs, then this provision exclusively governs those request(s) by Contractor and the following are all conditions precedent to Contractor's submission of a Proposed Change Order or Claim for additional compensation for escalation of materials costs.

24.6.4.1.6.1. Contractor shall not be entitled to submit a request for compensation for escalation of materials unless the actual cost of materials exceeds ten percent (10%) of the **total** material costs on the Project.

24.6.4.1.6.2. The cost escalation is the result of unusual and unforeseeable market conditions not reasonably foreseeable at the time of award of the Contract and was not an escalated cost resulting from any action or inaction of the Contractor.

24.6.4.1.6.3. Contractor timely ordered and/or purchased the materials at issue.

24.6.4.1.6.4. Contractor's material costs were reasonable at the time of District's

approval of the Contractor's GPC for the Project.

24.6.4.1.6.5. Contractor demonstrates an actual increase in the cost of materials in its Contract Price at the time of District's approval of the Contractor's GPC and/or as reflected in Contractor's actual material payment cost paid either at time of purchase or delivery, whichever is earlier.

24.6.4.1.6.6. An actual year-to-date price increase has occurred and can be substantiated by the E.N.R. 20-City Average Material Cost Index for the material at issue that demonstrates the claim for an increase in price of the material at the time of delivery of the higher priced material to the Project.

24.6.4.2. The writing shall be accompanied by all documents substantiating Contractor's position regarding the Claim.

24.6.4.3. A Claim that asserts an effect on any schedule milestones and/or Contract Time shall include all pertinent scheduling data demonstrating the impact(s) on the critical path(s), milestone(s) and/or Contract Time.

24.6.4.4. Contractor agrees that it shall not base its damages, its calculations or its Claim on a "total cost" approach, a "modified total cost" approach or a "jury verdict method" approach.

24.6.5. Certification. Each copy of the Claim Documentation shall be certified by a responsible officer of the Contractor in accordance with the requirements of the Contract Documents. This certification shall be under penalty of perjury and must include the following language immediately above or before the Contractor's signature: ***"I declare under penalty of perjury under the laws of the State of California that the information provided and statements made in this Claim are true and correct, substantiated and of merit."*** The Contractor acknowledges that this requirement is not a mere formality but is intended to ensure that the Contractor only submits Claims that it believes are true and correct, substantiated and have merit. Should Contractor fail to submit the foregoing written statement signed under penalty of perjury, Contractor waives and releases its Claim, including all rights and remedies in connection therewith. This certification must include a certification of any portion of the Claim from Subcontractor(s) or others who are asserting Claims by and through Subcontractors and/or the Contractor

24.6.6. District's Written Statement/Decision on Claim. The District shall issue a written statement/decision regarding the Claim to the Contractor within forty-five (45) days of receipt of the written Claim from the Contractor, or three (3) days after the District's first regular governing board meeting after that 45-day period if the District's governing board does not meet within that first 45-day period. If the District fails to timely provide a written statement/decision regarding the Claim, the Claim shall be deemed rejected in its entirety.

24.6.7. Contractor Must Demand an Informal Meet and Confer Conference if Contractor Pursues Any Claim

24.6.7.1. FAILURE OF A CONTRACTOR TO TIMELY DEMAND A MEET AND CONFER CONFERENCE IS A WAIVER OF ITS RIGHT TO PURSUE ALL OR A PORTION OF ITS CLAIM.

24.6.7.2. Where There Is No Agreement: If there is no agreement between Contractor and the District on a Claim, then within ten (10) calendar days of the date of the District's written statement/decision in response to a Claim or PCO, if Contractor pursues that Claim, then Contractor must demand, by **registered mail or certified mail return receipt requested**, a meet and confer conference with District staff. A meet and confer conference with District staff shall be a condition precedent to Contractor seeking any further relief, including a mediation as indicated below.

24.6.7.3. Where There Is Partial Agreement: If Contractor and the District partially agree on a Claim but do not reach complete agreement, then the Parties shall complete a Change Order, if applicable, for the issues and/or amounts agreed to. For those issues not agreed to, if Contractor pursues those issues from that Claim, then Contractor must demand, by **registered mail or certified mail return receipt requested**, a meet and confer conference with District staff regarding those issues. A meet and confer conference with District staff shall be a condition precedent to Contractor seeking any further relief, including a mediation as indicated below, in connection with the District's rejection.

24.6.7.4. Meet and Confer Conference. District and Contractor shall schedule the meet and confer conference as soon as reasonably possible after Contractor's written demand for a meet and confer conference, but in no case later than thirty (30) days after Contractor's demand.

24.6.7.5. District's Written Decision. Within ten (10) **business** days of the meet and confer conference, the District shall issue a written decision. If the District fails to timely provide a written statement/decision after the meet and confer conference, all Claim issues that were part of the meet and confer conference shall be deemed rejected in their entirety.

24.6.7.5.1. If the District's decision completely resolves the Claim, then the Parties shall complete a Change Order, if applicable, for the issues and/or amounts agreed to.

24.6.7.5.2. If the District rejects the Contractor's Claim in whole or in part or does not issue a timely written response, then the parties shall mediate the remaining issues of the Claim.

24.6.7.5.3. Contractor's costs incurred in seeking relief for Claims are not recoverable from District.

24.6.8. Mediation.

24.6.8.1. At the District's sole discretion, this mediation may be a multiple-party mediation with the Architect, the Construction Manager, the Inspector, and/or other District consultants.

24.6.8.2. The District and Contractor shall mutually agree to a mediator within ten (10) **business** days after the disputed portion of the Claim has been identified in writing. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the Claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator.

24.6.9. Contractor's Obligation to File a Government Code Claim. Nothing in this Contract, including this Claims Resolution Process, waives, modifies or tolls the Contractor's obligation to present a timely claim under Government Code section 910, et seq. Therefore, in addition to complying with this Claims Resolution Process, the Contractor is required to present claims to the District pursuant to Government Code section 910, et seq. If after the requirements of this Claims Resolution Process are satisfied, and all or a portion of the Claim remains unresolved, and if the Government Code claim is rejected by the District, the Contractor may proceed under the post-mediation provisions of this Claims Resolution Process.

24.6.10. Post Mediation Provisions

24.6.10.1. **Claims of \$375,000 or Less:** The provisions of Public Contract Code § 20104.4 shall apply. Pursuant to Public Contract Code § 20104.4(a), within sixty (60) days, but no earlier than thirty (30) days, following the filing of responsive pleadings, the court shall submit the matter to nonbinding mediation unless waived by mutual stipulation of both parties. Pursuant to Public Contract Code § 9204(d)(2)(D), a mediation conducted pursuant to this Claims Resolution Process shall excuse the

obligation under Public Contract Code § 20104.4(a) to mediate after litigation has been commenced unless otherwise agreed to by the parties in writing.

24.6.10.2. Litigation of Claims in Excess of \$375,000. If, after a mediation as indicated above, the Parties have not resolved the Claim, either Party may commence an action in a court of competent jurisdiction to contest that decision within ninety (90) days following the conclusion of that mediation or one (1) year following the accrual of the cause of action, whichever is later. By mutual agreement, the Parties can agree to instead resolve the Claim through arbitration.

24.6.11. The District shall be entitled to remedy any false claims, as defined in California Government Code section 12650 *et seq.*, made to the District by the Contractor or any Subcontractor under the standards set forth in Government Code section 12650 *et seq.* Any Contractor or Subcontractor who submits a false claim shall be liable to the District for three times the amount of damages that the District sustains because of the false claim. A Contractor or Subcontractor who submits a false claim shall also be liable to the District for (a) the costs, including attorney fees, of a civil action brought to recover any of those penalties or damages, and (b) a civil penalty of up to \$11,000 for each false claim. In addition, Contractor may be subject to criminal prosecution under California Penal Code §72 and/or civil liability under False Claims Act. If so, the District may be entitled to recover its costs incurred to investigate any False Claim, including but not limited to attorneys' fees and expert fees incurred in connection with that investigation.

24.7. Documentation of Resolution.

If a Claim is resolved, the District shall determine if that resolution shall be documented in a settlement agreement or release or other document, as appropriate.

24.8. Claim Resolution Process – Non-Applicability.

The procedures and provisions in this Claims Resolution section shall **not** apply to:

24.8.1. District's determination of what Work is or will be constructed, or whether the Work complies with the Contract Documents for purposes of accepting the Work;

24.8.2. District's rights and obligations as a public entity, such as, but without limitation, the revocation of pre-qualified or qualified status, barring a contractor from District contracts, the imposition of penalties or forfeitures prescribed by statute or regulation; provided, however, that penalties imposed against a public entity by statutes such as Section 7107 of the Public Contract Code, shall be subject to the mandatory dispute resolution provisions of this Claims Resolution section and the Contract;

24.8.3. Personal injury, wrongful death or property damage claims;

24.8.4. Latent defect or breach of warranty or guarantee to repair;

24.8.5. Stop notices or stop payment notices; or

24.8.6. Any other District rights as set forth herein.

24.9. The District's failure to respond to a Claim from the Contractor within the time periods described herein or to otherwise meet the time requirements of Public Contract Code section 9204 shall automatically result in the Claim being deemed rejected in its entirety, with no admission by the District as to the merits of the Claim.

24.10. If District fails to timely issue payment for any Claim or portion of a Claim as required pursuant to these Claim Resolution Procedures, the Contractor is permitted to assess interest indicated in Public Contract Code section 9204. Notwithstanding this provision, and in accordance with California Public Contract Code §7107, the District is entitled to withhold up to 150% of disputed amounts and the District shall not be liable for payment of interest on such disputed amounts pending final adjudication of such disputes.

25. LABOR, WAGE & HOUR, APPRENTICE AND RELATED PROVISIONS

25.1. Compliance Monitoring and Enforcement by the DIR

25.1.1. Contractor shall comply with the registration and compliance monitoring provisions of Labor Code section 1771.4, including furnishing its CPRs to the Labor Commissioner of California and complying with any applicable enforcement by the Department of Industrial Relations. Labor Code section 1771.1(a) states the following:

“A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded.”

25.1.2. Contractor acknowledges that, for purposes of Labor Code section 1725.5, this work is a public work to which Labor Code section 1771 applies. Contractor shall comply with Labor Code section 1725.5, including without limitation the registration requirements. Additionally, all “subcontractors” (as defined by Labor Code section 1722.1) shall comply with Labor Code section 1725.5 to be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of the Work. Contractor represents to the District that all “subcontractors” (as defined by Labor Code section 1722.1) are registered pursuant to Labor Code section 1725.5.

25.1.3. The Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. Contractor shall post job site notices, as prescribed by regulation. Contractor shall comply with all requirements of Labor Code section 1771.4, except the requirements that are exempted by the Labor Commissioner for the Project.

25.2. Wage Rates, Travel and Subsistence

25.2.1. Pursuant to the provisions of article 2 (commencing at section 1770), chapter 1, part 7, division 2, of the Labor Code of California, the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality in which this public work is to be performed for each craft, classification, or type of worker needed to execute this Contract are on file at the District’s principal office and copies will be made available to any interested party on request. Contractor shall obtain and post a copy of these wage rates at the job site.

25.2.2. Holiday and overtime work, when permitted by law, shall be paid for at a rate of at least one and one-half times the above specified rate of per diem wages, unless otherwise specified. The holidays upon which those rates shall be paid need not be specified by the District, but shall be all holidays recognized in the applicable collective bargaining agreement. If the prevailing rate is not based on a collectively bargained rate, the holidays upon which the prevailing rate shall be paid shall be as provided in Section 6700 of the Government Code.

25.2.3. Contractor shall pay and shall cause to be paid each worker engaged in Work on the Project not less than the general prevailing rate of per diem wages determined by the Director of the Department of Industrial Relations ("DIR") ("Director"), regardless of any contractual relationship which may be alleged to exist between Contractor or any Subcontractor and such workers.

25.2.4. If during the period this bid is required to remain open, the Director determines that there has been a change in any prevailing rate of per diem wages in the locality in which the Work under the Contract is to be performed, such change shall not alter the wage rates in the Notice to Bidders or the Contract subsequently awarded.

25.2.5. Pursuant to Labor Code section 1775, Contractor shall, as a penalty to District, forfeit the statutory amount, (currently not to exceed two hundred dollars (\$200) for each calendar day, or portion thereof), for each worker paid less than the prevailing rates, as determined by the District and/or the Director, for the work or craft in which that worker is employed for any public work done under Contract by Contractor or by any Subcontractor under it.

25.2.5.1. The amount of the penalty shall not be less than forty dollars (\$40) for each calendar day, or portion thereof, unless the failure of Contractor was a good faith mistake and, if so, the error was promptly and voluntarily corrected when brought to the attention of Contractor.

25.2.5.2. The amount of the penalty shall not be less than eighty dollars (\$80) for each calendar day or portion thereof, if Contractor has been assessed penalties within the previous three (3) years for failing to meet Contractor's prevailing wage obligations on a separate contract, unless those penalties were subsequently withdrawn or overturned.

25.2.5.3. The amount of the penalty may not be less than one hundred twenty dollars (\$120) for each calendar day, or portion thereof, if the Labor Commissioner determines the Contractor willfully violated Labor Code section 1775.

25.2.5.4. The difference between such prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate, shall be paid to each worker by Contractor.

25.2.6. Any worker employed to perform Work on the Project, which Work is not covered by any classification listed in the general prevailing wage rate of per diem wages determined by the Director, shall be paid not less than the minimum rate of wages specified therein for the classification which most nearly corresponds to Work to be performed by him, and such minimum wage rate shall be retroactive to time of initial employment of such person in such classification. Prevailing wage rates are on file with the District and are available to any interested party on request or at www.dir.ca.gov/oprl/statistics_and_databases.html.

25.2.7. Pursuant to Labor Code section 1773.1, per diem wages are deemed to include employer payments for health and welfare, pension, vacation, travel time, subsistence pay, and apprenticeship or other training programs authorized by section 3093, and similar purposes.

25.2.8. Contractor shall post at appropriate conspicuous points on the Site of Project, a schedule showing all determined minimum wage rates and all authorized deductions, if any, from unpaid wages actually earned. In addition, Contractor shall post a sign-in log for all workers and visitors to the Site, a list of all subcontractors of any tier on the Site, and the required Equal Employment Opportunity poster(s).

25.3. Hours of Work

25.3.1. As provided in article 3 (commencing at section 1810), chapter 1, part 7, division 2, of the Labor

Code, eight (8) hours of labor shall constitute a legal days work. The time of service of any worker employed at any time by Contractor or by any Subcontractor on any subcontract under this Contract upon the Work or upon any part of the Work contemplated by this Contract shall be limited and restricted by Contractor to eight (8) hours per day, and forty (40) hours during any one week, except as hereinafter provided. Notwithstanding the provisions hereinabove set forth, Work performed by employees of Contractor in excess of eight (8) hours per day and forty (40) hours during any one week, shall be permitted upon this public work upon compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half times the basic rate of pay.

25.3.2. Contractor shall keep and shall cause each Subcontractor to keep an accurate record showing the name of and actual hours worked each calendar day and each calendar week by each worker employed by Contractor in connection with the Work or any part of the Work contemplated by this Contract. The record shall be kept open at all reasonable hours to the inspection of District and to the Division of Labor Standards Enforcement of the DIR.

25.3.3. Pursuant to Labor Code section 1813, Contractor shall as a penalty to the District forfeit the statutory amount (believed by the District to be currently one hundred dollars (\$100)) for each worker employed in the execution of this Contract by Contractor or by any Subcontractor for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week in violation of the provisions of article 3 (commencing at section 1810), chapter 1, part 7, division 2, of the Labor Code.

25.3.4. Any Work necessary to be performed after regular working hours, or on Sundays or other holidays shall be performed without additional expense to the District.

25.4. Payroll Records

25.4.1. Pursuant to the provisions of section 1776 of the Labor Code, notice is hereby given that Contractor shall prepare and provide to the California Department of Industrial Relations and shall cause each Subcontractor performing any portion of the Work under this Contract to prepare and provide to the California Department of Industrial Relations, accurate and certified payroll record ("CPR(s)"), showing the name, address, social security number, work classification, straight time, and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by the Contractor and/or each Subcontractor in connection with the Work.

25.4.1.1. In addition to any other requirements under Labor Code section 1770, et seq., the CPRs enumerated hereunder shall be certified and shall be provided as required by the California Department of Industrial Relations.

25.4.2. In addition, all CPRs shall be available for inspection at all reasonable hours at the principal office of Contractor on the following basis:

25.4.2.1. A certified copy of an employee's CPR shall be made available for inspection or furnished to the employee or his/her authorized representative on request.

25.4.2.2. CPRs shall be made available for inspection or furnished upon request to a representative of District, Division of Labor Standards Enforcement, Division of Apprenticeship Standards, and/or the Department of Industrial Relations.

25.4.2.3. CPRs shall be made available upon request by the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through either the District, Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. If the requested CPRs have not been provided pursuant to the provisions herein, the requesting party shall,

prior to being provided the records reimburse the costs of preparation by Contractor, Subcontractors, and the entity through which the request was made. The public shall not be given access to the records at the principal office of Contractor.

25.4.3. The form of certification for the CPRs shall be as follows:

I, _____ (Name-Print), the undersigned, am the _____ (Position in business) with the authority to act for and on behalf of _____ (Name of business and/or Contractor), certify under penalty of perjury that the records or copies thereof submitted and consisting of _____ (Description, number of pages) are the originals or true, full, and correct copies of the originals which depict the payroll record(s) of actual disbursements by way of cash, check, or whatever form to the individual or individual named, and (b) we have complied with the requirements of sections 1771, 1811, and 1815 of the Labor Code for any work performed by our employees on the Project.

Date: _____ Signature: _____
(Section 16401 of Title 8 of the California Code of Regulations)

25.4.4. Each Contractor shall file a certified copy of the CPRs with the entity that requested the records within ten (10) days after receipt of a written request.

25.4.5. Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by District, Division of Apprenticeship Standards, or Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address, and social security number. The name and address of Contractor awarded Contract or performing Contract shall not be marked or obliterated.

25.4.6. Contractor shall inform District of the location of the records enumerated hereunder, including the street address, city, and county, and shall, within five (5) Business days, provide a notice of change of location and address.

25.4.7. In the event of noncompliance with the requirements of this section, Contractor shall have ten (10) days in which to comply subsequent to receipt of written notice specifying in what respects Contractor must comply with this section. Should noncompliance still be evident after the ten (10) day period, Contractor shall, as a penalty to District, forfeit one hundred dollars (\$100) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of Division of Apprenticeship Standards or Division of Labor Standards Enforcement, these penalties shall be withheld from Tenant Improvement Payment and/or Lease Payments then due.

25.4.8. It shall be the responsibility of Contractor to ensure compliance with the provisions of Labor Code section 1776.

25.5. Apprentices

25.5.1. Contractor acknowledges and agrees that, if this Contract involves a dollar amount greater than or a number of working days greater than that specified in Labor Code section 1777.5, then this Contract is governed by the provisions of Labor Code Section 1777.5. It shall be the responsibility of Contractor to ensure compliance with this Article and with Labor Code section 1777.5 for all apprenticeship occupations.

25.5.2. Apprentices of any crafts or trades may be employed and, when required by Labor Code section 1777.5, shall be employed provided they are properly registered in full compliance with the provisions of the Labor Code.

25.5.3. Every such apprentice shall be paid the standard wage paid to apprentices under the regulations of the craft or trade at which he/she is employed, and shall be employed only at the work of the craft or trade to which she/he is registered.

25.5.4. Only apprentices, as defined in section 3077 of the Labor Code, who are in training under apprenticeship standards and written apprentice agreements under chapter 4 (commencing at section 3070), division 3, of the Labor Code, are eligible to be employed. The employment and training of each apprentice shall be in accordance with the provisions of the apprenticeship standards and apprentice agreements under which he/she is training.

25.5.5. Pursuant to Labor Code section 1777.5, if that section applies to this Contract as indicated above, Contractor and any Subcontractors employing workers in any apprenticeable craft or trade in performing any Work under this Contract shall apply to the applicable joint apprenticeship committee for a certificate approving the Contractor or Subcontractor under the applicable apprenticeship standards and fixing the ratio of apprentices to journeymen employed in performing the Work.

25.5.6. Pursuant to Labor Code section 1777.5, if that section applies to this Contract as indicated above, Contractor and any Subcontractor may be required to make contributions to the apprenticeship program.

25.5.7. If Contractor or Subcontractor willfully fails to comply with Labor Code section 1777.5, then, upon a determination of noncompliance by the Administrator of Apprenticeship, it shall:

25.5.7.1. Be denied the right to bid on any subsequent project for one (1) year from the date of such determination;

25.5.7.2. Forfeit as a penalty to District the full amount as stated in Labor Code section 1777.7. Interpretation and enforcement of these provisions shall be in accordance with the rules and procedures of the California Apprenticeship Council and under the authority of the Chief of the Division of Apprenticeship Standards.

25.5.8. Contractor and all Subcontractors shall comply with Labor Code section 1777.6, which section forbids certain discriminatory practices in the employment of apprentices.

25.5.9. Contractor shall become fully acquainted with the law regarding apprentices prior to commencement of the Work. Special attention is directed to sections 1777.5, 1777.6, and 1777.7 of the Labor Code, and title 8, California Code of Regulations, section 200 et seq. Questions may be directed to the State Division of Apprenticeship Standards, 455 Golden Gate Avenue, San Francisco, California 94102.

25.5.10. Contractor shall ensure compliance with all certification requirements for all workers on the Project including, without limitation, the requirements for electrician certification in Labor Code section 108, et seq.

25.6. Non-Discrimination

25.6.1. Contractor herein agrees not to discriminate in its recruiting, hiring, promotion, demotion, or termination practices on the basis of race, religious creed, national origin, ancestry, sex, age, or physical handicap in the performance of this Contract and to comply with the provisions of the California Fair Employment and Housing Act as set forth in part 2.8 of division 3 of the California Government Code, commencing at section 12900; the Federal Civil Rights Act of 1964, as set forth in Public Law 88-352, and all amendments thereto; Executive Order 11246, and all administrative rules and regulations found to be applicable to Contractor and Subcontractor.

25.6.2. Special requirements for Federally Assisted Construction Contracts: During the performance of

this Contract, Contractor agrees to incorporate in all subcontracts the provisions set forth in Chapter 60-1.4(b) of Title 41 published in Volume 33 No. 104 of the Federal Register dated May 28, 1968.

25.7. Labor First Aid

Contractor shall maintain emergency first aid treatment for Contractor's workers on the Project which complies with the Federal Occupational Safety and Health Act of 1970 (29 U.S.C. § 651 et seq.), the California Occupational Safety and Health Act of 1973, and all related regulations, including without limitation sections 330 et seq. of Title 8 of the California Code of Regulations.

25.8. Skilled and Trained Workforce Requirement

25.8.1. Contractor is familiar with the hiring requirements set forth in Education Code section 17407.5, and as a condition of entering into this Facilities Lease, Contractor understands and agrees that Contractor and its Subcontractors at every tier will use a skilled and trained workforce, as defined in Education Code section 17407.5, to perform all Work on the Project that falls within an apprenticeable occupation in the building and construction trades.

26. MISCELLANEOUS

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
FACILITIES LEASE**

MEMORANDUM OF COMMENCEMENT DATE

[TO BE ENTERED INTO AFTER CONSTRUCTION IS COMPLETE TO COMMENCE DISTRICT OCCUPANCY OF THE FACILITIES AND TO START THE LEASE TERM.]

This MEMORANDUM OF COMMENCEMENT DATE is dated _____, 20____, and is made by and between **@Contractor** ("Contractor"), as Lessor, and the **Alameda Unified School District** ("District"), as Lessee.

1. Contractor and District have previously entered into a Facilities Lease dated as of _____, 20____, (the "Lease") for the leasing by Contractor to District of the Project Site(s) and Project in _____, CA, referenced in the Lease.

2. District hereby confirms the following:

A. That all construction of the Project required to be performed pursuant to the Facilities Lease has been completed by Contractor in all respects;

B. That District has accepted and entered into possession of the Project and now occupies same; and

C. That the term of the leaseback period in the Facilities Lease commenced on _____, 20____, and will expire at 11:59 P.M. on _____, 20____.

IN WITNESS WHEREOF, the Parties have accepted and agreed to this Memorandum of Commencement Date, as of the date indicated above, and have directed and authorized their respective officers to execute this Memorandum of Commencement Date:

Alameda Unified School District

@Contractor

Signature: _____

Signature: _____

Print Name: _____

Print Name: _____

Print Title: _____

Print Title: _____

EXHIBIT F
TO
FACILITIES LEASE

CONSTRUCTION SCHEDULE

[INCLUDE THIS FIRST PARAGRAPH IF CONTRACTOR PERFORMS PRELIMINARY SERVICES AND PARTIES AMEND FOR GPC]: IF THE PARTIES AGREE TO A GUARANTEED PROJECT COST AND AMEND THE CONTRACT, THE PARTIES SHALL ALSO AMEND THIS EXHIBIT AND INCLUDE THE CONSTRUCTION SCHEDULE PREPARED BY THE CONTRACTOR AND AGREED TO BY THE DISTRICT PURSUANT TO THE CONTRACT.

Preliminary Services. The schedule for the Preliminary Services is as follows:

- Contractor shall commence the Preliminary Services on or before [Date], and
- Contractor shall complete the Preliminary Services on or before [Date].

Construction Schedule. The Construction Schedule is as follows:

- It is hereby understood and agreed that assuming the District issues a Notice to Proceed for the Project on or before [Date], then:
 - District shall have Beneficial Occupancy of the Project on or before [Date], and
 - Project Completion shall be on or before [Date].
- In addition to the general parameters above for the Construction Schedule, attached is a detailed Project Construction Schedule with a duration no longer than the Contract Time, and with specific milestones that Contractor shall meet.

EXHIBIT G
TO
FACILITIES LEASE

SCHEDULE OF VALUES

Attached is a detailed Schedule of Values that complies with the requirements of the Construction Provisions (Exhibit D) and that has been approved by the District.

[INSERT SCHEDULE VALUES IF GPC AND SCHEDULE OF VALUES ARE AGREED TO]

OR

[INCLUDE THIS PARAGRAPH IF CONTRACTOR PERFORMS PRELIMINARY SERVICES AND PARTIES AMEND FOR GPC]: IF THE PARTIES AGREE TO A GUARANTEED PROJECT COST AND AMEND THE CONTRACT, THE PARTIES SHALL ALSO AMEND THIS EXHIBIT AND INCLUDE THE SCHEDULE OF VALUES PREPARED BY THE CONTRACTOR AND AGREED TO BY THE DISTRICT PURSUANT TO THE CONTRACT.

**EXHIBIT H
TO
FACILITIES LEASE**

SUBCONTRACTOR PROCUREMENT PROCESS

If the District issues an RFP or RFQ/P and requires the Contractors to submit a **final** price for this Project at the time it is competing against other Contractors, the Contractor shall comply with the subcontractor prequalification requirements of Education Code section 17406 (a)(1)(C) and may otherwise select subcontractors based on their own reasonable and non-discriminatory process.

If the District issues an RFQ or RFQ/P and selects one Contractor who will **later** provide a final price for this Project, that Contractor shall, in addition to all legal requirements, including without limitation Education Code section 17406, take the following steps when the District directs the Contractor to procure Subcontractors so that Contractor can provide a final lump sum Guaranteed Project Cost ("**GPC**") for construction of the Project.

1. **Subcontractor Bid Packages.** Contractor shall prepare separate and specific Subcontractor bid packages that include all scope(s) of construction Work included in the Plans and Specifications.
2. **Public Notice.** Contractor shall provide notice of bidding for Subcontractors "in accordance with the publication requirements applicable to the District's competitive selection process" to solicit Subcontractors in compliance with statutory requirements and the District's process. (Education Code §17406.)
3. **District Review of Bid Packages and Notice.** At least fourteen (14) days prior to the bidding of Subcontractor bid packages, Contractor shall provide the District with a copy of the written notice it will publish (including newspaper advertising) to solicit Subcontractors. The District reserves the right to request that Contractor reasonably revise its published notice.
4. **Three Bona Fide Bids.** Contractor is required to receive **at least** three (3) bona fide bids from Subcontractors for all scopes of Work on the Project that constitute more than three percent (3%) of the total Project scope of Work. Prior to the Contractor seeking bids, the District may, in its sole discretion, and upon Contractor's written request, authorize Contractor to utilize a different minimum number of bona fide bids from Subcontractors.
5. **Prequalification.** Contractor's Subcontractors performing work valued in excess of ½ of 1% of the GPC must comply with the following:
 - a. **MEP Prequalification.** If the Project has electrical, mechanical, and plumbing components that will be performed by subcontractors performing under the following license classification(s) (C-4, C-7, C-10, C-16, C-20, C-34, C-36, C-38, C-42, C-43, and/or C-46; "**MEP Subcontractor(s)**"), and those MEP Subcontractors will be first-tier Subcontractors to the Contractor, those MEP Subcontractors must be prequalified with the District to be eligible to be included in a Contractor's proposal. MEP Subcontractors shall prequalify with the District utilizing the District's Prequalification Questionnaire. **The District highly recommends that the Contractor informs all of its potential MEP Subcontractors that must be prequalified to immediately complete the prequalification process to ensure their eligibility to be included as MEP Subcontractors for the Project.**
 - b. **Non-MEP Subcontractor Prequalification Criteria and Standards.** For this Project, Contractor may **NOT** prequalify non-MEP subcontractors solicited for work on this Project, unless the Contractor provides any prequalification or qualification criteria, process or questionnaire to the District for approval at least fourteen (14) days prior to the bidding of Subcontractor bid packages.

- c. **LIMIT ON "BEST VALUE" SELECTION.** CONTRACTOR ACKNOWLEDGES THAT THIS PROCESS – THE PREQUALIFICATION OR ANY ASSOCIATED QUALIFICATION PROCESS – IS THE ONLY "BEST VALUE" SELECTION PROCESS AS IDENTIFIED IN EDUCATION CODE SECTION 17406 THAT THE DISTRICT HAS APPROVED FOR THIS PROJECT. THE CONTRACTOR MAY REQUEST, AT LEAST FOURTEEN (14) DAYS PRIOR TO THE BIDDING OF SUBCONTRACTOR BID PACKAGES, THAT THE DISTRICT APPROVE OTHER SELECTION PROCESS(ES) OR CRITERIA THAT THE CONTRACTOR DESIRES TO IMPLEMENT ON THIS PROJECT. CONTRACTOR CAN ONLY IMPLEMENT THOSE IF THE DISTRICT PRE-APPROVES THEM.
6. **Open-Book / Bid Opening.** Contractor shall invite the District to attend all bid opening(s) for the Project and shall within 48 hours of the bid opening(s) provide copies or access to all bid documents provided by all Subcontractors.
7. **Missing Scopes of Work in Subcontractor Bids ("Bid Levelling").** When Contractor has received all Subcontractor bids, Contractor shall identify all scope(s) of construction Work for which Contractor did not receive a bid and provide a written justification as to why the scope(s) of construction Work was either not included in a Subcontractor bid or was not bid on ("Unbid Work"). The District expects very little if any Unbid Work, far less than 1% of the GPC. After the District reviews the Contractor's justification, the Parties shall meet and confer and the District shall reasonably determine, in its sole discretion, whether to:
- a. Direct the Contractor to rebid the Unbid Work; or
 - b. If Contractor requests, allow the Contractor to self-perform the Unbid Work. If Contractor self-performs the Unbid Work, Contractor shall provide substantiation for the pricing for the Unbid Work that Contractor intends to self-perform. The Parties shall negotiate in good faith to determine a reasonable price for the Unbid Work that Contractor intends to self-perform. The District reserves the right to seek its own pricing of that Work to verify the value of Contractor's proposed pricing.
8. **Low Bid.** Because the "best value" process was implemented as part of the Subcontractor procurement process, once the Contractor receives Subcontractor bids, the Contractor shall award subcontracts to subcontractors with the **lowest responsive, responsible bid** that have satisfied the above prequalification and/or qualification steps, as applicable.
9. **Self-Performing Construction Work.** If Contractor intends to propose to self-perform portion(s) of the construction Work, it must
- a. Receive the District's prior written approval.
 - b. Provide its pricing (its bid) to the District 48 hours prior to Contractor's receipt of Subcontractor bids for those portion(s) of the Work.
 - c. Receive a minimum number of two (2) bona fide bids from Subcontractors for scope(s) of Work that the Contractor is bidding to self-perform, not including the Contractor's pricing/bid.

**EXHIBIT I
TO
FACILITIES LEASE**

**CERTIFICATES AND BONDS TO LEASE-LEASEBACK DOCUMENTS
AND
DIVISION 1 DOCUMENTS TO LEASE-LEASEBACK DOCUMENTS**

@Project Name

**Alameda Unified School District
and
@Contractor**

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)

CERTIFICATIONS TO BE COMPLETED BY CONTRACTOR

THE UNDERSIGNED MUST CHECK EACH BOX AND EXECUTE THIS FORM AND HEREBY CERTIFIES TO THE GOVERNING BOARD OF THE DISTRICT THAT:

- He/she is a representative of the Contractor,
- He/she is familiar with the facts herein certified and acknowledged,
- He/she is authorized and qualified to execute this Agreement and these certifications on behalf of Contractor and that by executing this Agreement he/she is certifying the following items.

☐ **Labor Code Sections 1860-1861 (Workers' Compensation).** In accordance with Labor Code section 3700, every contractor will be required to secure the payment of compensation to his or her employees. I acknowledge and certify under penalty of perjury that 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 this contract.

☐ **Government Code Sections 8355-8357 (Drug-Free Workplace).** I acknowledge and certify under penalty of perjury that I 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 the actions that 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) Any available 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 by subdivision (a) and that, as a condition of employment on the contract or grant, the employee agrees to abide by the terms of the statement.

I also acknowledge that this Contract may be subject to suspension of payments under the contract or grant or termination of the contract or grant, or both, and the contractor or grantee thereunder may be subject to debarment, in accordance with the requirements of the above-referenced statute, if the contracting or granting agency determines that any of the following has occurred:

- (1) The contractor or grantee has made a false certification under Section 8355.
- (2) The contractor or grantee violates the certification by failing to carry out the requirements of subdivisions (a) to (c), inclusive, of Section 8355.

I also acknowledge that the Department of General Services shall establish and maintain a list of individuals and organizations whose contracts or grants have been canceled due to failure to comply with the above-referenced statute. This list shall be updated monthly and published each month. No state agency shall award a contract or grant to a person or organization on the published list until that person or organization has complied with the above-referenced statute.

☐ **Tobacco-Free Environment.** 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 and certify under penalty of perjury that I am aware of the District's policy regarding tobacco-free environments at District sites, including the Project site and acknowledge and 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. The District also prohibits electronic cigarettes, "vaping" or similar product uses on District sites.

☐ **No Hazardous Materials.** I acknowledge and certify under penalty of perjury 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. I have instructed our employees with respect to the above-mentioned standards, hazards, risks, and liabilities.

- (i) 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. 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.
- (ii) 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.

The Contractor must immediately notify the District within two (2) Business Days, if the Contractor finds and before it disturbs, any material that the Contractor believes may be hazardous waste, as defined in section 25117 of the Health and Safety Code, and requires removal to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law

I acknowledge and certify under penalty of perjury that 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.
-

☐ **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 disburses when paint chips, chinks, 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.

(i) **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.

(ii) **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.

(iii) **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.

I acknowledge and certify under penalty of perjury, that:

1. I have received notification of potential lead-based materials on the District's property;
2. I am knowledgeable regarding and will comply with all applicable laws, rules, and regulations governing work with, and disposal of, lead.



Imported Materials. All soils, aggregate, or related materials ("Fill") that Contractor, a Subcontractor, agent or supplier, in any way, provides or delivers and/or supplies to the Project Site shall be free of any and all

hazardous material as defined in section 25260 of the Health and Safety Code, shall satisfy the requirements of any environmental review of the Project performed pursuant to the statutes and guidelines of the California Environmental Quality Act, sections 21000 et seq. of the Public Resources Code ("CEQA"), and shall comply with the requirements of sections 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. I acknowledge that, 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.

☐ **Roofing Contract Financial Interest Certification (Public Contract Code § 3006)**

I, _____ **[Your Name]**, _____ **[Firm Name]**
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 a 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.

I, _____ **[Your Name]**, _____ **[Firm Name]**
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, _____ **[Your Name]**, _____ **[Firm Name]**
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: _____

For Projects without substantive roofing components, check the following box and execute this certification:

☐ The Work on the Contract (1) does not include the replacement or repair of a roof or (2) is a repair of twenty five percent (25%) or less of the roof, (3) or is a repair project that has a total cost of twenty one thousand dollars (\$21,000) or less.

I acknowledge and certify under penalty of perjury that I am duly authorized to legally bind the Contractor to all provisions and items included in these certifications, that the contents of these certifications are true, and that these certifications are made under the laws of the State of California.

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 Contract Price, 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 Contract Price.

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: _____

CRIMINAL BACKGROUND INVESTIGATION / FINGERPRINTING CERTIFICATION

The undersigned does hereby certify to the governing board of the District that he/she is a representative of the Contractor, is familiar with the facts herein certified, is authorized and qualified to execute this certificate on behalf of Contractor; and that the information in this Criminal Background Investigation / Fingerprinting Certification 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 ("DOJ") has determined (per the DOJ process for Applicant Agencies described more fully on its website, located at:) that none of those employees have 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: _____

BYRD ANTI-LOBBYING AMENDMENT CERTIFICATION

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, as well as any California remedies, apply to this certification and disclosure, if any.

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: _____

PERFORMANCE BOND (100% of Contract Price)
(Note: Contractor must use this form, NOT a surety company form.)

KNOW ALL PERSONS BY THESE PRESENTS:

WHEREAS, the governing board ("**Board**") of the **Alameda Unified School District** (or "**District**") and **@Contractor**, ("**Principal**") have entered into a contract for the furnishing of all materials and labor, services and transportation, necessary, convenient, and proper to perform the following project:

@Project Name ("**Project**" or "**Contract**")

which Contract dated _____, 20_____, and all of the Contract Documents attached to or forming a part of the Contract, are hereby referred to and made a part hereof, and

WHEREAS, said Principal is required under the terms of the Contract to furnish a bond for the faithful performance of the Contract;

NOW, THEREFORE, the Principal and _____ ("**Surety**") are held and firmly bound unto the Board of the District in the penal sum of:

_____ DOLLARS

(\$ _____), lawful money of the United States, for the payment of which sum well and truly to be made we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally, firmly by these presents, to:

- Perform all the work required to complete the Project; and
- Pay to the District all damages the District incurs as a result of the Principal's failure to perform all the Work required to complete the Project.

In the event the Principal is declared by the District to be in breach or default in the performance of the Contract, then, after written notice from the District 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 District.

The condition of the obligation is such that, if the above bounden Principal, his or its heirs, executors, administrators, successors, or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions, and agreements in the Contract and any alteration thereof made as therein provided, on his or its part to be kept and performed at the time and in the intent and meaning, including all contractual guarantees and warranties of materials and workmanship, and shall indemnify and save harmless the District, its trustees, officers and agents, as therein stipulated, then this obligation shall become null and void, otherwise it shall be and remain in full force and virtue.

As a condition precedent to the satisfactory completion of the Contract, the above obligation shall hold good for a period equal to the warranty and/or guarantee period of the Contract, during which time Surety's obligation shall continue if Contractor shall fail to make full, complete, and satisfactory repair, replace, and totally protect the District from loss or damage resulting from or caused by defective materials or faulty workmanship. The obligations of Surety hereunder shall continue so long as any obligation of Contractor remains. Nothing herein shall limit the District's rights or the Contractor's or Surety's obligations under the Contract, law or equity, including, but not limited to, California Code of Civil Procedure section 337.15.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Contract or to the Work to be performed thereunder shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration, or addition to the Contract Documents or to the Work.

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, two (2) identical counterparts of this instrument, each of which shall for all purposes be deemed an original thereof, have been duly executed by the Principal and Surety above named, on the _____ day of _____, 20_____.

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 Contract Price)

(Note: Contractor must use this form, NOT a surety company form.)

KNOW ALL PERSONS BY THESE PRESENTS:

WHEREAS, the governing board ("**Board**") of the **Alameda Unified School District** (or "**District**") and **@Contractor**, ("**Principal**") have entered into a contract for the furnishing of all materials and labor, services and transportation, necessary, convenient, and proper to perform the following project:

@Project Name ("**Project**" or "**Contract**")

which Contract dated _____, 20____, and all of the Contract Documents attached to or forming a part of the Contract, are hereby referred to and made a part hereof, and

WHEREAS, pursuant to law and the Contract, the Principal is required, before entering upon the performance of the work, to file a good and sufficient bond with the body by which the Contract is awarded in an amount equal to 100 percent (100%) of the Contract price, to secure the claims to which reference is made in the Civil Code of California, including section 9100, and the Labor Code of California, including section 1741.

NOW, THEREFORE, the Principal and _____, ("**Surety**") are held and firmly bound unto all laborers, material men, and other persons referred to in said statutes in the penal sum of:

_____ DOLLARS

(\$ _____), lawful money of the United States, being a sum not less than the total amount payable by the terms of Contract, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, or assigns, jointly and severally, by these presents.

The condition of this obligation is that if the Principal or any of his or its subcontractors, of the heirs, executors, administrators, successors, or assigns of any, all, or either of them shall fail to pay for any labor, materials, provisions, provender, or other supplies, used in, upon, for or about the performance of the work contracted to be done, or for any work or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to such work or labor, that the Surety will pay the same in an amount not exceeding the amount herein above set forth, and also in case suit is brought upon this bond, will pay a reasonable attorney's fee to be awarded and fixed by the Court, and to be taxed as costs and to be included in the judgment therein rendered.

It is hereby expressly stipulated and agreed that this bond shall inure to the benefit of any and all persons, companies, and corporations entitled to file claims under sections 9000 through 9566 of the Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

Should the condition of this bond be fully performed, then this obligation shall become null and void; otherwise it shall be and remain in full force and affect.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Contract or to the Work to be performed thereunder shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration, or addition to the Contract Documents or to the Work.

IN WITNESS WHEREOF, two (2) identical counterparts of this instrument, each of which shall for all purposes be deemed an original thereof, have been duly executed by the Principal and Surety above named, on the _____ day of _____, 20_____.

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.

Division 1 Documents
to
Lease-Leaseback Documents

COORDINATION AND PROJECT MEETINGS	132
PRODUCT OPTIONS AND SUBSTITUTIONS.....	135
CONSTRUCTION SCHEDULE – NETWORK ANALYSIS.....	137
SUBMITTALS	144
REGULATORY REQUIREMENT.....	147
TESTING LABORATORY SERVICES	149
TEMPORARY FACILITIES AND CONTROLS	152
SITE STANDARDS	156
TEMPORARY TREE AND PLAN PROTECTION	158
STORM WATER POLLUTION PREVENTION PLAN - CONSTRUCTION	161
MATERIALS AND EQUIPMENT.....	164
DELIVERY, STORAGE AND HANDLING	166
CONTRACT CLOSEOUT AND FINAL CLEANING	167
FIELD ENGINEERING.....	169
CUTTING AND PATCHING.....	170
OPERATION AND MAINTENANCE.....	173
WARRANTIES	175
RECORD DOCUMENTS.....	176
COMMISSIONING	177

[TABLE OF CONTENTS NEEDS TO BE UPDATED WHEN DOCUMENT IS FINALIZED]

COORDINATION AND PROJECT MEETINGS

1. GENERAL

1.1. SECTION INCLUDES

- 1.1.1. Coordination Responsibilities of the Contractor
- 1.1.2. Field Engineering Responsibilities of the Contractor
- 1.1.3. Preconstruction Conference.
- 1.1.4. Progress Meetings.
- 1.1.5. Pre-Installation Conferences.
- 1.1.6. Post Construction Dedication.

1.2. COORDINATION RESPONSIBILITIES OF THE CONTRACTOR

- 1.2.1. Coordinate scheduling, submittals, and Work of the Specifications to assure efficient and orderly sequence of installation of interdependent construction elements, with provisions for accommodating items installed later.
- 1.2.2. Prior to commencement of a particular type or kind of work examine relevant information, contract documents, and subsequent data issued to the Project.
- 1.2.3. Verify that utility requirement characteristics of operating equipment are compatible with building utilities. Coordinate work of various sections having interdependent responsibilities for installing, connecting to, and placing in service, such equipment.
- 1.2.4. Closing up of holes, backfilling, and other covering up operations shall not proceed until all enclosed or covered work and inspections have been completed. Verify before proceeding.
- 1.2.5. Coordinate space requirements and installation of mechanical and electrical work which are indicated diagrammatically on Drawings. Follow routing shown for pipes, ducts, and conduit as closely as practicable; place runs parallel with line of building. Utilize spaces efficiently to maximize accessibility for other installations, for maintenance, and for repairs.
- 1.2.6. In finished areas except as otherwise indicated, conceal pipes, ducts, and wiring within the construction. Coordinate locations of fixtures and outlets with finish elements.
- 1.2.7. In locations where several elements of mechanical and electrical work must be sequenced and positioned with precision in order to fit into available space, prepare coordination drawings showing the actual conditions required for the installation. Prepare coordination drawings prior to purchasing, fabricating, or installing any of the elements required to be coordinated.
- 1.2.8. Closing up of walls, partitions or furred spaces, backfilling, and other covering up operations shall not proceed until all enclosed or covered work and inspections have been completed. Verify before proceeding.
- 1.2.9. Coordinate completion and clean up of Work of separate sections in preparation for completion and for portions of work designated for District's occupancy.
- 1.2.10. After District occupancy of Project, coordinate access to Site for correction of defective Work and Work not in accordance with Contract Documents, to minimize disruption of District's activities.
- 1.2.11. Coordinate all utility company work in accordance with the Contract Documents.

1.3. FIELD ENGINEERING RESPONSIBILITIES OF THE CONTRACTOR

- 1.3.1. Contractor shall employ a Land Surveyor registered in the State of California and acceptable to the Construction Manager.
- 1.3.2. Control datum for survey is that established by District provided survey. Contractor to locate and protect survey control and reference points.
- 1.3.3. Replace dislocated survey control points based on original survey control.
- 1.3.4. Provide field engineering services. Establish elevations, lines, and levels utilizing recognized engineering survey practices.
- 1.3.5. Upon completion of Work, submit certificate signed by the Land Surveyor, that elevations and locations of Work are in conformance with Contract Documents. Record

deviations on Record Drawings.

1.4. PRECONSTRUCTION CONFERENCE

- 1.4.1. Construction Manager or Project Engineer will schedule a conference immediately after receipt of fully executed Contract Documents prior to Project mobilization.
- 1.4.2. Mandatory Attendance: Construction Manager, Project Engineer, Inspector of Record, Architect of Record, Contractor, Contractor's Project Manager, and Contractor's Job/Project Superintendent.
- 1.4.3. Optional Attendance: Architect's consultants, subcontractors, and utility company representatives.
- 1.4.4. Construction Manager shall preside at conference and shall prepare and record minutes and distribute copies.
- 1.4.5. Agenda:
 - 1.4.5.1. Execution of the Contract Documents.
 - 1.4.5.2. Issue Notice to Proceed.
 - 1.4.5.3. Submission of executed bonds and insurance certificates.
 - 1.4.5.4. Distribution of Contract Documents.
 - 1.4.5.5. Submission of list of Subcontractors, list of Products, Schedule of Values, and Progress Schedule.
 - 1.4.5.6. Designation of responsible personnel representing the parties.
 - 1.4.5.7. Procedures for processing Force Account Directives and Change Orders.
 - 1.4.5.8. Procedures for Request for Information.
 - 1.4.5.9. Procedures for testing and inspecting.
 - 1.4.5.10. Procedures for processing applications for payment.
 - 1.4.5.11. Procedures for Project closeout.
 - 1.4.5.12. Use of Premises.
 - 1.4.5.13. Work restrictions.
 - 1.4.5.14. District's occupancy requirements or options.
 - 1.4.5.15. Responsibility for temporary facilities and controls.
 - 1.4.5.16. Construction waste management and recycling.
 - 1.4.5.17. Parking availability.
 - 1.4.5.18. Office, work and storage areas.
 - 1.4.5.19. Equipment deliveries and priority.
 - 1.4.5.20. Security.
 - 1.4.5.21. Progress cleaning.

1.5. PROGRESS MEETINGS

- 1.5.1. Construction Manager shall schedule and administer meetings throughout progress of the Work at a minimum of every week.
- 1.5.2. Construction Manager or Project Engineer will make arrangements for meetings, prepare agenda, and preside at meetings. Construction Manager shall record minutes (Field Reports), and distribute copies.
- 1.5.3. Attendance Required: Project Manager, Job Superintendent, Construction Manager, Project Engineer, Project Inspector (Inspector of Record), Architect of Record, Subcontractors, and suppliers as appropriate to agenda topics for each meeting.
- 1.5.4. Agenda:
 - 1.5.4.1. Review minutes of previous meetings. (Field Reports)
 - 1.5.4.2. Safety, and jobsite visits
 - 1.5.4.3. Review of Work progress.
 - 1.5.4.4. Field observations, problems, and decisions.
 - 1.5.4.5. Identification of problems which impede planned progress.
 - 1.5.4.6. Review of submittals schedule and status of submittals.
 - 1.5.4.7. Review of off-site fabrication and delivery schedules.
 - 1.5.4.8. Maintenance of construction schedule.
 - 1.5.4.9. Corrective measures to regain projected schedules.

- 1.5.4.10. Planned progress during succeeding work period.
- 1.5.4.11. Coordination of projected progress.
- 1.5.4.12. Maintenance of quality and work standards.
- 1.5.4.13. Effect of proposed changes on progress schedule and coordination.
- 1.5.4.14. Other business relating to Work.

- 1.5.5. District has authority to schedule meetings other than those listed, as necessary.

1.6. PRE-INSTALLATION CONFERENCES

When required in individual specification section, or requested by the District Contractor shall convene a pre-installation conference prior to commencing work of the section. Refer to individual specification section for timing requirements of conference.

- 1.6.1. Contractor shall require his/her subcontractors and suppliers directly affecting, or affected by, work of the specific section to attend.
- 1.6.2. Notify the Construction Manager, Project Engineer, Inspector of Record, and Architect of Record four (4) days in advance of meeting date.
- 1.6.3. The pre-installation conference may coincide with a regularly scheduled progress meeting.
- 1.6.4. Contractor shall prepare agenda, preside at conference, record minutes, and distribute copies within two (2) days after conference to participants.
- 1.6.5. The purpose of the meeting will be to review Contract Documents, conditions of installation, preparation and installation procedures, and coordination with related work and manufacturer's recommendations.
- 1.6.6. Pre-installation Schedule: As a minimum, Work being installed under the Contract Documents technical sections will require pre-installation conferences. Contractor shall review the technical specifications and add all additional requirements for pre-installation meetings contained in those sections.

1.7. POST CONSTRUCTION DEDICATION

- 1.7.1. Attendance Required: Project Superintendent, Contractor, Project Manager, major subcontractors, Construction Manager, Project Engineer, Inspector of Record, and Architect of Record.
- 1.7.2. Preparation prior to Dedication: Contractor and appropriate subcontractors and suppliers shall:
- 1.7.3. Assist District in operation of mechanical devices and systems.
 - 1.7.3.1. Verify operation and adjust controls for communication systems.
 - 1.7.3.2. Assist District in operation of lighting systems.

PRODUCT OPTIONS AND SUBSTITUTIONS

1. Substitution for Specified Items.

The Project shall be based on products and systems specified in Contract Documents or listed by name in Addenda. Contractor shall only request substitutions as indicated herein.

1.1. Request for Substitution Prior to Proposal.

- 1.1.1. District must receive any request for substitution a minimum of FOURTEEN (14) calendar days prior to the date proposals are due.
- 1.1.2. The District's denial of a substitution request prior to the date proposals are due shall be conclusive, requiring Contractors to base proposals only on approved items. The District is not responsible and/or liable in any way for a Contractor's damages and/or claims related, in any way, to that Contractor's basing its proposal on any requested substitution that the District has not approved. Contractor's proposal may be deemed non-responsive if it identifies a product or manufacturer of a non-approved substitution.
- 1.1.3. Approved substitutions shall be listed in Addenda.
- 1.1.4. District reserves the right not to act upon submittals of substitutions until after the date proposals are due. If the District does not act on a substitution request prior to the date proposals are due, Contractors must propose only on products and systems specified in Contract Documents or listed by name in Addenda.

1.2. Request for Substitution After Contract Awarded. Requests for substitutions after award of the Contract shall be within **THIRTY-FIVE (35) days of the date of the Notice of Award or similar notice to Contractor**. This time period can be extended by the District only, in its sole discretion.

- 1.2.1. Whenever in the Specifications any materials, process, or article is indicated or specified by grade, patent, or proprietary name, or by name of manufacturer, that Specification shall be deemed to be followed by the words "or equal." Contractor may, unless otherwise stated, offer any material, process, or article that shall be substantially equal or better in every respect to that so indicated or specified.
- 1.2.2. If the material, process, or article offered by Contractor is not, in the opinion of the District, substantially equal or better in every respect to that specified, then Contractor shall furnish the material, process, or article specified in the Specifications without any additional compensation or change.
- 1.2.3. This provision shall not be applicable with respect to any material, product, thing or service for which District made findings and gave notice in accordance with Public Contract Code section 3400(b); therefore, Contractor shall not be entitled to request a substitution with respect to those materials, products or services.
- 1.2.4. The burden of proof as to equality of any material, process, or article shall rest with Contractor.

1.3. A request for a substitution shall be in writing and shall include the following information and /or assurances.

- 1.3.1. All variations of the proposed substitute from the material specified including, but not limited to, principles of operation, materials, or construction finish, thickness or gauge of materials, dimensions, weight, and tolerances;
- 1.3.2. Available maintenance, repair or replacement services;
- 1.3.3. Increases or decreases in operating, maintenance, repair, replacement, and spare parts costs;
- 1.3.4. Whether or not acceptance of the substitute will require other changes in the Work (or in work performed by the District or others under contract with the District); and
- 1.3.5. The time impact on any part of the Work resulting directly or indirectly from acceptance of the proposed substitute.
- 1.3.6. The proposed substitute is equal or superior in all respects to that specified, and that such proposed substitute is suitable and fit for the intended purpose and will perform adequately the function and achieve the results called for by the general design and the Contract Documents;

- 1.3.7. The Contractor provides the same warranties and guarantees for the substitute that would be provided for that specified;
- 1.3.8. The Contractor shall be fully responsible for the installation of the substitute and any changes in the Work required, either directly or indirectly, because of the acceptance of such substitute, with no increase in Contract Price or Contract Time. Incidental changes or extra component parts required to accommodate the substitute will be made by the Contractor without a change in the Contract Price or Contract Time;
- 1.3.9. The Contractor shall be responsible for any re-design costs occasioned by District's acceptance and/or approval of any substitute; and
- 1.3.10. The Contractor shall, in the event that a substitute is less costly than that specified, credit the District with one hundred percent (100%) of the net difference between the substitute and the originally specified material. In this event, the Contractor agrees to execute a deductive Change Order to reflect that credit.
- 1.4. In the event Contractor furnishes a material, process, or article more expensive than that specified, the difference in the cost of that material, process, or article so furnished shall be borne by Contractor.
- 1.5. In no event shall the District be liable for any increase in Contract Price or Contract Time due to any claimed delay in the evaluation of any proposed substitute or in the acceptance or rejection of any proposed substitute.
- 1.6. If the District approves a substitution after the award of the Contract, the District shall memorialize that approval in a Change Order or other applicable Contract modification process.

CONSTRUCTION SCHEDULE - NETWORK ANALYSIS

1. GENERAL

1.1. REFERENCES

- 1.1.1. Construction Planning and Scheduling Manual - A Manual for General Contractors and the Construction Industry, The Associated General Contractors of America (AGC).
- 1.1.2. CSI - Construction Specifications Institute MP-2-1 Master Format.
- 1.1.3. U.S. National Weather Service - Local Climatological Data.

1.2. PERFORMANCE REQUIREMENTS

- 1.2.1. All Contractor's schedules shall comply with the baseline and milestones as indicated in the draft "Program Schedule" the District provided as a draft **Exhibit F** to the Facilities Lease.
- 1.2.2. Ensure adequate scheduling during construction activities so Work may be prosecuted in an orderly and expeditious manner within stipulated Contract Time.
- 1.2.3. Ensure coordination of Contractor and subcontractors at all levels.
- 1.2.4. Ensure coordination of submittals, fabrication, delivery, erection, installation, and testing of Products, materials and equipment.
- 1.2.5. Ensure on-time delivery of District furnished Products, materials and equipment.
- 1.2.6. Ensure coordination of jurisdictional reviews.
- 1.2.7. Prepare applications for payment.
- 1.2.8. Monitor progress of Work.
- 1.2.9. Prepare proper requests for changes to Contract Time.
- 1.2.10. Prepare proper requests for changes to Construction Schedule.
- 1.2.11. Assist in detection of schedule delays and identification of corrective actions.

1.3. QUALITY ASSURANCE

- 1.3.1. Perform scheduling work in accordance with Construction Planning and Scheduling Manual published by the AGC.
- 1.3.2. Maintain one copy of Construction Planning and Scheduling Manual on Site.
- 1.3.3. In the event of discrepancy between the AGC publication and the Contract Documents, provisions of the Contract Documents shall govern.

1.4. QUALIFICATIONS

1.4.1. Scheduler:

- 1.4.1.1. Contractor shall retain a construction scheduler to work in enough capacity to perform all of the Contractor's requirements to prepare the Construction Schedule. The Scheduler shall plan, coordinate, execute, and monitor a cost/resource loaded critical path method (CPM) schedule as required for Project and have a minimum of five (5) years direct experience using CPM.
- 1.4.1.2. Scheduler will cooperate with District and shall be available on site for monitoring, maintaining and updating schedules in a timely manner.
- 1.4.1.3. District has the right to reject the Scheduler based upon a lack of experience as required by this Document or based on lack of performance and timeliness of schedule submittals/fragnets on past projects. Contractor shall within seven (7) calendar days of District's rejection, propose another scheduler who meets the experience requirements stated above.

- 1.4.2. **Administrative Personnel:** Five (5) years minimum experience in using and monitoring schedules on comparable projects.

1.5. SUBMITTALS

- 1.5.1. Submission of submittals pursuant to "Contractor's Submittals And Schedules" in Exhibit D. Adobe "PDF" files are not acceptable.
- 1.5.2. Submit Short Interval Schedule at each Construction Progress Meeting.
- 1.5.3. Submit Time Adjustment Schedule within five (5) days of commencement of a claimed

delay.

- 1.5.4. Submit Recovery Schedules as required for timely completion of Work or when demanded by the District.
- 1.5.5. Submit job cost reports when demanded by the District.
- 1.5.6. Submit one (1) reproducible and two (2) copies of each schedule and cost report.
- 1.5.7. Submit large format plotted schedules monthly or at the request of the District or Construction Manager.

1.6. REVIEW AND EVALUATION

- 1.6.1. Contractor shall participate in joint review of Construction Schedule and Reports with District and Construction Manager.
- 1.6.2. Within seven (7) days of receipt of District and Construction Manager's comments provide satisfactory revision to Construction Schedule or adequate justification for activities in question.
- 1.6.3. In the event that an activity or element of Work is not detected by District or Construction Manager review, such omission or error shall be corrected by next scheduled update and shall not affect Contract Time.
- 1.6.4. Acceptance by District of corrected Construction Schedule shall be a condition precedent to making any Tenant Improvement Payment.
- 1.6.5. Cost-loaded values of Construction Schedule shall be basis for determining Tenant Improvement Payment unless waived by the District in writing.
- 1.6.6. Review and acceptance by District and Construction Manager of Preliminary Work Schedule or Construction Schedule does not constitute responsibility whatsoever for accuracy or feasibility of schedules nor does such acceptance expressly or impliedly warrant, acknowledge or admit reasonableness of activities, logic, duration, manpower, cost or equipment loading stated or implied on schedules.

1.7. FORMAT

- 1.7.1. Prepare diagrams and supporting mathematical analyses using Precedence Diagramming Method, under concepts and methods outlined in AGC Construction Planning and Scheduling Manual.
- 1.7.2. **Listings:** Reading from left to right, in ascending order for each activity.
- 1.7.3. **Diagram Size:** 42 inches maximum height x width required.
- 1.7.4. **Scale and Spacing:** To allow for legible notations and revisions.
- 1.7.5. Illustrate order and interdependence of activities and sequence of Work.
- 1.7.6. Illustrate complete sequence of construction by activity.
- 1.7.7. Provide legend of symbols and abbreviations used.

1.8. COST AND SCHEDULE REPORTS

- 1.8.1. **Activity Analysis:** Tabulate each activity of network diagram and identify for each activity:
 - 1.8.1.1. Description.
 - 1.8.1.2. Interface with outside contractors or agencies.
 - 1.8.1.3. Number.
 - 1.8.1.4. Preceding and following number.
 - 1.8.1.5. Duration.
 - 1.8.1.6. Earliest start date, earliest finish date.
 - 1.8.1.7. Actual start date, actual finish date.
 - 1.8.1.8. Latest start date, latest finish date.
 - 1.8.1.9. Total and free float.
 - 1.8.1.10. Identification of critical path activity.
 - 1.8.1.11. Monetary value keyed to Schedule of Values.
 - 1.8.1.12. Manpower requirements.
 - 1.8.1.13. Responsibility.
 - 1.8.1.14. Percentage complete.
 - 1.8.1.15. Variance positive or negative.

- 1.8.2. **Cost Report:** Tabulate each activity of network diagram and identify for each activity, unless waived by the District in writing:
 - 1.8.2.1. Description.
 - 1.8.2.2. Number.
 - 1.8.2.3. Total cost.
 - 1.8.2.4. Percentage complete.
 - 1.8.2.5. Value prior to current period.
 - 1.8.2.6. Value this period.
 - 1.8.2.7. Value to date.
- 1.8.3. **Required Sorts:** List activities in sorts or groups:
 - 1.8.3.1. By activity number.
 - 1.8.3.2. By amount of float time in order of early start.
 - 1.8.3.3. By responsibility in order of earliest start date.
 - 1.8.3.4. In order of latest start dates.
 - 1.8.3.5. In order of latest finish dates.
 - 1.8.3.6. Application for payment sorted by Schedule of Values.
 - 1.8.3.7. Listing of activities on critical path.
- 1.8.4. Listing of basic input data which generates schedule.

1.9. CONSTRUCTION SCHEDULE

- 1.9.1. Contractor shall develop and submit a preliminary schedule of construction (or Preliminary Construction Schedule) during the procurement process or, if not then, and only with the District's written approval, within thirty (30) days after award of the Contract. That document shall comply with this Document and the Contract Documents. It shall be submitted in computer generated network format and shall be organized by Activity Codes representing the Contractor's intended sequencing of the Work, and with time scaled network diagrams of activities. The Preliminary Construction Schedule shall include activities such as mobilization, preparation of submittals, specified review periods, procurement items, fabrication items, milestones, and all detailed construction activities.
- 1.9.2. Upon District's acceptance of the Preliminary Construction Schedule, Contractor shall update the accepted Preliminary Construction Schedule until Contractor's Construction Schedule is fully developed and accepted within the first thirty (30) calendar days. Once approved by District, this shall become the Construction Schedule (or "Baseline Schedule"). This schedule shall include and identify all tasks that are on the Project's critical path with a specific determination of the start and completion of each critical path task, all contract milestones and each milestone's completion date(s) as may be required by the District, and the date of Project Completion. Since updates to the Construction Schedule are the basis for payment to Contractor, submittal and acceptance of the Construction Schedule and updates shall be a condition precedent to making of monthly payments, as indicated in the General Construction Provisions (Exhibit D to the Facilities Lease).
- 1.9.3. Failure to submit an adequate or accurate Preliminary Construction Schedule, Construction Schedule, updates thereto or failure to submit on established dates, will be considered a breach of Contract.
- 1.9.4. Failure to include any activity shall not be an excuse for completing all Work by required Completion Date.
- 1.9.5. Activities of long intervals shall be broken into increments no longer than fourteen (14) days or a value over \$20,000.00 unless approved by the District or it is non-construction activity for procurement and delivery.
- 1.9.6. The Construction Schedule shall comply with the following and include the following:
 - 1.9.6.1. Provide a written narrative describing Contractor's approach to mobilization, procurement, and construction during the first thirty (30) calendar days including crew sizes, equipment and material delivery, Site

- access, submittals, and permits.
- 1.9.6.2. Shall designate critical path or paths.
- 1.9.6.3. Procurement activities to include mobilization, shop drawings and sample submittals.
- 1.9.6.4. Identification of key and long-lead elements and realistic delivery dates.
- 1.9.6.5. Construction activities in units of whole days limited to fourteen (14) days for each activity except non-construction, procurement and delivery.
- 1.9.6.6. Approximate cost and duration of each activity.
- 1.9.6.7. Shall contain seasonal weather considerations.
- 1.9.6.8. Indicate a date for Project Completion that is no later than Completion Date subject to any time extensions processed as part of a Change Order.
- 1.9.6.9. Conform to mandatory dates specified in the Contract Documents.
- 1.9.6.10. Contractor shall allow for inclement weather in the Proposed Baseline Schedule by incorporating an activity titled "Rain Day Impact Allowance" as the last activity prior to the Completion Milestone. No other activities may be concurrent with it. The duration of the Rain Day Impact Allowance activity will in accordance with the Contract Documents, including "Computation of Time / Adverse Weather" in Exhibit D , and will be calculated from the Notice to Proceed until the Completion.
- 1.9.6.11. Level of detail shall correspond to complexity of work involved.
- 1.9.6.12. Indicate procurement activities, delivery, and installation of District furnished material and equipment.
- 1.9.6.13. Designate critical path or paths.
- 1.9.6.14. Subcontractor work at all levels shall be included in schedule.
- 1.9.6.15. As developed shall show sequence and interdependence of activities required for complete performance of Work.
- 1.9.6.16. Shall be logical and show a coordinated plan of Work.
- 1.9.6.17. Show order of activities and major points of interface, including specific dates of completion.
- 1.9.6.18. Duration of activities shall be coordinated with subcontractors and suppliers and shall be best estimate of time required.
- 1.9.6.19. Shall show description, duration and float for each activity.
- 1.9.7. **Activity.** An activity shall meet the following criteria:
 - 1.9.7.1. Any portion or element of Work or action that is precisely described, readily identifiable, and is a function of a logical sequential process.
 - 1.9.7.2. Descriptions shall be clear and concise. Beginning and end shall be readily verifiable. Starts and finishes shall be scheduled by logical restraints.
 - 1.9.7.3. Responsibility shall be identified with a single performing entity.
 - 1.9.7.4. Additional codes shall identify building, floor, and CSI classification.
 - 1.9.7.5. Assigned dollar value (cost-loading) of each activity shall cumulatively equal total contract amount. Mobilization, bond and insurance costs shall be separate. General requirement costs, overhead, profit, shall be prorated throughout all activities. Activity costs shall correlate with Schedule of Values.
 - 1.9.7.6. Assigned manpower requirement (resource loading) of each activity.
 - 1.9.7.7. Major construction equipment shall be assigned to each activity.
 - 1.9.7.8. Activities labeled start, continue or completion are not allowed.
- 1.9.8. **Equipment and Materials.** For major equipment and materials show a sequence of activities including:
 - 1.9.8.1. Preparation of shop drawings and sample submissions.
 - 1.9.8.2. Review of shop drawings and samples.
 - 1.9.8.3. Finish and color selection.

- 1.9.8.4. Fabrication and delivery.
- 1.9.8.5. Erection or installation.
- 1.9.8.6. Testing.
- 1.9.9. Include a minimum of fifteen (15) days prior to Completion Date for punch lists and clean up. No other activities shall be scheduled during this period.
- 1.10. SHORT INTERVAL SCHEDULE**
 - 1.10.1. The Four-Week Rolling Schedule shall be based on the most recent District Accepted Construction Schedule or Update. It shall include weekly updates to all construction, submittal, fabrication/procurement, and separate Work Contract activities. Contractor shall ensure that it accurately reflects the current progress of the Work.
 - 1.10.2. Shall be fully developed horizontal bar-chart-type schedule directly derived from Construction Schedule.
 - 1.10.3. Prepare schedule on sheet of sufficient width to clearly show data.
 - 1.10.4. Provide continuous heavy vertical line identifying first day of week.
 - 1.10.5. Provide continuous subordinate vertical line identifying each day of week.
 - 1.10.6. Identify activities by same activity number and description as Construction Schedule.
 - 1.10.7. Show each activity in proper sequence.
 - 1.10.8. Indicate graphically sequences necessary for related activities.
 - 1.10.9. Indicate activities completed or in progress for previous two (2) week period.
 - 1.10.10. Indicate activities scheduled for succeeding two (2) week period.
 - 1.10.11. Further detail may be added if necessary to monitor schedule.
- 1.11. REQUESTED TIME ADJUSTMENT SCHEDULE**
 - 1.11.1. Updated Construction Schedule shall not show a Completion Date later than the Contract Time, subject to any time extensions processed as part of a Change Order.
 - 1.11.2. If an extension of time is requested, a separate schedule entitled "Requested Time Adjustment Schedule" shall be submitted to District and Architect.
 - 1.11.3. Indicate requested adjustments in Contract Time which are due to changes or delays in completion of Work.
 - 1.11.4. Extension request shall include forecast of Project Completion date and actual achievement of any dates listed in Contract Documents.
 - 1.11.5. To the extent that any requests are pending at time of any Construction Schedule update, Time Adjustment Schedule shall also be updated.
 - 1.11.6. Schedule shall be a time-scaled network analysis.
 - 1.11.7. Accompany schedule with formal written time extension request and detailed impact analysis justifying extension.
 - 1.11.8. Time impact analysis shall demonstrate time impact based upon date of delay, and status of construction at that time and event time computation of all affected activities. Event times shall be those as shown in latest Construction Schedule.
 - 1.11.9. Activity delays shall not automatically constitute an extension of Contract Time.
 - 1.11.10. Failure of subcontractors shall not be justification for an extension of time.
 - 1.11.11. Float is not for the exclusive use or benefit of any single party. Float time shall be apportioned according to needs of project, as determined by the District.
 - 1.11.12. Float suppression techniques such as preferential sequencing, special lead/lag logic restraints, extended activity durations, or imposed dates shall **not** be allowed without the prior written permission of the District.
 - 1.11.13. Extensions will be granted only to extent that time adjustments to activities exceed total positive float of the critical path and extends Completion date.
 - 1.11.14. District shall not have an obligation to consider any time extension request unless requirements of Contract Documents, and specifically, but not limited to these requirements are complied with.
 - 1.11.15. District shall not be responsible or liable for any construction acceleration due to failure of District to grant time extensions under Contract Documents should requested adjustments in Contract Time not substantially comply with submission and justification

requirements of Contract for time extension requests.

- 1.11.16. In the event a Requested Time Adjustment Schedule and Time Impact Analysis are not submitted within ten (10) days after commencement of a delay it is mutually agreed that delay does not require a Contract Time extension.

1.12. RECOVERY SCHEDULE

- 1.12.1. When activities are behind Construction Schedule a supplementary Recovery Schedule shall be submitted.
- 1.12.2. Contractor shall prepare and submit to the District a Recovery Schedule at any time requested by the District, at no cost to the District.
- 1.12.3. Form and detail shall be sufficient to explain and display how activities will be rescheduled to regain compliance with Construction Schedule and to complete the Work by the Completion Date.
- 1.12.4. Maximum duration shall be one (1) month and shall coincide with payment period.
- 1.12.5. Ten (10) days prior to expiration of Recovery Schedule, Contractor shall have to show verification to determine if activities have regained compliance with Construction Schedule. Based upon this verification the following will occur:
 - 1.12.5.1. Supplemental Recovery Schedule will be submitted to address subsequent payment period
 - 1.12.5.2. Construction Schedule will be resumed.

1.13. UPDATING SCHEDULES

- 1.13.1. Review and update schedule at least ten (10) days prior to submitting an Application for Payment.
- 1.13.2. Maintain schedule to record actual prosecution and progress.
- 1.13.3. Identify approved Change Orders which affect schedule as separate new activities.
- 1.13.4. No other revisions shall be made to schedule unless authorized by District.
- 1.13.5. **Written Narrative Report:** Contractor shall include a written report to explain the Monthly Schedule Update. The narrative shall, at a minimum include the following headings with appropriate discussions of each topic:
 - 1.13.5.1. Activities or portions of activities completed during previous reporting period.
 - 1.13.5.2. Actual start dates for activities currently in progress.
 - 1.13.5.3. Deviations from critical path in days ahead or behind.
 - 1.13.5.4. List of major construction equipment used and any equipment idle.
 - 1.13.5.5. Number of personnel by craft engaged on Work during reporting period.
 - 1.13.5.6. Progress analysis describing problem areas.
 - 1.13.5.7. Current and anticipated delay factors and their impact.
 - 1.13.5.8. Proposed corrective actions and logic revisions for Recovery Schedule.
 - 1.13.5.9. Proposed modifications, additions, deletions and changes in logic of Construction Schedule.
 - 1.13.5.10. In updating the Schedule, Contractor shall not modify Activity ID numbers, schedule calculation rules/criteria, or the Activity Coding Structure required.
- 1.13.6. Schedule update will form basis upon which Tenant Improvement Payments will be made.
- 1.13.7. District will not be obligated to review or process Application for Payment until schedule and Progress Report have been submitted.

1.14. DISTRIBUTION

- 1.14.1. Following joint review and acceptance of updated schedules distribute copies to District, Architect, and all other concerned parties.
- 1.14.2. Instruct recipients to promptly report in writing any problem anticipated by projections shown in schedule.

2. PRODUCTS

2.1. SCHEDULING SOFTWARE

Contractor shall utilize District approved software for scheduling software and shall employ the Critical Path Method (CPM) in the development and maintenance of the Construction Schedule. The scheduling software shall be capable of being resource loaded with manpower, costs and materials. It shall also be capable of generating time-scaled logic diagrams, resource histograms and profiles, bar charts, layouts and reports with any and/or all activity detail.

2.2. ELECTRONIC DATA

Provide compact disk(s) that contain a back-up of the Proposed Baseline Schedule data on it. The electronic P6 files shall be saved in ".XER" type format.

SUBMITTALS

1. GENERAL

1.1. SUBMITTAL PROCEDURES – USE OF SOFTWARE

1.1.1. CONTRACTOR SHALL UTILIZE DISTRICT APPROVED SOFTWARE FOR THE SUBMITTAL PROCESS

- 1.1.2. Contractor shall transmit each submittal in conformance with requirements of this Document. For each submittal, Contractor shall:
 - 1.1.2.1. Sequentially number the transmittal forms. Resubmitted submittals must have the original number with an alphabetic suffix;
 - 1.1.2.2. Identify Project and Architect's project number, Contractor, Subcontractor or supplier; pertinent Drawing sheet and detail number(s), and specification Section number, as appropriate;
 - 1.1.2.3. Apply Contractor's stamp, signed or initialed certifying that review, verification of Products required, field dimensions, adjacent construction work, and coordination of information is in accordance with the requirements of the Work and Contract Documents. Submittals without Contractor's stamp and signature will be returned without review.
- 1.1.3. Coordinate preparation and processing of submittals with performance of Work. Transmit each submittal sufficiently in advance of performance of Work to avoid delay.
 - 1.1.3.1. Coordinate each submittal with fabrication, purchasing, testing, delivery, other submittals, and related activities that require sequential activity.
 - 1.1.3.2. Coordinate transmittal of different types of submittals for related parts of Work so processing will not be delayed because of the need to review submittals concurrently for coordination.
 - 1.1.3.3. Architect reserves the right to withhold action on a submittal requiring coordination with other submittals until related submittals are received.
- 1.1.4. Comply with Contract Documents for list of submittals and time requirements for scheduled performance of Work.
- 1.1.5. No extension of Contract Time will be authorized because of failure to transmit submittals to the Architect sufficiently in advance of the Work to permit processing.
- 1.1.6. Identify variations from Contract Documents and Product or system limitations which may be detrimental to successful performance of the completed Work.
- 1.1.7. Provide space for Contractor and Architect review stamps.
- 1.1.8. Revise and resubmit submittals as required, identify all changes made since previous submittal.
- 1.1.9. Distribute copies of reviewed submittals to concerned parties. Instruct parties to promptly report any inability to comply with provisions.
- 1.1.10. Submittals not requested will not be recognized or processed. Submittals not requested will be returned without review.

1.2. SHOP DRAWINGS

- 1.2.1. Do not reproduce Contract Documents or copy standard information as the basis of shop drawings. Standard information prepared without specific reference to the Project is not a shop drawing.
- 1.2.2. Do not use or allow others to use Shop Drawings which have been submitted and have been rejected.

1.3. ELECTRONIC SUBMITTAL PROCESS

1.3.1. Submittal Procedure for Large Format shop drawings.

- 1.3.1.1. Contractor shall provide six (6) paper copies and of the large format Shop Drawings directly to the District and the Construction Manager (CM) and Contractor will provide an electronic transmittal (with a detailed description of the submittal including the subject, specification number and number of drawings) using the District approved software/program.

- 1.3.1.2. Contractor shall verify that the Submittal Schedule and all submittal log(s) are accurate and up to date.
- 1.3.1.3. The District and Architect will review and markup each Submittal and provide changes to Contractor for Contractor's incorporation into the Submittal.
- 1.3.1.4. This process will continue until the Contractor has provided a Submittal that is acceptable to the District and the Architect.
- 1.3.1.5. Once a Submittal is accepted, the District will provide a final accepted Submittal to the Contractor and the Contractor will closeout that one Submittal.
- 1.3.1.6. Contractor shall send one (1) copy of the completed record submittal of the large format documents to a vendor (Ford Graphics is suggested) and using the District approved software/program.

1.3.2. Product Data, Calculations and Small Format Drawings

- 1.3.2.1. Contractor shall upload/post one (1) electronic copy (from manufacturer's website or pre-scanned) of the product literature, data, calculations, and/or small format shop drawings using the District approved software/program with a Transmittal (with a detailed description of the submittal) directly to the CM.
- 1.3.2.2. The District and Architect will review and markup each Submittal and provide changes to Contractor for Contractor's incorporation into the Submittal.
- 1.3.2.3. This process will continue until the Contractor has provided a Submittal that is acceptable to the District and the Architect.
- 1.3.2.4. Once a Submittal is accepted, the District will provide a final accepted Submittal to the Contractor and the Contractor will closeout that one Submittal.
- 1.3.2.5. Contractor shall send one (1) copy of the completed record submittal of the large format documents to a vendor for scanning and posting using the District approved software/program.

1.3.3. Sample Submittal Procedure – (Product / Assembly Samples)

- 1.3.3.1. Contractor shall provide four (4) physical samples directly to the District and the CM and Contractor will provide an electronic transmittal (with a detailed description of the submittal including the subject, specification number and number of drawings) using the District approved software/program.
- 1.3.3.2. The District and Architect will review and markup each Submittal and provide changes to Contractor for Contractor's incorporation into the Submittal.
- 1.3.3.3. This process will continue until the Contractor has provided a Submittal that is acceptable to the District and the Architect.
- 1.3.3.4. Once a Submittal is accepted, the District will provide a final accepted Submittal to the Contractor and the Contractor will closeout that one Submittal.
- 1.3.3.5. Contractor shall send one (1) copy of the completed record submittal of the large format documents to a vendor (Ford Graphics is suggested) for using the District approved software/program.

1.4. PRODUCT DATA

In addition to the above requirements, mark each copy to identify applicable products, models, options, and other data. Supplement manufacturers' standard data to provide information unique to this Project.

1.5. SAMPLES

- 1.5.1. In addition to the above requirements, submit samples to illustrate functional and aesthetic characteristics of the Product in accordance with this Document, with integral parts and attachment devices. Coordinate sample submittals for interfacing work.
- 1.5.2. Where specific colors or patterns are not indicated, provide materials and products specified in the full range of color, texture and pattern for selection by District. Range shall include standard stocked color/texture/pattern, standard color/texture/pattern not stocked, but available from manufacturer, and special color/ texture/pattern

available from manufacturer as advertised in product data and brochures. Unless otherwise indicated in individual specification sections, District may select from any range at no additional cost to District.

- 1.5.3. Include identification on each sample, with full Project information.
- 1.5.4. Submit the number of samples that Contractor requires, plus one that will be retained by Architect and one by District.
- 1.5.5. Reviewed samples which may be used in the Work are indicated in individual specification Sections.

1.6. MANUFACTURER'S INSTRUCTION

- 1.6.1. When specified in individual specification Sections, submit manufacturers' printed instructions for delivery, storage, assembly, installation, start-up, adjusting, and finishing, in quantities specified for Product Data.
- 1.6.2. Identify conflicts between manufacturers' instructions and Contract Documents.

1.7. MANUFACTURER'S CERTIFICATES

- 1.7.1. When specified in individual specification Sections, submit manufacturers' certificate to Architect for review, in quantities specified for Product Data.
- 1.7.2. Indicate material or Product conforms to or exceeds specified requirements. Submit supporting reference date, affidavits, and certifications as appropriate.
- 1.7.3. Certificates may be recent or previous test results on material or Product, but must be acceptable to District.

1.8. MOCK-UP

- 1.8.1. Where indicated, provide mock-ups as required. Mock-ups shall be prepared per the specifications and shall accurately and reasonably represent the quality of construction the Contractor will provide. If the mock-up or portions thereof do not adequately represent the quality of the work specified, the Contractor shall modify it as needed.
- 1.8.2. Once completed to the District's satisfaction, the mock-up shall serve as the standard of quality for the work.
- 1.8.3. All mock-ups, at District's option, shall remain the property of the District. If not required by the District, Contractor shall remove and dispose of the mock-up.
- 1.8.4. Where indicated, on-site mock-ups, if accepted, may be integrated into the Work.

1.9. DEFERRED APPROVAL REQUIREMENTS

- 1.9.1. Installation of deferred approval items shall not be started until detailed plans, specifications, and engineering calculations have been accepted and signed by the Architect or Engineer in general responsible charge of design and signed by a California registered Architect or professional engineer who has been delegated responsibility covering the work shown on a particular plan or specification and approved by the Division of the State Architect (DSA). Deferred approval items for this Project are as indicated in the Contract Documents.
- 1.9.2. Deferred approval drawings and specifications become part of the approved documents for the Project when they are submitted to and approved by DSA.
- 1.9.3. Submit material using electronic submittal process as defined above.
- 1.9.4. Identify and specify all supports, fasteners, spacing, penetrations, etc., for each of the deferred approval items, including calculations for each and all fasteners.
- 1.9.5. Submit documents to Architect for review prior to requesting that the Architect forward it to the DSA.
- 1.9.6. Documents shall bear the stamp and signature of the Structural, Mechanical, or Electrical Engineer licensed in California who is responsible for that work.
- 1.9.7. Architect and its subconsultants will review the documents only for conformance with design concept. The Architect will then forward the Submittal to DSA for approval.
- 1.9.8. Contractor shall respond to review comments made by DSA and revise and resubmit submittal to the Architect for re-submittal to DSA for final approval.

REGULATORY REQUIREMENTS

1. GENERAL

1.1. DESCRIPTION

This section covers the general requirements for regulatory requirements pertaining to the Work and is supplementary to all other regulatory requirements mentioned or referenced elsewhere in the Contract Documents.

1.2. REQUIREMENTS OF REGULATORY AGENCIES

- 1.2.1.** All statutes, ordinances, laws, rules, codes, regulations, standards, and the lawful orders of all public authorities having jurisdiction of the Work, are hereby incorporated into the Contract Documents as if repeated in full herein and are intended to be included in any reference to Code or Building Code, unless otherwise specified, including, without limitation, the references in the list below. Contractor shall make available at the Site copies of all the listed documents applicable to the Work as the District and/or Architect may request, including, without limitation, applicable portions of the California Code of Regulations (C.C.R.).
- 1.2.2.** This Project shall be governed by applicable regulations, including, without limitation, the State of California's Administrative Regulations for the Division of the State Architect-Structural Safety (DSA/SS), Chapter 4, Part 1, Title 24, C.C.R., and the most current version on the date the Contract is executed and as it pertains to school construction including, without limitation:
 - 1.2.2.1.** Test and testing laboratory pursuant to Section 4-335 (District shall pay for the testing laboratory).
 - 1.2.2.2.** All special inspections pursuant to Section 4-333(d).
 - 1.2.2.3.** Contractor shall submit verified reports pursuant to Section 4-336 & 4-343(c).
 - 1.2.2.4.** Administration
 - 1.2.2.4.1.** Duties of the Architect and Engineers shall be pursuant to Section and 4-341.
 - 1.2.2.4.2.** Duties of Contractor shall be pursuant Section 4-343.
 - 1.2.2.4.3.** Verified Reports shall be pursuant to Section 4-336.
 - 1.2.2.5.** Contractor shall keep and make available a copy of Part 1 and 2 of the most current version of C.C.R., Title 24 at the Site during construction.
 - 1.2.2.6.** Contractor shall notify the Division of State Architect (DSA) upon the start of construction pursuant to Section 4-331.
 - 1.2.2.7.** Addenda and Change Orders shall be pursuant to Section 4-338.
- 1.2.3.** Items of deferred approval shall be clearly marked on the first sheet of the Architect's and/or Engineer's approved Drawings. All items later submitted for approval shall be pursuant to Title 24 requirements to the DSA.
 - 1.2.3.1.** Building Standards Administrative Code, C.C.R., Title 24, Part 1..
 - 1.2.3.2.** California Building Code (CBC), C.C.R., Title 24, Part 2.; (Uniform Building code volumes 1-3 and California Amendments).
 - 1.2.3.3.** California Electrical Code (CEC), C.C.R., Title 24, Part 3 ; (National Electrical Code and California Amendments).
 - 1.2.3.4.** California Mechanical Code (CMC), C.C.R., Title 24, Part 4 ; (Uniform Mechanical Code and California Amendments).
 - 1.2.3.5.** California Plumbing Code (CPC), C.C.R., Title 24, Part 5; (Uniform Plumbing Code and California Amendments).
 - 1.2.3.6.** California Fire Code (CFC), C.C.R., Title 24, Part 9; (Fire Plumbing Code and California Amendments).
 - 1.2.3.7.** California Referenced Standards Code, C.C.R., Title 24, Part 12.
 - 1.2.3.8.** State Fire Marshal Regulations, C.C.R., Title 19, Public Safety.
 - 1.2.3.9.** Partial List of Applicable NFPA Standards:
 - 1.2.3.9.1.** NFPA 13 - Automatic Sprinkler System.

- 1.2.3.9.2. NFPA 14 - Standpipes Systems.
- 1.2.3.9.3. NFPA 17A - Wet Chemical System
- 1.2.3.9.4. NFPA 24 - Private Fire Mains.
- 1.2.3.9.5. (California Amended) NFPA 72 - National Fire Alarm Codes.
- 1.2.3.9.6. NFPA 253 - Critical Radiant Flux of Floor Covering System.
- 1.2.3.9.7. FPA 2001 - Clean Agent Fire Extinguishing Systems.
- 1.2.3.10. California Division of the State Architect Interpretation of Regulations Manual.

Form Agreement

TESTING LABORATORY SERVICES

1. GENERAL

1.1. REFERENCES

- 1.1.1. ASTM D3740 - Practice for Evaluation of Agencies Engaged in Testing and/or Inspection of Soil and Rock as Used in Engineering Design and Construction.
- 1.1.2. ASTM E329 - Recommended Practice for Inspection and Testing Agencies for Concrete, Steel, and Bituminous Materials as Used in Construction.
- 1.1.3. CBC - California Building Code.
- 1.1.4. UBC - Uniform Building Code.
- 1.1.5. Title 24, Parts 1 and 2, of the California Code of Regulations. Contractor shall keep a copy of these available at the job Site for ready reference during construction
- 1.1.6. DSA - Division of the State Architect, Office of Regulation Services, Structural Safety Section. DSA shall be notified at or before the start of construction.

1.2. OBSERVATION AND SUPERVISION

- 1.2.1. The District and Construction Manager or their appointed representatives will review the Work and the Contractor shall provide facilities and access to the Work at all times as required to facilitate this review. Administration by the Architect and any consulting Structural Engineer will be in accordance with applicable regulations, including, without limitation, 24 C.C.R. §4-341.
- 1.2.2. One or more Project Inspector(s) approved by DSA and employed by or in contract with the District("Project Inspector"), will observe the Work in accordance with 24 C.C.R. §§4-333(b) and 4-342:
- 1.2.3. Project Inspector shall have access to the Work wherever it is in preparation or progress for ascertaining that the Work is in accordance with the Contract Documents and all applicable code sections. Contractor shall provide facilities and access as required and shall provide assistance for sampling or measuring materials.
 - 1.2.3.1. Project Inspector will notify District and Architect and inform Contractor of any observed failure of Work or material to conform to Contract Documents.
 - 1.2.3.2. The Project Inspector shall observe and monitor all testing and inspection activities required.
- 1.2.4. Contractor shall conform with all applicable laws as indicated in the Contract Documents, including, without limitation, to 24 C.C.R. §4-343. Contractor shall supervise and direct the Work and maintain a competent superintendent on the Project who is authorized to act in all matters pertaining to the Work. The Contractor shall inspect all materials, as they arrive, for compliance with the Contract Documents. Contractor shall reject defective Work or materials immediately upon delivery or failure of the Work or material to comply with the Contract Documents. The Contractor shall submit verified reports as indicated in the Contract Documents, including, without limitation, the Specifications and as required by 24 C.C.R. §4-336.

1.3. TESTS AND INSPECTIONS

- 1.3.1. Contractor shall be responsible for notifying District and Project Inspector of all required tests and inspections. Contractor shall notify District and Project Inspector forty-eight (48) hours in advance of performing any Work requiring testing or inspection.
- 1.3.2. Contractor shall provide access to Work to be tested and furnish incidental labor, equipment, and facilities to facilitate all inspections and tests.
- 1.3.3. District will pay for first inspections and tests required by the Title 24 and other inspections or tests that District and/or Architect may direct to have made, including, but not limited to, the following principal items:
 - 1.3.3.1. Tests and observations for earthwork and pavings.
 - 1.3.3.2. Tests for concrete mix designs, including tests of trial batches.
 - 1.3.3.3. Tests and inspections for structural steel work.
 - 1.3.3.4. Field tests for framing lumber moisture content.

- 1.3.3.5. Additional tests directed by District that establish that materials and installation comply with the Contract Documents.
 - 1.3.3.6. Test and observation of welding and expansion anchors.
 - 1.3.3.7. Factory observation of components and assembly of modular prefabrication structures and buildings.
 - 1.3.4. District may at its discretion, pay and then back charge Contractor for:
 - 1.3.4.1. Retests or reinspections, if required, and tests or inspection required due to Contractor error or lack of required identifications of material.
 - 1.3.4.2. Uncovering of work in accordance with Contract Documents.
 - 1.3.4.3. Testing done on weekends, holidays, and overtime will be chargeable to Contractor for the overtime portion.
 - 1.3.4.4. Testing done off site.
 - 1.3.5. Testing and inspection reports and certifications:
 - 1.3.5.1. If initially received by Contractor, Contractor shall provide to each of the following a copy of the agency or laboratory report of each test or inspection or certification: District; Construction Manager, if any; Architect; Consulting Engineer, if any; Other Engineers on the Project, as appropriate; and; Project Inspector.
 - 1.3.5.2. When the test or inspection is one required by the Title 24, a copy of the report shall also be provided to the DSA.
- 1.4. SELECTION AND PAYMENT**
 - 1.4.1. District's hiring of Testing Laboratory shall in no way relieve Contractor of its obligation to perform work in accordance with requirements of Contract Documents.
- 1.5. CONTRACTOR RESPONSIBILITIES**
 - 1.5.1. Submit proposed items for testing as required herein and/or as further required in the Contract Documents to Architect for review in accordance with applicable specifications.
 - 1.5.2. Cooperate with Laboratory personnel, and provide access to the Work and to manufacturer's facilities.
 - 1.5.3. Notify Architect, District, and Testing Laboratory 48 hours prior to expected time for operations requiring inspection and testing services.
 - 1.5.4. When tests or inspections cannot be performed after such notice, reimburse District for Laboratory personnel and travel expenses incurred due to the Contractor's negligence.
 - 1.5.5. Contractor shall notify District a sufficient time in advance of the manufacture of material to be supplied by Contractor pursuant to the Contract Documents, which must by terms of the Contract be tested, in order that the District may arrange for the testing of same at the source of supply.
 - 1.5.5.1. 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 that such testing and inspection will not be required shall not be incorporated in the Work.
 - 1.5.6. Contract and pay for services of District's Testing Laboratory to perform additional inspections, sampling and testing required when initial tests indicate Contractor's work and/or materials does not comply with Contract Documents.
- 1.6. PROJECT INSPECTOR'S ACCESS TO SITE**
 - 1.6.1. A Project Inspector employed by the District in accordance with the requirement of State of California Code of Regulations, Title 24, Part 1 will be assigned to the Work. Project Inspector's duties are specifically defined in 24. C.C.R. §4-342, and as indicated in the General Construction Provisions (Exhibit D to the Facilities Lease).
 - 1.6.2. District and Construction Manager shall at all times have access for the purpose of inspection to all parts of the Work and to the shops wherein the Work is in preparation, and Contractor shall at all times maintain proper facilities and provide safe access for such inspection.

- 1.6.3. The Work in all stages of progress shall be subject to the personal continuous observation of the Inspector. Inspector shall have free access to any or all parts of the Work at any time. Contractor shall furnish the Inspector reasonable facilities for obtaining such information as may be necessary to keep Inspector fully informed respecting the progress and manner of the Work and the character of the materials. Inspection of the Work shall not relieve the Contractor from any obligation set forth in the Contract Documents.
- 1.6.4. The Inspector is not authorized to change, revoke, alter, enlarge or decrease in any way any requirement of the Contract Documents, drawings, specifications or subsequent change orders.
- 1.6.5. Whenever there is insufficient evidence of compliance with any of the provisions of Title 24 or evidence that any material or construction does not conform to the requirements of Title 24, the Division of the State Architect may require tests as proof of compliance. Test methods shall be as specified herein or by other recognized and accepted test methods determined by the Division of the State Architect. All tests shall be performed by a testing laboratory accepted by the Division of the State Architect.

TEMPORARY FACILITIES AND CONTROLS

1. GENERAL

1.1. LOGISTICS PLAN

Contractor shall provide to the District for prior approval the Contractor's mobilization and logistics plan for the Site which shall include, at a minimum, the provisions herein.

1.2. TEMPORARY UTILITIES

1.2.1. Electric Power and Lighting

1.2.1.1. Contractor will furnish and pay for power during the course of the work to the extent power is not in the building(s) or on the Site. Contractor shall be responsible for providing temporary facilities required on the Site to point of intended use.

1.2.1.2. Contractor shall furnish, wire for, install, and maintain temporary electrical lights wherever it is necessary to provide illumination for the proper performance and/or observation of the Work: a minimum of 20 foot-candles for rough work and 50 foot-candles for finish work.

1.2.1.3. Contractor shall be responsible for maintaining existing lighting levels in the Project vicinity should temporary outages or service interruptions occur.

1.2.2. Heat and Ventilation

1.2.2.1. Contractor shall provide temporary heat to maintain environmental conditions to facilitate progress of the Work, to meet specified minimum conditions for the installation and curing of materials, and to protect materials and finishes from damage due to improper temperature and humidity conditions. Portable heaters shall be standard units complete with controls.

1.2.2.2. Contractor shall provide forced ventilation and dehumidification, as required, of enclosed areas for proper installation and curing of materials, to disperse humidity, and to prevent accumulations of dust, fumes, vapors, and gases.

1.2.2.3. Contractor shall pay the costs of installation, maintenance, operation, and removal of temporary heat and ventilation, including costs for fuel consumed, required for the performance of the Work.

1.2.3. Water

1.2.3.1. Contractor will furnish and pay for water during the course of the work. Contractor shall be responsible for providing temporary facilities required.

1.2.3.2. Contractor shall make potable water available for human consumption.

1.2.4. Sanitary Facilities

1.2.4.1. Contractor shall provide sanitary temporary facilities in no fewer numbers than required by law and such additional facilities as may be directed by the Inspector for the use of all workers. The facilities shall be maintained in a sanitary condition at all times and shall be left at the Site until removal is directed by the Project Inspector or Contractor completes all Work.

1.2.4.2. Use of toilet facilities in the Work shall not be permitted except by consent of the Project Inspector and District.

1.2.5. Telephone and Internet Service

1.2.5.1. Contractor shall arrange with local telephone and internet service company(ies) for service for the performance of the Work. Contractor shall, at a minimum, provide in all District field offices, one line for telephone, one line for fax machine, and one line for internet access. The Phone equipment must include speakerphone, intercom, conference call, flash, redial, call hold and voice mail. Internet speed spec should be 25/25 mbps or faster and WiFi speed specification shall utilize 802.11AC IEEE standard or better.

1.2.5.2. Contractor shall pay the costs for internet, telephone, and fax lines installation, maintenance, service, and removal; for Construction Site Office, Construction Manager's Office and Inspector's Office.

1.2.6. Fire Protection:

- 1.2.6.1. Contractor shall provide and maintain fire extinguishers and other equipment for fire protection. Such equipment shall be designated for use for fire protection only and shall comply with all requirements of the California Fire, State Fire Marshall and/or its designee.
- 1.2.6.2. Where on-site welding and burning of steel is unavoidable, Contractor shall provide protection for adjacent surfaces.

1.2.7. Custodial Service and Trash Removal:

Contractor shall provide custodial service and trash removal on a timely basis, not less than weekly for all Site Offices, restroom(s), and the Site.

1.2.8. Temporary Facilities:

- 1.2.8.1. Contractor shall coordinate floor plan and location of electrical, telephone, data outlets with District prior to ordering and delivering the trailer.
- 1.2.8.2. Contractor shall provide the following minimum facilities, trailers, offices, and services, fully furnished for the exclusive use by the District including desks, chairs, plan tables, etc.:
 - 1.2.8.2.1. One (1) office trailer with two (2) separate offices with windows and lockable doors
 - 1.2.8.2.2. One (1) bathroom
 - 1.2.8.2.3. One (1) conference room with a table and adequate seating for twelve (12)
- 1.2.8.3. Contractor will provide furnishings in the following quantities, to be set in rooms and position as directed by the District upon delivery:
 - 1.2.8.3.1. **1 per office** rolling mid-back task chairs, with arms
 - 1.2.8.3.2. **1 per office space:** double pedestal metal desks, 29" x 72" x 36", HON or equal
 - 1.2.8.3.3. **1 per office space and in meeting conference area:** metal bookcases, three shelf, 41"x34"x12"
 - 1.2.8.3.4. 1 resin folding table 29"x30"x72"
 - 1.2.8.3.5. 8 padded meeting chairs, Global or equal
 - 1.2.8.3.6. **1 per office:** four drawer, legal size lateral files, HON 500 series or equal
 - 1.2.8.3.7. Provide and install 2 "Plan-Hold" wall-mounted 42" wide plan racks with 36 individual plan holders each
 - 1.2.8.3.8. Provide and install 1 large white board in one conference room, 48" 72"
 - 1.2.8.3.9. Provide and install 1 large tack board in one conference room 48" x 72"
 - 1.2.8.3.10. Provide Canon all-in-one copier, printer, fax and printer, model Image Class MF733CDW or equal, with maintenance plan

1.3. CONSTRUCTION AIDS

1.3.1. Plant and Equipment:

- 1.3.1.1. Contractor shall furnish, operate, and maintain a complete plant for fabricating, handling, conveying, installing, and erecting materials and equipment; and for conveyances for transporting workmen. Include elevators, hoists, debris chutes, and other equipment, tools, and appliances necessary for performance of the Work.
- 1.3.1.2. Contractor shall maintain plant and equipment in safe and efficient operating condition. Damages due to defective plant and equipment, and uses made thereof, shall be repaired by Contractor at no expense to the District.
- 1.3.2. No District tools or equipment shall be used by Contractor for the performance of the Work.

1.4. BARRIERS AND ENCLOSURES

- 1.4.1. Contractor shall obtain District's written permission for locations and types of temporary barriers and enclosures, including fire-rated materials proposed for use, prior to their installation.
- 1.4.2. Contractor shall provide a six (6) foot high, chain link perimeter fence with post driven into the ground and fabric screen as a temporary barrier around construction area. Contractor shall provide and maintain temporary enclosures to prevent public entry and to protect persons using other buildings and portions of the Site and/or Premises. Contractor shall remove temporary fence, barriers and enclosure upon Completion of the Work.
- 1.4.3. Contractor shall provide site access to existing facilities for persons using other buildings and portions of the Site, the public, and for deliveries and other services and activities.

1.5. SECURITY

- 1.5.1. Contractor shall secure all construction equipment, machinery and vehicles, park and store only within fenced area, and render inoperable during non-work hours. Contractor is responsible for insuring that no construction materials, tools, equipment, machinery or vehicles can be used for unauthorized entry or other damage or interference to activities and security of existing facilities adjacent to and in the vicinity of the Project Site(s).
- 1.5.2. Contractor shall provide a security guard located on the Project Site(s) during non-working hours.

1.6. TEMPORARY CONTROLS

1.6.1. Noise Control

- 1.6.1.1. Contractor acknowledges that adjacent facilities may remain in operation during all or a portion of the Work, and it shall take all reasonable precautions to minimize noise as required by applicable laws and the Contract Documents.
- 1.6.1.2. Notice of proposed noisy operations, including without limitation, operation of pneumatic demolition tools, concrete saws, and other equipment, shall be submitted to District a minimum of forty-eight (48) hours in advance of their performance.

1.6.2. Noise and Vibration

- 1.6.2.1. Equipment and impact tools shall have intake and exhaust mufflers.
- 1.6.2.2. Contractor shall cooperate with District to minimize and/or cease the use of noisy and vibratory equipment if that equipment becomes objectionable by its longevity.

1.6.3. Dust and Dirt

- 1.6.3.1. Contractor shall conduct demolition and construction operations to minimize the generation of dust and dirt, and prevent dust and dirt from interfering with the progress of the Work and from accumulating in the Work and adjacent areas including, without limitation, occupied facilities, and off-site adjacent properties.
- 1.6.3.2. Contractor shall periodically water exterior demolition and construction areas to minimize the generation of dust and dirt.
- 1.6.3.3. Contractor shall ensure that all hauling equipment and trucks carrying loads of soil and debris shall have their loads sprayed with water or covered with tarpaulins, and as otherwise required by local and state ordinance.
- 1.6.3.4. Contractor shall prevent dust and dirt from accumulating on walks, roadways, parking areas, and planting, and from washing into sewer and storm drain lines.

1.6.4. Water

Contractor shall not permit surface and subsurface water, and other liquids, to accumulate in or about the vicinity of the Premises. Should accumulation develop, Contractor shall control the water or other liquid, and suitably dispose of it by means of temporary pumps, piping, drainage lines, troughs, ditches, dams, or other methods.

1.6.5. Pollution

- 1.6.5.1. No burning of refuse, debris, or other materials shall be permitted on or in the vicinity of the Premises.
- 1.6.5.2. Contractor shall comply with applicable regulatory requirements and anti-pollution ordinances during the conduct of the Work including, without limitation, demolition, construction, and disposal operations.

1.6.6. Lighting

If portable lights are used after dark, all light must be located so as not to direct light into neighboring property.

1.7. JOB SIGN(S)

1.7.1. General:

- 1.7.1.1. Contractor shall provide and maintain and locate a Project identification sign with the design, text, and colors designated by District and/or the Architect. Sign shall be protected in place and maintained by the Contractor.
- 1.7.1.2. Signs other than the specified Project sign and or signs required by law, for safety, or for egress, shall not be permitted, unless otherwise approved in advance by the District.

1.7.2. Materials:

- 1.7.2.1. Structure and Framing: Structurally sound, new or used wood or metal; wood shall be nominal 3/4-inch exterior grade plywood.
- 1.7.2.2. Sign Surface: Minimum 3/4-inch exterior grade plywood.
- 1.7.2.3. Sign shall be mounted on 4"x4" wooden posts embedded at least thirty six (36) inches into the soil or placed in concrete.
- 1.7.2.4. Paint: Exterior quality, of type and colors selected by the District and/or the Architect.

1.7.3. Fabrication:

- 1.7.3.1. Contractor shall fabricate to provide smooth, even surface for painting.
- 1.7.3.2. Size: 4'-0" x 8'-0", unless otherwise indicated.
- 1.7.3.3. Contractor shall paint exposed surfaces of supports, framing, and surface material with exterior grade paint: one coat of primer and one coat of finish paint.
- 1.7.3.4. Text and Graphics: As indicated.

1.8. PUBLICITY RELEASES

Contractor shall not release any information, story, photograph, plan, or drawing relating information about the Project to anyone, including press and other public communications medium, including, without limitation, on website(s). Contractor shall not bring anyone onto the Project Site(s) during or after construction for the purpose of publicity or marketing without prior written permission of the District.

SITE STANDARDS

1. GENERAL

1.1. REQUIREMENTS OF THE DISTRICT

1.1.1. Drug-Free Schools and Safety Requirements:

- 1.1.1.1. No drugs, alcohol, smoking or the use of tobacco products are allowed at any time in any buildings, Contractor-owned vehicles or vehicles owned by others while on District property. No students, staff, visitors, or contractors are to use drugs on these sites.
- 1.1.1.2. Contractor shall post: "Non-Smoking Area" in a highly visible location on Site. Contractor may designate a smoking area outside of District property within the public right-of-way, provided that this area remains quiet and unobtrusive to adjacent neighbors. This smoking area must be kept clean at all times.
- 1.1.1.3. Contractor shall ensure that no alcohol, firearms, weapons, or controlled substances enter or are used at the Site. Contractor shall immediately remove from the Site and terminate the employment of any employee(s) found in violation of this provision.

- 1.1.2. **Language:** Unacceptable and/or loud language will not be tolerated, "Cat calls" or other derogatory language toward students or public will not be allowed.

1.1.3. Disturbing the Peace (Noise and Lighting):

- 1.1.3.1. Contractor shall observe the noise ordinance of the Site at all times including, without limitation, all applicable local, city, and/or state laws, ordinances, and/or regulations regarding noise and allowable noise levels.
- 1.1.3.2. District reserves the right to prohibit the use of radios at the Site, except for handheld communication radios.
- 1.1.3.3. If portable lights are used after dark, the lights must be located so as not to direct light into neighboring properties.

1.1.4. Traffic:

- 1.1.4.1. Driving on the Premises shall be limited to periods when students and public are not present. If driving or deliveries must be made during the school hours, two (2) or more ground guides shall lead the vehicle across the area of travel. In no case shall driving take place across playgrounds or other pedestrian paths during recess, lunch, and/or class period changes. The speed limit on-the Premises shall be five (5) miles per hour (maximum) or less if conditions require. Contractor shall not have any deliveries to the Project during the hour before school begins at the Site and during the half hour after school ends at the Site without prior written permission from the Construction Manager or the District.
- 1.1.4.2. All paths of travel for deliveries, including without limitation, material, equipment, and supply deliveries, shall be reviewed and approved by District in advance.
- 1.1.4.3. District shall designate a construction entry to the Site. If Contractor requests, District determines it is required, and to the extent possible, District shall designate a staging area so as not to interfere with the normal functioning of school facilities. Location of gates and fencing shall be approved in advance with District and at Contractor's expense.
- 1.1.4.4. Parking areas shall be reviewed and approved by District in advance. No parking is to occur under the drip line of trees or in areas that could otherwise be damaged.
- 1.1.4.5. All of the above shall be observed and complied with by the Contractor and all workers on the Site. Failure to follow these directives could result in individual(s) being suspended or removed from the work force at the discretion of the District. The same rules and regulations shall apply equally to delivery

personnel, inspectors, consultants, and other visitors to the Site.

Form Agreement

TEMPORARY TREE AND PLANT PROTECTION

WHERE SUBSTANTIAL TREE PROTECTION WILL BE REQUIRED ON THE SITE, OBTAIN AN ARBORIST TO REVIEW THIS DOCUMENT PRIOR TO CONSTRUCTION.

1. GENERAL

1.1. SUMMARY

This Document includes the protection and trimming of existing trees that interfere with, or are affected by, execution of the Work, whether temporary or permanent construction.

1.2. DEFINITIONS

Tree Protection Zone: Area surrounding individual trees or groups of trees to remain during construction, and defined by the drip line of individual trees or the perimeter drip line of groups of trees, unless otherwise indicated.

1.3. SUBMITTALS

- 1.3.1. Product Data: For each type of product indicated.
- 1.3.2. Tree Pruning Schedule: Written schedule from arborist detailing scope and extent of pruning of trees to remain that interfere with or are affected by construction.
- 1.3.3. Qualification Data: For tree service firm and arborist.
- 1.3.4. Certification: From arborist, certifying that trees indicated to remain have been protected during construction according to recognized standards and that trees were promptly and properly treated and repaired when damaged.
- 1.3.5. Maintenance Recommendations: From arborist, for care and protection of trees affected by construction during and after completing the Work.

1.4. QUALITY ASSURANCE

- 1.4.1. Tree Service Firm Qualifications: An experienced tree service firm that has successfully completed tree protection and trimming work similar to that required for this Project and that will assign an experienced, qualified arborist to Project Site(s) during execution of tree protection and trimming.
- 1.4.2. Arborist Qualifications: An arborist certified by ISA (International Society of Arboriculture) or licensed in the jurisdiction where Project is located.
- 1.4.3. Tree Pruning Standard: Comply with ANSI A300 (Part 1), "Tree, Shrub, and Other Woody Plant Maintenance--Standard Practices (Pruning)."
 - 1.4.3.1. Before tree protection and trimming operations begin, meet with District to review tree protection and trimming procedures and responsibilities.

2. PRODUCTS

2.1. MATERIALS

- 2.1.1. Drainage Fill: Selected crushed stone, or crushed or uncrushed gravel, washed, ASTM D 448, Size 24, with 90 to 100 percent passing a 2-1/2-inch (63-mm) sieve and not more than 10 percent passing a 3/4-inch (19-mm) sieve.
- 2.1.2. Topsoil: Natural or cultivated surface-soil layer containing organic matter and sand, silt, and clay particles; friable, pervious, and black or a darker shade of brown, gray, or red than underlying subsoil; reasonably free of subsoil, clay lumps, gravel, and other objects more than 1 inch (25 mm) in diameter; and free of weeds, roots, and toxic and other nonsoil materials.
 - 2.1.2.1. Obtain topsoil only from well-drained sites where topsoil is 4 inches (100 mm) deep or more; do not obtain from bogs or marshes.
- 2.1.3. Filter Fabric: Manufacturer's standard, nonwoven, pervious, geotextile fabric of polypropylene, nylon, or polyester fibers.
- 2.1.4. Chain-Link Fence: Metallic-coated steel chain-link fence fabric of 0.120-inch- (3-mm-) diameter wire; a minimum of 48 inches (1200 mm) high; with 1.9-inch- (48-mm-) diameter line posts; 2-3/8-inch- (60-mm-) diameter terminal and corner posts; 1-5/8-inch- (41-mm-) diameter top rail; and 0.177-inch- (4.5-mm-) diameter bottom tension wire; with tie wires, hog ring ties, and other accessories for a complete fence system.

- 2.1.5. Select mulch as recommended by arborist or landscape architect.
- 2.1.6. Organic Mulch: Use shredded hardwood, ground or shredded bark, or wood and bark chips, all free of deleterious materials.

3. EXECUTION

3.1. PREPARATION

- 3.1.1. Temporary Fencing: Install temporary fencing around tree protection zones to protect remaining trees and vegetation from construction damage. Maintain temporary fence and remove when construction is complete.
- 3.1.2. Install chain-link fence according to ASTM F 567 and manufacturer's written instructions.
- 3.1.3. Protect tree root systems from damage caused by runoff or spillage of noxious materials while mixing, placing, or storing construction materials. Protect root systems from ponding, eroding, or excessive wetting caused by dewatering operations.
- 3.1.4. Mulch areas inside tree protection zones and other areas indicated.
 - 3.1.4.1. Select mulch as recommended by arborist or landscape architect.
 - 3.1.4.2. Apply 2-inch (50-mm) to 3-inch (75-mm) average thickness of organic mulch. Do not place mulch within 6 inches (150 mm) of tree trunks.
- 3.1.5. Do not store construction materials, debris, or excavated material inside tree protection zones. Do not permit vehicles or foot traffic within tree protection zones; prevent soil compaction over root systems.
- 3.1.6. Maintain tree protection zones free of weeds and trash.
- 3.1.7. Do not allow fires within tree protection zones.

3.2. EXCAVATION

- 3.2.1. Install shoring or other protective support systems to minimize sloping or benching of excavations where construction or utility excavation is near trees to be protected.
- 3.2.2. Do not excavate within tree protection zones, unless otherwise indicated.
- 3.2.3. Where excavation for new construction is required within tree protection zones, hand clear and excavate to minimize damage to root systems. Use narrow-tine spading forks and comb soil to expose roots.
 - 3.2.3.1. Do not allow exposed roots to dry out before placing permanent backfill. Provide temporary earth cover or pack with peat moss and wrap with burlap. Water and maintain in a moist condition. Temporarily support and protect roots from damage until they are permanently relocated and covered with soil.
- 3.2.4. Where utility trenches are required within tree protection zones, tunnel under or around roots by drilling, auger boring, pipe jacking, or digging by hand.
 - 3.2.4.1. Root Pruning: Do not cut main lateral roots or taproots; cut only smaller roots that interfere with installation of utilities. Cut roots with sharp pruning instruments; do not break or chop.

3.3. REGRADING

- 3.3.1. Grade Lowering: Where new finish grade is indicated below existing grade around trees, slope grade beyond tree protection zones. Maintain existing grades within tree protection zones.
- 3.3.2. Grade Lowering: Where new finish grade is indicated below existing grade around trees, slope grade away from trees as recommended by arborist, unless otherwise indicated.
 - 3.3.2.1. Root Pruning: Prune tree roots exposed during grade lowering. Do not cut main lateral roots or taproots; cut only smaller roots. Cut roots with sharp pruning instruments; do not break or chop.
- 3.3.3. Minor Fill: Where existing grade is 6 inches (150 mm) or less below elevation of finish grade, fill with topsoil. Place topsoil in a single uncompacted layer and hand grade to required finish elevations.
- 3.3.4. Moderate Fill: Where existing grade is more than 6 inches (150 mm) but less than 12 inches (300 mm) below elevation of finish grade, place drainage fill, filter fabric, and

topsoil on existing grade as follows:

- 3.3.4.1. Carefully place drainage fill against tree trunk approximately 2 inches (50 mm) above elevation of finish grade and extend not less than 18 inches (450 mm) from tree trunk on all sides. For balance of area within drip-line perimeter, place drainage fill up to 6 inches (150 mm) below elevation of grade.
- 3.3.4.2. Place filter fabric with edges overlapping 6 inches (150 mm) minimum.
- 3.3.4.3. Place fill layer of topsoil to finish grade. Do not compact drainage fill or topsoil. Hand grade to required finish elevations.

3.4. TREE PRUNING

- 3.4.1. Prune trees to remain that are affected by temporary and permanent construction.
- 3.4.2. Prune trees to remain to compensate for root loss caused by damaging or cutting root system. Provide subsequent maintenance during Contract period as recommended by arborist.
- 3.4.3. Pruning Standards: Prune trees according to ANSI A300 (Part 1), as recommended by arborist report.
- 3.4.4. Adjust pruning requirements per arborist's recommendations.
- 3.4.5. Cut branches with sharp pruning instruments; do not break or chop.
- 3.4.6. Modify below to specific project requirements.
- 3.4.7. Chip removed tree branches and dispose of or spread over areas identified by District.

3.5. TREE REPAIR AND REPLACEMENT

- 3.5.1. Promptly repair trees damaged by construction operations within 24 hours. Treat damaged trunks, limbs, and roots according to arborist's written instructions.
- 3.5.2. Remove and replace trees indicated to remain that die or are damaged during construction operations or that are incapable of restoring to normal growth pattern.
 - 3.5.2.1. Provide new trees of 6-inch (150-mm) caliper size and of a when damaged trees more than 6 inches (150 mm) in caliper size, measured 12 inches (300 mm) above grade, are required to be replaced. Plant and maintain new trees as specified in Contract Documents.
- 3.5.3. Where recommended by arborist report, aerate surface soil, compacted during construction, 10 feet (3 m) beyond drip line and no closer than 36 inches (900 mm) to tree trunk. Drill 2-inch (50-mm) diameter holes a minimum of 12 inches (300 mm) deep at 24 inches (600 mm) o.c. Backfill holes with an equal mix of augered soil and sand.

3.6. DISPOSAL OF WASTE MATERIALS

- 3.6.1. Burning is not permitted.
- 3.6.2. Disposal: Remove excess excavated material and displaced trees from Site.

STORM WATER POLLUTION PREVENTION PLAN – CONSTRUCTION

PURSUANT TO THE PROVISIONS OF EXHIBIT D AND THE CONTRACT DOCUMENTS, CONTRACTOR SHALL PERFORM THE WORK OF THE PROJECT RELATED TO BEING THE DISTRICT'S QUALIFIED SWPPP (STORM WATER POLLUTION PREVENTION PLAN) PRACTITIONER ("QSP"). THE CONTRACTOR SHALL COMPLY WITH THE FOLLOWING PROVISIONS AND THE SWPPP. IF THE SWPPP CONTAINS OTHER MORE DETAILED OR CONFLICTING PROVISIONS AND/OR REQUIRES THE CONTRACTOR TO TAKE OTHER ACTIONS OR ACTIVITIES, THE CONTRACTOR MUST COMPLY WITH THE SWPPP.

1. INTRODUCTION

- 1.1. In order to enroll in the construction storm water permit and before construction activities begin, the District will file certain submittals referred to as Permit Registration Documents (PRDS) with the Regional Water Quality Control Board.

2. GENERAL

The Clean Water Act and Porter Cologne Water Quality Act prohibit the discharge of any water containing pollutants from certain construction sites unless a National Pollutant Discharge Elimination System permit is first obtained and followed. The National Pollutant Discharge Elimination System General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities (Construction Storm Water Permit) Order No. 2009-0009-DWQ as amended by Order No. 2010-0014-DWQ (NPDES No. CAS000002) issued by the California State Water Resources Control Board (State Water Board) authorizes the discharge of storm water and certain non-storm water from construction sites if certain conditions and measures are taken. The District has determined that the construction of this Project requires enrollment in the Construction Storm Water Permit.

3. SUBMITTALS

3.1. GENERAL

All submittals shall be made in a form conducive for the District to electronically upload the approved submittals to the Storm water Multi-Application Reporting and Tracking System (SMARTS).

3.2. RAIN EVENT ACTION PLAN (REAP)

- 3.2.1. A Rain Event Action Plan (REAP) is a written document, specific for each rain event. A REAP should be designed that when implemented it protects all exposed portions of the site within 48 hours of any likely. The General Permit requires Risk Level 2 and 3 dischargers to develop and implement a REAP designed to protect all exposed portions of their sites within 48 hours prior to any likely precipitation event. The REAP requirement is designed to ensure that the discharger has adequate materials, staff, and time to implement erosion and sediment control measures that are intended to reduce the amount of sediment and other pollutants generated from the active site. A REAP must be developed when there is likely a forecast of 50% or greater probability of precipitation in the project area. (The National Oceanic and Atmospheric Administration (NOAA) defines a chance of precipitation as a probability of precipitation of 30% to 50% chance of producing precipitation in the project area.¹⁴ NOAA defines the probability of precipitation (PoP) as the likelihood of occurrence (expressed as a percent) of a measurable amount (0.01 inch or more) of liquid precipitation (or the water equivalent of frozen precipitation) during a specified period of time at any given point in the forecast area.) Forecasts are normally issued for 12- hour time periods.
- 3.2.2. If the District's QSD determines that the site is a Risk Level 2 or 3 the Contractor's QSP shall prepare the REAP for the Work in compliance with the General Permit and the SWPPP.

3.3. RECORDS

All electronic and hardcopy records required by the Construction Storm Water Permit shall be submitted to the District within seven (7) days of Completion of the Project.

4. PERMIT REGISTRATION DOCUMENTS

Prior to any activities on Site that disturb the Site's surface, the Permit Registration Documents (PRDs) required by the Construction Storm Water Permit must be filed with the Regional Water Quality Control Board. The District shall file the PRDs with the Regional Water Quality Control Board to activate coverage under the Construction

Storm Water Permit.

5. IMPLEMENTATION REQUIREMENTS

- 5.1. Contractor shall not conduct any activities that may affect the Site's construction runoff water quality until the District provides Contractor with the Waste Discharger Identification Number (WDID) assigned to this Project by the State Water Board.
- 5.2. Contractor shall keep a copy of the approved SWPPP at the job site. The SWPPP shall be made available when requested by a representative of the Regional Water Quality Control Board, State Water Resources Control Board, United States Environmental Protection Agency, or the local storm water management agency. Requests from the public shall be directed to the District for response.
- 5.3. Contractor shall designate in writing to the District a Qualified SWPPP Practitioner (QSP) who shall be responsible for implementing the SWPPP, REAP (if applicable), ATS (if applicable), conducting non-storm water and storm water visual observations, and for ensuring that all best management practices (BMPs) required by the SWPPP and General Permit are properly implemented and maintained.
- 5.4. All measures required by the SWPPP shall be implemented concurrent with the commencement of construction. Pollution practices and devices shall be followed or installed as early in the construction schedule as possible with frequent upgrading of devices as construction progresses.
- 5.5. Contractor shall ensure that all measures are properly maintained and repaired to protect the water quality of discharges.

6. INSPECTION, SAMPLING, ANALYSIS, AND RECORD KEEPING REQUIREMENTS

The Contractor's QSP shall conduct all required visual observations, sampling, analysis, reporting, and record keeping required by the SWPPP and the Construction Storm Water Permit.

7. REPORTING REQUIREMENTS

Contractor shall prepare and provide all the reports, which include, but are not limited to the Annual Report and any NEL Violation Reports or NAL Exceedance Reports, all of which are required by the SWPPP and the Construction Storm Water Permit.

8. ANNUAL REPORT

By August 1 of each year (defined as July 1 to June 30) that had at least one continuous three (3) month period coverage under the General Permit, Contractor shall complete and submit to the District an Annual Report, as required by the General Permit. If the Project is complete prior to August 1, Contractor shall submit the report prior to acceptance of the Project.

9. COMPLETION OF WORK

- 9.1. Clean-up shall be performed as each portion of the work progresses. All refuse, excess material, and possible pollutants shall be disposed of in a legal manner off-site and all temporary and permanent SWPPP devices shall be in place and maintained in good condition.
- 9.2. At Completion of Work, Contractor shall inspect installed SWPPP devices, and present the currently implemented SWPPP with all backup records to the District.

10. NOTICE OF TERMINATION (NOT)

A Notice of Termination (NOT) must be submitted by the Contractor to the District for electronic submittal by the Legally Responsible Person via SMARTS to terminate coverage under the General Permit. The NOT must include a final Site Map and representative photographs of the Project Site(s) that demonstrate final stabilization has been achieved. The NOT shall be submitted to the District on or before the Contractor submits its final application for payment. If the Regional Water Board rejects the NOT for any reason, the Contractor shall revise the NOT as many times as necessary to get the Regional Water Board's approval. The Regional Water Board will consider a construction site complete when the conditions of the General Permit, Section II.D have been met.

11. QUALITY ASSURANCE

- 11.1. Before performing any of the obligations indicated herein, the Contractor's QSP shall meet the training and certification requirements in the Construction Storm Water Permit.
- 11.2. Contractor shall perform the Work in strict compliance with the approved SWPPP, REAP, ATS, and the Construction Storm Water Permit.
- 11.3. Contractor shall conduct at least a one-hour training session on the requirements of the SWPPP for each employee before an employee conducts any construction on the Site. Contractor shall

maintain documentation of this employee training at the site for review by the District or any regulatory agency.

12. **PERFORMANCE REQUIREMENTS**

- 12.1. The Storm Water Pollution Prevention Plan is a minimum requirement. Revisions and modifications to the SWPPP are acceptable only if they maintain levels of protection equal to or greater than originally specified.
- 12.2. Read and be thoroughly familiar with all of the requirements of the SWPPP.
- 12.3. Inspect and monitor all work and storage areas for compliance with the SWPPP prior to any anticipated rain.
- 12.4. Complete any and all corrective measures as may be directed by the regulatory agency.
- 12.5. **Penalties:** Contractor shall pay any fees and any penalties that may be imposed by the regulatory agency for non-compliance with SWPPP during the course of Work.
- 12.6. **Costs:** Contractor to pay all costs associated with the implementation of the requirements of the SWPPP in order to maintain compliance with the Permit. This includes installation of all Housekeeping BMPs, General Site and Material Management BMPs, Inspection requirements, maintenance requirements, and all other requirements specified in the SWPPP.

13. **MATERIALS**

All temporary and permanent storm water pollution prevention facilities, equipment, and materials as required by or as necessary to comply with the SWPPP as described in the BMP Handbook.

MATERIALS AND EQUIPMENT

1. GENERAL

1.1. MATERIAL AND EQUIPMENT

- 1.1.1. Only items approved by the District and/or Architect shall be used.
- 1.1.2. Contractor shall submit lists of Products and other Product information in accordance with the Contract Documents, including, without limitation, the provisions regarding the submittals.

1.2. MATERIAL AND EQUIPMENT COLORS

- 1.2.1. The Contractor shall comply with all schedule(s) of colors provided by the District and/or Architect.
- 1.2.2. No individual color selections will be made until after approval of all pertinent materials and equipment and after receipt of appropriate samples in accordance with the Contract Documents, including, without limitation, the provisions regarding the submittals.
- 1.2.3. Contractor shall request priority in writing for any item requiring advance ordering to maintain the approved Construction Schedule.

1.3. DELIVERY, STORAGE, AND HANDLING

- 1.3.1. Contractor shall deliver manufactured materials in original packages, containers, or bundles (with seals unbroken), bearing name or identification mark of manufacturer.
- 1.3.2. Contractor shall deliver fabrications in as large assemblies as practicable; where specified as shop-primed or shop-finished, package or crate as required to preserve such priming or finish intact and free from abrasion.
- 1.3.3. Contractor shall store materials in such a manner as necessary to properly protect them from damage. Materials or equipment damaged by handling, weather, dirt, or from any other cause will not be accepted.
- 1.3.4. Except for items that the District has approved, in writing, for Contractor to store off-site, all materials are not be acceptable that have been warehoused for long periods of time, stored or transported in improper environment, improperly packaged, inadequately labeled, poorly protected, excessively shipped, deviated from normal distribution pattern, or reassembled.
- 1.3.5. Contractor shall store material so as to cause no obstructions of sidewalks, roadways, and underground services. Contractor shall protect material and equipment furnished pursuant to the Contract Documents.
- 1.3.6. Contractor may store materials on Site with prior written approval by the District, all material shall remain under Contractor's control and Contractor shall remain liable for any damage to the materials. Should the Project Site(s) not have storage area available, the Contractor shall provide for off-site storage at no cost to District.
- 1.3.7. When any room in Project is used as a shop or storeroom, the Contractor shall be responsible for any repairs, patching, or cleaning necessary due to that use. Location of storage space shall be subject to prior written approval by District.

2. PRODUCTS

2.1. MANUFACTURERS

- 2.1.1. Manufacturers listed in various sections of Contract Documents are names of those manufacturers that are believed to be capable of supplying one or more of items specified therein.
- 2.1.2. The listing of a manufacturer does not imply that every product of that manufacturer is acceptable as meeting the requirements of the Contract Documents.

2.2. FACILITIES AND EQUIPMENT

Contractor shall provide, install, maintain, and operate a complete and adequate facility for handling, the execution, disposal, and distribution of material and equipment as required for proper and timely performance of Work.

2.3. MATERIAL REFERENCE STANDARDS

Where material is specified solely by reference to "standard specifications" and if requested by District, Contractor shall submit for review data on actual material proposed to be incorporated into Work, listing name and address of vendor, manufacturer, or producer, and trade or brand names of those materials, and data substantiating compliance with standard specifications.

3. EXECUTION

3.1. WORKMANSHIP

3.1.1. Where not more specifically described in any other Contract Documents, workmanship shall conform to methods and operations of best standards and accepted practices of trade or trades involved and shall include items of fabrication, construction, or installation regularly furnished or required for completion (including finish and for successful operation, as intended).

3.1.2. Work shall be executed by tradespersons skilled in their respective field of work. When completed, parts shall have been durably and substantially built and present a neat appearance.

3.2. COORDINATION

3.2.1. Contractor shall coordinate installation of materials and equipment so as to not interfere with installation of other work. Adjustment or rework because of Contractor's failure to coordinate will be at no additional cost to District.

3.2.2. Contractor shall examine in-place materials and equipment for readiness, completeness, fitness to be concealed or to receive Work, and compliance with Contract Documents. Concealing or covering work constitutes acceptance of additional cost which will result should in-place materials and equipment be found unsuitable for receiving other work or otherwise deviating from the requirements of the Contract Documents.

3.3. COMPLETENESS

Contractor shall provide all portions of the Work, unless clearly stated otherwise, installed complete and operational with all elements, accessories, anchorages, utility connections, etc., in manner to assure well-balanced performance, in accordance with manufacturer's recommendations and in accordance with Contract Documents. For example, electric water coolers require water, electricity, and drain services; roof drains require drain system; sinks fit within countertop, etc. Terms such as "installed complete," "operable condition," "for use intended," "connected to all utilities," "terminate with proper cap," "adequately anchored," "patch and refinish," "to match similar," should be assumed to apply in all cases, except where completeness of functional or operable condition is specifically stated as not required.

3.4. APPROVED INSTALLER OR APPLICATOR

Contractor shall ensure that all installations are only performed by a manufacturer's approved installer or applicator.

3.5. MANUFACTURER'S RECOMMENDATIONS

All installations shall be in accordance with manufacturer's published recommendations and specific written directions of manufacturer's representative. Should Contract Documents differ from recommendations of manufacturer or directions of manufacturer's representative, Contractor shall analyze differences, make recommendations to the District and the Architect in writing, and shall not proceed until interpretation or clarification has been issued by the District and/or the Architect.

DELIVERY, STORAGE AND HANDLING

1. GENERAL

1.1. PRODUCTS

- 1.1.1. Products are as defined in the General Construction Provisions (Exhibit D to the Facilities Lease).
- 1.1.2. Contractor shall not use and/or reuse materials and/or equipment removed from existing Premises, except as specifically permitted by the Contract Documents.
- 1.1.3. Contractor shall provide interchangeable components of the same manufacturer, for similar components.

1.2. TRANSPORTATION AND HANDLING

- 1.2.1. Contractor shall transport and handle Products in accordance with manufacturer's instructions.
- 1.2.2. Contractor shall promptly inspect shipments to confirm that Products comply with Contract requirements, are of correct quantity, and are undamaged.
- 1.2.3. Contractor shall provide equipment and personnel to properly handle Products to prevent soiling, disfigurement, or damage.

1.3. STORAGE AND PROTECTION

- 1.3.1. Contractor shall store and protect Products in accordance with manufacturer's instructions, with seals and labels intact and legible. Contractor shall store sensitive Products in weather-tight, climate controlled enclosures.
- 1.3.2. Contractor shall place fabricated Products that are stored outside, on above-ground sloped supports.
- 1.3.3. Contractor shall provide off-site storage and protection for Products when Site does not permit on-site storage or protection.
- 1.3.4. Contractor shall cover Products subject to deterioration with impervious sheet covering and provide ventilation to avoid condensation.
- 1.3.5. Contractor shall store loose granular materials on solid flat surfaces in a well-drained area and prevent mixing with foreign matter.
- 1.3.6. Contractor shall provide equipment and personnel to store Products by methods to prevent soiling, disfigurement, or damage.
- 1.3.7. Contractor shall arrange storage of Products to permit access for inspection and periodically inspect to assure Products are undamaged and are maintained under specified conditions.

CONTRACT CLOSEOUT AND FINAL CLEANING

1. GENERAL

1.1. CLOSEOUT PROCEDURES

Contractor shall comply with all closeout provisions as indicated in the General Construction Provisions (Exhibit D to the Facilities Lease).

1.2. FINAL CLEANING

- 1.2.1. Contractor shall execute final cleaning prior to final inspection.
- 1.2.2. Contractor shall clean interior and exterior glass and surfaces exposed to view; remove temporary labels, tape, stains, and foreign substances, polish transparent and glossy surfaces, wax and polish new vinyl floor surfaces, vacuum carpeted and soft surfaces.
- 1.2.3. Contractor shall clean equipment and fixtures to a sanitary condition.
- 1.2.4. Contractor shall replace filters of operating equipment.
- 1.2.5. Contractor shall clean debris from roofs, gutters, down spouts, and drainage systems.
- 1.2.6. Contractor shall clean Site, sweep paved areas, and rake clean landscaped surfaces.
- 1.2.7. Contractor shall remove waste and surplus materials, rubbish, and construction facilities from the Site.

1.3. ADJUSTING

Contractor shall adjust operating products and equipment to ensure smooth and unhindered operation.

1.4. RECORD DOCUMENTS AND SHOP DRAWINGS

Contractor shall legibly mark each item to record actual construction, including:

- 1.4.1. Measured depths of foundation in relation to finish floor datum.
- 1.4.2. Measured horizontal and vertical locations of underground utilities and appurtenances, referenced to permit surface improvements.
- 1.4.3. Measured locations of internal utilities and appurtenances concealed in construction, referenced to visible and accessible features of the Work.
- 1.4.4. Field changes of dimension and detail.
- 1.4.5. Details not on original Contract Drawings
- 1.4.6. Changes made by modification(s).
- 1.4.7. References to related Shop Drawings and modifications.
- 1.4.8. Contractor will provide one set of Record Drawings to District in an electronic format and one set on paper.
- 1.4.9. Contractor shall submit all required documents to District and/or Architect prior to or with its final Application for Payment.

1.5. INSTRUCTION OF DISTRICT PERSONNEL

- 1.5.1. Before final inspection, at agreed upon times, Contractor shall instruct District's designated personnel in operation, adjustment, and maintenance of products, equipment, and systems.
- 1.5.2. For equipment requiring seasonal operation, Contractor shall perform instructions for other seasons within six (6) months.
- 1.5.3. Contractor shall use operation and maintenance manuals as basis for instruction. Contractor shall review contents of manual with personnel in detail to explain all aspects of operation and maintenance.
- 1.5.4. Contractor shall prepare and insert additional data in Operation and Maintenance Manual when need for such data becomes apparent during instruction.
- 1.5.5. Contractor shall use operation and maintenance manuals as basis for instruction. Contractor shall review contents of manual with personnel in detail to explain all aspects of operation and maintenance.
- 1.5.6. Contractor shall be available for up to two (2) four-hour sessions of additional training of District personnel at any time within the first year of operation of the Site.

1.6. SPARE PARTS AND MAINTENANCE MATERIALS

- 1.6.1. Contractor shall provide products, spare parts, maintenance, and extra materials in

- quantities specified in the Specifications and in Manufacturer's recommendations.
- 1.6.2. Contractor shall provide District all required Operation and Maintenance Data.

Form Agreement

FIELD ENGINEERING

1. GENERAL

1.1. REQUIREMENTS INCLUDED

- 1.1.1. Contractor shall provide and pay for field engineering services by a California-registered engineer, required for the Project, including, without limitations:
 - 1.1.1.1. Survey work required in execution of the Project.
 - 1.1.1.2. Civil or other professional engineering services specified, or required to execute Contractor's construction methods.

1.2. QUALIFICATIONS OF SURVEYOR OR ENGINEERS

Contractor shall only use a qualified licensed engineer or registered land surveyor, to whom District makes no objection.

1.3. SURVEY REFERENCE POINTS

- 1.3.1. Existing basic horizontal and vertical control points for the Project are those designated on the Drawings.
- 1.3.2. Contractor shall locate and protect control points prior to starting Site Work and preserve all permanent reference points during construction. In addition Contractor shall:
 - 1.3.2.1. Make no changes or relocation without prior written notice to District and Architect.
 - 1.3.2.2. Report to District and Construction Manager when any reference point is lost or destroyed, or requires relocation because of necessary changes in grades or locations.
 - 1.3.2.3. Require surveyor to replace Project control points based on original survey control that may be lost or destroyed.

1.4. RECORDS

Contractor shall maintain a complete, accurate log of all control and survey work as it progresses.

1.5. SUBMITTALS

- 1.5.1. Contractor shall submit name and address of Surveyor and Professional Engineer to District and Construct Manager prior to its/their work on the Project.
- 1.5.2. On request of District and Construction Manager, Contractor shall submit documentation to verify accuracy of field engineering work, at no additional cost to the District.
- 1.5.3. Contractor shall submit a certificate signed by registered engineer or surveyor certifying that elevations and locations of improvements are in conformance or nonconformance with Contract Documents.

2. EXECUTION

2.1. COMPLIANCE WITH LAWS

Contractor is responsible for meeting all applicable codes, OSHA, safety and shoring requirements.

2.2. NONCONFORMING WORK

Contractor is responsible for any re-surveying required by correction of nonconforming work.

CUTTING AND PATCHING

1. GENERAL

1.1. CUTTING AND PATCHING

- 1.1.1. Contractor shall be responsible for all cutting, fitting, and patching, including associated excavation and backfill, required to complete the Work or to:
 - 1.1.1.1. Make several parts fit together properly.
 - 1.1.1.2. Uncover portions of Work to provide for installation of ill-timed Work.
 - 1.1.1.3. Remove and replace defective Work.
 - 1.1.1.4. Remove and replace Work not conforming to requirements of Contract Documents.
 - 1.1.1.5. Remove Samples of installed Work as specified for testing.
 - 1.1.1.6. Provide routine penetrations of non-structural surfaces for installation of piping and electrical conduit.
 - 1.1.1.7. Attaching new materials to existing remodeling areas – including painting (or other finishes) to match existing conditions.
- 1.1.2. In addition to Contract requirements, upon written instructions from District, Contractor shall uncover Work to provide for observations of covered Work in accordance with the Contract Documents; remove samples of installed materials for testing as directed by District; and remove Work to provide for alteration of existing Work.
- 1.1.3. Contractor shall not cut or alter Work, or any part of it, in such a way that endangers or compromises the integrity of the Work, the Project, or work of others.
- 1.1.4. Contractor shall not cut and patch operating elements and safety related components in a manner that results in reducing their capacity to perform as intended or that results in increased maintenance or decreased operational life or safety. Operating elements include the following:
 - 1.1.4.1. Primary operational systems and equipment.
 - 1.1.4.2. Air or smoke barriers.
 - 1.1.4.3. Fire-suppression systems.
 - 1.1.4.4. Mechanical systems piping and ducts.
 - 1.1.4.5. Control systems.
 - 1.1.4.6. Communication systems.
 - 1.1.4.7. Conveying systems.
 - 1.1.4.8. Electrical wiring systems.
- 1.1.5. Contractor shall not cut and patch miscellaneous elements or related components in a manner that could change their load-carrying capacity, that results in reducing capacity to perform as intended, or that results in increased maintenance or decreased operational life of safety. Miscellaneous elements include the following:
 - 1.1.5.1. Water, moisture or vapor barriers.
 - 1.1.5.2. Membranes and flashings.
 - 1.1.5.3. Exterior curtain-wall construction.
 - 1.1.5.4. Equipment supports.
 - 1.1.5.5. Piping, ductwork, vessels and equipment.
 - 1.1.5.6. Noise and vibration control elements and systems.
 - 1.1.5.7. Shoring, bracing and sheeting.

1.2. SUBMITTALS

- 1.2.1. Contractor shall submit written notice to District pursuant to the applicable notice provisions of the Contract Documents, requesting consent to proceed with the cutting or alteration (Request) at least ten (10) days prior to any cutting or alterations that may affect the structural safety of Project, or work of others, including the following:
 - 1.2.1.1. The work of the District or other trades.

- 1.2.1.2. Structural value or integrity of any element of Project.
- 1.2.1.3. Integrity or effectiveness of weather-exposed or weather-resistant elements or systems.
- 1.2.1.4. Efficiency, operational life, maintenance or safety of operational elements.
- 1.2.1.5. Visual qualities of sight-exposed elements.
- 1.2.2. Contractor's Request shall also include:
 - 1.2.2.1. Identification of Project.
 - 1.2.2.2. Description of affected Work.
 - 1.2.2.3. Necessity for cutting, alteration, or excavations.
 - 1.2.2.4. Affects of Work on District, other trades, or structural or weatherproof integrity of Project.
 - 1.2.2.5. Description of proposed Work:
 - 1.2.2.5.1. Scope of cutting, patching, alteration, or excavation.
 - 1.2.2.5.2. Trades that will execute Work.
 - 1.2.2.5.3. Products proposed to be used.
 - 1.2.2.5.4. Extent of refinishing to be done.
 - 1.2.2.6. Alternates to cutting and patching.
 - 1.2.2.7. Cost proposal, when applicable.
 - 1.2.2.8. The scheduled date the Contractor intends to perform the Work and the duration of time to complete the Work.
 - 1.2.2.9. Written permission of other trades whose Work will be affected.

1.3. QUALITY ASSURANCE

- 1.3.1. Contractor shall ensure that cutting, fitting, and patching shall achieve security, strength, weather protection, appearance for aesthetic match, efficiency, operational life, maintenance, safety of operational elements, and the continuity of existing fire ratings.
- 1.3.2. Contractor shall ensure that cutting, fitting, and patching shall successfully duplicate undisturbed adjacent profiles, materials, textures, finishes, colors, and that materials shall match existing construction. Where there is dispute as to whether duplication is successful or has been achieved to a reasonable degree, the District's decision shall be final.

1.4. PAYMENT FOR COSTS

- 1.4.1. Cost caused by ill-timed or defective Work or Work not conforming to Contract Documents, including costs for additional services of the District, its consultants, including but not limited to the Construction Manager, the Architect, the Project Inspector(s), Engineers, and Agents, will be paid by Contractor and/or deducted from the Contract by the District.
- 1.4.2. District shall only pay for cost of Work if it is part of the original Contract Price or if a change has been made to the contract in compliance with the provisions of the General Construction Provisions (Exhibit D to the Facilities Lease). Cost of Work performed upon instructions from the District, other than defective or nonconforming Work, will be paid by District on approval of written Change Order. Contractor shall provide written cost proposals prior to proceeding with cutting and patching.

2. PRODUCTS

2.1. MATERIALS

- 2.1.1. Contractor shall provide for replacement and restoration of Work removed. Contractor shall comply with the Contract Documents and with the Industry Standard(s), for the type of Work, and the Specification requirements for each specific product involved. If not specified, Contractor shall first recommend a product of a manufacturer or appropriate trade association for approval by the District.
- 2.1.2. Materials to be cut and patched include those damaged by the performance of the Work.

3. EXECUTION

3.1. INSPECTION

- 3.1.1. Contractor shall inspect existing conditions of the Site and the Work, including elements subject to movement or damage during cutting and patching, excavating and backfilling. After uncovering Work, Contractor shall inspect conditions affecting installation of new products.
- 3.1.2. Contractor shall report unsatisfactory or questionable conditions in writing to District as indicated in the General Construction Provisions (Exhibit D to the Facilities Lease) and shall proceed with Work as indicated in the General Construction Provisions (Exhibit D to the Facilities Lease) by District.

3.2. PREPARATION

- 3.2.1. Contractor shall provide shoring, bracing and supports as required to maintain structural integrity for all portions of the Project, including all requirements of the Project.
- 3.2.2. Contractor shall provide devices and methods to protect other portions of Project from damage.
- 3.2.3. Contractor shall, provide all necessary protection from weather and extremes of temperature and humidity for the Project, including without limitation, any work that may be exposed by cutting and patching Work. Contractor shall keep excavations free from water.

3.3. ERECTION, INSTALLATION AND APPLICATION

- 3.3.1. With respect to performance, Contractor shall:
 - 3.3.1.1. Execute fitting and adjustment of products to provide finished installation to comply with and match specified tolerances and finishes.
 - 3.3.1.2. Execute cutting and demolition by methods that will prevent damage to other Work, and provide proper surfaces to receive installation of repairs and new Work.
 - 3.3.1.3. Execute cutting, demolition excavating, and backfilling by methods that will prevent damage to other Work and damage from settlement.
 - 3.3.1.4. Contractor shall employ original installer or fabricator to perform cutting and patching for:
 - 3.3.1.5. Weather-exposed surfaces and moisture-resistant elements such as roofing, sheet metal, sealants, waterproofing, and other trades.
 - 3.3.1.6. Sight-exposed finished surfaces.
- 3.3.2. Contractor shall execute fitting and adjustment of products to provide a finished installation to comply with specified products, functions, tolerances, and finishes as shown or specified in the Contract Documents including, without limitation, the Drawings and Specifications.
- 3.3.3. Contractor shall fit Work airtight to pipes, sleeves, ducts, conduit, and other penetrations through surfaces. Contractor shall conform to all Code requirements for penetrations or the Drawings and Specifications, whichever calls for a higher quality or more thorough requirement. Contractor shall maintain integrity of both rated and non-rated fire walls, ceilings, floors, etc.
- 3.3.4. Contractor shall restore Work which has been cut or removed. Contractor shall install new products to provide completed Work in accordance with requirements of the Contract Documents and as required to match surrounding areas and surfaces.
- 3.3.5. Contractor shall refinish all continuous surfaces to nearest intersection as necessary to match the existing finish to any new finish.

OPERATION AND MAINTENANCE DATA

1. GENERAL

1.1. QUALITY ASSURANCE

Contractor shall prepare instructions and data by personnel experienced in maintenance and operation of described products.

1.2. FORMAT

- 1.2.1. Contractor shall prepare data in the form of an instructional manual entitled "OPERATIONS AND MAINTENANCE MANUAL & INSTRUCTIONS" ("Manual").
- 1.2.2. Binders: Contractor shall use commercial quality, 8-1/2 by 11 inch, three-side rings, with durable plastic covers; two inch maximum ring size. When multiple binders are used, Contractor shall correlate data into related consistent groupings.
- 1.2.3. Cover: Contractor shall identify each binder with typed or printed title "OPERATION AND MAINTENANCE MANUAL & INSTRUCTIONS"; and shall list title of Project and identify subject matter of contents.
- 1.2.4. Contractor shall arrange content by systems process flow under section numbers and sequence of Table of Contents of the Contract Documents.
- 1.2.5. Contractor shall provide tabbed fly leaf for each separate Product and system, with typed description of Product and major component parts of equipment.
- 1.2.6. Text: The content shall include Manufacturer's printed data, or typewritten data on 24 pound paper.
- 1.2.7. Drawings: Contractor shall provide with reinforced punched binder tab and shall bind in with text; folding larger drawings to size of text pages.

1.3. CONTENTS, EACH VOLUME

- 1.3.1. Table of Contents: Contractor shall provide title of Project; names, addresses, and telephone numbers of the Architect, any engineers, subconsultants, Subcontractor(s), and Contractor with name of responsible parties; and schedule of Products and systems, indexed to content of the volume.
- 1.3.2. For Each Product or System: Contractor shall list names, addresses, and telephone numbers of Subcontractor(s) and suppliers, including local source of supplies and replacement parts.
- 1.3.3. Product Data: Contractor shall mark each sheet to clearly identify specific Products and component parts, and data applicable to installation. Delete inapplicable information.
- 1.3.4. Drawings: Contractor shall supplement Product data to illustrate relations of component parts of equipment and systems, to show control and flow diagrams. Contractor shall not use Project Record Documents as maintenance drawings.
- 1.3.5. Text: The Contractor shall include any and all information as required to supplement Product data. Contractor shall provide logical sequence of instructions for each procedure, incorporating manufacturer's instructions.

1.4. MANUAL FOR MATERIALS AND FINISHES

- 1.4.1. Building Products, Applied Materials, and Finishes: Contractor shall include Product data, with catalog number, size, composition, and color and texture designations. Contractor shall provide information for re-ordering custom manufactured Products.
- 1.4.2. Instructions for Care and Maintenance: Contractor shall include Manufacturer's recommendations for cleaning agents and methods, precautions against detrimental agents and methods, and recommended schedule for cleaning and maintenance.
- 1.4.3. Moisture Protection and Weather Exposed Products: Contractor shall include Product data listing applicable reference standards, chemical composition, and details of installation. Contractor shall provide recommendations for inspections, maintenance, and repair.
- 1.4.4. Additional Requirements: Contractor shall include all additional requirements as specified in the Specifications.
- 1.4.5. Contractor shall provide a listing in Table of Contents for design data, with tabbed fly

sheet and space for insertion of data.

1.5. MANUAL FOR EQUIPMENT AND SYSTEMS

- 1.5.1. Each Item of Equipment and Each System: Contractor shall include description of unit or system, and component parts and identify function, normal operating characteristics, and limiting conditions. Contractor shall include performance curves, with engineering data and tests, and complete nomenclature, and commercial number of replaceable parts.
- 1.5.2. Panelboard Circuit Directories: Contractor shall provide electrical service characteristics, controls, and communications.
- 1.5.3. Contractor shall include color coded wiring diagrams as installed.
- 1.5.4. Operating Procedures: Contractor shall include start-up, break-in, and routine normal operating instructions and sequences. Contractor shall include regulation, control, stopping, shut-down, and emergency instructions. Contractor shall include summer, winter, and any special operating instructions.
- 1.5.5. Maintenance Requirements: Contractor shall include routine procedures and guide for trouble-shooting; disassembly, repair, and reassembly instructions; and alignment, adjusting, balancing, and checking instructions.
- 1.5.6. Contractor shall provide servicing and lubrication schedule, and list of lubricants required.
- 1.5.7. Contractor shall include manufacturer's printed operation and maintenance instructions.
- 1.5.8. Contractor shall include sequence of operation by controls manufacturer.
- 1.5.9. Contractor shall provide original manufacturer's parts list, illustrations, assembly drawings, and diagrams required for maintenance.
- 1.5.10. Contractor shall provide control diagrams by controls manufacturer as installed.
- 1.5.11. Contractor shall provide Contractor's coordination drawings, with color coded piping diagrams as installed.
- 1.5.12. Contractor shall provide charts of valve tag numbers, with location and function of each valve, keyed to flow and control diagrams.
- 1.5.13. Contractor shall provide list of original manufacturer's spare parts, current prices, and recommended quantities to be maintained in storage.
- 1.5.14. Additional Requirements: Contractor shall include all additional requirements as specified in Specification(s).
- 1.5.15. Contractor shall provide a listing in Table of Contents for design data, with tabbed fly sheet and space for insertion of data.

1.6. SUBMITTAL

- 1.6.1. Concurrent with the Submittal Schedule as indicated in the General Construction Provisions (Exhibit D to the Facilities Lease), Contractor shall submit to the District for review two (2) copies of a preliminary draft of proposed formats and outlines of the contents of the Manual.
- 1.6.2. For equipment, or component parts of equipment put into service during construction and to be operated by District, Contractor shall submit draft content for that portion of the Manual within ten (10) days after acceptance of that equipment or component.
- 1.6.3. On or before the Contractor submits its final application for payment, Contractor shall submit two (2) copies of a complete Manual in final form. The District will provide comments to Contractor and Contractor must revise the content of the Manual as required by District prior to District's approval of Contractor's final Application for Payment.
- 1.6.4. Contractor must submit two (2) copies of revised Manual in final form within ten (10) days after receiving District's comments. Failure to do so will be a basis for the District withholding funds sufficient to protect itself for Contractor's failure to provide a final Manual to the District. All final documents to be concurrently provided to the District in an electronic format.

WARRANTIES

1. GENERAL

1.1. FORMAT

- 1.1.1. Binders: Contractor shall use commercial quality, 8-1/2 by 11 inch, three-side rings, with durable plastic covers; two inch maximum ring size.
- 1.1.2. Cover: Contractor shall identify each binder with typed or printed title "WARRANTIES" and shall list title of Project.
- 1.1.3. Table of Contents: Contractor shall provide title of Project; name, address, and telephone number of Contractor and equipment supplier, and name of responsible principal. Contractor shall identify each item with the number and title of the specific Specification, document, provision, or section in which the name of the Product or work item is specified.
- 1.1.4. Contractor shall separate each warranty with index tab sheets keyed to the Table of Contents listing, providing full information and using separate typed sheets as necessary. Contractor shall list each applicable and/or responsible Subcontractor(s), supplier(s), and/or manufacturer(s), with name, address, and telephone number of each responsible principal(s).

1.2. PREPARATION

- 1.2.1. Contractor shall obtain warranties, executed in duplicate by each applicable and/or responsible subcontractor(s), supplier(s), and manufacturer(s), within ten (10) days after completion of the applicable item or work. Except for items put into use with District's permission, Contractor shall leave date of beginning of time of warranty until the date of completion is determined.
- 1.2.2. Contractor shall verify that warranties are in proper form, contain full information, and are notarized, when required.
- 1.2.3. Contractor shall co-execute submittals when required.
- 1.2.4. Contractor shall retain warranties until time specified for submittal.

1.3. TIME OF SUBMITTALS

- 1.3.1. For equipment or component parts of equipment put into service during construction with District's permission, Contractor shall submit a draft warranty for that equipment or component within ten (10) days after acceptance of that equipment or component.
- 1.3.2. On or before the Contractor submits its final application for payment, Contractor shall submit all warranties and related documents in final form. The District will provide comments to Contractor and Contractor must revise the content of the warranties as required by District prior to District's approval of Contractor's final Application for Payment.
- 1.3.3. For items of Work that are not completed until after the date of Completion, Contractor shall provide an updated warranty for those item(s) of Work within ten (10) days after acceptance, listing the date of acceptance as start of warranty period.

RECORD DOCUMENTS

1. RECORD DRAWINGS

1.1. GENERAL

- 1.1.1. "Record Drawings" may also be referred to in the Contract as "As-Built Drawings."
- 1.1.2. As indicated in the Contract Documents, District will provide Contractor with one set of reproducible plans of the original Contract Drawings.
- 1.1.3. Contractor shall maintain at each Project Site(s) one (1) set of marked-up plans and shall transfer all changes and information to those marked-up plans, as often as required in the Contract Documents, but in no case less than once each month. Contractor shall submit to the Project Inspector one set of the Project Record Drawings ("As-Built") showing all changes incorporated into the Work since the preceding monthly submittal. The As-Built shall be available at the Project Site(s). The Contractor shall submit reproducible documents at the conclusion of the Project following review of the red-lined prints.
- 1.1.4. Label and date each Record Drawing "RECORD DOCUMENT" in legibly printed letters.
- 1.1.5. All deviations in construction, including but not limited to pipe and conduit locations and deviations caused by without limitation Change Orders, Construction Directives, RFI's, and Addenda, shall be accurately and legibly recorded by Contractor
- 1.1.6. Locations and changes shall be done by Contractor in a neat and legible manner and, where applicable, indicated by drawing a "cloud" around the changed or additional information.

1.2. RECORD DRAWING INFORMATION

- 1.2.1. Contractor shall record the following information:
 - 1.2.1.1. Locations of Work buried under or outside each building, including, without limitation, all utilities, plumbing and electrical lines, and conduits.
 - 1.2.1.2. Actual numbering of each electrical circuit.
 - 1.2.1.3. Locations of significant Work concealed inside each building whose general locations are changed from those shown on the Contract Drawings.
 - 1.2.1.4. Locations of all items, not necessarily concealed, which vary from the Contract Documents.
 - 1.2.1.5. Installed location of all cathodic protection anodes.
 - 1.2.1.6. Deviations from the sizes, locations, and other features of installations shown in the Contract Documents.
 - 1.2.1.7. Locations of underground work, points of connection with existing utilities, changes in direction, valves, manholes, catch basins, capped stubouts, invert elevations, etc.
 - 1.2.1.8. Sufficient information to locate Work concealed in each building with reasonable ease and accuracy.
- 1.2.2. In some instances, this information may be recorded by dimension. In other instances, it may be recorded in relation to the spaces in the building near which it was installed.
- 1.2.3. Contractor shall provide additional drawings as necessary for clarification.
- 1.2.4. Contractor shall provide reproducible record drawings, made from final Shop Drawings marked "No Exceptions Taken" or "Approved as Noted."

2. RECORD SPECIFICATIONS

Contractor shall mark each section legibly to record manufacturer, trade name, catalog number, and supplier of each Product and item of equipment actually installed.

3. MAINTENANCE OF RECORD DOCUMENTS

- 3.1. Contractor shall store Record Documents apart from documents used for construction as follows:
 - 3.1.1. Provide files and racks for storage of Record Documents.
 - 3.1.2. Maintain Record Documents in a clean, dry, legible condition and in good order.
- 3.2. Contractor shall not use Record Documents for construction purposes.

COMMISSIONING

1. RELATED DOCUMENTS AND PROVISIONS

Contractor shall review all Contract Documents for applicable provisions related to the provisions in this document, including without limitation:

1.1. LEED Certification Sustainable Design Requirements.

2. SUMMARY

- 2.1. Commissioning is a process for validating and documenting that the facility and its systems are constructed and perform in conformity with the Contract Documents.
- 2.2. The objective of the commissioning process is to verify that the performance of the facility and its systems meet or exceed the design intent.
- 2.3. Commissioning includes special facility start-up processes used to bring the facility to a fully operational state, free of deficiencies in an efficient and timely manner.
- 2.4. Training on related systems and equipment operation and maintenance shall be scheduled to commence only after start-up is complete and systems are verified to be 100% complete and functional.

3. DESCRIPTION

The following applies to all Contract Documents:

- 3.1. **Contractor Startup:** Sub-phase of Contractor's work ending with Acceptance of Work, during which Contractor performs a pre-planned program of activities including starting, testing, inspecting, adjusting balancing, correcting deficiencies and other similar activities.
 - 3.1.1. The District, Construction Manager and Architect and the Inspector shall be present to observe, inspect and identify deficiencies in building systems operations.
- 3.2. The completion of startup means the entire Construction Project including startup and fine tuning has been performed to the requirements of the Contract Documents and is verified in writing by the District, Construction Manager and Architect.
- 3.3. **Fine Tuning:** Fine tuning is the responsibility of Contractors after District occupancy and ending one (1) year after District occupancy. During this time, the Contractor is responsible for optimizing systems and correcting deficiencies arising under normal operating conditions.
 - 3.3.1. Includes a period after occupancy where systems are optimized under "live" operating conditions and any outstanding construction deficiencies are corrected.
 - 3.3.2. Fine Tuning shall extend from date of District occupancy to one year after occupancy.

4. DEFINITION OF TERMS

- 4.1. **Contractor's Pre-Commissioning Checklists:** Includes installation and start-up items as specified to be completed by the appropriate contractors prior to operational verification through the functional testing process.
- 4.2. **Installation Verification Process:** Includes the on-site inspection and review of related system components for conformance to Contract Documents. The Contractor shall verify systems readiness for functional testing procedures prior to the start of functional testing. Deficiencies will be documented by the Inspector for future resolution.
- 4.3. **Functional Performance Testing Process:** Includes the documented testing of system parameters, under actual or simulated operating conditions. Final performance commissioning of systems will begin only after the appropriate Contractor certifies that systems are 100% complete and ready for functional testing. The Contractor will be required to schedule, coordinate and perform device tests, calibration and functional performance test procedures.
- 4.4. **Deficiencies and Resolutions List:** Includes a list of noted deficiencies discovered as a result of the commissioning process. This list also includes the current disposition of issues, and the date of final resolution as confirmed by the Construction Manager and Inspector. Deficiencies are defined as those issues where products execution or performance does not satisfy the Project Contract Documents and/or the design intent.

5. COMMISSIONING SCHEDULE

- 5.1. Provide schedules for Contractor Start-Up work.
- 5.2. Incorporate in overall construction schedule.

- 5.3. Contractor's activities, which will be performed as specified under Fine Tuning, shall be completed within one (1) year from date of occupancy by the District.

6. CONTRACTOR RESPONSIBILITIES

- 6.1. Provide utility services required for the commissioning process.
- 6.2. Contractor is responsible for construction means, methods, job safety, and/or management function related to commissioning on the Project Site.
- 6.3. Contractor shall assign representatives with expertise and authority to act on behalf of Contractor and schedule the representatives to participate in and perform commissioning team activities including, but not limited to, the following:
 - 6.3.1. Participate in design and construction-phase coordination meetings.
 - 6.3.2. Participate in maintenance orientation and inspection.
 - 6.3.3. Participate in operation and maintenance training sessions.
 - 6.3.4. Participate in final review.
 - 6.3.5. Certify that Work is complete and systems are operational according to the Contract Documents, including calibration of instrumentation and controls.
 - 6.3.6. Evaluate performance deficiencies identified in test reports and, in collaboration with entity responsible for system and equipment installation, recommend corrective action.
 - 6.3.7. Review and comment on final commissioning documentation.
- 6.4. Contractor shall integrate all commissioning activities into Contractor's Construction Schedule.
- 6.5. Contractor's Subcontractors shall assign representatives with expertise and authority to act on behalf of subcontractors and schedule the representatives to participate in and perform commissioning team activities including, but not limited to, the following:
 - 6.5.1. Participate in design and construction-phase coordination meetings.
 - 6.5.2. Participate in maintenance orientation and inspection.
 - 6.5.3. Participate in procedures meeting for testing.
 - 6.5.4. Participate in final review.
 - 6.5.5. Provide schedule for operation and maintenance data submittals, equipment startup, and testing to Commissioning Authority for incorporation into the commissioning plan. Update schedule on a weekly basis throughout the construction period.
 - 6.5.6. Provide information to the Commissioning Authority for developing construction phase commissioning plan.
 - 6.5.7. Participate in training sessions for District's operation and maintenance personnel.
 - 6.5.8. Provide updated Project Record Documents to Commissioning Authority on a daily basis.
 - 6.5.9. Gather and submit operation and maintenance data for systems, subsystems, and equipment to the Commissioning Authority, as specified in Division 01 Document "Operation and Maintenance Data."
 - 6.5.10. Provide technicians who are familiar with the construction and operation of installed systems, who shall execute the test procedures developed by the Commissioning Authority, and who shall participate in testing of installed systems, subsystems, and equipment.

7. SUBMITTALS

- 7.1. Submit Draft and Final Contractor Start-up Forms as described in this Document. Submit Draft Report for Construction Manager and Architect's review and comment prior to Final Submission. Submit Final Report not later than twenty weeks before scheduled date of Acceptance of Work.
- 7.2. Prepare and submit one copy of report form to be used in preparation of system reports for:
 - 7.2.1. Food Service Equipment.
 - 7.2.2. Gymnasium Equipment and Scoreboards
 - 7.2.3. Laboratory Fume Hoods
 - 7.2.4. Elevators
 - 7.2.5. Each mechanical system specified in Division 15.
 - 7.2.6. Each Electrical system specified in Division 16.
- 7.3. Each System Report shall be submitted including the following:

- 7.3.1. Project Name
- 7.3.2. Name of System
- 7.3.3. Index of report's content
- 7.3.4. Adjacent to list of equipment, columns to indicate status of equipment operation, to date and to sign off equipment start-up.
- 7.3.5. Space to record equipment and operational problems which cannot be corrected with scheduled Contractor Start-Up program and which may delay Acceptance of Work.
- 7.3.6. Manufacturer's equipment start-up reports.
- 7.3.7. Systems' testing, balancing, and adjusting reports.
- 7.3.8. Equipment Report Forms shall include the following: Project name, name of equipment, starting and testing procedures to be performed and observations and test results to be recorded.

8. QUALITY ASSURANCE

- 8.1. Training Instructor Qualifications: Contractor shall provide factory-authorized service representatives, experienced in training, operation, and maintenance procedures for installed systems, subsystems, and equipment.
- 8.2. Test Equipment Calibration: Comply with test equipment manufacturer's calibration procedures and intervals. Recalibrate test instruments (per NIST requirements if applicable) immediately whenever instruments have been repaired following damage or dropping. Affix calibration tags to test instruments. Instruments shall have been calibrated within six months prior to use.

9. EQUIPMENT & SYSTEM SCHEDULE

The following equipment shall be commissioned in this Project:

System	Equipment	Note	Req'd by LEED
HVAC System	Chillers		X
	Boilers		X
	Pumps		X
	Cooling towers		X
	Variable frequency drives		X
	Air handlers		X
	Packaged AC units		X
	Terminal units for Office areas	2	X
	Unit heaters		X
	Heat exchangers		X
	Exhaust fans		X
	Supply fans		X
	Return fans		X
Building Management System	Sequences of Operation, Monitored Points, and Alarms		X
	Metering/Monitoring Devices and Equipment		X
	Software Commissioning, GUI presentation commissioning, system access performance criteria, software tools/source code commissioning, instrument data sheets, middleware commissioning, Internet Protocol commissioning		
Electrical System	Sweep or scheduled lighting controls	2	X
	Daylight dimming controls		X
	Lighting occupancy sensors		X
	Electrical grounding		

Plumbing System	Domestic water heaters		X
Security Alarm Systems	Security cameras and monitoring system personal duress alarm system; Intercom system; Paging System.		
System	Equipment	Note	Req'd by LEED
Security Electronics	Security plumbing fixture water management system.		
	Door Controls.		
	Fire alarm system.		
	Distributed radio antenna system.		
	Access control system.		
Courtroom Systems	Room acoustics.		
	Sound masking system.		
	Assisted listening.		
	Video projection.		
	Audio system.		
	Lighting and lighting controls.		X
Fire/Life Safety Systems	All devices		
	Alarm drivers		
	HVAC/Fire System Integration		
	Event Notifying and Reporting Systems		
Communication System			

9.1. SYSTEM FAILURES

- 9.2.** After a second failure of a system to successfully meet the criteria as set for in the functional performance testing process, the Contractor shall reimburse the District for cost associated with any additional retesting required due to uncorrected deficiencies. Costs shall include salary, benefits, overhead, travel costs and per diem lodging costs if applicable.

EXHIBIT J
TO FACILITIES LEASE

PLANS, TECHNICAL SPECIFICATIONS, AND DRAWINGS

[IF PLANS ARE FINAL – PROVIDE A COMPLETE LIST OF ALL PLANS, TECHNICAL SPECS, AND OTHER DRAWINGS]

OR

[INCLUDE IF CONTRACTOR PERFORMS PRELIMINARY SERVICES AND PARTIES AMEND FOR GPC]: IF THE PARTIES AGREE TO A GUARANTEED PROJECT COST AND AMEND THE CONTRACT, THE PARTIES SHALL ALSO AMEND THIS EXHIBIT AND INCLUDE THE PLANS, TECHNICAL SPECIFICATIONS, AND DRAWINGS FOR THE PROJECT PURSUANT TO THE CONTRACT.

**EXHIBIT K
TO FACILITIES LEASE**

REVISIONS TO CONTRACT DOCUMENTS

[MUST BE REVISED / SPECIFIED FOR EACH PROJECT]

FACILITIES LEASE

Section 3.4 (Operating School): The phasing plan shall be as follows:

- _____
- _____
- _____

Section 3.6 (No Work During Student Testing): The following dates and times apply to this section:

- Each January: Two (2) days (Finals)
- Each March: Two (2) days (CAHSEE)
- Each June: Two (2) days (Finals)
- Each April - May: Ten (10) days (STAR and AP)

EXHIBIT D TO FACILITIES LEASE

Section 6.2.1 [Staffing Requirement]: The minimum staffing for the Project shall be a competent:

- Project Manager,
- Full-time Construction Superintendent on each active component/project,
- Project Engineer, and
- Project Administrator

Contractor shall provide with its proposal the name and resume for each specific individual that it is proposing for each position. Those persons shall be made available for interviews with the District, if requested.

Section 7.3 Bidding for Subcontractor Work

7.3.1 CONTRACTOR SHALL SOLICIT AND PROCURE SUBCONTRACTORS PURSUANT TO THE SUBCONTRACTOR PROCUREMENT PROCESS ATTACHED TO THE FACILITIES LEASE AS EXHIBIT H.

7.3.2 Contractor agrees and acknowledges that the Subcontractor Procurement Process is integral to the Parties negotiating in good faith to agree upon a GMP. If Contractor fails to comply with any of its obligations to procure Subcontractors in the Contract Documents, it will be considered a material breach and Default of the Facilities Lease, and the District shall have the right to terminate the Facilities Lease.

Article 10 – CONTRACTOR’S SUBMITTALS AND SCHEDULES

Item	Description	Due Date
Construction Schedule	Must be in Microsoft Project or Primavera or Equivalent	Within 30 days of District’s Notice to Proceed.
Schedule of Values	With all the detail as required in	Prior to the District’s

	Exhibit D.	approval of the Contractor's first Application for Tenant Improvement Payment
Shop Drawings		Within 30 days of District's Notice to Proceed.
Safety Plan		Within 30 days of District's Notice to Proceed.
Complete Subcontractor List		Within 30 days of District's Notice to Proceed.
Logistics Plan		Within 30 days of District's Notice to Proceed.

Section 15.1.1.4: The number of days that must be exceeded to claim extra time for "Adverse Weather":

[ALTERNATIVELY: THE DISTRICT AND CONTRACTOR MAY NEGOTIATE A CUMULATIVE NUMBER OF DAYS FOR THE DURATION OF THE PROJECT.]

January	<u>7</u>	July	<u>0</u>
February	<u>7</u>	August	<u>0</u>
March	<u>4</u>	September	<u>0</u>
April	<u>3</u>	October	<u>2</u>
May	<u>1</u>	November	<u>2</u>
June	<u>1</u>	December	<u>2</u>

END OF DOCUMENT

**EXHIBIT L
TO FACILITIES LEASE**

AGREEMENT FOR PRELIMINARY SERVICES

This Agreement for Preliminary Services ("**Agreement**") dated _____, 20_____
("**Effective Date**"), is made and entered into by and between the **Alameda Unified School District** ("**District**") and
@Contractor ("**Contractor**") (together, the "**Parties**").

WHEREAS, the District's Governing Board, in order to enable the District to utilize the lease-leaseback delivery method for future construction projects, adopted procedures for a fair and impartial solicitation process to evaluate qualifications and proposals to determine which proposer provides the "best value" pursuant to Education Code section 17406(a)(2) ("**Lease-Leaseback Procedures**"); and

WHEREAS, Education Code section 17406(a)(1) permits the District to utilize the lease-leaseback delivery method to enter into a lease whereby the District leases the project site to the contractor to construct the project, and the contractor then leases the project site back to the District; and

WHEREAS, prior to entering into the lease to construct the project, Education Code section 17406(b)(1) permits the District to enter into a contract for the performance of preliminary services before the Division of the State Architect ("**DSA**") approves the plans and specifications for a project so long as the contractor does not perform any services for which a contractor's license is required; and

WHEREAS, consistent with the Lease-Leaseback Procedures, the District issued a request for qualifications and proposals ("**RFQ/P**") to solicit proposals from qualified firms to perform both preliminary services and construction services for the District's **@Project Name** ("**Project**"), and through the RFQ/P the District intended to award both the performance of preliminary phase services and construction phases services to the successful contractor; and

WHEREAS, after receiving and scoring the proposals, the District determined that the Contractor presented the District the "best value" to the District and the District's Governing Board awarded the Project to the Contractor; and

WHEREAS, the District seeks to have the Contractor perform preliminary services as more fully described in **Attachment A** attached hereto ("**Preliminary Services**") pursuant to Education Code section 17406(b)(1), and the Contractor represents that it is able and qualified to perform Preliminary Services for the Lease-Leaseback Project prior to the Contractor providing construction phase services; and

WHEREAS, after the Contractor performs Preliminary Services, the Parties acknowledge that Contractor shall procure subcontractors, propose a Guaranteed Maximum Price / Guaranteed Project Cost ("**GMP**" or "**GPC**"), and the Parties shall enter into a Site Lease and Facilities Lease for the construction of the Lease-Leaseback Project based on the Contractor's response to the RFQ/P.

AGREEMENT

NOW, THEREFORE, for good and sufficient consideration, receipt of which is acknowledged, the Parties agree as follows:

1. **Services.** The Contractor shall provide the services as described in **Attachment A**, attached hereto and incorporated herein by this reference ("**Services**" or "**Work**"). The scope of services will generally consist of the following:

Contractor shall perform Preliminary Services for the Project upon the District's issuance of a Notice to Proceed consistent with the Schedule.

- 1.1. The Services shall be performed at _____ School, _____, as further described in the Scope of Work for Preliminary Services attached hereto as **Attachment A ("Project")**.
2. **Term.** Unless terminated or otherwise cancelled as permitted herein, the term of this Agreement shall be for the duration of the Services provided under this Agreement consistent with the Schedule.
- 2.1. **Notice to Proceed.** Within a reasonable time after the Parties execute this Agreement, the District shall issue a Notice to Proceed to Contractor at which time Contractor shall commence the performance of the Services.
- 2.2. **Schedule.** The schedule for the Preliminary Services is as follows ("**Schedule**"):
- 2.2.1. Contractor shall commence the Preliminary Services on or before **[Date]**, and
- 2.2.2. Contractor shall complete the Preliminary Services on or before **[Date]**.
3. **One Project.** The Parties agree and acknowledge, consistent with the RFQ/P and relevant law, that upon the District's award to the Contractor of the Lease-Leaseback Project, the Parties intended the Contractor to perform Preliminary Services and construction services for the Lease-Leaseback Project as one continuous project, and, except insofar as the Parties cannot agree on a GPC for the Lease-Leaseback Project at the conclusion of Preliminary Services, the District intends, and always has intended, for the Contractor to construct the Lease-Leaseback Project.
4. **Submittal of Documents.** The Contractor shall not commence the Work under this Agreement until the Contractor has submitted and the District has approved the certificate(s) and affidavit(s), and the endorsement(s) of insurance required as indicated below:
- _____ X Signed Agreement
- _____ X Workers' Compensation Certification
- _____ X Fingerprinting/Criminal Background Investigation Certification
- _____ X Insurance Certificates and Endorsements
- _____ X W-9 Form
- _____ Bonds (as required or requested by District)
5. **Compensation.** The District shall pay Contractor for Contractor's performance of Preliminary Services a total fee **not to exceed** _____ Dollars (\$ _____) based on the amount of Work satisfactorily performed and approved by the District pursuant to the scope and provisions in **Attachment A** attached hereto and as indicated herein ("**Fee**"):

[BY SCOPE]

Item	Amount
General Services	\$ _____
Review of Design Documents	\$ _____
Value Engineering	\$ _____
Constructability Review	\$ _____
Confirm Modifications to Design Drawings	\$ _____
Budget of Project Costs	\$ _____
Construction Schedule and Phasing Plan	\$ _____
Construction Planning and Bidding	\$ _____
Total	\$ _____

[MONTHLY FEE OPTION]

Month	Fee
January	\$ _____
February	\$ _____
March	\$ _____
April	\$ _____
May	\$ _____
June	\$ _____
July	\$ _____
August	\$ _____
September	\$ _____
October	\$ _____
November	\$ _____
December	\$ _____
Etc.	\$ _____

[HOURLY FEE OPTION]

Job Title	Hourly Rate
Principal in Charge	\$ _____
Director	\$ _____
Consultant(s)	\$ _____
Administrative Personnel	\$ _____
Other	\$ _____
Other	\$ _____

- 5.1. The Fee includes 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 Lease-Leaseback Project, Plans and Specifications, review and preparation of necessary documentation relating to the development of the Lease-Leaseback 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.
- 5.2. The Contractor shall submit a monthly itemized statement of Service charges and expenses to the District on the fifth (5th) day of each month. The itemized statement shall reflect the hours spent, or scopes of work performed, by the Contractor in performing its Services, and, if applicable, the statements shall reflect expenses and materials. The itemized statement shall show the days and hours worked each workday Contractor performs Services for the previous month. District will permit a one (1) month grace period beyond this time for the Contractor to submit its invoice for a particular month's work. No amounts shall be due or owing to the Contractor if it fails to submit an invoice to the District at or before the end of that grace period.
- 5.3. Payment for the Work shall be made for all undisputed amounts in monthly installment payments within forty five (45) days after the Contractor submits an itemized statement to the District for Work actually completed and after the District's written approval of the Work, or the portion of the Work for which payment is to be made.
6. **Expenses.** District shall not be liable to Contractor for any costs or expenses paid or incurred by Contractor in performing the Services, except as expressly provided for in this Agreement.

7. **Independent Contractor.** Contractor, in the performance of this Agreement, shall be and act as an independent contractor. Contractor understands and agrees that it and all of its employees shall not be considered officers, employees, agents, partner, or joint venture of the District, and are not entitled to benefits of any kind or nature normally provided employees of the District and/or to which District's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker's Compensation. Contractor shall assume full responsibility for payment of all federal, state and local taxes or contributions, including unemployment insurance, social security and income taxes with respect to Contractor's employees. In the performance of the work herein contemplated, Contractor is an independent contractor or business entity, with the sole authority for controlling and directing the performance of the details of Contractor's Work, District being interested only in the results obtained.
8. **Contractor and Subcontractor Registration and Compliance.**
- 8.1. Contractor acknowledges that, for purposes of Labor Code section 1725.5, all or some of the Work is a public work to which Labor Code section 1771 applies and that the Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. Contractor shall comply with Labor Code section 1725.5, including without limitation the registration requirements for itself and its subcontractors. Contractor represents that all of its subcontractors are registered pursuant to Labor Code section 1725.5.
- 8.2. Labor Code section 1771.1(a) states the following:
- "A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work Contractor to Section 1725.5 at the time the contract is awarded."
- 8.3. Contractor shall comply with the registration and compliance monitoring provisions of Labor Code section 1771.4, including furnishing its CPRs to the Labor Commissioner of California and complying with any applicable enforcement by the Department of Industrial Relations.
- 8.4. Contractor shall post job site notices, as required by law, including without limitation Labor Code section 1771.4.
- 8.5. Contractor shall comply with all requirements of Labor Code section 1771.4, except the requirements that are exempted by the Labor Commissioner for the Project.
9. **Designated Representatives.** Contractor shall coordinate with District personnel and/or its designated representatives as may be requested and desirable, including with other professionals employed by the District for the design, coordination or management of other work related to the Project.
10. **Materials.** Contractor shall furnish, at its own expense, all labor, materials, equipment, supplies and other items necessary to complete the services to be provided pursuant to this Agreement, except as expressly provided for in this Agreement.
11. **Performance of Services.**

11.1. Standard of Care.

11.1.1. Contractor represents that Contractor has the qualifications and ability to perform the Services in a professional manner, without the advice, control or supervision of District. Contractor's Services will be performed, findings obtained, reports and recommendations prepared in accordance with generally and currently accepted principles and practices of its profession for services to California school districts. Contractor's Services will be performed with due care and in accordance with applicable law, code, rule, regulation, and/or ordinance.

11.1.2. Contractor hereby represents, to the extent applicable, that it possesses the necessary professional capabilities, qualifications, licenses, skilled personnel, experience, expertise, and financial resources, and it has available and will provide the necessary equipment, materials, tools, and facilities to perform the Services in an efficient, professional, and timely manner in accordance with the terms and conditions of the Agreement.

11.1.3. Contractor shall be responsible for the professional quality, technical accuracy, completeness, and coordination of the Services, and Contractor understands that the District relies upon such professional quality, accuracy, completeness, and coordination by Contractor in performing the Services.

11.1.4. Contractor shall ensure that any individual performing work under the Agreement requiring a California license shall possess the appropriate license required by the State of California. All personnel shall have sufficient skill and experience to perform the work assigned to them.

11.2. **Meetings.** In addition to all public hearings and meetings, Contractor agrees to participate in coordination meetings to discuss District strategies, timetables, implementations of Services, and any other issues deemed relevant to the Project.

11.3. District Approval.

11.3.1. The District has the right to inspect and supervise to secure satisfactory completion of the Services.

11.3.2. Prior to any documents being made public, Contractor shall provide in draft form to District staff and District legal counsel, all documents that it or its subcontractors prepare.

12. Information.

12.1. **Furnished by District.** Upon request by Contractor, District shall furnish Contractor any information and documents readily available to District that the Contractor determines may be of use to the Contractor in the performance of the Services. District shall rely upon Contractor to determine which information and documents may be of use to the Contractor in performance of the Services. District makes no representations with respect to the reliability, accuracy, or completeness of any information or documents furnished by the District. Contractor shall determine if it is appropriate to rely on the District furnished information or documents. Contractor shall determine if clarification, additional information, or additional data is needed, and if so, to seek it out.

12.2. **Furnished by Others.** Contractor is to obtain, utilizing its own personnel, any required information that has been developed by other public or private entities that are not under contract to District. Contractor shall determine if it is appropriate to rely on the information or data developed by these other public or private entities. Contractor shall determine if clarification, additional information, or additional data is needed.

13. **Originality of Services.** Except as to standard generic details, Contractor agrees that all technologies, formulae, procedures, processes, methods, writings, ideas, dialogue, compositions, recordings, teleplays and video productions prepared for, written for, or submitted to the District and/or used in connection with this Agreement, shall be wholly original to Contractor and shall not be copied in whole or in part from any other source, except that submitted to Contractor by District as a basis for such services.
14. **Copyright/Trademark/Patent.** Contractor understands and agrees that all matters produced under this Agreement shall become the property of District and cannot be used without District's express written permission. District shall have all right, title and interest in said matters, including the right to secure and maintain the copyright, trademark and/or patent of said matter in the name of the District. Contractor consents to use of Contractor's name in conjunction with the sale, use, performance and distribution of the matters, for any purpose and in any medium.
15. **Audit.** Contractor shall establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business operations of Contractor transacted under this Agreement. Contractor shall retain these books, records, and systems of account during the Term of this Agreement and for five (5) years thereafter. Contractor shall permit the District, its agent, other representatives, or an independent auditor to audit, examine, and make excerpts, copies, and transcripts from all books and records, and to make audit(s) of all billing statements, invoices, records, and other data related to the Services covered by this Agreement. Audit(s) may be performed at any time, provided that the District shall give reasonable prior notice to Contractor and shall conduct audit(s) during Contractor's normal business hours, unless Contractor otherwise consents. For a period of three (3) years after final payment under this Agreement, all expenditures of public funds in excess of ten thousand dollars (\$10,000) shall be subject to examination and audit by the State Auditor. The audit shall be confined to those matters connected with the performance of this Agreement, including, but not limited to, the costs of administering the Agreement.
16. **Termination.**
- 16.1. **Without Cause by District.** District may, at any time, with or without reason, terminate this Agreement and compensate Contractor only for the Services satisfactorily rendered to the date of termination. Written notice by District shall be sufficient to stop further performance of Services by Contractor. Notice shall be deemed given when received by the Contractor or no later than three (3) days after the day the notice was mailed, whichever is sooner.
- 16.2. **Without Cause by Contractor.** Contractor cannot terminate this Agreement without cause.
- 16.3. **With Cause by District.** District may terminate this Agreement upon giving of written notice of intention to terminate for cause. Cause shall include:
- 16.3.1. material violation of this Agreement by the Contractor; or
- 16.3.2. any act by Contractor exposing the District to liability to others for personal injury or property damage; or
- 16.3.3. Contractor is adjudged a bankrupt, Contractor makes a general assignment for the benefit of creditors or a receiver is appointed on account of Contractor's insolvency.

Written notice by District shall contain the reasons for such intention to terminate and unless within three (3) calendar days after that notice the condition or violation shall cease, or satisfactory arrangements for the correction thereof be made, this Agreement shall upon the expiration of the three (3) calendar days cease and terminate. In the event of this termination, the District may secure the Services from another Contractor. If the expense, fees, and/or costs to the District exceeds the cost of providing the Services pursuant to this Agreement, the Contractor shall immediately pay the excess

expense, fees, and/or costs to the District upon the receipt of the District's notice of these expense, fees, and/or costs. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to District.

- 16.4. **With Cause by Contractor.** Contractor may only terminate this Agreement after giving written notice of intention to terminate for cause and the expiration of the time to cure. Cause shall only include:

16.4.1. Material violation of this Agreement by the District, or

16.4.2. Failure of the District to timely pay undisputed Contractor invoices.

Written notice by Contractor shall contain the reasons for such intention to terminate and unless within thirty (30) calendar days after that notice the condition or violation shall cease, or satisfactory arrangements for the correction thereof be made, this Agreement shall upon the expiration of the thirty (30) calendar days cease and terminate. During the thirty (30) calendar days the Inspector shall continue providing Services to the District until the Agreement ceases and terminates. In the event of this termination, the District may secure the Services from another Contractor.

- 16.5. **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 which is not Contractor privileged information, as defined by law, or Contractor's personnel information.

17. **Indemnification.** The Contractor shall indemnify, defend with legal counsel reasonably acceptable to the District, keep and hold harmless the District, and their respective board members, officers, representatives, and employees, in both individual and official capacities ("Indemnitees"), against all suits, claims, damages, losses, and expenses, caused by, arising out of, resulting from, or incidental to, the performance of the Work under this Contract by the Contractor or its subcontractors to the full extent allowed by the laws of the State of California, and not to any extent that would render these provisions void or unenforceable, including, without limitation, any such suit, claim, damage, loss, or expense attributable to, without limitation, bodily injury, sickness, disease, death, alleged patent violation or copyright infringement, or to injury to or destruction of tangible property, except to the extent caused by the negligence or willful misconduct of the Indemnitees. This agreement and obligation of the Contractor shall not be construed to negate, abridge, or otherwise reduce any right or obligation of indemnity that would otherwise exist as to any party or person described herein.

18. **Insurance.**

- 18.1. The Contractor shall procure and maintain at all times it performs any portion of the Services the following insurance with minimum limits equal to the amount indicated below.

18.1.1. **Commercial General Liability and Automobile Liability Insurance.** Commercial General Liability Insurance and Any Auto Automobile Liability Insurance that shall protect the Contractor, the District, and the State from all claims of bodily injury, property damage, personal injury, death, advertising injury, and medical payments arising performing any portion of the Services. (Form CG 0001 and CA 0001, or forms substantially similar, if approved by the District.)

18.1.2. **Workers' Compensation and Employers' Liability Insurance.** Workers' Compensation Insurance and Employers' Liability Insurance for all of its employees performing any portion of

the Services. In accordance with provisions of section 3700 of the California Labor Code, the Contractor shall be required to secure workers' compensation coverage for its employees. If any class of employee or employees engaged in performing any portion of the Services under this Agreement are not protected under the Workers' Compensation Statute, adequate insurance coverage for the protection of any employee(s) not otherwise protected must be obtained before any of those employee(s) commence performing any portion of the Services.

18.1.3. Professional Liability (Errors and Omissions). This insurance shall cover the Contractor and his/her subcontractors(s) for two million dollars (\$2,000,000) aggregate limit subject to no more than twenty-five thousand dollars (\$25,000) per claim deductible, coverage to continue through completion of construction plus two years thereafter. The policy must contain terms or endorsements extending coverage that requires the insurer to defend and indemnify for acts which happen before the effective date of the policy provided the claim is first made during the policy period.

Type of Coverage	Minimum Requirement
Commercial General Liability Insurance , including Bodily Injury, Personal Injury, Property Damage, Advertising Injury, and Medical Payments	
Each Occurrence	\$ 1,000,000
General Aggregate	\$ 2,000,000
Automobile Liability Insurance - Any Auto	
Each Occurrence	\$ 1,000,000
Professional Liability	\$ 2,000,000
Workers Compensation	Statutory Limits
Employer's Liability	\$ 1,000,000

18.2. Proof of Carriage of Insurance. The Contractor shall not commence performing any portion of the Services until all required insurance has been obtained and certificates indicating the required coverage have been delivered in duplicate to the District and approved by the District. Certificates and insurance policies shall include the following:

18.2.1. A clause stating: "This policy shall not be canceled or reduced in required limits of liability or amounts of insurance until notice has been mailed to the District, stating date of cancellation or reduction. Date of cancellation or reduction shall not be less than thirty (30) days after date of mailing notice."

18.2.2. Language stating in particular those insured, extent of insurance, location and operation to which insurance applies, expiration date, to whom cancellation and reduction notice will be sent, and length of notice period.

18.2.3. An endorsement stating that the District and the State and their agents, representatives, employees, trustees, officers, consultants, and volunteers ("Additional Insureds") are named Additional Insureds under all policies except Workers' Compensation Insurance, Professional Liability, and Employers' Liability Insurance. The coverage shall contain no special limitations on the scope of protection afforded to the Additional Insureds. An endorsement shall also state that Contractor's insurance policies shall be primary to any insurance or self-insurance maintained by District.

18.2.4. All policies except the Professional Liability Policy shall be written on an occurrence form.

18.3. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no

less than A: VII, unless otherwise acceptable to the District.

19. **Assignment.** The obligations and liabilities of the Contractor pursuant to this Agreement shall not be assigned voluntarily by the Contractor nor assigned by operation of law, without express written consent of the District.
20. **Binding Contract.** This Agreement shall be binding upon the Parties hereto and upon their successors and assigns and shall inure to the benefit of the Parties and their successors and assigns.
21. **Compliance with Laws.** Contractor shall observe and comply with all rules and regulations of the governing board of the District and all federal, state, and local laws, ordinances and regulations. Contractor shall give all notices required by any law, ordinance, rule and regulation bearing on conduct of the Work as indicated or specified. If Contractor observes that any of the Work required by this Agreement is at variance with any such laws, ordinance, rules or regulations, Contractor shall notify the District, in writing, and, at the sole option of the District, any necessary changes to the scope of the Work shall be made and this Agreement shall be appropriately amended in writing, or this Agreement shall be terminated effective upon Contractor's receipt of a written termination notice from the District. If Contractor performs any work that is in violation of any laws, ordinances, rules or regulations, without first notifying the District of the violation, Contractor shall bear all costs arising therefrom.
22. **Certificates/Permits/Licenses.** Contractor and all Contractor's employees or agents shall secure and maintain in force such certificates, permits and licenses as are required by law in connection with the furnishing of the Services. Except for any license or permits furnished by District, Contractor shall be fully responsible for identifying and obtaining all necessary licenses and permits for the timely prosecution of the Services.
23. **Anti-Discrimination.** It is the policy of the District that in connection with all work performed under contracts there be no discrimination against any employee engaged in the work because of race, color, ancestry, national origin, religious creed, physical disability, medical condition, marital status, sexual orientation, gender, or age and therefore the Contractor agrees to comply with applicable Federal and California laws including, but not limited to the California Fair Employment and Housing Act beginning with Government Code Section 12900 and District policy. Contractor and each subcontractor shall comply with Chapter 1 of Division 2, Part 7 of the Labor Code, beginning with § 1720, and including §§ 1735, 1777.5 and 1777.6, forbidding discrimination, and §§ 1776, 1777.5 and 1777.6 concerning the employment of apprentices by Contractor or subcontractors. Willful failure to comply may result in penalties, including loss of the right to bid on or receive public works contracts. In addition, the Contractor agrees to require like compliance by all its subcontractor(s).
24. **Fingerprinting of Employees.** The Fingerprinting/Criminal Background Investigation Certification must be completed and attached to this Agreement prior to Contractor's performing of any portion of the Services.
25. **Disabled Veteran Business Enterprises.** Section 17076.11 of the Education Code requires school districts using funds allocated pursuant to the State of California School Facility Program for the construction or modernization of a school building to have a participation goal of at least three percent (3%), per year, of the overall dollar amount expended each year by the school district, for disabled veteran business enterprises (DVBE). In accordance therewith, the Contractor must submit, upon request by District, appropriate documentation to the District identifying the steps the Contractor has taken to solicit DVBE participation in conjunction with this Agreement, if applicable.
26. **Interaction with the Media and Public.** Contractor shall promptly refer all inquiries from the news media or public to District and shall not make any statements to the media or the public relating to the Services. If Contractor receives a complaint from a citizen or the community, Contractor shall promptly inform the District about the complaint.
27. **Taxes.** Contractor shall be liable and solely responsible for paying all required taxes and other obligations, including but not limited to federal and state income taxes and social security taxes payable in connection with

the Services and this Agreement. Contractor agrees to release, indemnify, defend, and hold District harmless from and against any worker's compensation or any tax liability which District may incur to any Federal or State governments with jurisdiction as a consequence of this Agreement. All payments made to Contractor may be reported to the Internal Revenue Service.

28. **No Rights in Third Parties.** This Agreement does not create any rights in, or inure to the benefit of, any third party except as expressly provided herein.
29. **District's Evaluation of Contractor and Contractor's Employees and/or Subcontractors.** The District may evaluate the Contractor in any way the District is entitled pursuant to applicable law. The District's evaluation may include, without limitation:
- 29.1. Requesting that District employee(s) evaluate the Contractor and the Contractor's employees and subcontractors and each of their performance.
- 29.2. Announced and unannounced observance of Contractor, Contractor's employee(s), and/or subcontractor(s).
30. **Limitation of District Liability.** Other than as provided in this Agreement, District's financial obligations under this Agreement shall be limited to the payment of the compensation provided in this Agreement. Notwithstanding any other provision of this Agreement, in no event, shall District be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement for the services performed in connection with this Agreement.
31. **Disputes.** In the event of a dispute between the Parties as to performance of Work, Agreement interpretation, or payment, the Parties shall attempt to resolve the dispute by negotiation and/or mediation, if agreed to by the Parties. Pending resolution of the dispute, Contractor shall neither rescind the Agreement nor stop performing the Services.
32. **Confidentiality.** The Contractor and all Contractor's agents, personnel, employee(s), and/or subcontractors(s) shall maintain the confidentiality of all information received in the course of performing the Services. Contractor understands that student records are confidential and agrees to comply with all state and federal laws concerning the maintenance and disclosure of student records. This requirement to maintain confidentiality shall extend beyond the termination of this Agreement.
33. **Employment with Public Agency.** Contractor, if an employee of another public agency, agrees that Contractor will not receive salary or remuneration, other than vacation pay, as an employee of another public agency for the actual time in which Services are actually being performed pursuant to this Agreement.
34. **Notice.** Any notice required or permitted to be given under this Agreement shall be deemed to have been given, served, and received if given in writing and either personally delivered or sent by overnight delivery service, addressed as follows:

Alameda Unified School District

_____, CA 9_____

ATTN: _____

@Contractor

_____, CA 9_____

ATTN: _____

Any notice personally given shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the business day next following delivery thereof to the overnight delivery service.

35. **Integration/Entire Agreement of Parties.** This Agreement constitutes the entire agreement between the Parties and supersedes all prior discussions, negotiations, and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by both Parties.
36. **California Law.** This Agreement is entered into in California and shall be governed by and the rights, duties and obligations of the Parties, and shall be determined and enforced in accordance with the laws of the State of California. The Parties further agree that any action or proceeding brought to enforce the terms and conditions of this Agreement shall be maintained in the county in which the District's administrative offices are located. Contractor waives any claim or right to remove an action on this Agreement to federal court.
37. **Waiver.** The waiver by either Party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.
38. **Severability.** If any term, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force and effect, and shall not be affected, impaired or invalidated in any way.
39. **Authority to Bind Parties.** Neither Party in the performance of any and all duties under this Agreement, except as otherwise provided in this Agreement, has any authority to bind the other to any agreements or undertakings.
40. **Attorney Fees/Costs.** Should litigation be necessary to enforce any terms or provisions of this Agreement, then each Party shall bear its own litigation and collection expenses, witness fees, court costs and attorney's fees.
41. **Captions and Interpretations.** Paragraph headings in this Agreement are used solely for convenience and shall be wholly disregarded in the construction of this Agreement. No provision of this Agreement shall be interpreted for or against a Party because that Party or its legal representative drafted such provision, and this Agreement shall be construed as if jointly prepared by the Parties.
42. **Calculation of Time.** For the purposes of this Agreement, "days" refers to calendar days unless otherwise specified.
43. **Signature Authority.** Each Party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each Party has been properly authority and empowered to enter into this Agreement.
44. **Counterparts.** This Agreement and all amendments and supplements to it may be executed in counterparts, and all counterparts together shall be construed as one document.
45. **Incorporation of Recitals and Attachments.** The Recitals and each attachment attached hereto are hereby incorporated herein by reference.
46. **Provisions Required by Law Deemed Inserted.** Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein and this Agreement shall be read and enforced as though it were included herein.
47. **Incorporation of RFQ/RFP & Proposal and Interpretation of Documents.** If the Parties enter into this Agreement as a result of a Request for Qualifications and/or a Request for Proposal ("**RFQ/RFP**"), the RFQ/RFP is incorporated into this Agreement, except that if there is any conflict between the RFQ/RFP and any provision of this Agreement, the Agreement shall prevail.

IN WITNESS WHEREOF, the Parties have accepted and agreed to this Agreement, as of the Effective Date, and have directed and authorized their respective officers to execute this Agreement:

Alameda Unified School District

@Contractor

Signature: _____

Signature: _____

Print Name: _____

Print Name: _____

Print Title: _____

Print Title: _____

Form Agreement

Attachment A to Agreement for Preliminary Services

Scope of 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 **four (4)** times: 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 Contract Document 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 Contract Documents.

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.

- 1.6. **Bidding for Subcontractor Work.** CONTRACTOR SHALL SOLICIT AND PROCURE SUBCONTRACTORS PURSUANT TO THE SUBCONTRACTOR PROCUREMENT PROCESS ATTACHED TO THE FACILITIES LEASE AS EXHIBIT H.
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.

**EXHIBIT M
TO FACILITIES LEASE
PROJECT LABOR AGREEMENT**

Form Agreement

**EXHIBIT N
TO FACILITIES LEASE**

FEDERAL CONTRACTING REQUIREMENTS

The following are contract provisions mandated by federal law. To the extent that any provision in this Exhibit N conflicts with any other portion of the Contract, the provisions of this Exhibit N shall control over any other conflicting provision.

- 1. Federal Equal Opportunity Employment.** Because this is a “federally assisted construction contract” as defined in 41 C.F.R .Part 60-1.3, the following contract clause is inserted into this Contract and must be complied with by Contractor:

During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and sub contractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract,

loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

Form Agreement

2. Compliance with Davis-Bacon Act.

- 2.1. All transactions related to this Contract shall be done comply with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable. Contractor shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable.
- 2.2. Contractor and Subcontractor are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.
- 2.3. Additionally, Contractor and Subcontractor are required to pay wages not less than once a week.
- 2.4. By entering into the Contract, Contractor has accepted the wage determination(s) applicable to the Work, and agrees to comply with the wage determination(s).

3. Copeland "Anti-Kickback" Act.

- 3.1. Contractor must comply with the requirements of the Copeland "Anti-Kickback" Act (18 USC 874 and 40 USC 3145), as supplemented by Department of Labor regulation 29 CFR part 3. Contractor and Subcontractors are prohibited from inducing, by any means, any person employed on the project to give up any part of the compensation to which the employee is entitled. The Contractor and each Subcontractor must submit to the District, a weekly statement on the wages paid to each employee performing on covered work during the prior week.
- 3.2. Contractor and Subcontractors shall insert in any subcontracts the clause above, and also a clause requiring Subcontractors to include these clauses in any lower tier subcontracts. Contractor shall be responsible for the compliance by any Subcontractor or lower tier subcontractor with all of these clauses.
- 3.3. A breach of this "Copeland 'Anti-Kickback' Act" or any of the above-referenced clauses shall be, in the District discretion, grounds for termination for cause of the Contract, and for debarment as a contractor or subcontractor as provided in 29 C.F.R. § 5.12.

4. Contract Work Hours and Safety Standards. Consistent with 29 C.F.R. § 5.5(b), the following contract clause is inserted into this Contract and must be complied with by Contractor:

(1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at

the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)

(A) *The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:*

(1) *The work to be performed by the classification requested is not performed by a classification in the wage determination; and*

(2) *The classification is utilized in the area by the construction industry; and*

(3) *The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.*

(B) *If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.*

(C) *In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.*

(D) *The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.*

(iii) *Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.*

(iv) *If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated*

in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding. *The District and/or appropriate federal agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the District and/or appropriate federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.*

(3) Payrolls and basic records.

(i) *Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.*

(ii)

(A) *The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the appropriate federal agency if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the appropriate federal agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.*

Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the (write in name of appropriate federal agency) if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit them to the applicant, sponsor, or owner, as the case may be, for transmission to the appropriate federal agency, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the appropriate federal agency or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees –

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training

Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the appropriate federal agency may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(b) Contract Work Hours and Safety Standards Act. The Agency Head shall cause or require the contracting officer to insert the following clauses set forth in paragraphs (b)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by § 5.5(a) or § 4.6 of part 4 of this title. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with

respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. *The District or appropriate federal agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.*

(4) Subcontracts. *The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.*

(c) *In addition to the clauses contained in paragraph (b), in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in § 5.1, the Agency Head shall cause or require the contracting officer to insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Agency Head shall cause or require the contracting officer to insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.*

5. **Rights to Inventions.** To the extent applicable to this Contract, contracts or agreements that include the performance of experimental, developmental, or research work must provide for the rights of the Federal Government and the Owner in any resulting invention as established by 37 CFR part 401, Rights to Inventions Made by Non-profit Organizations and Small Business Firms under Government Grants, Contracts, and Cooperative Agreements. This contract incorporates by reference the patent and inventions rights as specified within 37 CFR §401.14. Contractor must include this requirement in all sub-tier contracts involving experimental, developmental, or research work.
6. **Clean Air Act/Federal Water Pollution Control Act.**
 - 6.1. Contractor agrees to comply with all applicable standards, orders, and regulations issued pursuant to the Clean Air Act (42 USC § 7401 et seq.), and) and the Federal Water Pollution Control Act (33 USC § 1251 et seq.), as each may be amended from time to time.
 - 6.2. The Contractor agrees to report any violation to the District and upon discovery, or upon the occurrence of an event that demonstrates that Contractor should have discovered such violation, and understands

that and agrees that the District will report each violation as required to the appropriate federal agency(ies), including, without limitation, the Environmental Protection Agency Regional Office.

6.3. Contractor must include this requirement in all subcontracts that exceeds \$150,000.

7. Debarment and Suspension.

7.1. This Contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. Contractor is required to verify that none of the Contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

7.2. Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

7.3. This certification is a material representation of fact relied upon by the District. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the District, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

7.4. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

8. **Byrd Anti-Lobbying Amendment.** Contractor certifies to the District that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Contractor also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Contractor shall require that each Subcontractor and lower tier subcontractor below it require this certification and the certification executed by the Contractor in the Contract Documents, be included in its contract(s), and to make the required disclosures. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the District.

9. **Procurement of Recovered Materials.** Contractor and Subcontractor agree to comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, and the regulatory provisions of 40 C.F.R Part 247. In the performance of this Contract, and to the extent practicable, the Contractor and Subcontractors are to use products containing the highest percentage of recovered materials for items designated by the Environmental Protection Agency (EPA) under 40 CFR Part 247 whenever:

9.1. The contract requires procurement of \$10,000 or more of a designated item during the fiscal year; or

9.2. The contractor has procured \$10,000 or more of a designated item using Federal funding during the previous fiscal year.

The list of EPA-designated items is available at www.epa.gov/smm/comprehensive-procurement-guidelines-construction-products.

Section 6002(c) establishes exceptions to the preference for recovery of EPA-designated products if the contractor can demonstrate the item is:

- 9.3. Not reasonably available within a timeframe providing for compliance with the contract performance schedule;
- 9.4. Fails to meet reasonable contract performance requirements; or
- 9.5. Is only available at an unreasonable price.

10. Domestic Preference for Procurements. Contractor shall comply with the following requirements as required by 2 C.F.R. § 200.322:

- 10.1. Contractor, as appropriate and constituent with the law, and the greatest extent practicable, shall prefer the purchase, acquisition, or use of goods, products or materials, produced in the United States, including, without limitation: iron, aluminum, steel, cement, and other manufactured products.
- 10.2. "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
- 10.3. "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.
- 10.4. Contractor shall bind its Subcontractors to this clause, and shall require that this clause be placed in Subcontractors' contracts with lower tier subcontractors.

ALAMEDA UNIFIED SCHOOL DISTRICT PROJECT LABOR AGREEMENT

PREAMBLE

The purpose of this Agreement is to promote efficiency of construction operations during the Alameda Unified School District Measure I New Construction and Modernization Projects ("Projects") as defined herein, and to provide for peaceful settlement of labor disputes and grievances without strikes or lockouts, thereby promoting the public interest in assuring the timely and economical completion of the Projects, while also helping to increase training and employment opportunities for the District's students in the construction trades through apprenticeship and pre-apprentice programs as the students graduate from the District's schools.

The relevant skilled work force requirements described in Education Code section 17407.5 as that statute relates to the commitment that a skilled and trained workforce will be used to perform the Project(s), is deemed to have been established by any Contractor becoming a signatory to this Agreement.

RECITALS

WHEREAS, the timely and successful completion of the Projects is of the utmost importance to the Alameda Unified School District ("District") to meet the educational needs of the District's students and to avoid increased costs resulting from delays in construction; and

WHEREAS, large numbers of workers of various skills will be required in the performance of the construction work, including those to be represented by the unions affiliated with the Building and Construction Trades Council of Alameda County ("Unions") and any other labor organization which is signatory to this Agreement employed by contractors and subcontractors who are signatory to this Agreement; and

WHEREAS, it is recognized that on projects of this magnitude with multiple contractors and bargaining units on the job site at the same time over an extended period of time, the potential for work disruption is substantial without an overriding commitment to maintain continuity of work; and

WHEREAS, the interests of the general public, the District, the Unions and Contractor/Employer(s) would be best served if the construction work proceeded in an orderly manner without disruption because of strikes, sympathy strikes, work stoppages, picketing, lockouts, slowdowns or other interferences with work; and

WHEREAS, the Contractor/Employers and the Unions desire to mutually establish and stabilize wages, hours and working conditions for the workers employed on the Projects by the Contractor/Employer(s), and further, to encourage close cooperation among the Contractor/Employer(s) and the Union(s) to the end that a satisfactory, continuous and harmonious relationship will exist among the parties to this Agreement; and

WHEREAS, the Agreement is not intended to replace, interfere, abrogate, diminish or modify existing local or national collective bargaining Agreements in effect during the duration of the Projects, insofar as a legally binding Agreement exists between the Contractor/Employer(s) and the affected Union(s) except to the extent that the provisions of this Agreement are inconsistent with said collective bargaining Agreements, in which event, the provisions of this Agreement shall prevail; and

WHEREAS, the contracts for construction work on the Projects will be awarded in accordance with the applicable provisions of the Public Contract Code, Education Code and other applicable California law; and

WHEREAS, the funding for the construction of the Projects will come from Measure I, passed by the Alameda residents, and paid for by the Measure I special tax on the properties owned by Alameda residents, in contrast to typical California school projects, which are funded through a balance of local and State funds; and

WHEREAS, the District has the absolute right to select the lowest responsive and responsible bidder for the award of the construction contracts on the Projects, or to reject all bid proposals, or to use other legal project delivery methodologies; and

WHEREAS, the District places high priority upon the development of comprehensive programs for the recruitment, training and employment of local area residents and has identified the need to prepare its students for lifelong careers and continuing education, recognizing the ability of local apprenticeship programs to provide meaningful and sustainable careers in the building and construction industry; and

WHEREAS, the parties signatory to this Agreement pledge their full good faith and trust to work towards a mutually satisfactory completion of the Projects;

NOW, THEREFORE, it is agreed between and among the parties hereto, as follows:

ARTICLE 1. DEFINITIONS

1.1 "Agreement" means this Project Labor Agreement.

1.2 "District" means the Alameda Unified School District, its employees, agents, and administrative staff under its Superintendent.

1.3 "Completion" of work on a project means that point at which the District has determined that the work to construct the project is in all respects 100% complete and that all contract drawings, warranties, certificates, manuals and data have been submitted and training completed in accordance with the contract documents. Division of State Architect approval is not required for a determining that a project is complete.

1.4 "Contractor/Employer(s)" means any individual, firm, partnership or corporation, or combination thereof, including joint ventures, which is an independent business enterprise, and their successors and assigns, that enters into a contract with the District not excluded in this

Agreement with respect to the construction of any part of the Projects under contract terms and conditions approved by the District and which incorporate the Agreement, and any of its contractors or subcontractors of any tier.

1.5 "Construction Contracts" means the public works contracts including design-bid, design-build, lease-leaseback or other contracts not excluded in this Agreement which will be signed by the District and which are necessary to complete the Projects.

1.6 "Projects" is defined to include all phases of the construction of new facilities and demolition, upgrading and repair to all existing facilities covered in construction contracts executed by the District and that are covered by this Agreement in Section 2.2.

1.7 "Union" or "Unions" means the Building and Construction Trades Council of Alameda County, AFL-CIO ("Council") and any affiliated labor organization signatory to this Agreement, acting in their own behalf and on behalf of their respective affiliates and member organizations whose names are subscribed hereto and who have through their officers executed this Agreement ("Signatory Unions").

1.8 "Project Manager" means the person(s) or business entity(ies) designated by the District to oversee all phases of construction on the Projects and to oversee the implementation of this Agreement and who works under the guidance of the District's Authorized Representative.

1.9 "Facilities Officer" means the Facilities Officer for the Alameda Unified School District.

1.10 "Master Agreement" or "Schedule A" means the Master Collective Bargaining Agreement of each craft Union signatory hereto.

1.11 "Alameda Resident" for purposes of this Agreement means any individual who at any time during the Projects' construction can certify through a utility bill, or other similar means acceptable to the parties to this Agreement, that the individual resided within either the boundaries of the Alameda Unified School District or the Alameda City Limits both on the date of such certification and the effective date of this Agreement.

1.12 "District Graduate" is a person who has graduated from the Alameda Unified School District.

1.13 "First Period Apprentice" is a first period apprentice who is enrolled in a State of California approved apprenticeship program that is a joint labor-management apprentice program.

1.14 "General Contractor" means the entity with overall project schedule responsibility, such as a General Contractor, Construction Manager, Lease-Leaseback Developer, Prime Contractor, Design Build entity, etc.

1.15 "Allocated" regarding project funding means the point in time in which a project is defined enough to where a preliminary budget is created and established in the Measure I program budget tracking system managed by the Program Manager.

ARTICLE 2.
SCOPE OF AGREEMENT

2.1 Parties: The Agreement shall apply and is limited to all Contractors/Employer(s) performing construction contracts on the Projects, the District and the Building and Construction Trades Council of Alameda County, AFL-CIO ("Council") and any affiliated labor organization signatory to this Agreement, acting in their own behalf and on behalf of their respective affiliates and member organizations whose names are subscribed hereto and who have through their officers executed this Agreement ("Signatory Unions"). It is agreed that liability under this Agreement is several and not joint.

2.2 Project Description:

2.2.1 The District will apply the Agreement as a contract specification to the award of construction contracts identified by the District as Measure I Projects, funded in whole or in part by Measure I General Obligation bonds, and which were let for bid after the date of this Agreement. Construction projects include those that provide for the construction of new facilities, the demolition of facilities or the renovation of current facilities.

2.2.2 Excluded Work. However, the Parties acknowledge that the District may exclude, at its discretion, up to five percent (5%) of Measure I Project proceeds for smaller or deferred maintenance construction projects. It is also understood that no single craft's work shall be disproportionality affected by this exclusion. The Unions agree that they will not undertake any strike or work stoppage against a contractor performing work at a District site under this provision. Either Party to the Agreement can call to meet and confer regarding the implementation of this section 2.2.2.

2.3 Project Labor Disputes. All project labor disputes involving the application or interpretation of a Master Agreement to which a signatory Contractor/Employer(s) and a signatory Union are parties shall be resolved pursuant to the resolution procedures of the Master Agreement. All disputes relating to the interpretation or application of the Project Labor Agreement shall be subject to resolution by the grievance arbitration procedure set forth in Article 13.

2.4 Covered Work:

2.4.1 This Agreement covers, without limitation, all on-site construction, demolition, alteration, installation, improvement, painting or repair of buildings, structures, landscaping, temporary fencing and other works and related activities for the Projects that is within the craft jurisdiction of one of the Unions and that is part of the Projects, including, without limitation to the following examples, geotechnical and exploratory drilling, temporary HVAC, pipelines, (including those in linear corridors built to serve the project), pumps, pump stations and modular furniture installation, site preparation, survey work, demolition of existing structures and all construction, demolition or improvements required to be performed as a condition of approval by any public agency. This scope of work includes all soils and materials testing and inspection where such testing and inspection is a classification in which a prevailing wage determination has been published.

2.4.2 This Agreement shall apply to any start-up, calibration, commissioning, performance testing, repair, maintenance, operational revisions to systems and/or subsystems performed on Covered Work after Project Completion unless the covered work is performed by District Employees.

2.4.3 The Projects include work necessary for the Projects and/or in temporary yards or areas adjacent to or dedicated to the Projects, and at any batch plant(s) constructed or used solely to supply materials to the Projects, This Agreement covers all on-site fabrication work over which the District, Contractor(s) or subcontractor(s) possess the right of control (including work done for the Projects in any temporary yard or area established for the Projects.) Additionally, this Agreement covers any off-site work, including fabrication necessary for the Project defined herein, that is covered by a current Schedule "A" Agreement or local addenda to a National Agreement of the applicable Union(s) that is in effect as of the execution date of this Agreement.

2.4.4 The furnishing of supplies, equipment or materials which are stockpiled for later use shall in no case be considered subcontracting. Construction trucking work, such as the delivery of ready-mix, asphalt, aggregate, sand or other fill material which are directly incorporated into the construction process as well as the off-hauling of debris and excess fill, material and/or mud, shall be covered by the terms and conditions of this Agreement, to the fullest extent provided by law and by prevailing wage determinations of the California Department of Industrial Relations ("DIR"). Employers, including brokers, of persons providing construction trucking work shall be required to provide certified payroll records, as required to the District within ten (10) days of written request or as required by the DIR and California law.

2.4.5 The on-site installation or application of all items shall be performed by the craft having jurisdiction over such work; provided, however, it is recognized that installation of specialty items which may be furnished by the District or a Contractor shall be performed by construction persons employed under this Agreement who may be directed by other personnel in a supervisory role; provided, however, in limited circumstances requiring special knowledge of the particular item(s), may be performed by construction persons of the vendor or other companies where necessary to protect a manufacturer's warranty. All work of a specialty nature to be performed by the employees of a vendor or equipment manufacturer necessary to protect the warranty on such equipment shall be identified and discussed at the Pre-job meeting as provided in Article 5 of this Agreement. The issue of whether it is necessary to use construction persons of the vendor or other companies to protect the manufacturer's warranty shall be subject to the grievance and arbitration clause of this Agreement.

2.4.6 It is agreed that the District shall require all Contractors of whatever tier who have been awarded contracts for work covered by this Agreement, to accept and be bound by the terms and conditions of this Project Agreement by executing the **Letter of Assent (Attachment A)** prior to commencing work. The District shall assure compliance with this Agreement by the Contractors. It is further agreed that, where there is a conflict, the terms and conditions of this Project Agreement shall supersede and override terms and conditions of any and all other national, area, or local collective bargaining agreements, except that work covered by this Agreement within the following craft jurisdictions shall be performed under the terms of their National Agreements as follows: the NTL Articles of Agreement, the National Stack/Chimney

Agreement, the National Cooling Tower Agreement, and the National Agreement of Elevator Constructors, and any instrument calibration work and loop checking shall be performed under the terms of the UA/IBEW Joint National Agreement for Instrument and Control Technicians, with the exception that Articles IV, XIII and XIV of this Agreement shall apply to such work. It is understood that this, together with the MLAs, is a self-contained, stand alone, Agreement and that by virtue of having become bound to this Project Agreement, neither the District

2.5 **Exclusions.** The following shall be excluded from the scope of this Agreement.

2.5.1 Work performed by public utilities is not intended to be covered by this Agreement even if such work is funded all or in part by local bond funds.

2.5.2 The Excluded Work identified in section 2.2.2 of this Agreement.

2.5.3 Work, independent of job-site construction work contracts, performed by the District related to the purchase or lease of specialized equipment and work performed by District personnel.

2.5.4 Information Technology and Data Processing Equipment, Materials and Supplies purchased by the District using Measure I Project proceeds.

2.5.5 All employees of the design team or other consultants to the District not performing craft or manual labor within the scope of this Agreement.

2.5.6 Off-site maintenance of leased equipment and onsite supervision of such work.

2.5.7 The Agreement shall not apply to a Contractor/Employer's non-craft executives, managerial employees, engineering employees and supervisors (except those covered by existing building and construction trades collective bargaining Agreements), and office and clerical employees. This Agreement shall not apply to Professional Services so long as the work performed is not subject to Prevailing Wage classifications.

2.5.8 The District shall not be required to comply with this Agreement for any work performed with its own forces as permitted by the Public Contract Code and Education Code.

ARTICLE 3. EFFECT OF AGREEMENT

3.1 By executing the Agreement, the Unions and the District agree to be bound by each and all of the provisions of the Agreement.

3.2 By accepting the award under a Construction Contract for the Projects, whether as contractor or subcontractor, the Contractor/Employer agrees to be bound by each and every provision of the Agreement and agrees that it will evidence its acceptance prior to the commencement of work by executing the Letter of Assent in the form attached hereto as Addendum A.

3.3 At the time that any Contractor/Employer enters into a subcontract with any subcontractor providing for the performance of the Construction Contract, the Contractor/Employer(s) shall provide a copy of this Agreement, as it may from time to time be modified, to said subcontractor and shall require the subcontractor as a part of accepting an award of a construction subcontract to agree in writing to be bound by each and every provision of this Agreement prior to the commencement of work. This Agreement shall only be binding on the signatory parties hereto and shall not apply to the parents, affiliates, subsidiaries, or other ventures of any such party.

ARTICLE 4.

WORK STOPPAGES, STRIKES, SYMPATHY STRIKES AND LOCKOUTS

4.1 The Unions, District and Contractor/Employers covered by the Agreement agree that for the duration of the Projects:

4.1.1 There shall be no strikes, sympathy strikes, work stoppages, picketing, hand billing or otherwise advising the public that a labor dispute exists, or slowdowns of any kind, for any reason, by the Unions or employees employed on the Projects, at the job site of the Projects or at any other facility or construction project of District because of a dispute on the Projects. Disputes arising between the Unions and Contractor/Employers on other District projects are not governed by the terms of the Agreement or this Article.

4.1.2 As to employees employed on the Projects, there shall be no lockout of any kind by a Contractor/Employer covered by the Agreement.

4.1.3 If a Master Agreement expires before the Contractor/Employer completes the performance of the Construction Contract the Union agrees that it will not strike the Contractor/Employer on said contract for work covered under this Agreement and the Union and the Contractor/Employer agree that the expired Master Agreement shall continue in full force and effect for work covered under this Agreement until a new or modified Master Agreement is reached. If the new or modified Master Agreement provides that any terms of the Master Agreement shall be retroactive, the Contractor/Employer agrees to comply with any retroactive terms of the new or modified master collective bargaining Agreement which are applicable to employees who were employed on the projects during the interim with retroactive payment due within seven (7) days of the effective date of the modified Master Agreement.

4.1.4 In the case of nonpayment of wages and trust fund contributions on the Projects, the Union shall give the District and the Contractor/Employer(s) three (3) business day notice of the intent when nonpayment of trust funds has occurred and **three (3) business days'** notice when nonpayment of wages has occurred or when paychecks being tendered to a financial institution normally recognized to honor such paychecks will not honor such paycheck as a result of insufficient funds, of the intent to withhold labor from the Contractor/Employer(s)' or their subcontractor's workforce, during which time the Contractor/Employer shall have the opportunity to correct the default. In this instance, a Union's withholding of labor (but not picketing) from an Contractor/Employer who has failed to pay his/its fringe benefit contributions or failed to meet his/its weekly payroll shall not be considered a violation of this Article. If the District contends that any Union has violated this Article, it will notify in writing (including email)

the Secretary-Treasurer/Business Manager/Senior Executive of the Council and the Senior Executive of the Union, setting forth the facts alleged to violate the Article, prior to instituting the expedited arbitration procedure set forth below. The Council will immediately use his/her best efforts to cause the cessation of any violation of this Article within 24 hours and the leadership of the Union will immediately inform the membership of their obligations under this Article. If, after the expiration of the 24-hour period, the District continues to contend that a Union has violated this article, the District institute the expedited arbitration procedure set forth below. The leadership of the Union will immediately inform the membership of their obligations under this Article.

4.2 Expedited Arbitration: Any party to this Agreement shall institute the following procedure, prior to invoking any other action at law or equity, when a breach of this Article is alleged to have occurred:

4.2.1 A party invoking this procedure shall notify Robert Hirsch, as the permanent arbitrator, or Barry Winograd, as the alternate arbitrator under this procedure. In the event that the permanent arbitrator is unavailable at any time, the alternate will be contacted. If neither is available, then a selection shall be made from the list of arbitrators in Article XIII.. Notice to the arbitrator shall be by the most expeditious means available, with notices by facsimile, email or telephone to the District and the party alleged to be in violation, and to the Council of Alameda County and the involved local Union if a Union is alleged to be in violation.

4.2.2 Upon receipt of said notice, the District shall contact the designated arbitrator, named above or the alternate who will attempt to convene a hearing within twenty-four (24) hours if it is contended the violation still exists. The Arbitrator shall notify the parties by facsimile, email or telephone of the place and time for the hearing. Said hearing shall be completed in one session, which, with appropriate recesses at the arbitrator's discretion, shall not exceed twenty-four (24) hours unless otherwise agreed upon by all parties. A failure of any party to attend said hearings shall not delay the hearing of evidence or the issuance of any award by the arbitrator.

4.2.3 The sole issue at the hearing shall be whether or not a violation of Article 4, Section 4.1 of the Agreement has occurred. The arbitrator shall have no authority to consider any matter of justification, explanation or mitigation of such violation or to award damages, which issue is reserved for court proceedings, if any. The award shall be issued in writing within three (3) hours after the close of the hearing, and may be issued without a written opinion. If any party desires a written opinion, one shall be issued within fifteen (15) days, but its issuance shall not delay compliance with or enforcement of the award. The arbitrator may order cessation of the violation of this Article and other appropriate relief and such award shall be served on all parties by hand or registered mail upon issuance. Should a party found in violation of this Article fail to comply with an Arbitrator's award to cease the violation, the party in violation shall pay to the affected party as liquidated damages the sum of ten thousand dollars (\$10,000.00) per shift for which it failed to comply, or portion thereof, until such violation is ceased. The Arbitrator shall retain jurisdiction to resolve any disputes regarding the liquidated damages claimed under this section.

4.2.4 Such award may be enforced by any Court of competent jurisdiction upon the filing of this Agreement and all other relevant documents referred to above in the following manner. Written notice of the filing of such enforcement proceedings shall be given to the other party. In the proceeding to obtain a temporary order enforcing the arbitrator's award as issued under Section 4.2(4) of this Article, all parties waive the right to a hearing and agree that such proceedings may be ex parte. Such Agreement does not waive any party's right to participate in a hearing for a final order of enforcement. The Court's order or orders enforcing the arbitrator's award shall be served on all parties by hand or delivered by certified mail.

4.2.5 Any rights created by statute or law governing arbitration proceedings inconsistent with the above procedure or which interfere with compliance are waived by the parties.

4.2.6 The fees and expenses of the arbitrator shall be divided equally between the parties.

4.2.7 If, after final order by any Court of competent jurisdiction, the offending party continues to breach the terms of Article 4 of this Agreement, the non-offending party shall have the option to recover monetary damages associated with the breaching party's failure to comply with the Agreement and court order, including but not limited to delay damages and escalation costs.

ARTICLE 5. PRE-CONSTRUCTION CONFERENCE

5.1 Timing: The Project Manager shall convene and conduct a pre-job conference with representatives of all involved Contractors/Employers, who shall be prepared to announce craft assignments and to discuss in detail the scope of work and other issues as set forth below, and the Unions, at a location mutually agreeable to the applicable Council at least 21 calendar days prior to:

5.1.1 The commencement of any Project Work, and

5.1.2 The commencement of Project Work on each subsequently awarded construction contract.

5.2 The conference shall be attended by a representative of each participating Contractor and each affected Union and the Council and District may attend at their discretion.

5.2 The pre-job conference shall include but not be limited to the following subjects:

5.2.1 A listing of each Contractor's scope of work;

5.2.2 The craft assignments;

5.2.3 The estimated number of craft workers required to perform the work;

5.2.4 Transportation arrangements;

5.2.5 The estimated start and completion dates of the work; and

5.2.6 Discussion of pre-fabricated materials.

5.3 Review Meetings: In order to ensure the terms of the PLA are being fulfilled and all concerns pertaining to the Agency, the Unions, and the Contractors are addressed, the Project Manager, General Contractor and Secretary Treasurer of the Council or designated representatives thereof shall meet on a periodic basis during the term of construction.

ARTICLE 6. NO DISCRIMINATION

The Contractor/Employer(s) and Union(s) agree not to engage in any form of discrimination on the ground or because of race, color, creed, national origin, ancestry, age, sex, sexual orientation, disability or Acquired Immune Deficiency Syndrome or AIDS Related Condition (AIDS/ARC), or any other basis made illegal by law against any employee, or applicant for employment, on the Projects.

ARTICLE 7. UNION SECURITY

7.1 The Contractor/Employer(s) recognize the Union(s) as the sole bargaining representative of all craft employees working within the scope of this Agreement.

7.2 All employees who are employed by the Contractor/Employer(s) on the Projects shall, as a condition of employment, on or before the eighth (8th) day of consecutive or cumulative employment on a Construction Contract subject to this Agreement, be responsible for the payment of the applicable monthly working dues and any associated fees uniformly required for union membership in the local union which is signatory to this Agreement. Further, there is nothing in this Agreement that would prevent non-union employees from joining the local union.

7.3 Authorized representatives of the Union(s) shall have access to the Projects whenever work covered by this Agreement is being, has been or will be performed on the Projects.

ARTICLE 8. REFERRAL

8.1 The Union(s) shall be the primary source of all craft labor employed on the Projects. However, in the event that a Contractor/Employer has his/her own Core workforce, the Contractor/Employer(s) may request by name, and the local shall honor, referral of persons who demonstrate the following qualifications:

8.1.1 possess any license required by state or federal law for the Project work to be performed;

8.1.2 have worked a total of at least one thousand five hundred (1,500) hours in the construction craft during the prior three (3) years;

8.1.3 were on the Contractor/Employer(s)' active payroll for at least sixty (60) out of the one hundred (100) calendar days prior to the contract award;

8.1.4 have the ability to perform safely the basic functions of the applicable trade.

8.2 The Union will refer to such Contractor/Employer(s) one journeyman employee from the hiring hall out-of-work list for the affected trade or craft, and will then refer one of such Contractor/Employer(s)' "core" employees as a journeyman and shall repeat the process, one and one, until such Contractor/Employer(s) crew requirements are met or until such Contractor has hired five (5) "core" employees, whichever occurs first. Thereafter, all additional employees in the affected trade or craft shall be hired exclusively from the hiring hall out-of-work list(s). For the duration of the Contractor/Employer(s)' work the ratio shall be maintained and when the Contractor/Employer(s)' workforce is reduced, employees shall be reduced in reverse order beginning with the core worker and in the same ratio of core employees to hiring hall referrals as was applied in the initial hiring. Contractor/Employer(s) signatory to a Local, Regional, and/or National collective bargaining Agreements with Union(s) signatory hereto shall be bound to use the hiring hall provisions contained in the Master Agreement of the affected Union(s), and nothing in the referral provisions of this Agreement shall be construed to supersede the local hiring hall provisions of the Master Agreement(s).

8.3 Contractor/Employer(s) shall be bound by and utilize the registration facilities and referral systems established or authorized by the signatory Unions. In the event that referral facilities maintained by the Union(s) are unable to fill the requisition of a Contractor/Employer(s) for employees within a forty-eight (48) hour period, weekends and holidays excluded, after such requisition is made by the Contractor/Employer(s), the Contractor/Employer(s) shall be free to obtain work persons from any source. The Contractor/Employer(s) shall immediately notify the appropriate Union of the identity, including name, address, telephone number and social security number, of any such person(s) hired from an alternative source and refer the employee to the hall to comply with Article XII.

8.4 Unions will exert their utmost efforts to recruit sufficient numbers of skilled craft persons to fulfill the requirements of the Contractor/Employer(s),

8.5 Subject to the limitation of applicable law, the parties to this Agreement support the development of increased numbers of skilled construction workers from the residents of the City of Alameda, to meet the needs of the Projects and the requirements of the industry generally. Toward that end, the Unions agree to encourage the referral and utilization, to the extent permitted by law and the hiring hall procedures of the Unions, of qualified Alameda Residents, as journeymen and apprentices on the Projects and entrance into such apprenticeship and training programs as may be operated by the signatory Unions consistent with the applicable Apprenticeship Program's State-approved Standards.

ARTICLE 9.
WAGE AND BENEFITS

9.1 All Contractor/Employer(s) agree to pay contributions to the vacation, pension or other form of deferred compensation plan, apprenticeship, worker protection and assistance, and health benefit funds established by the applicable Master Agreement for each hour worked on the Projects in the amounts designated in the Master Agreements of the appropriate local Union.

9.2 By signing this Agreement, the Contractor/Employer(s) adopt and agree to be bound by the written terms of the legally established trust Agreements, as described in 9.1, and which may from time to time be amended, specifying the detailed basis on which payments are to be made into, and benefits paid out of, such trust funds. The Contractors authorize the parties to such local trust agreements to appoint trustees and successor trustees to administer the trust funds and hereby ratify and accept the trustees so appointed as if made by the Contractor(s). The Contractor(s) agrees to execute a Subscription Agreement(s) for Trust Funds when such Trust Fund(s) requires such document(s).

9.3 Wages, Hours, Terms and Conditions of Employment: The wages, hours and other terms and conditions of employment on the Projects shall be governed by the Master Agreement of the respective crafts, copies of which shall be on file with the District upon request, to the extent such Master Agreement is not inconsistent with this Agreement. Where a subject is covered by the Master Agreement and not covered in this Agreement, the Master Collective Bargaining Agreement will prevail. When a subject is covered by both the Master Collective Bargaining Agreement and this Agreement, to the extent there is any inconsistency, this Agreement will prevail.

ARTICLE 10.
EMPLOYEE GRIEVANCE PROCEDURE

All disputes involving discipline and/or discharge of employees working on the projects shall be resolved through the grievance and arbitration provision contained in the Master Agreement for the craft of the affected employee. No employee working on the Projects shall be disciplined or dismissed without just cause.

ARTICLE 11.
COMPLIANCE

It shall be the responsibility of the Contractor/Employer(s) and Unions to investigate and monitor compliance with the provisions of the Agreement contained in Article 9. Nothing in this Agreement shall be construed to interfere with or supersede the usual and customary legal remedies available to the Unions and/or employee benefit trust funds to collect delinquent trust fund contributions from Employers on the Projects. The District shall monitor and enforce compliance with the prevailing wage requirements of the State and Contractor/Employer(s)' compliance with this Project Labor Agreement.

ARTICLE 12.
JOINT ADMINISTRATIVE COMMITTEE

12.1 The parties to this Agreement shall establish a four (4) person Joint Administrative Committee. This Committee shall be comprised of two (2) representative selected by the District and two (2) representatives selected by the Unions. Each representative shall designate an alternate who shall serve in his or her absence for any purpose contemplated by this Agreement.

12.2 The Joint Administrative Committee shall meet as requested by the Parties to review the implementation of the Agreement and the progress of the Projects. Any question regarding the meaning, interpretation, or application of the provisions of this Agreement shall be referred directly to the Joint Administrative Committee for review and recommendation.

ARTICLE 13.
GRIEVANCE ARBITRATION PROCEDURE

13.1 All Project labor disputes involving the application or interpretation of the Master Agreement to which a signatory Contractor/Employer and a signatory Union are parties shall be resolved pursuant to the resolution procedures of the Master Collective Bargaining Agreement. All disputes arising out of the meaning, interpretation or application of the provisions of this Agreement shall be settled by means of the procedures set out herein. No grievance shall be recognized unless the grieving party (Local Union or District Council on its own behalf, or on behalf of an employee whom it represents, or a Contractor/Employer on its own behalf) provides notice in writing to the signatory party with whom it has a dispute within ten (10) business days after becoming aware of the dispute but in no event more than thirty (30) business days after it reasonably should have become aware of the event giving rise to the dispute. The time limits in Section 13.1 may be extended by mutual Agreement (oral or written) of the parties.

13.2 Grievances shall be settled according to the following procedures:

- Step 1: Within five (5) business days after the receipt of the written notice of the grievance, the Business Representative of the involved Local Union or District Council, or his/her designee, and the representative of the involved Contractor/Employer shall confer and attempt to resolve the grievance. The Union(s) shall notify its International Union representative(s), which shall advise if it intends on participating in a Step 2 meeting.
- Step 2: In the event that the representatives are unable to resolve the dispute within the five (5) business days after its referral to Step 1, either involved party may submit it within three (3) business days to the Joint Administrative Subcommittee (consisting of one District and one Union representative of the Joint Administrative Committee), which shall meet within five (5) business days after such referral (or such longer time as is mutually agreed upon by all representatives on the Joint Administrative Committee), to confer in an attempt to resolve the grievance. The decision of the Joint Administrative Subcommittee shall be final and binding on all parties. If the dispute

is not resolved within such time five (5) business days after its referral or such longer time as mutually agreed upon, it may be referred within five (5) business days by either party to Step 3.

Step 3: Within five (5) business days after referral of a dispute to Step 3, the parties shall choose a mutually agreed upon arbitrator for final and binding arbitration. If the parties cannot mutually agree on the selection of an arbitrator, the arbitrator shall be selected by the alternate striking method from the following list: (Hirsch, Winograd, Riker, Davis, Engler) The order of striking names from the list of arbitrators shall be determined by a coin toss, the winner of which shall decide whether they wish to strike first or second. Such striking shall take place within three (3) days. If a party does not respond within three (3) days, this means any Arbitrator from the list is acceptable. The decision of the Arbitrator shall be binding on all parties. The Arbitrator shall have no authority to change, amend, add to or detract from any of the provisions of the Agreement. The expense of the Arbitrator shall be borne equally by both parties. The Arbitrator shall arrange for a hearing on the earliest available date from the date of his/her selection. A decision shall be given to the parties within five (5) calendar days after completion of the hearing unless such time is extended by mutual Agreement. A written opinion may be requested by a party from the presiding Arbitrator. The time limits specified in any step of the Grievance Procedure set forth in Section 13.2 may be extended by mutual Agreement of the parties initiated by the written request of one party to the other, at the appropriate step of the Grievance Procedure. However, failure to process a grievance, or failure to respond in writing within the time limits provided above, without a request for an extension of time, shall be deemed a waiver of such grievance without prejudice, or without precedent to the processing of and/or resolution of like or similar grievances or disputes. In order to encourage the resolution of disputes and grievances at Steps 1 and 2 of this Grievance Procedure, the parties agree that such settlements shall not be precedent setting.

13.3 Retention: At the time a grievance is submitted under this Agreement or any Master Agreement, the Union(s) may request that the District withhold and retain an amount from what is due and owing to the Contractor(s) against whom the grievance is filed, sufficient to cover the damages alleged in the grievance, should the Union(s) prevail. The amount shall be retained by the District until such time as the underlying grievance giving rise to the retention is withdrawn, settled, or otherwise resolved, and the retained amount shall be paid to whomever the parties to the grievance shall decide, or to whomever an Arbitrator shall so order.

13.4 Should any of the arbitrators listed in Article 4 or above no longer work as a labor arbitrator, the District and the Council, through the Joint Administrative Committee, shall mutually agree to a replacement.

ARTICLE 14.
JURISDICTIONAL DISPUTES

14.1 The assignment of Covered Work will be solely the responsibility of the Employer performing the work involved; and such work assignments will be in accordance with the Plan for the Settlement of Jurisdictional Disputes in the Construction Industry (the "Plan") or any successor Plan.

14.2 All jurisdictional disputes on this Project between or among the Building and Construction Trades Unions and the Employers, parties to this Agreement, shall be settled and adjusted according to the present Plan established by the Building and Construction Trades Department, or any other plan or method of procedure that may be adopted in the future by the Building and Construction Trades Department. Decisions rendered shall be final, binding and conclusive on the Employer and Union parties to this Agreement.

14.3 If a dispute arising under this Article involves the Northern California Carpenters Regional Council or any of its subordinate bodies, an Arbitrator shall be chosen by the procedures specified in Article V, Section 5, of the Plan from a list composed of John Kagel, Thomas Angelo, Robert Hirsch, and Thomas Pagan, and the Arbitrator's hearing on the dispute shall be held at the offices of the California State Building and Construction Trades Council in Sacramento, California, within 14 days of the selection of the Arbitrator. All other procedures shall be as specified in the Plan.

14.4 All jurisdictional disputes shall be resolved without the occurrence of any strike, work stoppage, or slow-down of any nature, and the Employer's assignment shall be adhered to until the dispute is resolved. Individuals violating this Section shall be subject to immediate discharge.

14.5 Each Employer shall conduct a Pre-Job Conference with the Council prior to commencing Covered Work. The Primary Employer and the Owner will be advised in advance of all such conferences and may participate if they wish. Pre-job conferences for different Employers may be held together.

ARTICLE 15.
MANAGEMENT RIGHTS

Consistent with the Master Labor Agreements, the Contractor/Employer(s) shall retain full and exclusive authority for the management of their operations, including the right to direct their work force in their sole discretion. No rules, customs or practices shall be permitted or observed which limit or restrict production, or limit or restrict the working efforts of employees except that lawful manning provisions in the Master Agreement shall be recognized.

ARTICLE 16.
SAVINGS CLAUSE

16.1 The parties agree that in the event any article, provision, clause, sentence or word of the Agreement is determined to be illegal or void as being in contravention of any applicable law, by a court of competent jurisdiction, the remainder of the Agreement shall remain in full

force and effect. The parties further agree that if any article, provision, clause, sentence or word of the Agreement is determined to be illegal or void, by a court of competent jurisdiction, the parties shall substitute, by mutual Agreement, in its place and stead, an article, provision, clause, sentence or word which will meet the objections to its validity and which will be in accordance with the intent and purpose of the article, provision, clause, sentence or word in question.

16.2 The parties also agree that in the event that a decision of a court of competent jurisdiction materially alters the terms of the Agreement such that the intent of the parties is defeated, then the entire Agreement shall be null and void.

16.3 If a court of competent jurisdiction determines that all or part of the Agreement is invalid and/or enjoins the District from complying with all or part of its provisions and the District accordingly determines that the Agreement will not be required as part of an award to a Contractor/Employer, the unions will no longer be bound by the provisions of Article 4.

ARTICLE 17.

TERM

17.1 The Agreement shall be included as a condition of the award of all construction contracts for the Projects.

17.2 This Agreement shall become effective on the day the District ratifies this Agreement and shall continue in full force and effect for a period of five years. The parties may mutually agree in writing to amend, extend or terminate this Agreement at any time.

ARTICLE 18.

ALAMEDA HIRE REQUIREMENTS

18.1 The Parties agree to a goal that Alameda Residents, and especially District Graduates, will perform a minimum of 20% of the hours worked, on a craft by craft basis on the Projects. In the event that no Alameda residents or District Graduates are available to fulfill the 20% local hire requirement, the next tier of residents will come from the Green Corridor. This includes, in addition to Alameda, the cities of Albany, Berkeley, El Cerrito, Emeryville, Richmond, Oakland, and San Leandro. The Contractor/Employer(s) shall make good faith efforts to reach this goal through the utilization of the Unions' hiring hall procedures. The Unions shall make good faith efforts in their recruiting and training of District Graduate and Alameda Resident workers and in their hiring hall procedures to facilitate this 20% goal on the Projects.

18.2 Should any of the contractors performing work on the Projects fail to meet this 20% goal and fail to demonstrate "good faith" efforts to do so, through a specific submittal process to be included in their contractual requirements, the contract's 10% retention will be held until such time that this failure is remedied. Acceptable remedies to correct continued failure may include, but not be limited to the following remedies, as determined by the Joint Administrative Committee (as established in Section 12):

18.2.1 Classification as a non-qualified bidder on future District projects;

18.2.2 Commitment, with documentation, to employ District Graduates, or

Green Corridor Residents on non-District projects for a determined number of work hours; and

18.2.3 Bringing in District Graduates and Alameda residents as new apprentices and continuing their employment for up to 12 months.

18.3 A Contractor/Employer(s) who has employed a District Graduate for up to six months preceding the start of the District project for a minimum of at least 100 hours per month and has the ability to perform safely the basic functions of the applicable trade may receive credit for 50% of these hours towards the 20% goal. A Contractor/Employer may also receive credit for 50% of the documented hours performed by District Graduates or Alameda Residents on the Contractor's non-District projects, when such hours are concurrent with the Contractor's work on the Projects.

18.4 The maximum total combined credit that can be applied for in 18.3 is half of the 20%.

18.5 The contractors may use District student intern's hours for credit towards the local hiring goals. Internships for credit may be up to three (3) interns per year at up to 3000 hours per year per intern.

18.6 Should any Contractor/Employer performing work on the Projects exceed the 20% local hire goal as set forth in this Agreement, they shall be acknowledged at the appropriate public, televised school board meeting for their efforts at the completion of their contract scope.

18.7 Apprenticeship Provision:

18.7.1 The Prime Contractor and their sub-contractors will be required to hire 1 District Graduate, Alameda Resident or Alameda Student as a first period apprentice for every 5 million dollars of total construction cost. There can be no more than 2 entry-level apprentices credited for each craft, and the general contractor will be able to include entry-level apprentices hired by their subcontractor to meet this requirement. The District will refer names of former students or recent graduates to the Union and Contractors and the Unions will agree to cooperate with the Contractor in furnishing apprentices as requested and the hiring of the apprentices will be in accordance to the Apprenticeship provisions listed in the Master Agreements, and the apprentices shall be properly supervised and paid in accordance with provisions contained within the Master Agreements. The failure of the District to refer names and/or the Union to provide those apprentices upon request will relieve the Prime contractor of this District Graduate/Alameda Resident/Student first period apprentice hiring responsibility.

18.7.2 The General Contractor, or subcontractor who hires such Alameda Resident/Student First Period Apprentices shall be credited with two work hours towards the 20% local work hours, for each hour worked by the first period Alameda Resident/Student apprentices.

18.7.3 The intent of this provision is to work the new apprentices to the full extent permissible by state law and the Master Agreements. Failure of the General Contractor and their subcontractors to maintain qualified apprentices on the job will be subject to Division of Apprenticeship Standards penalties, and further penalties as determined by the Joint Administrative Committee.

18.8 **Career Technical Education Program.** Both the District and the Building Trades agree that an active school to career program in the trades can be a benefit to many Alameda students. The Building Trades and the District agree to collaborate in the development and implementation of the District's Career Technical Education ("CTE") program.

18.9 The Building Trades agree to support the District's CTE programs by doing the following:

18.9.1 Assisting the District's CTE program by:

18.9.2 Providing speakers at least twice a year,

18.9.3 Escorting field trips to existing apprenticeship centers at least three times a year, per the school's schedule,

18.9.4 Mentoring students. Identify at least five individuals who will serve as mentors,

18.9.5 Internships for students. The Unions will explore providing internships. The Unions will assist the program in identifying willing contractors and suppliers to provide additional internships.

18.10 Career Fairs. Agree to actively participate with multiple trade booths in two career fairs per year.

18.11 Actively participate in helping to create and provide hands-on training for, pre-apprenticeship programs set up by the District for adult school and b-tech students. Such participation may begin slowly, but it is envisioned that the trades will spend no less than 100 hours per year in assisting this program.

18.12 Assist in exploring the feasibility of the District students participating in local pre-apprenticeship programs, such as the Cypress-Mandela program. Support the District efforts with this program if a mutual Agreement with such a program can be worked out.

18.13 The parties agree to meet around the implementation of the program at the discretion of the District.

ARTICLE 19. HELMETS TO HARDHATS

19.1 The parties recognize a desire to facilitate the entry into the Building and Construction Trade Union(s) of Veterans who are interested in careers in the building and construction industry. The parties agree to utilize the services of the Center for Military Recruitment, Assessment and Veteran's Employment (hereinafter "Center") and the Center's "Helmets to Hardhats" program to serve as a resource for preliminary orientation, assessment of construction aptitude, referral to apprenticeship programs or hiring halls, counseling and mentoring, support network, employment opportunities and other needs as identified by the parties

19.2 The Union(s) and Contractor/Employer(s) agree to coordinate with the Center to participate in an integrated database of Veterans interested in working on this Project and of apprenticeship and employment opportunities for this Project. To the extent permitted by law, the Union(s) will give credit to such Veterans for bona fide, provable past experience.

ARTICLE 20. MISCELLANEOUS PROVISIONS

20.1 **Integration.** This Agreement, together with the Schedule A's, is intended by the parties as the final expression of their Agreement with respect to such terms as are included herein and as the complete and exclusive statement of its terms and may not be contradicted by evidence of any prior Agreement or of a contemporaneous oral Agreement, nor explained or supplemented by evidence of consistent additional terms.

20.2 **No Representations or Warranties.** Each of the parties acknowledges no one has made any promise, representation or warranty whatsoever, express or implied, written or oral, not contained herein to induce them to execute this Agreement, and that this Agreement is not executed in reliance upon any such promise, representation or warranty.

20.3 **Modification.** Each of the parties acknowledges and agrees that this Agreement may be amended only by writing and signed by the District and the Council.

20.4 **Interpretation.** Each of the parties acknowledges and agrees that this Agreement is an accord and satisfaction to be construed as whole according to its fair meaning and not in favor of nor against any of the parties as draftsman or otherwise.

20.5 **Forum.** Any action or proceeding seeking any relief under or with respect to this Agreement shall be brought solely in the Superior Court of the State of California for the County of Alameda in accordance with the procedures set forth in this Agreement.

20.6 **Choice of Law.** This Agreement shall be governed by and interpreted under the laws of the State of California and the Federal laws of the United States of America as applicable to instruments, persons, transactions and subject matter which have legal contacts and relationships exclusively within the State of California.

20.7 **No Attorneys Fees.** No party shall be entitled to recover an award of attorneys' fees or costs with respect to any action or proceeding seeking relief under this Agreement.

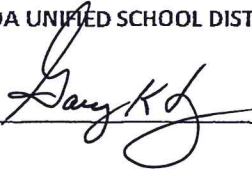
20.8 **Counterparts.** This Agreement may be executed in counterparts, each of which shall constitute an original of the Agreement. Facsimile or email PDF signature pages transmitted to other parties to this Agreement shall be deemed equivalent to original signatures on counterparts.

20.9 **Warranty of Authority.** Each of the persons signing this Agreement represents and warrants that such person has been duly authorized to sign this Agreement on behalf of the party indicated, and each of the parties by signing this Agreement warrants and represents that such party is legally authorized and entitled to enter into this Agreement.

20.10 Ratification by Governing Board. This Agreement shall not be binding on the District until it is ratified by the Governing Board at a publicly noticed Governing Board meeting.

ALAMEDA UNIFIED SCHOOL DISTRICT

By: _____

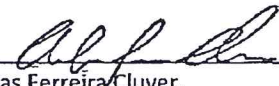


Date: _____

02.09.17

BUILDING AND CONSTRUCTION TRADES COUNCIL OF
ALAMEDA COUNTY, AFL-CIO

By: _____


Andreas Ferreira Cluver,
Secretary-Treasurer

Date: _____

6/10/16

[Trade signatures follow below]

Addendum A: Agreed To Letter of Assent

[Addressee]
[Address]
[City and State]

Re: Alameda Unified School District Measure I New Construction and Modernization Projects,
Project Labor Agreement.
Letter of Assent for _____
(Projects Name)

Dear Mr. /Ms. _____:

The undersigned party confirms that it agrees to be a party to and bound by the Alameda Unified School District Measure I New Construction and Modernization Projects, Project Labor Agreement as such Agreement may, from time to time, be amended by the parties or interpreted pursuant to its terms.

By executing this Letter of Assent, the undersigned party subscribes to, adopts and agrees to be bound by the written terms of the legally established trust Agreements as set forth in Section 9.1, as they may from time to time be amended, specifying the detailed basis upon which contributions are to be made into, and benefits made out of, such trust funds and ratifies and accepts the trustees appointed by the parties to such trust funds, and agrees to execute a separate Subscription Agreement(s) for Trust Funds when such Trust Fund(s) requires such document(s).

Such obligation to be a party to and bound by this Agreement shall extend to all work covered by said Agreement undertaken by the undersigned party on the Alameda Unified School District Measure I New Construction and Modernization Projects. The undersigned party shall require all of its subcontractors, of whatever tier, to become similarly bound for all their work within the scope of this Agreement by signing an identical Letter of Assent.

This letter shall constitute a subscription Agreement, to the extent of the terms of the letter.

CONTRACTOR/SUBCONTRACTOR: _____
Project Contract Number: _____

California State License Number: _____
or Motor Carrier (CA) Permit Number _____

DIR Public Works Registration # _____

Name and Signature of Authorized Person: _____
(Print Name)

(Title)

(Signature) (Date)

ALAMEDA UNIFIED SCHOOL DISTRICT
BOARD AGENDA ITEM

Item Title: Approval of Special Education Local Plan Area Master Contracts

Item Type: Consent

Background: Alameda Unified School District's Special Education Department contracts with non-public schools and non-public agencies to provide services to AUSD students under SELPA (Special Educational Local Plan Areas) agreements.

(Fund 01) Agreement between AUSD and Speech Pathology Group for a total of \$649,278.45.

AUSD LCAP Goals: 4. Ensure that all students have access to basic services.

Fund Codes: 01 General Fund

Fiscal Analysis

Amount (Savings) (Cost): \$649,278.45

Recommendation: Approve as submitted.

AUSD Guiding Principle: #1 - All students have the ability to achieve academic and personal success.

Submitted By: Kirsten Zazo, Assistant Superintendent of Educational Services

ATTACHMENTS:

Description	Upload Date	Type
☐ SELPA Contracts 9.28.21	9/22/2021	Backup Material

Meeting Date: September 28, 2021

Item Title: Approval of Special Education Local Plan Area Contracts

Each year, Alameda Unified School District's Special Education Department prepares "Master Contracts" that allocate funds for its ongoing annual services provided to AUSD students under SELPA (Special Education Local Plan Area) agreements.

In order to protect confidential student information, the contracts for non-public schools and non-public agencies related service providers listed below will be maintained in the Special Education Department for board members and public review.

- Speech Pathology Group 2021 – 2022 ESY \$39,067.45
- Speech Pathology Group 2021 – 2022 RSY \$610,211.00

ALAMEDA UNIFIED SCHOOL DISTRICT
BOARD AGENDA ITEM

Item Title: Proclamation: American Character Education Month - October

Item Type: Consent

Background: Each year in October, California's State Superintendent of Public Instruction and President of the State Board of Education emphasize the importance of teaching character education to our students by declaring Character Education Month.

The following quote is excerpted from Elementary Makes the Grade! (CDE, 1999) to emphasize and explain these efforts: "Effective schools seek to develop and reinforce character traits, such as caring, citizenship, fairness, respect, responsibility, and trustworthiness, through a systematic approach that includes adult modeling, curriculum integration, a positive school climate, and access to comprehensive guidance and counseling services."

Tonight the Alameda Unified School District's Board of Education proclaims October as American Character Education Month.

AUSD LCAP Goals: 1. Eliminate barriers to student success and maximize learning time.| 2a. Support all students in becoming college and career ready.| 2b. Support all English Learners (ELs) in becoming college and career ready.| 3. Support parent/guardian development as knowledgeable partners and effective advocates for student success.| 4. Ensure that all students have access to basic services.

Fund Codes:

Fiscal Analysis

Amount (Savings) (Cost): N/A

Recommendation: Approve as submitted.

AUSD Guiding Principle: #1 - All students have the ability to achieve academic and personal success.| #2 - Teachers must challenge and support all students to reach their highest academic and personal potential.| #3 - Administrators must have the knowledge, leadership skills and ability to ensure student success.| #4 - Parental involvement and community engagement are integral to student success.

Submitted By: Kirsten Zazo, Assistant Superintendent of Educational Services

ATTACHMENTS:

	Description	Upload Date	Type
□	Proclamation: American Character Education Month	9/22/2021	Backup Material

PROCLAMATION
American Character Education Month - October

WHEREAS, the California State Board of Education and the State Superintendent of Public Instruction believe that all students enrolled in California's public schools have the right to a comprehensive curriculum that promotes a common core of personal and social values as the basis of good character; and

WHEREAS, the California State Board of Education and the State Superintendent of Public Instruction believe that America's heritage and laws reflect a common core of personal and social values that hold the citizens of this democracy responsible for acting morally and ethically, being actively involved in school and community, resolving differences peacefully, and respecting the rights, dignity, and property of others; and

WHEREAS, the California State Board of Education and the State Superintendent of Public Instruction believe that the character of our state is only as strong as the character of each individual citizen; and

WHEREAS, although character development is, first and foremost, an obligation of families, the efforts of faith communities, schools, youth, and civic and human services organizations also play a very significant role in supporting families to foster and promote good character; and

WHEREAS, state law calls upon educators to impress upon students the principles of morality, truth, justice, patriotism, and a true comprehension of the rights, duties, and dignity of American citizenship, and the meaning of equality and human dignity, all of which result in awakening students to the moral and ethical virtues that build a fundamental strength of character; and

WHEREAS, an effective character education program requires an intentional, proactive, consistent, and comprehensive approach that promotes a common core of personal and social values in all phases of school life, a core that includes trustworthiness, respect, responsibility, fairness, caring, citizenship, civic virtue, honesty, and personal responsibility;

NOW, THEREFORE, BE IT PROCLAIMED that the Alameda Unified School District Board of Education recognizes October as American Character Education Month.

PASSED AND ADOPTED this 28th day of September, 2021.

AYES:_____MEMBERS:_____

NOES:_____MEMBERS:_____

ABSENT:_____MEMBERS:_____

Jennifer Williams, President
Board of Education
Alameda Unified School District
Alameda County, State of California

ATTEST:

By: _____
Pasquale Scuderi, Secretary
Board of Education
Alameda Unified School District
Alameda County, State of California

ALAMEDA UNIFIED SCHOOL DISTRICT
BOARD AGENDA ITEM

Item Title: Proclamation: Disability Employment Awareness Month - October

Item Type: Consent

Background: To increase the public's awareness of the contributions and skills of American workers with disabilities, Congress designated each October as National Disability Employment Awareness Month (NDEAM). This effort to educate the American public about issues related to disability and employment began in 1945 when Congress enacted a law declaring the first week in October each year "National Employ the Physically Handicapped Week."

Tonight the Alameda Unified School District's Board of Education proclaims October as Disability Employment Month.

AUSD LCAP Goals: 4. Ensure that all students have access to basic services.

Fund Codes:

Fiscal Analysis

Amount (Savings) (Cost): N/A

Recommendation: Approve as submitted.

AUSD Guiding Principle: #1 - All students have the ability to achieve academic and personal success.

Submitted By: Kirsten Zazo, Assistant Superintendent of Educational Services

ATTACHMENTS:

	Description	Upload Date	Type
□	Proclamation: Disability Employment Awareness Month	9/22/2021	Backup Material

PROCLAMATION
Disability Employment Awareness Month – October

WHEREAS, we understand employment and economic security are critical to fulfilling our hopes and aspirations; and

WHEREAS, no individual should face unnecessary barriers to success, and no one with a disability should be limited in his or her desire to work; and

WHEREAS, this year marks the 31st anniversary of the Americans with Disabilities Act (ADA), the landmark civil rights legislation that established a foundation of justice and equal opportunity for individuals with disabilities; and

WHEREAS, individuals with disabilities are a vital and dynamic part of our nation, and their contributions have affected countless lives;

NOW, THEREFORE, BE IT PROCLAIMED that the Alameda Unified School District Board of Education recognizes October as Disability Employment Awareness Month.

PASSED AND ADOPTED this 28th day of September, 2021.

AYES:_____MEMBERS:_____

NOES:_____MEMBERS:_____

ABSENT:_____MEMBERS:_____

Jennifer Williams, President
Board of Education
Alameda Unified School District
Alameda County, State of California

ATTEST:

By: _____
Pasquale Scuderi, Secretary
Board of Education
Alameda Unified School District
Alameda County, State of California

ALAMEDA UNIFIED SCHOOL DISTRICT
BOARD AGENDA ITEM

Item Title: Proclamation: Energy Awareness Month - October

Item Type: Consent

Background: The Federal Government first set aside time to raise energy awareness in 1981 with American Energy Week, which was observed from 1981 through 1985. It became a month-long observance at the U.S. Department of Energy (DOE) in 1986.

During his presidency, President Obama, reaffirmed our need to raise our energy awareness, stating the following: "During National Energy Awareness Month, we recognize the contributions of individuals, organizations, and companies that are committed to advancing energy innovation and efficiency, and we promote the importance of a clean energy economy to our Nation."

Tonight the Alameda Unified School District's Board of Education proclaims October as Energy Awareness Month.

AUSD LCAP Goals: 4. Ensure that all students have access to basic services.

Fund Codes:

Fiscal Analysis

Amount (Savings) (Cost): N/A

Recommendation: Approve as submitted.

AUSD Guiding Principle: #1 - All students have the ability to achieve academic and personal success.

Submitted By: Kirsten Zazo, Assistant Superintendent of Educational Services

ATTACHMENTS:

Description	Upload Date	Type
□ Proclamation: Energy Awareness Month	9/22/2021	Backup Material

PROCLAMATION
Energy Awareness Month – October

WHEREAS, October is National Energy Awareness Month, a national effort to underscore how crucial energy is to our national prosperity, security, and environmental well-being; and

WHEREAS, saving energy is a huge step toward saving the environment and slowing down global climate change; and

WHEREAS, educating the public on energy conservation is the primary reason for making October Energy Awareness Month; and

WHEREAS, AUSD is now practicing “green” concepts in all of our school sites and district offices by stepping up our recycling efforts and assigning a “Green School Coordinator” at each of our sites; and

WHEREAS, AUSD has adopted a Board Policy calling upon all staff and students to acknowledge themselves as energy consumers and energy savers so we can work toward conservation efforts in the District;

NOW, THEREFORE, BE IT PROCLAIMED that the Alameda Unified School District Board of Education recognizes October as Energy Awareness Month.

PASSED AND ADOPTED this 28th day of September, 2021.

AYES: _____ MEMBERS: _____

NOES: _____ MEMBERS: _____

ABSENT: _____ MEMBERS: _____

Jennifer Williams, President
Board of Education
Alameda Unified School District
Alameda County, State of California

ATTEST:

By: _____
Pasquale Scuderi, Secretary
Board of Education
Alameda Unified School District
Alameda County, State of California

ALAMEDA UNIFIED SCHOOL DISTRICT
BOARD AGENDA ITEM

Item Title: Proclamation: Filipino American History Month - October

Item Type: Consent

Background: October 18th of 1587 was the date of the first documented proof of Filipinos in the Continental United States. In October of 1988, the Filipino American National Historical Society declared October as Filipino American History Month. This month is officially recognized by the California Department of Education as a month to celebrate our Filipino American citizens.

Tonight, the Alameda Unified School District's Board of Education proclaims October as Filipino American History Month.

AUSD LCAP Goals: 1. Eliminate barriers to student success and maximize learning time.| 2a. Support all students in becoming college and career ready.| 2b. Support all English Learners (ELs) in becoming college and career ready.| 3. Support parent/guardian development as knowledgeable partners and effective advocates for student success.| 4. Ensure that all students have access to basic services.

Fund Codes:

Fiscal Analysis

Amount (Savings) (Cost): N/A

Recommendation: Approve as submitted.

AUSD Guiding Principle: #1 - All students have the ability to achieve academic and personal success.| #2 - Teachers must challenge and support all students to reach their highest academic and personal potential.| #3 - Administrators must have the knowledge, leadership skills and ability to ensure student success.| #4 - Parental involvement and community engagement are integral to student success.

Submitted By: Kirsten Zazo, Assistant Superintendent of Educational Services

ATTACHMENTS:

	Description	Upload Date	Type
▣	Proclamation: Filipino American History Month	9/22/2021	Backup Material

PROCLAMATION
Filipino American History Month - October

WHEREAS, the Filipino American National Historical Society declared the Year 1988 to be the 225th Anniversary of permanent settlement of Filipinos in the continental United States; and

WHEREAS, efforts must continue to promote the study of Filipino American history and culture, so mandated in the mission statement of the Filipino American National Historical Society, because the role of Filipino Americans and those of other people of color have been overlooked in the writings, teachings, and learning of United States history; and

WHEREAS, it is imperative for Filipino American youth to have positive role models and to instill in them the importance of education, complemented with the richness of their ethnicity and the values of their legacy; and

WHEREAS, the earliest documented proof of Filipino presence in the continental United States falls on October 1587, according to numerous historians who have written upon these early landings on California shores; and

WHEREAS, Alameda resident and California Assembly member Rob Bonta was elected in 2012 as the state's representative of Alameda, Oakland, and San Leandro, making him the first Filipino American legislator in California;

NOW, THEREFORE, BE IT PROCLAIMED that the Alameda Unified School District Board of Education recognizes October as Filipino American Month.

PASSED AND ADOPTED this 28th day of September, 2021.

AYES:_____MEMBERS:_____

NOES:_____MEMBERS:_____

ABSENT:_____MEMBERS:_____

Jennifer Willimas, President
Board of Education
Alameda Unified School District
Alameda County, State of California

ATTEST:

By: _____
Pasquale Scuderi, Secretary
Board of Education
Alameda Unified School District
Alameda County, State of California

ALAMEDA UNIFIED SCHOOL DISTRICT
BOARD AGENDA ITEM

Item Title: Proclamation: Lesbian, Gay, Bisexual, Transgender, Queer/Questioning History Month - October

Item Type: Consent

Background: A resolution was first approved in 2013-14 by the Alameda Unified Board of Education declaring October LGBTQ History Month. Tonight we continue the tradition and present a proclamation to recognize October as LGBTQ History Month in AUSD.

AUSD LCAP Goals: 1. Eliminate barriers to student success and maximize learning time.| 3. Support parent/guardian development as knowledgeable partners and effective advocates for student success.

Fund Codes:

Fiscal Analysis

Amount (Savings) (Cost): N/A

Recommendation: Approve as submitted.

AUSD Guiding Principle: #1 - All students have the ability to achieve academic and personal success.| #4 - Parental involvement and community engagement are integral to student success.

Submitted By: Kirsten Zazo, Assistant Superintendent of Educational Services

ATTACHMENTS:

Description	Upload Date	Type
□ Proclamation: LGBTQ History Month	9/22/2021	Backup Material

PROCLAMATION
Lesbian, Gay, Bisexual, Transgender, Queer/Questioning (LGBTQ)
History Month - October

WHEREAS, Lesbian, Gay, Bisexual, Transgender, and Queer/Questioning (LGBTQ) Americans have made and continue to make lasting contributions to strengthen the fabric of American society; and

WHEREAS, October holds historically significant days such as the first National March on Washington and also Coming Out Day; and

WHEREAS, the month of October has been established to remind all cultures within our wider community of the important roles LGBTQ people have taken in creating the social, historical, legal, and political worlds we live in today; and

WHEREAS, the Alameda Board of Education appreciates and recognizes the importance of LGBTQ History Month as an effective means of educating and calling to action the citizens of the City of Alameda to work together by fighting prejudice and discrimination in their own lives; and

WHEREAS, a knowledge of LGBTQ history enables LGBTQ students, families, and educators to be supported to uphold affirmative lives with dignity and respect; and

WHEREAS, in 2017 the Alameda Unified School District (AUSD), the City of Alameda, the Alameda Collaborative for Children, Youth, and their Families (ACCYF), the Alameda Chamber of Commerce, the Alameda Education Foundation (AEF), Alameda Family Services (AFS), the Alameda Education Association (AEA), the local California School Employees Associations (CSEA) Chapters 27 and 860, the Alameda Parent Teachers Association (PTA), and other civic leaders joined together in an “Everyone Belongs Here” campaign created by AUSD’s students and AUSD’s LGBTQ Round Table to voice a common call to action for LGBTQ rights, uniting us all in a social justice platform to uphold the rights of all people;

NOW, THEREFORE, BE IT PROCLAIMED that the Alameda Unified School District Board of Education recognizes and supports October as Lesbian, Gay, Bisexual, Transgender, and Queer/Questioning (LGBTQ) History Month.

PASSED AND ADOPTED this 28th day of September, 2021.

AYES: _____ MEMBERS: _____

NOES: _____ MEMBERS: _____

ABSENT: _____ MEMBERS: _____

Jennifer Williams, President
Board of Education
Alameda Unified School District
Alameda County, State of California

ATTEST:

By:

Pasquale Scuderi, Secretary
Board of Education
Alameda Unified School District
Alameda County, State of California

ALAMEDA UNIFIED SCHOOL DISTRICT
BOARD AGENDA ITEM

Item Title: Proclamation: National Child Health Day - October 4, 2021

Item Type: Consent

Background: Calvin Coolidge was the first American president to issue a proclamation for Child Health Day in 1928, and it was annually observed on May 1 until it was changed to the first Monday of October in 1960. National Child Health Day in the United States raises people's awareness of how they can protect and develop children's health.

Tonight the Alameda Unified School District's Board of Education proclaims October 4th as National Child Health Day.

AUSD LCAP Goals: 1. Eliminate barriers to student success and maximize learning time.| 3. Support parent/guardian development as knowledgeable partners and effective advocates for student success.

Fund Codes:

Fiscal Analysis

Amount (Savings) (Cost): N/A

Recommendation: Approve as submitted.

AUSD Guiding Principle: #1 - All students have the ability to achieve academic and personal success.| #4 - Parental involvement and community engagement are integral to student success.

Submitted By: Kirsten Zazo, Assistant Superintendent of Educational Services

ATTACHMENTS:

Description	Upload Date	Type
☐ Proclamation: National Child Health Day	9/22/2021	Backup Material

PROCLAMATION
National Child Health Day
October 4, 2021

WHEREAS, Calvin Coolidge was the first president to issue a proclamation for Child Health Day in 1928; and

WHEREAS, Childhood obesity is a serious problem in the United States putting children and adolescents at risk for poor health.

WHEREAS, Obesity prevalence among children and adolescents in the United States is still too high; and

WHEREAS, this is a risk factor for serious health consequences including asthma, diabetes, and heart disease; and

WHEREAS, Child Health Day helps spark or increase our awareness of ways to minimize or alleviate health problems that children may face; and

WHEREAS, the day focuses on a range of child health issues such as prenatal care, adolescent health, the impact of daycare on a child's development preventing injuries, healthy eating and lifestyle choices, and immunization;

NOW, THEREFORE, BE IT PROCLAIMED that the Alameda Unified School District Board of Education recognizes October 4, 2021 as National Child Health Day.

PASSED AND ADOPTED this 28th day of September, 2021.

AYES:_____MEMBERS:_____

NOES:_____MEMBERS:_____

ABSENT:_____MEMBERS:_____

Jennifer Williams, President
Board of Education
Alameda Unified School District
Alameda County, State of California

ATTEST:

By: _____
Pasquale Scuderi, Secretary
Board of Education
Alameda Unified School District
Alameda County, State of California

ALAMEDA UNIFIED SCHOOL DISTRICT
BOARD AGENDA ITEM

Item Title: Proclamation: National Domestic Violence Awareness Month - October

Item Type: Consent

Background: Each year millions of children and youth are at risk of exposure to domestic violence. Learning disabilities and developmental delays in verbal, cognitive, and motor skills are common among children living in homes with domestic violence. Additionally children from violent homes have a high risk of alcohol/drug use, post-traumatic stress disorder, and juvenile delinquency.

On October 13, 2016 the Alameda Unified Board of Education approved a resolution declaring Alameda Public Schools Domestic Violence Free Zones. In support of that resolution, tonight the Alameda Unified School District's Board of Education proclaims October as National Domestic Violence Awareness Month.

AUSD LCAP Goals: 1. Eliminate barriers to student success and maximize learning time.| 2a. Support all students in becoming college and career ready.| 2b. Support all English Learners (ELs) in becoming college and career ready.| 3. Support parent/guardian development as knowledgeable partners and effective advocates for student success.| 4. Ensure that all students have access to basic services.

Fund Codes:

Fiscal Analysis

Amount (Savings) (Cost): N/A

Recommendation: Approve as submitted.

AUSD Guiding Principle: #1 - All students have the ability to achieve academic and personal success.| #2 - Teachers must challenge and support all students to reach their highest academic and personal potential.| #3 - Administrators must have the knowledge, leadership skills and ability to ensure student success.| #4 - Parental involvement and community engagement are integral to student success.

Submitted By: Kirsten Zazo, Assistant Superintendent of Educational Services

ATTACHMENTS:

Description	Upload Date	Type
□ Proclamation: National Domestic Violence Awareness Month	9/22/2021	Backup Material

PROCLAMATION
National Domestic Violence Awareness Month - October

WHEREAS, October is National Domestic Violence Awareness Month; and

WHEREAS, each year millions of children and youth are at risk of exposure to domestic violence; and

WHEREAS, many children witnessing domestic violence come to believe that violence is acceptable and begin to display various emotional, physical, and behavioral disturbances; and

WHEREAS, learning disabilities are common among children living in homes with domestic violence, and they often suffer developmental delays in verbal, cognitive, and motor abilities; and

WHEREAS, children from violent homes have a higher risk of alcohol/drug use, post-traumatic stress disorder, and juvenile delinquency; and

WHEREAS, schools often play a role in creating a more stable environment by modeling and teaching alternatives to violence and acting as a resource and support to families; and

WHEREAS, the citizens of Alameda recognize that domestic violence is incompatible with healthy relationships and that breaking the cycle of violence requires a focused and coordinated community response; and

WHEREAS, on October 13, 2016, the AUSD Board of Education declared all Alameda public schools as Domestic Violence Free Zones;

NOW, THEREFORE, BE IT PROCLAIMED that the Alameda Unified School District's Board of Education recognizes October as National Domestic Violence Awareness Month.

PASSED AND ADOPTED this 28th day of September, 2021.

AYES:_____MEMBERS:_____

NOES:_____MEMBERS:_____

ABSENT:_____MEMBERS:_____

Jennifer Williams, President
Board of Education
Alameda Unified School District
Alameda County, State of California

ATTEST:

By: _____
Pasquale Scuderi, Secretary
Board of Education
Alameda Unified School District
Alameda County, State of California

ALAMEDA UNIFIED SCHOOL DISTRICT
BOARD AGENDA ITEM

Item Title: Proclamation: National Dyslexia Awareness Month - October

Item Type: Consent

Background: Dyslexia is a language-based learning disability. One in ten people have symptoms of dyslexia, including slow or inaccurate reading, poor spelling, or mixing up similar words. It is not due to a lack of intelligence or a desire to learn.

The International Dyslexia Association (IDA) has increased awareness across the country to ensure that teachers are trained in a structured literacy approach. With a structured literacy approach, individuals with dyslexia can and do learn successfully.

Dyslexia occurs in people of all background and intellectual levels. People who are very bright can have dyslexia. They are often capable or even gifted in areas such as art, computer science, design, drama, electronics, math, mechanics, music, physics, sales, and sports.

Tonight, the Alameda Unified School District's Board of Education proclaims October as National Dyslexia Awareness Month.

AUSD LCAP Goals: 1. Eliminate barriers to student success and maximize learning time.| 2a. Support all students in becoming college and career ready.| 2b. Support all English Learners (ELs) in becoming college and career ready.| 3. Support parent/guardian development as knowledgeable partners and effective advocates for student success.| 4. Ensure that all students have access to basic services.

Fund Codes:

Fiscal Analysis

Amount (Savings) (Cost): N/A

Recommendation: Approve as submitted.

AUSD Guiding Principle: #1 - All students have the ability to achieve academic and personal success.| #2 - Teachers must challenge and support all students to reach their highest academic and personal potential.| #3 - Administrators must have the knowledge, leadership skills and ability to ensure student success.| #4 - Parental involvement and community engagement are integral to student success.

Submitted By: Kirsten Zazo, Assistant Superintendent of Educational Services

ATTACHMENTS:

Description

Upload Date

Type

▣ Proclamation: National Dyslexia Awareness 9/22/2021
Month

Backup Material

PROCLAMATION

National Dyslexia Awareness Month - October

WHEREAS, October is recognized as *National Dyslexia Awareness Month*. Dyslexia is a language based learning disability. One in ten people have symptoms of dyslexia, including slow or inaccurate reading, poor spelling or mixing up similar words. It is not due to a lack of intelligence or a desire to learn; and

WHEREAS, the International Dyslexia Association (IDA) has increased awareness across the country to ensure that teachers are trained in a structured literacy approach. With a structured literacy approach, individuals with dyslexia can and do learn successfully; and

WHEREAS, dyslexia occurs in people of all backgrounds and intellectual levels. People who are very bright can have dyslexia. They are often capable or even gifted in areas such as art, computer science, design, drama, electronics, math, mechanics, music, physics, sales, and sports; and

WHEREAS, warning signs associated with dyslexia include difficulty learning to speak, trouble learning letters and their sounds, difficulty organizing written and spoken language, trouble memorizing number facts, difficulty reading quickly enough to comprehend, trouble persisting with and comprehending longer reading assignments, difficulty spelling, trouble learning a foreign language, and difficulty correctly doing math operations; and

WHEREAS, parents who suspect that their child might be exhibiting signs of dyslexia or another language-based learning difference are encouraged to take action as soon as they suspect a problem;

NOW, THEREFORE, BE IT PROCLAIMED that the Alameda Unified School District Board of Education hereby recognizes October as *National Dyslexia Awareness Month*.

PASSED AND ADOPTED this 28th day of September, 2021.

AYES: _____ MEMBERS: _____

NOES: _____ MEMBERS: _____

ABSENT: _____ MEMBERS: _____

Jennifer Williams, President
Board of Education
Alameda Unified School District
Alameda County, State of California

ATTEST:

By: _____
Pasquale Scuderi, Secretary
Board of Education
Alameda Unified School District
Alameda County, State of California

ALAMEDA UNIFIED SCHOOL DISTRICT
BOARD AGENDA ITEM

Item Title: Proclamation: Walk and Roll to School Day - October 6, 2021

Item Type: Consent

Background: Walk and Roll to School Day is a longstanding tradition in Alameda. The event's primary purpose is to promote safe routes to school, as well as health and physical fitness among today's youth. The event is part of a larger-scale international "Walk to School Month" event, held in 42 countries worldwide.

Pedestrian Friendly Alameda, BikeAlameda, PTA Council, and Alameda Public Works Department partner together to encourage the Board of Education to join in promoting the benefits of walking or bicycling rather than driving to school. These organizations are committed to creating cleaner, safer, and environmentally healthier Alameda neighborhoods and schools for children as well as supporting the opportunity for quality family time when parents, guardians, grandparents, and children can walk or bike to school together.

Tonight, the Alameda Unified School District's Board of Education proclaims October 6 as Walk and Roll to School Day.

AUSD LCAP Goals:

Fund Codes:

Fiscal Analysis

Amount (Savings) (Cost): N/A

Recommendation: Approve as submitted.

AUSD Guiding Principle: #4 - Parental involvement and community engagement are integral to student success.

Submitted By: Kirsten Zazo, Assistant Superintendent of Educational Services

ATTACHMENTS:

Description	Upload Date	Type
□ Proclamation: Walk and Roll to School Day	9/22/2021	Backup Material

PROCLAMATION
Walk and Roll to School Day
October 6, 2021

WHEREAS, the Alameda Unified School District Board of Education and the Alameda PTA Council join with Pedestrian Friendly Alameda, Bike Alameda, and the Public Works Department in promoting the Annual Alameda Walk and Roll to School Day event at elementary and middle schools; and

WHEREAS, this event will focus on the benefits of walking or bicycling rather than driving to school and in creating Safe Routes to Schools, resulting in cleaner, safer, and environmentally healthier schools for children; and

WHEREAS, this day encourages parents, grandparents, friends, and neighbors to spend more time with children, reduce car use and traffic hazards, promote physical activity, and contribute to a more walkable community; and

WHEREAS, by instilling good safety skills in our children now, not only will they become better pedestrians and bicyclists, but they'll learn to become better motorists when they get behind the wheel of a car; and

WHEREAS, Walk and Roll to School Day is an opportunity to find ways to make our neighborhoods and our school district safer; and

WHEREAS, walking and bicycling are two important forms of transportation that get us to where we are going and contribute to the overall good health of our community;

NOW, THEREFORE, BE IT PROCLAIMED that the Alameda Unified School District Board of Education proclaims October 6, 2021 as *Walk and Roll to School Day* and encourages parents and youth to make walking and bicycling a year-round practice.

PASSED AND ADOPTED this 28th day of September, 2021.

AYES: _____ MEMBERS: _____

NOES: _____ MEMBERS: _____

ABSENT: _____ MEMBERS: _____

Jennifer Williams, President
Board of Education
Alameda Unified School District
Alameda County, State of California

ATTEST:

By: _____
Pasquale Scuderi, Secretary
Board of Education
Alameda Unified School District
Alameda County, State of California

ALAMEDA UNIFIED SCHOOL DISTRICT
BOARD AGENDA ITEM

Item Title: Proclamation: World Teachers' Day - October 5, 2021

Item Type: Consent

Background: World Teachers' Day, created in 1994 by UNESCO, is held annually on October 5th and celebrates teachers worldwide. Its aim is to mobilize support for teachers and to ensure that the needs of future generations will continue to be met by teachers. This day is also an opportunity to draw attention to their status, employment conditions, and the needs of countries where teacher recruitment is not keeping pace with increased student enrollment.

Tonight the Alameda Unified School District's Board of Education proclaims October 5th as World Teachers' Day.

AUSD LCAP Goals:

Fund Codes:

Fiscal Analysis

Amount (Savings) (Cost): N/A

Recommendation: Approve as submitted.

AUSD Guiding Principle: #7 - All employees must receive respectful treatment and professional support to achieve district goals.

Submitted By: Kirsten Zazo, Assistant Superintendent of Educational Services

ATTACHMENTS:

Description	Upload Date	Type
□ Proclamation: World Teachers' Day	9/22/2021	Backup Material

PROCLAMATION
World Teachers' Day
October 5, 2021

WHEREAS, World Teachers' Day is an opportunity to mobilize support for teachers and to ensure that the needs of future generations will continue to be met by teachers; and

WHEREAS, this day is also an opportunity to draw attention to their status, employment conditions, and the needs of countries where teacher recruitment is not keeping pace with increased student enrollment; and

WHEREAS, World Teachers' Day shows appreciation, awareness, and understanding displayed for crucial contributions which teachers make to education;

NOW, THEREFORE, BE IT PROCLAIMED that the Alameda Unified School District Board of Education recognizes October 5, 2021 as World Teachers' Day.

PASSED AND ADOPTED this 28th day of September, 2021.

AYES: _____ MEMBERS: _____

NOES: _____ MEMBERS: _____

ABSENT: _____ MEMBERS: _____

Jennifer Williams, President
Board of Education
Alameda Unified School District
Alameda County, State of California

ATTEST:

By: _____
Pasquale Scuderi, Secretary
Board of Education
Alameda Unified School District
Alameda County, State of California

ALAMEDA UNIFIED SCHOOL DISTRICT
BOARD AGENDA ITEM

Item Title: Ratification of Contracts Executed Pursuant to Board Policy 3300

Item Type: Consent

Background: On June 22, 2021, for FY 2021-2022 the Board of Education delegated authority to enter into contracts on behalf of the Alameda Unified School District and to purchase supplies, materials, apparatus, equipment, and services up to the amounts specified in Public Contract Code 20111 and Education Code section 17604 to the Superintendent of Schools, Assistant Superintendent of Educational Services (formerly Chief Student Services Officer), Assistant Superintendent of Business Services (formerly Chief Business Officer), and Assistant Superintendent of Human Resources (formerly Chief Human Resources Officer).

Resolution Number 2020-2021.68 further limited the delegation to expenditures of less than \$96,700 and required that the Board of Education ratify the contracts within sixty (60) days of incurring the expense.

The following contracts are presented for ratification:

1. (Fund 25) Project Addendum No. 1843.01.01 to Agreement for Architectural Services between AUSD and Quattrocchi Kwok Architects for an increase of \$25,000 and a new total fee of \$152,200.00.
2. (Fund 01) Amendment No. 3 to Professional Services Agreement between AUSD and 360 Degree Customer, Inc. for an increase of \$43,740 and a new value of \$329,040.00.
3. (Fund 01) Professional Services Agreement between AUSD and Apodaca Mechanical Consulting for work performed on a time (various rates) and material basis will a total not to exceed \$80,000.00.
4. (Fund 01) Contract for Repairs, Maintenance or Small Construction Projects between AUSD and Parc Environmental for a total price not to exceed \$25,000.00.
5. (Fund 01) Master Contract Amendment as part of the Community Based Organization Master Contract (No. 900333) between AUSD and the County of Alameda for compensation payable to AUSD not to exceed \$60,149.00.

AUSD LCAP Goals: 4. Ensure that all students have access to basic services.

Fund Codes:

Fiscal Analysis

Amount (Savings) (Cost): See attached contract(s) for detailed expenditures.

Recommendation: Approve as submitted.

AUSD Guiding Principle: #5 - Accountability, transparency, and trust are necessary at all levels of the organization. | #6 - Allocation of funds must support our vision, mission, and

guiding principles.

Submitted By: Shariq Khan, Assistant Superintendent of Business Services

ATTACHMENTS:

Description	Upload Date	Type
▣ Quattrocchi Kwok Architects, Inc.	9/22/2021	Backup Material
▣ 360 Degree Customer Inc	9/22/2021	Backup Material
▣ Apodaca Mechanical Consulting	9/24/2021	Backup Material
▣ Parc Environmental	9/24/2021	Backup Material
▣ County of Alameda	9/24/2021	Backup Material

AUSD

ALAMEDA UNIFIED SCHOOL DISTRICT

Excellence & Equity For All Students

Professional Services Agreement

This Agreement is entered into between the Alameda Unified School District (AUSD) and Apodaca Mechanical Consulting (CONTRACTOR). AUSD is authorized by Government Code Section 53060 to contract for the furnishing of special services and advice in financial, economic, account, engineering, legal, and administrative matters with persons specially trained, experienced, and competent to perform such services. CONTRACTOR is specially trained, experienced, and competent to provide such services. The parties agree as follows:

1. **Services.** The CONTRACTOR shall provide the following services:

Contract #2131 - All Sites_Mechanical Consulting & Controls Programming

Apodaca Mechanical & Consulting agrees to provide mechanical consulting, inspections and reviews pertaining to the analysis of various mechanical systems and factors in response to Covid-19 environment as per request of AUSD MOF management. This includes, inspections, reviews, oversight, adjustments, and modifications to HVAC equipment in conjunction with air balancing and testing companies and District HVAC controls programming vendors.

All work performed on an Hourly Time & Materials basis as the following rates:

Regular Business Hour Rates: \$135.00/hr

Helper/Apprentice Rates: \$125.00/hr

Overtime Rates: \$155.00/hr

Saturday Rates: \$155.00/hr

Sunday Rates: \$155.00/hr

See Exhibit "A" for Materials & Equipment mark-up.

Not to exceed price of Purchase Order of \$80,000.00 for all Alameda Unified School District sites.

2. **Terms.** The term of this agreement shall be upon completion of contract (or the day immediately following approval by an executive cabinet member if the aggregate amount CONTRACTOR contracted with AUSD is below \$96,700 in the current fiscal year; or, approval by the Board of Education if the total contract(s) exceed \$96,700, whichever is later) to Thursday, June 30, 2022. The work shall be completed no later than Thursday, June 30, 2022.

3. **Compensation.** Check one of the following boxes:

This sum shall be for full performance of this Agreement and includes fees, costs, and expenses incurred by CONTRACTOR including, but not limited to labor, materials, taxes, profit, overhead, travel, insurance, subcontractor costs, and other costs.

3.1.1 ☐ CONTRACTOR is providing services for a flat fee which shall not exceed \$ _____.

3.1.2 ☒ CONTRACTOR will be compensated at an hourly rate. Contractor will provide a maximum of hours of service at a rate of \$ see above per hour for a total not to exceed \$ 80,000.00.

3.1.3 ☐ Other: _____.

AUSD shall not be liable to CONTRACTOR for any costs or expenses paid or incurred or equipment, materials or supplies used by CONTRACTOR in performing services for AUSD, except as follows: N/A

which shall not exceed a total cost of \$ N/A.

Payment for the work shall be made for all undisputed amounts in monthly installment payments within forty-five (45) days after the CONTRACTOR submits an invoice to AUSD for work actually completed and after AUSD's written approval of the work, or the portion of the work for which payment is to be made.

The granting of any payment by AUSD or the recipient thereof by CONTRACTOR, shall in no way lessen the liability of CONTRACTOR to correct unsatisfactory work, although the unsatisfactory character of that work may not have been apparent or detected at the time a payment was made. Work, which does not conform to the requirements of this Agreement, may be rejected by District and in that case must be replaced by CONTRACTOR without delay.

4. Strategic Alignment. Check one of the following boxes:

4.1 ☐ **School-based Agreements:** How does this service support your academic goals and increase student achievement as described in the Board-approved School Site Plan? _____

4.2 ☒ **Central Office Agreements:** How does this service support the overall strategic goals of the department and increase student achievement? Covid-19 HVAC safety

5. Conduct of Contractor. CONTRACTOR will adhere to the following staff requirements and provide AUSD with evidence of staff qualifications, prior to commencing the work under this Agreement and consistent with invoicing requirements outlined in Section 9, which include:

5.1 Tuberculosis Screening. Check one of the following boxes:

5.1.1 ☐ TB Clearance will be completed through the AUSD Human Resources Department prior to starting work.

5.1.2 ☐ Agency requires all employees or subcontractors to complete TB testing and maintains current records accessible to AUSD upon request.

5.1.3 ☒ **Waiver of TB Screening.** CONTRACTOR is not required to provide evidence of TB Clearance because CONTRACTOR will not work directly with students on more than an occasional basis.

MA (CONTRACTOR initials)

_____ (District Representative initials)

5.2 Fingerprinting of Employees and Agents. The fingerprinting and criminal background investigation requirements of Education Code Section 45125.1 apply to CONTRACTOR's services under this Agreement and CONTRACTOR certifies its compliance with these provisions as follows: "CONTRACTOR has complied with the fingerprinting and criminal background investigation requirements of Education Code Section 45125.1 with respect to all CONTRACTOR's employees, subcontractors, agents, and subcontractors' employees or agents ("Employees") regardless of whether those Employees are paid or unpaid, concurrently employed by AUSD or acting as independent contractors of CONTRACTOR, who may have contact with AUSD pupils in the course of providing services pursuant to the Agreement, 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. CONTRACTOR further certifies that it has received and reviewed fingerprint results for each of its Employees and CONTRACTOR has requested and reviewed subsequent arrest records for all Employees who may come into contact with AUSD pupils in providing services to the District under this Agreement."

5.2.1 ☒ Fingerprint Clearance will be completed through the AUSD Human Resources Department prior to starting work.

5.2.2 ☐ Agency requires all employees or subcontractors to complete fingerprinting and maintains current records accessible to AUSD upon request.

5.2.3 ☐ Waiver of Fingerprint Requirement. CONTRACTOR is not required to comply with section 5.2 because CONTRACTOR's services are of limited duration and District employees will directly supervise CONTRACTOR at all times that CONTRACTOR is in the presence of students.

ma (CONTRACTOR initials)

 (District Representative initials)

5.3 **Removal of CONTRACTOR's Employee(s).** In the event that AUSD, in its sole discretion, at any time during the term of this Agreement, desires the removal of any CONTRACTOR related persons, employee, representative, or agent from an AUSD school site and/or property, CONTRACTOR shall immediately upon receiving notice from AUSD of such desire, cause the removal of such person or persons.

6. **Insurance.** CONTRACTOR will provide AUSD with evidence of the following insurance coverage prior to commencing the work under this Agreement:

6.1 **Workers' Compensation Insurance.** Check one of the following boxes. If CONTRACTOR employs any person to perform work in connection with this Agreement, CONTRACTOR shall procure and maintain at all times during the performance of such work, Workers' Compensation Insurance in conformance with the laws of the State of California and Federal laws when applicable. Employers' Liability Insurance shall not be less than One Million Dollars (\$1,000,000) per accident or disease.

Check only one of the boxes below:

☒ The CONTRACTOR is aware of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and will provide AUSD proof of coverage before commencing the performance of the work of this Agreement. *CONTRACTOR acknowledgement marc apodaca

☐ The CONTRACTOR does not employ anyone in the manner subject to the Workers' Compensation laws of California.

6.2 **General Liability Insurance.** CONTRACTOR shall maintain general liability insurance, including automobile coverage when applicable, with limits of One Million Dollars (\$1,000,000) per occurrence for bodily injury and property damage. The coverage shall be primary as to AUSD and shall name AUSD as an additional insured through endorsement. Inclusion of AUSD as an additional insured shall not affect AUSD's right to a claim, demand, suit or judgment made, brought or recovered against CONTRACTOR. CONTRACTOR must provide insurance documentation prior to the commencement of work.

*CONTRACTOR acknowledgement marc apodaca

6.3 Professional Liability Insurance. If CONTRACTOR is offering AUSD professional advice under this Agreement, CONTRACTOR shall maintain errors and omissions insurance or professional liability insurance with coverage limits of One Million Dollars (\$1,000,000) per claim.

6.3.1 ☐ **Waiver of Professional Liability Insurance.** CONTRACTOR is not required to maintain professional liability insurance as they are not offering professional advice. Waiver of insurance does not release CONTRACTOR from responsibility for any claim or demand.
_____ (CONTRACTOR initials)
_____ (District Representative initials)

7. Notices. All notices provided for under this Agreement shall be in writing and either personally delivered during normal business hours or sent by U.S. Mail (certified, return receipt requested) with postage prepaid to the other party at the address set forth below:

AUSD Representative:

Name: Monty Patterson
E-mail: mpatterson@alamedaunified.org
Site/Dept: District Office/MOF
Address: 2060 Challenger Drive, Alameda CA 94501
510-337-7090

CONTRACTOR:

Name: Apodaca Mechanical & Consulting, Inc.
Title: President.
Address: 5518 Southbrook Dr.
Clayton Ca. 94517
Email: marc@apodacamechanical.com

Notice shall be effective when received if personally served or, if mailed, three days after mailing. Either party must give written notice of a change in address.

8. Invoicing. Invoices furnished by CONTRACTOR under this Agreement must be in a form acceptable to AUSD. All amounts paid by AUSD shall be subject to audit by AUSD.

8.1 Invoices shall be emailed directly to accountspayable@alamedaunified.org or mailed to Attn: Accounts Payable at 2060 Challenger Drive, Alameda, CA 94501. Invoice shall include but not be limited to: consultant name, consultant address, invoice date, invoice sequence number, purchase order number, name of school or department service was provided to, period of service, number of hours of service, brief description of services provided, hourly rate, and total payment requested.

9. Licenses and Permits. CONTRACTOR shall obtain and keep in force all licenses, permits, and certificates necessary for the performance of this Agreement.

10. Contractor Qualifications / Performance of Services.

10.1 Contractor Qualifications. CONTRACTOR is specially trained, experienced, competent and fully licensed to provide the Services required by this Agreement in conformity with the laws and regulations of the State of California, the United States of America, and all local laws, ordinances and regulations, as they may apply.

10.2 Standard of Care. CONTRACTOR represents that CONTRACTOR has the qualifications and ability to perform the Services in a professional manner, without the advice, control, or supervision of AUSD. Contractor's services will be performed, findings obtained, reports and recommendations prepared in accordance with generally and currently accepted principles and practices of its profession for services to California school districts.

- 11. Status of Contractor.** This is not an employment contract. CONTRACTOR, in the performance of this Agreement, shall be and act as an independent contractor. CONTRACTOR certifies that s/he performs work that is outside the usual course of the District's business. CONTRACTOR further certifies s/he is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed. CONTRACTOR understands and agrees that it and all of its employees shall not be considered officers, employees, agents, partner, or joint venture of AUSD, and are not entitled to benefits of any kind or nature normally provided employees of AUSD and/or to which AUSD's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Workers' Compensation. CONTRACTOR shall assume full responsibility for payment of all federal, state, and local taxes or contributions, including unemployment insurance, social security, and income taxes with respect to CONTRACTOR's employees. In the performance of the work herein contemplated, CONTRACTOR is an independent contractor or business entity, with the sole authority for controlling and directing the performance of the details of the work. AUSD's interest is only in the results obtained.
- 12. Assignment.** The obligations of CONTRACTOR under this Agreement shall not be assigned by CONTRACTOR without the express prior written consent of AUSD.
- 13. Anti-Discrimination.** It is the policy of AUSD that in connection with all work performed under contracts there be no discrimination against any employee engaged in the work because of race, color, ancestry, national origin, religious creed, physical disability, medical condition, marital status, sexual orientation, gender, or age and therefore the CONTRACTOR agrees to comply with applicable federal and California laws including, but not limited to, the California Fair Employment and Housing Act beginning with Government Code Section 12900 and Labor Code Section 1735 and AUSD policy. In addition, the CONTRACTOR agrees to require like compliance by all its subcontractors. Contractor shall not engage in unlawful discrimination in employment on the basis of actual or perceived race, color, national origin, ancestry, religion, age, marital status, pregnancy, physical or mental disability, medical condition, veteran status, gender, sex, or sexual orientation.
- 14. Drug-Free/Smoke Free Policy.** No drugs, alcohol, and/or smoking are allowed at any time in any buildings and/or grounds on AUSD property. No students, staff, visitors, CONTRACTORS, or subcontractors are to smoke or use drugs or alcohol on these sites.
- 15. Indemnification.** CONTRACTOR agrees to hold harmless, indemnify, and defend AUSD and its officers, agents, and employees from any and all claims or losses accruing or resulting from injury, damage, or death of any person, firm, or corporation in connection with the performance of this Agreement. CONTRACTOR also agrees to hold harmless, indemnify, and defend AUSD and its elective board, officers, agents, and employees from any and all claims or losses incurred by any supplier, contractor, or subcontractor furnishing work, services, or materials to CONTRACTOR in connection with the performance of the Agreement. This provision survives termination of this Agreement.
- 16. Copyright/Trademark/Patent/Ownership.** CONTRACTOR understands and agrees that all matters produced under this Agreement shall become the property of AUSD and cannot be used without AUSD's express written permissions. AUSD shall have all rights, title, and interest in said matters, including the right to secure and maintain the copyright, trademark and/or patent of said matter in the name of AUSD. CONTRACTOR consents to use of CONTRACTOR's name in conjunction with the sale, use, performance, and distribution of the matters, for any purpose and in any medium. These matters include, without limitation, drawings, plans, specifications, studies, reports, memoranda, computation sheets, the contents of computer diskettes, artwork,

copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, source codes, or any other original works of authorships, or other documents prepared by CONTRACTOR or its subcontractors in connection with the Services performed under this Agreement. All works shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in those works are the property of AUSD.

17. **Waiver.** No delay or omission by either party in exercising any right under this Agreement shall operate as a waiver of that or any other right or prevent a similar subsequent act from constituting a violation of the Agreement.
18. **Termination.** AUSD may at any time terminate this Agreement upon written notice to CONTRACTOR. AUSD shall compensate CONTRACTOR for services satisfactorily provided through the date of termination. In addition, AUSD may terminate this Agreement for cause should CONTRACTOR fail to perform any part of this Agreement. In the event of termination for cause, AUSD may secure the required services from another contractor. If the cost to AUSD exceeds the cost of providing the services pursuant to the Agreement, CONTRACTOR shall pay the additional cost.
19. **No Rights in Third Parties.** This Agreement does not create any rights in, or inure to the benefit of, any third party except as expressly provided herein.
20. **AUSD's Evaluation of CONTRACTOR and CONTRACTOR's Employees and/or Subcontractors.** AUSD may evaluate the CONTRACTOR's work in any way that AUSD is entitled to do so pursuant to applicable law. The AUSD's evaluation may include, without limitation:
 - 20.1 Requesting that AUSD employee(s) evaluate the CONTRACTOR and the CONTRACTOR's employees and subcontractors and each of their performance.
 - 20.2 Announced and unannounced observance of CONTRACTOR, CONTRACTOR's employee(s), and/or subcontractor(s).
21. **Limitation of AUSD Liability.** Other than as provided in this Agreement, AUSD's financial obligations under this Agreement shall be limited to the payment of the compensation provided in this Agreement. Notwithstanding any other provision of this Agreement, in no event shall AUSD be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect, or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement for the services performed in connection with this Agreement.
22. **Confidentiality.** CONTRACTOR and all personnel designated by CONTRACTOR to perform under this Agreement shall maintain the confidentiality of all information received in the course of performing this Agreement. This requirement shall extend beyond the effective termination or expiration date of this Agreement. In the event CONTRACTOR receives student data protected by the Family Educational Rights and Privacy Act ("FERPA"), Provider shall abide by Education Code section 49073, including the following:(a) Provider shall not use the student data provided, for an unauthorized purpose, transfer the student data to an unauthorized third party, or sell said data (b) Provider shall delete or otherwise dispose of student data in its possession after the termination of services under this Agreement (c) Provider shall undertake reasonable precautions to protect the student data and shall promptly report to the District any unauthorized access to the student data.

- 23. Conflict of Interest.** CONTRACTOR shall abide by and be subject to all applicable AUSD policies, regulations, statutes or other laws regarding conflict of interest. CONTRACTOR shall not hire any officer or employee of AUSD to perform any service by this Agreement. CONTRACTOR affirms to the best of his/her/its knowledge, there exists no actual or potential conflict of interest between CONTRACTOR's family, business or financial interest and the services provided under this Agreement. In the event of change in either private interest or services under this Agreement, any question regarding possible conflict of interest which may arise as a result of such change will be brought to AUSD's attention in writing. Through its execution of this Agreement, CONTRACTOR acknowledges that it is familiar with the provisions of Section 1090 et seq. and Section 87100 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitute a violation of said provisions. In the event CONTRACTOR receives any information subsequent to execution of this Agreement, which might constitute a violation of said provisions, CONTRACTOR agrees it shall notify AUSD of this information.
- 24. Integration/Entire Agreement of Parties.** This Agreement constitutes the entire agreement between the Parties and supersedes all prior discussions, negotiations, and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by both Parties.
- 25. Litigation.** This Agreement shall be performed in Alameda, California and is governed by the laws of the State of California. The Alameda County Superior Court shall have jurisdiction over any state court litigation initiated to enforce or interpret this Agreement. If litigation is initiated, the prevailing party shall be entitled to reasonable attorney's fees and costs.
- 26. Agreement Contingent on Governing Board Approval.** The District shall not be bound by the terms of this Agreement until it has been formally approved or ratified by the District's Governing Board, and/or Executive Cabinet as its designee, and no payment shall be owed or made to CONTRACTOR absent formal approval.
- 27. Counterparts.** This Agreement and all amendments and supplements to it may be executed in counterparts, and all counterparts together shall be construed as one document. The Recitals and each Exhibit attached hereto are hereby incorporated herein by reference.
- 28. Contract Publicly Posted.** This contract, its contents, and all incorporated documents are public documents and will be made available by AUSD to the public online via the Internet.
- 29. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion.** CONTRACTOR certifies to the best of his/her/its knowledge and belief, that it and its principals are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency according to Federal Acquisition Regulation Subpart 9.4, and by signing this contract, certifies that this vendor does not appear on the Excluded Parties List (<https://www.sam.gov/>).
- 30. Force Majeure.** At the District's discretion, the Parties shall be excused from performance hereunder during the time and to the extent that it is prevented from performing in the customary manner by an act of God, fire, flood, war, riot, civil disturbance, terrorism, epidemic, quarantine/shelter in place order, strike, lockout, labor dispute, or any other occurrence which is beyond the control of the parties, when evidence thereof is presented to the other party. The District shall not be responsible for any costs associated with this Agreement while performance is so excused.
- 31. Other.** Additional terms attached or edits to must be approved by legal counsel representing AUSD.

Revised: 6.2021

I. SITE

CONTRACTOR

Print Name & Title:

Marc Apodaca, President

CONTRACTOR Signature: marc apodaca

Digitally signed by marc apodaca
Date: 2021.09.03 11:37:36 -07'00'

Date: 9/03/21

SOURCE OF FUNDS

Unrestricted Funds (general fund)

X

Donated Funds

Restricted Funds

Budget Code:

01-8150-0-0000-8110-5800-077-77-0000

Requesting Administrator ("wet" signature required)

Date

The person(s) signing this Agreement on behalf of each party has been given the proper authority and empowered to enter into this Agreement.

FORWARD TO: Business Services for review and processing

II. HR

Human Resource Approval ☐ Yes ☐ No

Signature of Human Resource Administrator

Date

III. CABINET

- ☐ Superintendent, Pasquale Scuderi
- ☐ Assistant Superintendent of Human Resources, Tim Erwin
- ☐ Assistant Superintendent of Educational Services, Kirsten Zazo
- ☐ Assistant Superintendent of Business Services, Shariq Khan

Signature of Executive Cabinet Member

Date

IV. BOARD

BOE Approval Required for Contracts Equal To Or Greater Than \$96,700:

Signature of President, Board of Education

Date

Signature of Secretary, Board of Education

Date

ALAMEDA UNIFIED SCHOOL DISTRICT

Excellence & Equity For All Students

Instructions to Independent Contractors

Contractors who are not corporations should complete this form and submit with other contract documents.

Check all items that are true and correct. Contractor must inform Fiscal Services if business is converted into corporation.

INDEPENDENT CONTRACTOR STATUS CHECKLIST

(Employee v. Independent Contractor)

Independent Contractor's Name: _____

Current AUSD employee or substitute? ☐ Yes ☐ No

LABOR CODE FACTORS (§ 2750.3) – ALL 3 MUST APPLY

- ☐ CONTRACTOR and its workers are free from the control and direction of the District in connection with the performance of the work, both under the contract for the performance of the work and in fact.
- ☐ The work to be performed by the CONTRACTOR and its workers is outside the usual course of the District's business.
- ☐ CONTRACTOR is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.

IRS COMMON LAW FACTORS:

- ☐ **NO INSTRUCTIONS:** The worker will not be required to follow explicit instructions to accomplish the job. AUSD may provide job specifications, however.
- ☐ **NO TRAINING:** The worker will not receive training provided by AUSD. The worker will use independent methods to accomplish the work.
- ☐ **RIGHT TO HIRE OTHERS:** The worker is being hired to provide a result and will have the right to hire others to do the actual work/job.
- ☐ **WORK NOT ESSENTIAL TO AUSD:** AUSD's success or continuation does not depend on the services of the worker.
- ☐ **OWN WORK HOURS:** The worker will establish the work hours for the job.
- ☐ **NO CONTINUING RELATIONSHIP:** The worker will not have a continuing relationship with AUSD. If the relationship is frequent, it will be at irregular intervals, or call (no full-time), or whenever work is available.
- ☐ **CONTROL OF ASSISTANTS:** If assistants are hired, it will be at the worker's sole discretion. The worker will be responsible for hiring, supervising, and paying those assistants.
- ☐ **TIME TO PURSUE OTHER WORK:** The worker will have time to pursue other gainful work.
- ☐ **JOB LOCATION:** The worker will control the job location if work is performed on AUSD's premises; AUSD will not direct or supervise the work.
- ☐ **ORDER OF WORK:** The worker will determine the order and sequence in which the job will be performed.
- ☐ **BASIS OF PAYMENT:** The worker will be paid by the job or project, not by actual time expended. Periodic payments may

be made, though, based on a percentage of the completed job. Also, overall compensation may be based on the projected number of days/hours needed to do the job times a fixed daily/hourly rate. However, this compensation will be set in advance of the job.

- ☐ **WORK FOR MULTIPLE FIRMS:** The worker may work for more than one firm or agency at a time.
- ☐ **BUSINESS EXPENSES:** The worker will be responsible for incidental or special business expenses.
- ☐ **OWN TOOLS/EQUIPMENT:** The worker will furnish the tools/equipment needed for the job. If AUSD leases equipment to the worker, the terms will be equivalent to what an independent business person could have obtained in the open market.
- SIGNIFICANT INVESTMENT:** The worker can perform services without hiring AUSD's facilities (equipment, office furniture, machinery, etc.). The worker's investment in his/her trade is real, essential, and adequate.
- ☐ **SERVICES AVAILABLE TO GENERAL PUBLIC:** The worker makes his/her services available to the general public by (check one or more):
 - ☐ Having an office and assistants
 - ☐ Advertising his/her services (e.g., business cards, letterhead, telephone book, other)
 - ☐ Having business signs
 - ☐ Having a business license
 - ☐ Listing services in a business directory
 - ☐ Other
 - ☐ (Attached copies of business license, business cards, letterhead, advertisements)
- ☐ **POSSIBLE PROFIT OR LOSS:** The worker can make a profit or a loss (check one or more):
 - ☐ The worker hires, directs, and pays assistants
 - ☐ The worker has his/her own office, equipment, materials, or facilities
 - ☐ The worker has continuing and recurring liability
 - ☐ The worker has agreed to perform specific jobs for prices agreed upon in advance
 - ☐ The worker's services affect his/her own business reputation
- ☐ **LIMITED RIGHT TO DISCHARGE:** The worker cannot be fired so long as a result is produced which meets the contract specifications.
- ☐ **NO COMPENSATION FOR NON-COMPLETION:** The worker is responsible for the satisfactory completion of the job and is not entitled to compensation in case of non-completion.
- ☐ **NO INTERIM REPORTS:** The worker is hired for the final result, and therefore, the worker will be asked for progress or interim reports. (Note: reports which are defined in the Independent Contractor Agreement as an expected final result of the agreement or which are required by state or federal law are part of the services contracted for and are not considered "interim" or "progress" reports.)

I, _____ (contractor's printed name), certify that all the statements as checked above are true and correct according to the best of my knowledge.

Signature: _____



ALAMEDA UNIFIED SCHOOL DISTRICT

Excellence & Equity For All Students

Time and Materials Rate Sheet

Company: Apodaca Mechanical & Consulting, Inc.
 Representative Name: Marc Apodaca
 Address: 5518 Southbrook Dr.
Clayton Ca. 94517
 Phone: 925.890.1899 / 925.673.8987
 Contractor License #: 765801
 DIR #: 1000003726
 Date: 9/03/21
 Project/Bid#: 2123

Time and Materials Rates

Effective Dates: 6/30/21 to 6/30/22

LABOR: Rates quoted below are general prevailing wage rates per public projects including insurance, taxes, overhead and profit.

Rates per Hour:

	<u>Straight time</u>	<u>Over time</u>	<u>Double time</u>
Foreman	<u>135</u>	<u>155</u>	<u>155</u>
Journeyman	<u>135</u>	<u>155</u>	<u>155</u>
Helper/Apprentice	<u>125</u>	<u>155</u>	<u>155</u>
Superintendent	<u>na</u>	<u>na</u>	<u>na</u>
Project Manager	<u>na</u>	<u>na</u>	<u>na</u>
Saturday Rates	<u>155</u>	<u>155</u>	<u>155</u>
Sunday Rates	<u>155</u>	<u>155</u>	<u>155</u>

MATERIAL JOB COSTS:

Material expenses will be billed at cost plus a fee of 25 % for overhead and profit.

EQUIPMENT:

Equipment owned by Contractor will be billed to the job at standard, prevailing rental rates as established by outside vendors for similar equipment. Equipment rented from outside vendors will be charged cost plus 25 % for overhead and profit.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

7/15/2021

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER First Service Insurance 215 Estates Dr. Suite 1 Roseville CA 95678	CONTACT NAME:	
	PHONE (A/C, No, Ext): 800-591-9692	FAX (A/C, No): 800-591-1845
E-MAIL ADDRESS: certificates@firstserviceweb.com		
INSURER(S) AFFORDING COVERAGE		
INSURER A: U. S. Specialty Insurance Co. NAIC # 29599		
INSURER B: Norguard Insurance Company NAIC # 31470		
INSURER C: Houston Casualty Company NAIC # 42374		
INSURER D:		
INSURER E:		
INSURER F:		

INSURED
Apodaca Mechanical & Consulting, Inc.
5518 Southbrook Drive
Clayton CA 94517

AMCAPOD-01

COVERAGES**CERTIFICATE NUMBER:** 181136170**REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	Y		U21AC9194405	4/9/2021	4/9/2022	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
B	<input type="checkbox"/> AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	Y		APAU150631	2/21/2021	2/21/2022	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	<input type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N Y	N/A	APWC122982	10/1/2020	10/1/2021	<input checked="" type="checkbox"/> PER STATUTE E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
C	Professional Liability Pollution			HCCP2160199 HCCP2160199	7/7/2021 7/7/2021	7/7/2022 7/7/2022	Each Occurrence 1,000,000 Each Occurrence 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Alameda Unified School District, its trustees, employees, and agents, the State of California are named as Additional Insured under all policies per terms of the attached endorsement(s) and as required by a written contract. 30 Day notice of cancellation, except 10 day notice for non-payment of premium applies per policy provisions.

-Project Description: All Contracts

-Site Name: All Sites

-Address: 2060 Challenger Drive, Alameda CA 94501

CERTIFICATE HOLDER**CANCELLATION**

Alameda Unified School District
2060 Challenger Dr.
Alameda CA 94501

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

© 1988-2014 ACORD CORPORATION. All rights reserved.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED WHEN REQUIRED BY CONTRACT

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

This provision does not apply in regard to any ownership, maintenance or use of the additional insured's "autos."

Additional Insured When Required by Contract

- (1) Paragraph A.1. – **WHO IS AN INSURED – of Section II – Liability Coverage** is amended to add:

d. When you have agreed, in a written contract or written agreement, that a person or organization be added as an additional insured on your business auto policy, such person or organization is an "insured", but only to the extent such person or organization is liable for "bodily injury" or "property damage" caused by the conduct of an "insured" under paragraphs a. or b. of Who Is An Insured with regard to the ownership, maintenance or use of a covered "auto."

The insurance afforded to any such additional insured applies only if the "bodily injury" or "property damage" occurs:

- (1) During the policy period, and
- (2) Subsequent to the execution of such written contract, and
- (3) Prior to the expiration of the period of time that the written contract requires such insurance be provided to the additional insured.

(2) How Limits Apply

If you have agreed in a written contract or written agreement that another person or organization be added as an additional insured on your policy, the most we will pay on behalf of such additional insured is the lesser of:

(a) The limits of insurance specified in the written contract or written agreement; or

(b) The Limits of Insurance shown in the Declarations.

Such amount shall be a part of and not in addition to Limits of Insurance shown in the Declarations and described in this Section.

(3) Additional Insureds Other Insurance

If we cover a claim or "suit" under this Coverage Part that may also be covered by other insurance available to an additional insured, such additional insured must submit such claim or "suit" to the other insurer for defense and indemnity.

However, this provision does not apply to the extent that you have agreed in a written contract or written agreement that the insurance is primary and non-contributory with the additional insured's own insurance.

(4) Duties in The Event Of Accident, Claim, Suit or Loss

If another person or organization is added as an additional insured on your policy, the additional insured shall be required to comply with the provisions in **A. Loss Conditions 2. – Duties In The Event Of Accident, Claim, Suit Or Loss – of SECTION IV – BUSINESS AUTO CONDITIONS**, in the same manner as the Named Insured.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

PRIMARY AND NONCONTRIBUTORY AND BLANKET WAIVER OF SUBROGATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

A. PRIMARY AND NON-CONTRIBUTORY TO OTHER INSURANCE

With respect to any person or organization that is an additional insured under this Coverage Part, the following is added to paragraph 4. of **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**:

If you have agreed in writing in a contract or agreement that this insurance is primary and non-contributory relative to an additional insured's own insurance, then this insurance is primary and we will not seek contribution from that other insurance. For the purpose of this endorsement, the additional insured's own insurance means insurance on which the additional insured is a Named Insured.

When this endorsement is attached to the policy it supersedes all other insurance conditions within.

B. WAIVER OF SUBROGATION – BLANKET

Under **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**, The **Transfer Of Rights Of Recovery Against Others To Us Condition** is amended by the addition of the following:

We waive any right of recovery we may have against any person or organization because of payments we make for injury or damage arising out of:

- a. Your ongoing operations; or
- b. "Your work" included in the "products-completed operations hazard".

However, this waiver applies only when you have agreed in writing to waive such rights of recovery in a contract or agreement, and only if the contract or agreement:

- a. Is in effect or becomes effective during the term of this policy; and
- b. Was executed prior to loss.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – SCHEDULED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s):	Location(s) Of Covered Operations
Any person or organization for whom you are performing operations during the policy period when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on your policy.	
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury" or "property damage" occurring after:

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

COMMUNITY-BASED ORGANIZATION (CBO) MASTER CONTRACT AMENDMENT COVERSHEET

This Master Contract Amendment, effective as of July 1, 2021, is a part of the Community Based Organization Master Contract (No. 900333) made and entered into by and between the County of Alameda ("County"), and Alameda City Unified School District, hereinafter referred to as the ("Contractor").

The Master Contract is hereby amended by adding the following described exhibits, all of which are attached and incorporated into the Master Contract by this reference, and hereinafter referred to as "Procurement Contract No. 22199", the "Procurement Contract":

1. **Exhibit A** – Service definition/Deliverables;
2. **Exhibit B** – Terms of Payment;
3. **Exhibit C** – Insurance Requirements;
4. **Exhibit D** – Debarment and Suspension Certification; and
5. **Exhibit E** – HIPAA Business Associate Agreement;

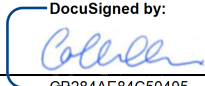
The Exhibits above replace and supersede any and all previous Exhibits entered by both parties for this Procurement Contract. Except as herein amended, the Master Contract is continued in full force and effect.

The Term of this Procurement Contract shall be from July 1, 2022 through June 30, 2022. The compensation payable to Contractor hereunder shall not exceed \$60,149 for the term of this Procurement Contract.

Contractor shall invoice the County bi-annually during the contract period, not to exceed \$30,074.50 per invoice

The signatures below signify that the attached Exhibits have been received, negotiated and finalized. The Contractor also continues to be bound by all provisions of the Master Contract. IN WITNESS WHEREOF and for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, County and Contractor agree hereto have executed this Procurement Contract, effective as of the date of execution by the County. By signing below, signatory warrants and represents that he/she executed this Procurement Contract in his/her authorized capacity and that by his/her signature on this Procurement Contract, he/she or the entity upon behalf of which he/she acted, executed this Procurement Contract.

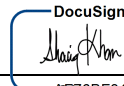
COUNTY OF ALAMEDA

DocuSigned by:
By  Date 9/23/2021
Signature

Name Colleen Chawla

Title Director, Health Care Services Agency

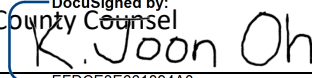
ALAMEDA CITY UNIFIED SCHOOL DISTRICT

DocuSigned by:
By  Date 9/22/2021
Signature

Name Shariq Khan

Title Chief Business Officer,

APPROVED AS TO FORM: Donna R. Ziegler,

By  K. Joon Oh Date _____
DocuSigned by: County Counsel
Signature
EFDCE3E661894A0...

Name K Joon Oh

Title Deputy County Counsel

EXHIBIT A
DEFINITION OF SERVICES

Contractor: Alameda City Unified School District
Contract Period: 7/1/2021 to 6/30/2022
Contract Amount: \$60,149

I. Contracted Services

School Based Behavioral Health Initiative- Mental Health Consultation in Schools Program

A. Services and Funding

Alameda City Unified School District (AUSD), Contractor, shall provide Mental Health Consultation in Schools program services to students & their families, and staff of Alameda City Unified School District on behalf of the Alameda County Health Care Services Agency Center for Healthy Schools and Communities (CHSC). The goals for the program are to build a system of health supports for students and their families, increase capacity of staff and strengthen coordination of service delivery.

The Mental Health Consultation in School Program is funded by the Prevention and Early Intervention (PEI) Mental Health Access and Linkage to Services programs under Alameda County Mental Health Services Act (MHSA). The PEI MHSA program aims to connect students experiencing behavioral health issues to supports including, but not limited to, prevention, early intervention, treatment and recovery services.

B. Program Goals, Results Framework, Outcomes, and Evaluation

1. The Center for Healthy Schools and Communities (CHSC) Goal

The overall goal of the CHSC is for all youth in Alameda County to graduate from high school healthy and ready for college and career.

2. CHSC Results Framework

- a. Youth are physically, socially and emotionally healthy
- b. Youth succeed academically
- c. Environments are safe, supportive and stable
- d. Families are supported and supportive
- e. Systems are integrated and care is coordinated and equitable

3. The Alameda County School Based Behavioral Health Initiative defines School-Based Behavioral Health (SBBH) as the infrastructure, programs, and relationship within a school and district that promote the healthy social-emotional development of all students and address barriers to learning. The six core components of our SBBH model are:

- Three tiers of support

- District Capacity
- Cultural Responsiveness
- Coordination strategies
- School-wide responsibility
- Ongoing Assessment

C. Program Goals

Mental Health Consultation in Schools Program goals:

1. Enhanced capacity of schools to identify and track individuals and families with social, emotional and behavioral issues and ensure proper referral and linkage to treatment;
2. Increased number of school staff trained in the recognition of early indicators of mental illness and how to refer students for screening and intervention;
3. Increased knowledge of social, emotional and behavioral issues; and
4. Reduced suspensions, expulsions, drop-out rates, violence, social isolation, and involvement with law enforcement/courts among students.

D. Target Population

Contractor shall serve the following populations.

1. Service Groups & Program Eligibility

Contractor shall serve any student within the Alameda City Unified School District. Contractor shall make it a priority to serve students who are at high risk for serious mental health issues and school failure. The interventions shall also target the school staff and families who provide support to these students. Families are defined broadly and include non-custodial parents and guardians.

2. Referral Process to Program

Contractor shall accept self-referrals and referrals from teachers, school administrators and family members. Contractor shall also conduct some activities that serve the entire school community.

3. Limitations of Service

Not applicable.

E. Program Description

1. Program Design

Within this frame, Contractor shall develop collaborative partnerships with teachers, school staff, parents, and other providers to create school environments that promote healthy emotional development, make social-emotional learning supports available to all students, and

facilitate effective problem-solving among adults and students through a Multi-Tiered System of Supports (MTSS). MTSS is defined as an approach to integrate a continuum of system-wide resources, strategies, structures, and practices to offer a comprehensive and responsive framework for systemically addressing barriers to student learning.

Contractor shall facilitate Coordination of Services Team (COST) meetings and participate in or coordinate efforts around linkage to community resources, including preventative check-in visits, individual/group services, case management sessions, restorative justice (RJ) circles or other RJ activities, screening services, Student Attendance Review Team (SART), Student Attendance Review Board (SARB), Student Success Team (SST), and conflict mediation.

Contractor shall collaborate with various County departments on various programs including the other Prevention and Early Intervention programs. Contractor shall make presentations, prepare reports, and attend meetings (including SBBH monthly meetings) and/or trainings as required by CHSC.

2. Discharge Criteria and Process

Not applicable.

3. Hours of Operation

Contractor shall maintain the following hours of operation:

Monday through Friday, 8:00 a.m. to 3:00 p.m. Home visits shall be scheduled when appropriate. Alternative arrangements may be made depending upon client need.

4. Service Delivery Sites

Contractor shall provide services at schools of Alameda City Unified School District.

Contractor shall obtain written approval from CHSC through the CHSC Program Contract Manager prior to implementing any changes in service delivery sites.

5. Minimum Staffing Qualifications

Contractor shall notify the CHSC Program Contract Manager of any change and/or vacancy in direct service staffing which is anticipated to decrease contracted service delivery by more than 25 percent during the contract period.

Contractor shall maintain a minimum of 1.0 Full-Time Equivalent (FTE) position dedicated to this program.

II. Deliverables

Contractor shall provide the following core services during the period of 7/1/2021– 6/30/2022:

- A. Access and Linkage to Services (Coordination Strategies; Build District Capacity; Three Tiers of Support)

Strategy/Activities	Time Frame	Outcomes and Reporting
<p>1. Develop structures and protocols for coordinating health and wellness supports:</p> <p>Activities include:</p> <ul style="list-style-type: none"> a) Implementation of COST at 3 Alameda Unified school sites b) Train AUSD school site staff on overview of COST referral process and early warning signs of Mental Health issues c) Provide technical assistance and consultation to improve integrated coordination of services and COST functioning across AUSD schools d) Provide mental health consultation to faculty, staff, and families; preventive counseling to individuals and groups, and referrals and linkages to mental health services e) Provide ongoing coaching and technical assistance on Positive Behavior Intervention and Supports (PBIS) system of multi-tiered supports to AUSD staff. <p>2. Administration</p> <ul style="list-style-type: none"> a) Representative will attend monthly Alameda County School Based Behavioral Health Initiative District lead meetings. 	<p>August 2021-June 2022</p>	<p>Effort measures & targets:</p> <ul style="list-style-type: none"> • COST meets monthly at a minimum of 3 AUSD schools • Number of students served through COST • Utilize data tracking tool provided by CHSC to submit COST Tracker/ School Based Behavioral Health Services (“SBBH”) semi-annual reports • Train AUSD school site staff on overview of COST and early warning signs of Mental Health issues for 50% of AUSD Schools <p>Quality measures & targets:</p> <ul style="list-style-type: none"> • Maintain the school sites utilizing COST model to coordinate services • Existing COST teams show improvement in at least one area of functioning (CHSC COST rubric) • COST tracker • SBBH semi-annual reports <p>Impact Measures:</p> <ul style="list-style-type: none"> • School staff report improved capacity from trainings (workshop evaluations to be submitted online with semi-annual reports) • At least 75 % of students/families referred through COST for a behavioral health early intervention or treatment service shall be connected with that early intervention or treatment service • At least 75 % of students/families referred through COST for a behavioral health prevention service shall

		be connected with that service
--	--	--------------------------------

III. Reporting and Evaluation Requirements

Between July 1, 2021 and June 30, 2022, Contractor will fully cooperate with the Center for Healthy Schools & Communities evaluators and **participate in the School Based Behavioral Health Initiative (SBBHI) evaluation.**

A. Evaluation Tools. Contractor shall submit the School District Behavioral Health Programs Semi-annual Progress Report into the electronic data entry system designated CHSC. Contractor implements required evaluation tools which may vary depending on services provided, and participate in pre and post data sharing meetings as applicable. Contractor will cooperate with CHSC planning efforts for and adoption of a revised method of data collection, i.e. Salesforce database. Evaluation tools may include but are not limited to:

- Youth Satisfaction Surveys
- Staff Satisfaction Surveys
- Parent/Caregiver Surveys

B. Reporting. Contractor shall comply with the reporting requirements of County, State, or Federal agencies, and applicable law and regulations as a condition of funding. Contractor completes and submits all required data tracking and reports. The format for data tracking and reports may change during the year, e.g. from tracking sheets to a Salesforce platform. Either way, Contractor shall provide the Center for Healthy Schools & Communities Evaluators with electronic copies of semi-annual reports for the preceding 6 months utilizing the Report template according to the following schedule:

☐ January 15, 2022 (for the period covering July 1, 2021 through Dec 31, 2021)

☐ July 15, 2022 (for the period covering Jan 1, 2022 through June 30, 2022)

If reporting requirements cannot be met by above deadlines, Contractor shall immediately contact the Center for Healthy Schools & Communities (CHSC) and Evaluators with the reason for delay and the estimated date for report completion. It is within the discretion of CHSC to extend any due date. Lack of notification or failure to meet a deadline will result in fund reduction. Contractor shall include hardcopies of the quarterly report and data reports with each invoice in order to receive payment.

Contractor shall provide additional information upon request by County.

C. Quality Assurance & Monitoring Requirements

1. County representatives may perform site visits to directly observe operations at any contractor with 48-hour notification. In the performance of site visits, County representatives shall conduct inspections and manage information in a manner consistent with applicable laws relating to confidentiality of records and in a manner

that will minimize disruption of Contractor's work and will not interfere with patient care.

2. The scope of review may include, but is not limited to: availability and accessibility of care; utilization review; waiting time for services; and review of third-party billing and reimbursement.
3. All medical records related to services rendered under this Exhibit A, shall be accessible to County for inspection and audit as required for public health related conditions and as provided under HIPAA exclusion.
4. All business records related to services rendered under this Exhibit A, shall be accessible to County for inspection and audit as a part of the administrative monitoring and evaluation.
5. County representatives will maintain the confidentiality of any patient records or protected health information made available to them pursuant to this Exhibit A in accordance with all applicable state and federal statutes and regulations relating to confidentiality.

IV. Additional Requirements

A. Certification/Licensure/ Confidentiality/Communication

1. Contractor will maintain all required licenses and special permits issued by federal, state, and local agencies related to the services it provides.
2. Contractor shall notify The Center for Healthy Schools & Communities staff immediately by telephone and in writing within five days, when there is a change in the license and/or certification of any program, service, department, or facility providing services under this Exhibit A.
3. Contractor shall conform to all federal and state laws relating to confidentiality of patients' medical information, including but not limited to the Health Insurance Portability and Accountability Act when applicable.
4. Communication is vital in our collective work with schools. In matters related to schools, Contractor and The Center for Healthy Schools & Community staff shall notify and inform each other about communication with school board, district and school site staff.
5. Contractor shall provide additional agreed upon services as other funding emerges.

B. Additional Deliverables

Contractor shall submit additional deliverables or reports requested by County financial or program monitors that may be required with respect to the Mental Health Services Act and related regulations, requirements, or funding terms and conditions. Contractor shall comply with the reporting requirements of County, State, or Federal agencies, and applicable law and regulations, as a condition of funding.

V. Contact Information

	Health Care Services Agency	Contractor
Signatory	Colleen Chawla	Shariq Khan
Title	Director	Chief Business Officer
Email	Colleen.chawla@acgov.org	skhan@alamedaunified.org
Program Contact	Kate Graves	Kirsten Zazo
Email	Kate.graves@acgov.org	kzazo@alamedaunified.org
Address	1000 san Leandro Blvd., Ste. 300 San Leandro CA, 94578	2060 Challenger Drive Alameda, CA 94501
Phone	(510) 542-6942	510-337-7095

VI. Termination

Termination Provisions. Termination for Cause – If County determines that Contractor has failed, or will fail, through any cause, to fulfill in a timely and proper manner its obligations under this Procurement Contract, or if County determines that Contractor has violated or will violate any of the covenants, agreements, provisions, or stipulations or the Agreement or this Procurement Contract, County shall thereupon have the right to terminate the Agreement or this Procurement Contract by giving written notice to Contractor of such termination and specifying the effective date of such termination.

Without prejudice to the foregoing, Contractor agrees that if prior to or subsequent to the termination or expiration of the Agreement or this Procurement Contract upon any final or interim audit by County, Contractor shall have failed in any way to comply with any requirements of this Agreement or this Procurement Contract, then Contractor shall pay to County forthwith whatever sums are so disclosed to be due to County (or shall, at County's election, permit County to deduct such sums from whatever amounts remain undisbursed by County to Contractor pursuant to this Agreement or from whatever remains due Contractor by County from any other contract between Contractor and County).

Termination Without Cause – County shall have the right to terminate this Agreement or this Procurement Contract without cause at any time upon giving at least 30 days written notice prior to the effective date of such termination.

Termination By Mutual Agreement – County and Contractor may otherwise agree in writing to terminate this Agreement or this Procurement Contract in a manner consistent with mutually agreed upon specific terms and conditions.

VII. Entirety of Agreement

Contractor shall abide by all requirements contained in the Master Contract General Terms and Conditions, all Exhibits and all Attachments that are associated with and included in this Procurement Contract and are hereby incorporated into this Procurement Contract by this reference.

**EXHIBIT B
TERMS OF PAYMENT**

ALAMEDA CITY UNIFIED SCHOOL DISTRICT

I. Budget (July 1, 2021-June 30, 2022)

2019-20 Expenses	FTE	Maximum Reimbursement
Personnel		
Program Manager	1.0	\$46,758
Stipends		\$700.80
Subtotal Personnel		\$47,459
Benefits@27%		\$12,692
NOT TO EXCEED TOTAL		\$60,149

II. Conditions of the Funding Source

This contract provides for funding for the Mental Health Consultation in Schools program at Alameda City Unified School District (AUSD). In awarding this contract, the County in no way guarantees any future funding.

III. Terms and Conditions of Payment

A. Reimbursement

1. The total amount of reimbursement under the terms of this Procurement Contract shall not exceed \$60,149.00. Funds shall be used solely in support of the Mental Health Consultation in Schools program budget.
2. Contractor shall invoice the County bi-annually during the contract period, not to exceed \$30,074.50 per invoice, based on actual expenditures incurred and per completion of each deliverable. The final invoice shall be based on actual expenditures after the completion of all deliverables, shall not exceed the remaining balance of the contract, and must be received no later than July 15, 2022.
3. Required reports must be submitted before payment will be processed.
4. County shall use best efforts to process invoice submitted for reimbursement by Contractor within forty-five (45) days from receipt of invoice, reports and any other back up documentation as requested

B. Invoicing Procedures

Contractor shall invoice County bi-annually, preferably via email. Invoice, with an original signature, invoice number, PO number, and service period must be accompanied by required report.

Invoice should be sent via email to:

Kate Graves: [kate.graves@acgov.org] and Connie Yale: [connie.yale@acgov.org]

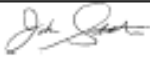
If necessary, invoice can be mailed to:

Attn: Kate Graves/Connie Yale
Center for Healthy Schools & Communities
Alameda County Health Care Services Agency
1000 San Leandro Blvd., Suite 300
San Leandro, CA 94577

EXHIBIT C
COUNTY OF ALAMEDA MINIMUM INSURANCE REQUIREMENTS

Without limiting any other obligation or liability under this Agreement, the Contractor, at its sole cost and expense, shall secure and keep in force during the entire term of the Agreement or longer, as may be specified below, the following minimum insurance coverage, limits and endorsements:

TYPE OF INSURANCE COVERAGES		MINIMUM LIMITS
A	Commercial General Liability Premises Liability; Products and Completed Operations; Contractual Liability; Personal Injury and Advertising Liability	\$1,000,000 per occurrence (CSL) Bodily Injury and Property Damage
B	Commercial or Business Automobile Liability All owned vehicles, hired or leased vehicles, non-owned, borrowed and permissive uses. Personal Automobile Liability is acceptable for individual contractors with no transportation or hauling related activities	\$1,000,000 per occurrence (CSL) Any Auto Bodily Injury and Property Damage
C	Workers' Compensation (WC) and Employers Liability (EL) Required for all contractors with employees	WC: Statutory Limits EL: \$1,000,000 per accident for bodily injury or disease
D	Professional Liability/Errors & Omissions Includes endorsements of contractual liability and defense and indemnification of the County	\$1,000,000 per occurrence \$2,000,000 project aggregate
E	<u>Endorsements and Conditions:</u> 1. ADDITIONAL INSURED: All insurance required above with the exception of Professional Liability, Commercial or Business Automobile Liability, Workers' Compensation and Employers Liability, shall be endorsed to name as additional insured: County of Alameda, its Board of Supervisors, the individual members thereof, and all County officers, agents, employees, volunteers, and representatives. The Additional Insured endorsement shall be at least as broad as ISO Form Number CG 20 38 04 13. 2. DURATION OF COVERAGE: All required insurance shall be maintained during the entire term of the Agreement. In addition, Insurance policies and coverage(s) written on a claims-made basis shall be maintained during the entire term of the Agreement and until 3 years following the later of termination of the Agreement and acceptance of all work provided under the Agreement, with the retroactive date of said insurance (as may be applicable) concurrent with the commencement of activities pursuant to this Agreement. 3. REDUCTION OR LIMIT OF OBLIGATION: All insurance policies, including excess and umbrella insurance policies, shall include an endorsement and be primary and non-contributory and will not seek contribution from any other insurance (or self-insurance) available to the County. The primary and non-contributory endorsement shall be at least as broad as ISO Form 20 01 04 13. Pursuant to the provisions of this Agreement insurance effected or procured by the Contractor shall not reduce or limit Contractor's contractual obligation to indemnify and defend the Indemnified Parties. 4. INSURER FINANCIAL RATING: Insurance shall be maintained through an insurer with a A.M. Best Rating of no less than A:VII or equivalent, shall be admitted to the State of California unless otherwise waived by Risk Management, and with deductible amounts acceptable to the County. Acceptance of Contractor's insurance by County shall not relieve or decrease the liability of Contractor hereunder. Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the Contractor. 5. SUBCONTRACTORS: Contractor shall include all subcontractors as an insured (covered party) under its policies or shall verify that the subcontractor, under its own policies and endorsements, has complied with the insurance requirements in this Agreement, including this Exhibit. The additional Insured endorsement shall be at least as broad as ISO Form Number CG 20 38 04 13. 6. JOINT VENTURES: If Contractor is an association, partnership or other joint business venture, required insurance shall be provided by one of the following methods: — Separate insurance policies issued for each individual entity, with each entity included as a "Named Insured" (covered party), or at minimum named as an "Additional Insured" on the other's policies. Coverage shall be at least as broad as in the ISO Forms named above. — Joint insurance program with the association, partnership or other joint business venture included as a "Named Insured". 7. CANCELLATION OF INSURANCE: All insurance shall be required to provide thirty (30) days advance written notice to the County of cancellation. 8. CERTIFICATE OF INSURANCE: Before commencing operations under this Agreement, Contractor shall provide Certificate(s) of Insurance and applicable insurance endorsements, in form and satisfactory to County, evidencing that all required insurance coverage is in effect. The County reserves the rights to require the Contractor to provide complete, certified copies of all required insurance policies. The required certificate(s) and endorsements must be sent as set forth in the Notices provision.	

Northern California ReLIEF				CERTIFICATE OF COVERAGE		Issue Date 6/18/2020	
ADMINISTRATOR: Keenan & Associates 1111 Broadway, Suite 2000 Oakland, CA 94607 8151 www.keenan.com		LICENSE # 0451271		THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE COVERAGE DOCUMENTS BELOW.			
COVERED PARTY: Alameda City Unified School District East Bay Schools Ins Group 2050 Challenger Drive, Suite 100 Alameda CA 94501				ENTITIES AFFORDING COVERAGE: ENTITY A: Northern California ReLIEF ENTITY B: ENTITY C: ENTITY D: ENTITY E:			
THIS IS TO CERTIFY THAT THE COVERAGES LISTED BELOW HAVE BEEN ISSUED TO THE COVERED PARTY NAMED ABOVE FOR THE PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN. THE COVERAGE AFFORDED HEREIN IS SUBJECT TO ALL THE TERMS AND CONDITIONS OF SUCH COVERAGE DOCUMENTS.							
ENT LTR	TYPE OF COVERAGE	COVERAGE DOCUMENTS	EFFECTIVE/ EXPIRATION DATE	MEMBER RETAINED LIMIT / DEDUCTIBLE	LIMITS		
A	GENERAL LIABILITY <input checked="" type="checkbox"/> GENERAL LIABILITY <input checked="" type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCURRENCE <input checked="" type="checkbox"/> GOVERNMENT CODES <input checked="" type="checkbox"/> ERRORS & OMISSIONS	NCR 00107-34	7/1/2020 7/1/2021	\$ 50,000	COMBINED SINGLE LIMIT EACH OCCURRENCE \$ 1,000,000		
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input checked="" type="checkbox"/> HIRED AUTO <input checked="" type="checkbox"/> NON-OWNED AUTO <input checked="" type="checkbox"/> GARAGE LIABILITY <input checked="" type="checkbox"/> AUTO PHYSICAL DAMAGE	NCR 00107-34	7/1/2020 7/1/2021	\$ 50,000	COMBINED SINGLE LIMIT EACH OCCURRENCE \$ 1,000,000		
A	PROPERTY <input checked="" type="checkbox"/> ALL RISK <input checked="" type="checkbox"/> EXCLUDES EARTHQUAKE & FLOOD <input checked="" type="checkbox"/> BUILDERS RISK	NCR 00107-34	7/1/2020 7/1/2021	\$ 25,000	\$ 250,250,000 EACH OCCURRENCE		
A	STUDENT PROFESSIONAL LIABILITY	NCR 00107-34	7/1/2020 7/1/2021	\$ 50,000	\$ Included EACH OCCURRENCE		
	WORKERS COMPENSATION [] EMPLOYERS' LIABILITY			\$	[] WC STATUTORY LIMITS [] OTHER \$ E.L. EACH ACCIDENT		
	EXCESS WORKERS COMPENSATION [] EMPLOYERS' LIABILITY			\$	\$ E.L. DISEASE - EACH EMPLOYEE \$ E.L. DISEASE - POLICY LIMITS		
	OTHER			\$	\$		
DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/RESTRICTIONS/SPECIAL PROVISIONS: As respects to Master Contract #900333, Procurement Contract #20520 between the County of Alameda, Behavioral Health Care Services and Alameda Unified School District regarding the School-Based Mental Health Consultation Program effective 7/1/2020 through 6/30/2021. \$2,000,000 annual aggregate as required by the contract.							
CERTIFICATE HOLDER: County of Alameda Behavioral Health Care Services Attn: Wilbur Kelly 1900 Embarcadero Cove, Suite 205 Oakland CA 94606				SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS			
				 John Stephens AUTHORIZED REPRESENTATIVE			

ENDORSEMENT
ADDITIONAL COVERED PARTY

COVERED PARTY	COVERAGE DOCUMENT	ADMINISTRATOR
Alameda City Unified School District East Bay Schools Ins Group	NCR 00107-34	Keenan & Associates

Subject to all its terms, conditions, exclusions, and endorsements, such additional covered party as is afforded by the coverage document shall also apply to the following entity but only as respects to liability arising directly from the actions and activities of the covered party described under "as respects" below.

Additional Covered Party:

County of Alameda
Behavioral Health Care Services
Attn: Wilbur Kelly
1900 Embarcadero Cove, Suite 205
Oakland CA 94606

As Respects:

As respects to Master Contract #900333, Procurement Contract #20320 between the County of Alameda, Behavioral Health Care Services and Alameda Unified School District regarding the School-Based Mental Health Consultation Program effective 7/1/2020 through 6/30/2021. \$2,000,000 annual aggregate as required by the contract.

The County of Alameda, its Board of Supervisors, the individual members thereof, and all County officers, agents, employees and representatives are included as an Additional Covered Party.



Authorized Representative

Issue Date: 6/18/2020


Protected Insurance Program for Schools		CERTIFICATE OF COVERAGE		Issue Date 6/18/2020	
ADMINISTRATOR: Keenan & Associates 1111 Broadway, Suite 2000 Oakland, CA 94607 8151 www.keenan.com		LICENSE # 0451271		THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE COVERAGE DOCUMENTS BELOW.	
COVERED PARTY: Alameda City Unified School District East Bay Schools Ins Group 2050 Challenger Drive, Suite 100 Alameda CA 94501		ENTITIES AFFORDING COVERAGE: ENTITY A: Protected Insurance Program for Schools ENTITY B: ENTITY C: ENTITY D: ENTITY E:			
THIS IS TO CERTIFY THAT THE COVERAGES LISTED BELOW HAVE BEEN ISSUED TO THE COVERED PARTY NAMED ABOVE FOR THE PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE COVERAGE AFFORDED HEREIN IS SUBJECT TO ALL THE TERMS AND CONDITIONS OF SUCH COVERAGE DOCUMENTS.					
DNT LTR	TYPE OF COVERAGE	COVERAGE DOCUMENTS	EFFECTIVE/ EXPIRATION DATE	MEMBER RETAINED LIMIT / DEDUCTIBLE	LIMITS
	GENERAL LIABILITY <input type="checkbox"/> GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCURRENCE <input type="checkbox"/> GOVERNMENT CODES <input type="checkbox"/> ERRORS & OMISSIONS			\$	COMBINED SINGLE LIMIT EACH OCCURRENCE \$
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> HIRED AUTO <input type="checkbox"/> NON-OWNED AUTO <input type="checkbox"/> GARAGE LIABILITY <input type="checkbox"/> AUTO PHYSICAL DAMAGE			\$	COMBINED SINGLE LIMIT EACH OCCURRENCE \$
	PROPERTY <input type="checkbox"/> ALL RISK <input type="checkbox"/> EXCLUDES EARTHQUAKE & FLOOD <input type="checkbox"/> BUILDERS RISK			\$	\$ EACH OCCURRENCE
	STUDENT PROFESSIONAL LIABILITY			\$	\$ EACH OCCURRENCE
A	WORKERS COMPENSATION <input checked="" type="checkbox"/> EMPLOYERS LIABILITY	PIPS 00217-18	7/1/2020 7/1/2021	\$	<input type="checkbox"/> JWC STATUTORY LIMITS <input checked="" type="checkbox"/> OTHER \$ 1,000,000 E.L. EACH ACCIDENT
	EXCESS WORKERS COMPENSATION <input type="checkbox"/> EMPLOYERS LIABILITY			\$	\$ 1,000,000 E.L. DISEASE - EACH EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMITS
	OTHER			\$	
DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/RESTRICTIONS/SPECIAL PROVISIONS: As respects to Master Contract #000333, Procurement Contract #20320 between the County of Alameda, Behavioral Health Care Services and Alameda Unified School District regarding the School-Based Mental Health Consultation Program effective 7/1/2020 through 6/30/2021. \$2,000,000 annual aggregate as required by the contract.					
CERTIFICATE HOLDER: County of Alameda Behavioral Health Care Services Attn: Wilbur Kelly 1900 Embarcadero Cove, Suite 205 Oakland CA 94606			SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS  John Stephens AUTHORIZED REPRESENTATIVE		

EXHIBIT D

**COUNTY OF ALAMEDA
DEBARMENT AND SUSPENSION CERTIFICATION**

(Applicable to all agreements funded in part or whole with federal funds and contracts over \$25,000).

The contractor, under penalty of perjury, certifies that, except as noted below, contractor, its principals, and any named and unnamed subcontractor:

- Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;
- Has not been suspended, debarred, voluntarily excluded or determined ineligible by any federal agency within the past three years;
- Does not have a proposed debarment pending; and
- Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three years.

If there are any exceptions to this certification, insert the exceptions in the following space.

Exceptions will not necessarily result in denial of award, but will be considered in determining contractor responsibility. For any exception noted above, indicate below to whom it applies, initiating agency, and dates of action.

Notes: Providing false information may result in criminal prosecution or administrative sanctions. The above certification is part of the Procurement Contract. Signing this Procurement Contract on the signature portion thereof shall also constitute signature of this Certification.

CONTRACTOR: Alameda City Unified School District

PRINCIPAL: Shariq Khan TITLE: Chief Business Officer

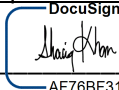
SIGNATURE:  DATE: 9/22/2021
DocuSigned by: AF76BF3178424B1...

EXHIBIT E
HIPAA BUSINESS ASSOCIATE AGREEMENT

This Exhibit, the HIPAA Business Associate Agreement (“Exhibit”) supplements and is made a part of the underlying agreement (“Agreement”) by and between the County of Alameda, (“County” or “Covered Entity”) and Alameda City Unified School District, (“Contractor” or “Business Associate”) to which this Exhibit is attached. This Exhibit is effective as of the effective date of the Agreement.

I. RECITALS

Covered Entity wishes to disclose certain information to Business Associate pursuant to the terms of the Agreement, some of which may constitute Protected Health Information (“PHI”); Covered Entity and Business Associate intend to protect the privacy and provide for the security of PHI disclosed to Business Associate pursuant to the Agreement in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“HIPAA”), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 (the “HITECH Act”), the regulations promulgated thereunder by the U.S. Department of Health and Human Services (the “HIPAA Regulations”), and other applicable laws; and The Privacy Rule and the Security Rule in the HIPAA Regulations require Covered Entity to enter into a contract, containing specific requirements, with Business Associate prior to the disclosure of PHI, as set forth in, but not limited to, Title 45, sections 164.314(a), 164.502(e), and 164.504(e) of the Code of Federal Regulations (“C.F.R.”) and as contained in this Agreement.

II. STANDARD DEFINITIONS

Capitalized terms used, but not otherwise defined, in this Exhibit shall have the same meaning as those terms are defined in the HIPAA Regulations. In the event of an inconsistency between the provisions of this Exhibit and the mandatory provisions of the HIPAA Regulations, as amended, the HIPAA Regulations shall control. Where provisions of this Exhibit are different than those mandated in the HIPAA Regulations, but are nonetheless permitted by the HIPAA Regulations, the provisions of this Exhibit shall control. All regulatory references in this Exhibit are to HIPAA Regulations unless otherwise specified.

The following terms used in this Exhibit shall have the same meaning as those terms in the HIPAA Regulations: Data Aggregation, Designated Record Set, Disclosure, Electronic Health Record, Health Care Operations, Health Plan, Individual, Limited Data Set, Marketing, Minimum Necessary, Minimum Necessary Rule, Protected Health Information, and Security Incident.

The following term used in this Exhibit shall have the same meaning as that term in the HITECH Act: Unsecured PHI.

III. SPECIFIC DEFINITIONS

Agreement. “Agreement” shall mean the underlying agreement between County and Contractor, to which this Exhibit, the HIPAA Business Associate Agreement, is attached.

Business Associate. “Business Associate” shall generally have the same meaning as the term “business associate” at 45 C.F.R. section 160.103, the HIPAA Regulations, and the HITECH Act, and in reference to a party to this Exhibit shall mean the Contractor identified above. “Business Associate” shall also mean any subcontractor that creates, receives, maintains, or transmits PHI in performing a function, activity, or service delegated by Contractor.

Contractual Breach. “Contractual Breach” shall mean a violation of the contractual obligations set forth in this Exhibit.

Covered Entity. "Covered Entity" shall generally have the same meaning as the term "covered entity" at 45 C.F.R. section 160.103, and in reference to the party to this Exhibit, shall mean any part of County subject to the HIPAA Regulations.

Electronic Protected Health Information. "Electronic Protected Health Information" or "Electronic PHI" means Protected Health Information that is maintained in or transmitted by electronic media.

Exhibit. "Exhibit" shall mean this HIPAA Business Associate Agreement.

HIPAA. "HIPAA" shall mean the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191.

HIPAA Breach. "HIPAA Breach" shall mean a breach of Protected Health Information as defined in 45 C.F.R. 164.402, and includes the unauthorized acquisition, access, use, or Disclosure of Protected Health Information which compromises the security or privacy of such information.

HIPAA Regulations. "HIPAA Regulations" shall mean the regulations promulgated under HIPAA by the U.S. Department of Health and Human Services, including those set forth at 45 C.F.R. Parts 160 and 164, Subparts A, C, and E.

HITECH Act. "HITECH Act" shall mean the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 (the "HITECH Act").

Privacy Rule and Privacy Regulations. "Privacy Rule" and "Privacy Regulations" shall mean the standards for privacy of individually identifiable health information set forth in the HIPAA Regulations at 45 C.F.R. Part 160 and Part 164, Subparts A and E.

Secretary. "Secretary" shall mean the Secretary of the United States Department of Health and Human Services ("DHHS") or his or her designee.

Security Rule and Security Regulations. "Security Rule" and "Security Regulations" shall mean the standards for security of Electronic PHI set forth in the HIPAA Regulations at 45 C.F.R. Parts 160 and 164, Subparts A and C.

IV. PERMITTED USES AND DISCLOSURES OF PHI BY BUSINESS ASSOCIATE

Business Associate may only use or disclose PHI:

- A. As necessary to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Agreement, provided that such use or Disclosure would not violate the Privacy Rule if done by Covered Entity;
- B. As required by law; and
- C. For the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate, provided the disclosures are required by law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

V. PROTECTION OF PHI BY BUSINESS ASSOCIATE

- A. *Scope of Exhibit.* Business Associate acknowledges and agrees that all PHI that is created or received by Covered Entity and disclosed or made available in any form, including paper record, oral communication, audio recording and electronic display, by Covered Entity or its operating units to Business Associate, or is created or received by Business Associate on Covered Entity's behalf, shall be subject to this Exhibit.
- B. *PHI Disclosure Limits.* Business Associate agrees to not use or further disclose PHI other than as permitted or required by the HIPAA Regulations, this Exhibit, or as required by law. Business Associate may not use or disclose PHI in a manner that would violate the HIPAA Regulations if done by Covered Entity.
- C. *Minimum Necessary Rule.* When the HIPAA Privacy Rule requires application of the Minimum Necessary Rule, Business Associate agrees to use, disclose, or request only the Limited Data Set, or if that is inadequate, the minimum PHI necessary to accomplish the intended purpose of that use, Disclosure, or request. Business Associate agrees to make uses, Disclosures, and requests for PHI consistent with any of Covered Entity's existing Minimum Necessary policies and procedures.
- D. *HIPAA Security Rule.* Business Associate agrees to use appropriate administrative, physical and technical safeguards, and comply with the Security Rule and HIPAA Security Regulations with respect to Electronic PHI, to prevent the use or Disclosure of the PHI other than as provided for by this Exhibit.
- E. *Mitigation.* Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or Disclosure of PHI by Business Associate in violation of the requirements of this Exhibit. Mitigation includes, but is not limited to, the taking of reasonable steps to ensure that the actions or omissions of employees or agents of Business Associate do not cause Business Associate to commit a Contractual Breach.
- F. *Notification of Breach.* During the term of the Agreement, Business Associate shall notify Covered Entity in writing within twenty-four (24) hours of any suspected or actual breach of security, intrusion, HIPAA Breach, and/or any actual or suspected use or Disclosure of data in violation of any applicable federal or state laws or regulations. This duty includes the reporting of any Security Incident, of which it becomes aware, affecting the Electronic PHI. Business Associate shall take (i) prompt corrective action to cure any such deficiencies and (ii) any action pertaining to such unauthorized use or Disclosure required by applicable federal and/or state laws and regulations. Business Associate shall investigate such breach of security, intrusion, and/or HIPAA Breach, and provide a written report of the investigation to Covered Entity's HIPAA Privacy Officer or other designee that is in compliance with 45 C.F.R. section 164.410 and that includes the identification of each individual whose PHI has been breached. The report shall be delivered within fifteen (15) working days of the discovery of the breach or unauthorized use or Disclosure. Business Associate shall be responsible for any obligations under the HIPAA Regulations to notify individuals of such breach, unless Covered Entity agrees otherwise.
- G. *Agents and Subcontractors.* Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides PHI received from, or created or received by Business Associate on behalf of Covered Entity, agrees to the same restrictions, conditions, and requirements that apply through this Exhibit to Business Associate with respect to such information. Business Associate shall obtain written contracts agreeing to such terms from all agents and subcontractors. Any subcontractor who contracts for another company's services with regards to the PHI shall likewise obtain written contracts agreeing to such terms. Neither Business Associate nor any of its subcontractors may subcontract with respect to this Exhibit without the advanced written consent of Covered Entity.

- H. *Review of Records.* Business Associate agrees to make internal practices, books, and records relating to the use and Disclosure of PHI received from, or created or received by Business Associate on behalf of Covered Entity available to Covered Entity, or at the request of Covered Entity to the Secretary, in a time and manner designated by Covered Entity or the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the HIPAA Regulations. Business Associate agrees to make copies of its HIPAA training records and HIPAA business associate agreements with agents and subcontractors available to Covered Entity at the request of Covered Entity.
- I. *Performing Covered Entity's HIPAA Obligations.* To the extent Business Associate is required to carry out one or more of Covered Entity's obligations under the HIPAA Regulations, Business Associate must comply with the requirements of the HIPAA Regulations that apply to Covered Entity in the performance of such obligations.
- J. *Restricted Use of PHI for Marketing Purposes.* Business Associate shall not use or disclose PHI for fundraising or Marketing purposes unless Business Associate obtains an Individual's authorization. Business Associate agrees to comply with all rules governing Marketing communications as set forth in HIPAA Regulations and the HITECH Act, including, but not limited to, 45 C.F.R. section 164.508 and 42 U.S.C. section 17936.
- K. *Restricted Sale of PHI.* Business Associate shall not directly or indirectly receive remuneration in exchange for PHI, except with the prior written consent of Covered Entity and as permitted by the HITECH Act, 42 U.S.C. section 17935(d)(2); however, this prohibition shall not affect payment by Covered Entity to Business Associate for services provided pursuant to the Agreement.
- L. *De-Identification of PHI.* Unless otherwise agreed to in writing by both parties, Business Associate and its agents shall not have the right to de-identify the PHI. Any such de-identification shall be in compliance with 45 C.F.R. sections 164.502(d) and 164.514(a) and (b).
- M. *Material Contractual Breach.* Business Associate understands and agrees that, in accordance with the HITECH Act and the HIPAA Regulations, it will be held to the same standards as Covered Entity to rectify a pattern of activity or practice that constitutes a material Contractual Breach or violation of the HIPAA Regulations. Business Associate further understands and agrees that: (i) it will also be subject to the same penalties as a Covered Entity for any violation of the HIPAA Regulations, and (ii) it will be subject to periodic audits by the Secretary.

VI. INDIVIDUAL CONTROL OVER PHI

- A. *Individual Access to PHI.* Business Associate agrees to make available PHI in a Designated Record Set to an Individual or Individual's designee, as necessary to satisfy Covered Entity's obligations under 45 C.F.R. section 164.524. Business Associate shall do so solely by way of coordination with Covered Entity, and in the time and manner designated by Covered Entity.
- B. *Accounting of Disclosures.* Business Associate agrees to maintain and make available the information required to provide an accounting of Disclosures to an Individual as necessary to satisfy Covered Entity's obligations under 45 C.F.R. section 164.528. Business Associate shall do so solely by way of coordination with Covered Entity, and in the time and manner designated by Covered Entity.
- C. *Amendment to PHI.* Business Associate agrees to make any amendment(s) to PHI in a Designated Record Set as directed or agreed to by Covered Entity pursuant to 45 C.F.R. section 164.526, or take other measures as necessary to satisfy Covered Entity's obligations under 45 C.F.R. section 164.526. Business Associate shall do so solely by way of coordination with Covered Entity, and in the time and manner designated by Covered Entity.

VII. TERMINATION

- A. *Termination for Cause.* A Contractual Breach by Business Associate of any provision of this Exhibit, as determined by Covered Entity in its sole discretion, shall constitute a material Contractual Breach of the Agreement and shall provide grounds for immediate termination of the Agreement, any provision in the Agreement to the contrary notwithstanding. Contracts between Business Associates and subcontractors are subject to the same requirement for Termination for Cause.
- B. *Termination due to Criminal Proceedings or Statutory Violations.* Covered Entity may terminate the Agreement, effective immediately, if (i) Business Associate is named as a defendant in a criminal proceeding for a violation of HIPAA, the HITECH Act, the HIPAA Regulations or other security or privacy laws or (ii) a finding or stipulation that Business Associate has violated any standard or requirement of HIPAA, the HITECH Act, the HIPAA Regulations or other security or privacy laws is made in any administrative or civil proceeding in which Business Associate has been joined.
- C. *Return or Destruction of PHI.* In the event of termination for any reason, or upon the expiration of the Agreement, Business Associate shall return or, if agreed upon by Covered Entity, destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. Business Associate shall retain no copies of the PHI. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate.
If Business Associate determines that returning or destroying the PHI is infeasible under this section, Business Associate shall notify Covered Entity of the conditions making return or destruction infeasible. Upon mutual agreement of the parties that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Exhibit to such PHI and limit further uses and Disclosures to those purposes that make the return or destruction of the information infeasible.

VIII. MISCELLANEOUS

- A. *Disclaimer.* Covered Entity makes no warranty or representation that compliance by Business Associate with this Exhibit, HIPAA, the HIPAA Regulations, or the HITECH Act will be adequate or satisfactory for Business Associate's own purposes or that any information in Business Associate's possession or control, or transmitted or received by Business Associate is or will be secure from unauthorized use or Disclosure. Business Associate is solely responsible for all decisions made by Business Associate regarding the safeguarding of PHI.
- B. *Regulatory References.* A reference in this Exhibit to a section in HIPAA, the HIPAA Regulations, or the HITECH Act means the section as in effect or as amended, and for which compliance is required.
- C. *Amendments.* The parties agree to take such action as is necessary to amend this Exhibit from time to time as is necessary for Covered Entity to comply with the requirements of HIPAA, the HIPAA Regulations, and the HITECH Act.
- D. *Survival.* The respective rights and obligations of Business Associate with respect to PHI in the event of termination, cancellation or expiration of this Exhibit shall survive said termination, cancellation or expiration, and shall continue to bind Business Associate, its agents, employees, contractors and successors.
- E. *No Third Party Beneficiaries.* Except as expressly provided herein or expressly stated in the HIPAA Regulations, the parties to this Exhibit do not intend to create any rights in any third parties.
- F. *Governing Law.* The provisions of this Exhibit are intended to establish the minimum requirements regarding Business Associate's use and Disclosure of PHI under HIPAA, the HIPAA Regulations and the HITECH Act. The use and Disclosure of individually identified health information is also covered by applicable California law, including but not limited to the Confidentiality of Medical Information Act (California Civil Code section 56 *et seq.*). To the extent that California law is more stringent with respect

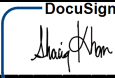
to the protection of such information, applicable California law shall govern Business Associate's use and Disclosure of confidential information related to the performance of this Exhibit.

- G. *Interpretation.* Any ambiguity in this Exhibit shall be resolved in favor of a meaning that permits Covered Entity to comply with HIPAA, the HIPAA Regulations, the HITECH Act, and in favor of the protection of PHI.

This EXHIBIT, the HIPAA Business Associate Agreement is hereby executed and agreed to by

CONTRACTOR:

Name: Alameda City Unified School District

By (Signature):  AF76BF3178424B1...

Print Name: Shariq Khan

Title: Chief Business Officer

ALAMEDA UNIFIED SCHOOL DISTRICT
BOARD AGENDA ITEM

Item Title: Resolution No. 2021-2022.16 Approval of Budget Transfers, Increases, Decreases

Item Type: Consent

Background: After the adoption of the proposed budget for the fiscal year, it is often necessary to make budgetary transfers and revisions. Budget transfers allow budget managers to redistribute funds as needs and plans change. Budget revisions allow the District to increase or decrease funds based on entitlements and grants actually received by the District.

AUSD LCAP Goals: 4. Ensure that all students have access to basic services.

Fund Codes: 01 General Fund

Fiscal Analysis

Amount (Savings) (Cost): Will increase revenues and expenditures in the District in the amount of \$23,714.50

Recommendation: Approve as submitted.

AUSD Guiding Principle: #1 - All students have the ability to achieve academic and personal success.| #5 - Accountability, transparency, and trust are necessary at all levels of the organization.| #6 - Allocation of funds must support our vision, mission, and guiding principles.| #7 - All employees must receive respectful treatment and professional support to achieve district goals.

Submitted By: Shariq Khan, Assistant Superintendent of Business Services

ATTACHMENTS:

Description	Upload Date	Type
☐ Resolution No. 2021-2022.16	9/21/2021	Resolution Letter
☐ Attachment A	9/21/2021	Backup Material

ALAMEDA UNIFIED SCHOOL DISTRICT
Alameda, California
Resolution

September 28, 2021

Resolution No. 2021-2022.16

Approval of Budget Transfers, Increases, Decreases

WHEREAS, the state statute require budget appropriations to be adopted by the Board of Education in the following object codes:

1000 Certificated Salaries
2000 Classified Salaries
3000 Employee Benefits
4000 Books and Supplies
5000 Services and Other Operating Expense
6000 Capital Outlay
7000 Other Sources and Uses

AND, WHEREAS, the Board of Education desires to change the adopted appropriations;

NOW, THEREFORE, BE IT RESOLVED that the changes be made to the adopted appropriations as per Attachment A.

PASSED AND ADOPTED by the following vote this 28th day of September, 2021:

AYES: _____ MEMBERS: _____

NOES: _____ MEMBERS: _____

ABSENT: _____ MEMBERS: _____

Jennifer Williams, President
Board of Education
Alameda Unified School District

ATTEST:

By: _____
Pasquale Scuderi, Secretary
Board of Education
Alameda Unified School District

BUDGET REVISIONS

(Budget Revisions affect Fund Balance;
Amounts are either added or subtracted from Fund Balance)

School/Dept	Description	Amount
Alameda High School	Donations	\$ 21,065.50
ASTI	Donations	\$ 275.00
Bay Farm	Donations	\$ 110.00
Encinal Jr. & Sr.	Donations	\$ 1,139.00
Love	Donations	\$ 250.00
Maya Lin	Donations	\$ 375.00
Student Services	Donations	\$ 500.00
Total Donations		\$ 23,714.50

ALAMEDA UNIFIED SCHOOL DISTRICT
BOARD AGENDA ITEM

Item Title: Check-In and Update on Start of 2021-2022 School Year (5 Mins/Information)

Item Type: Information

Background: Superintendent Scuderi and his team will share information with the Board regarding the opening of school on August 16th, including data on the number of COVID-19 cases AUSD has had so far.

For all positive cases:

- Families in the impacted classroom or classrooms have already been contacted by the District or their principals
- Testing has already been conducted for the students in the impacted classrooms/cohorts
- Testing will continue for those students, twice weekly, for the duration of a 10-day “modified quarantine” period.

Superintendent Scuderi will also talk about the efforts of classified staff, teachers, and administrators who have worked non-stop to get us to where we are today and how staff will pivot to meet the needs of students and families as conditions change.

Finally, Superintendent Scuderi will discuss current efforts to establish regular, site-based testing at elementary schools.

This update will be a recurring agenda item as plans are updated and revised.

AUSD LCAP Goals: 1. Eliminate barriers to student success and maximize learning time.| 2a. Support all students in becoming college and career ready.| 2b. Support all English Learners (ELs) in becoming college and career ready.| 3. Support parent/guardian development as knowledgeable partners and effective advocates for student success.| 4. Ensure that all students have access to basic services.

Fund Codes:

Fiscal Analysis

Amount (Savings) (Cost): N/A

Recommendation: This item is presented for information only.

AUSD Guiding Principle: #1 - All students have the ability to achieve academic and personal success.| #5 - Accountability, transparency, and trust are necessary at all levels of the organization.

Submitted By: Pasquale Scuderi, Superintendent with the AUSD Executive Cabinet Team

ATTACHMENTS:

	Description	Upload Date	Type
▣	Update on Opening of School + COVID Numbers	9/27/2021	Presentation

School Opening Update

Alameda Unified School District



Presented to the Board of Education

September 28, 2021

Pasquale Scuderi, AUSD Superintendent

Rainy Day Lunchtime and Recess

- No simple or universal solutions, but some critical preliminary guidelines...
- Indoor eating is permitted but capacity limits and distancing are recommended
- Strategies may vary from site to site based on facilities and spaces
- Strategies can include:
 - Altered schedules with additional (and shorter) lunch periods with fewer students
 - Using multiple indoor spaces for lunch is positive but presents supervision challenges
 - Ventilation supports for multi-purpose rooms complete: each Elementary MPR

Stay Focused and Committed to Keeping Schools Safe and Open!

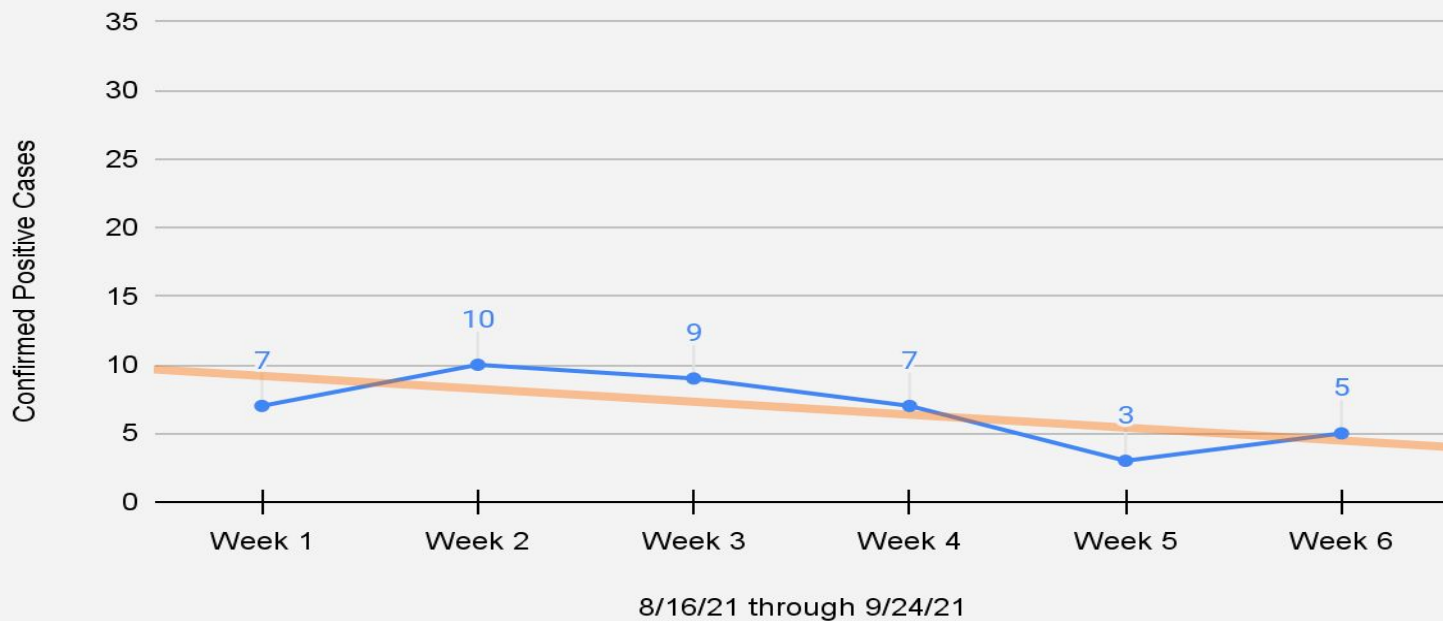
- Vaccinations help!
- Face coverings indoors and outdoors until further notice (CDPH on or before 11/1)
- Hand washing and hand sanitizing
- Continue to run portable HEPA filters and use the prescription for air balance in each classroom/learning space
- Exercise caution during non-school hours - in school precautions tend to be more consistent because they do not include the variables of personal choices

Positive Case Reporting

- <https://www.alameda.k12.ca.us/cvdashboard>

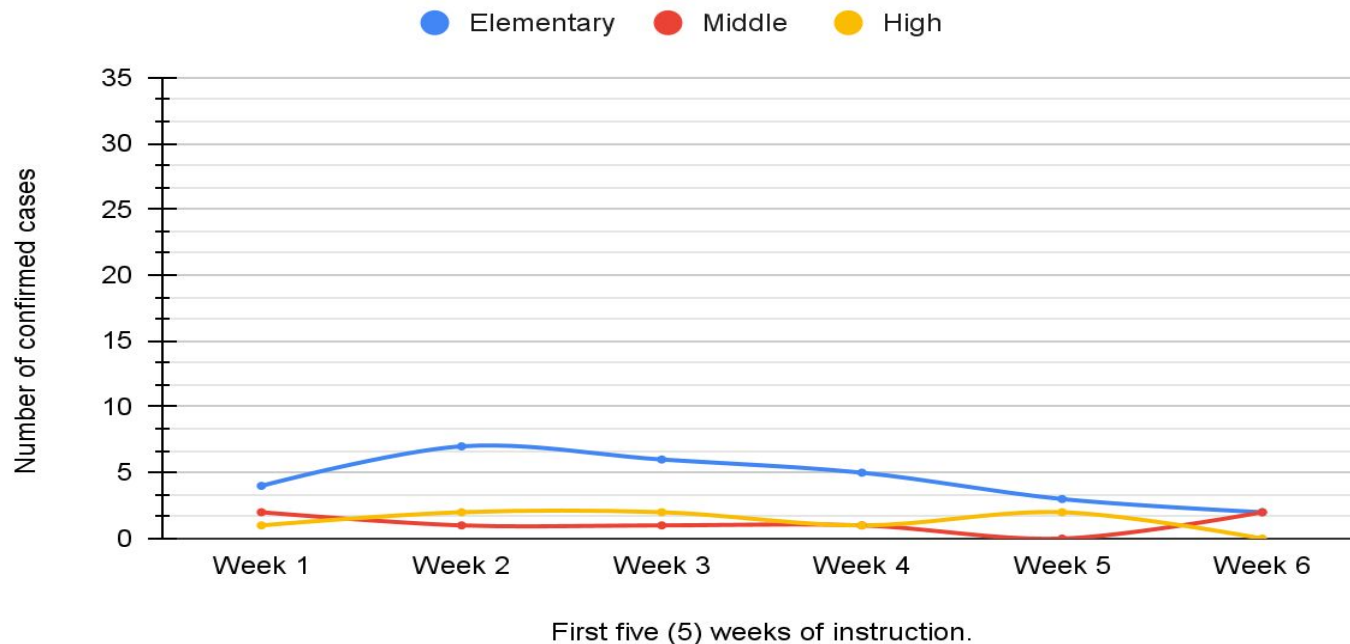
All Positive Cases Since 8/16

AUSD Total Confirmed Cases by Week Through 9/24/21



All Positive Cases Since 8/16 by School Level

AUSD ALL SCHOOLS Weekly Totals by School Level 8/16/21-9/24/21 (for period 8/16-9/24)



Cumulative Elementary Cases: as of 9/24

	<i>Week 1</i>	<i>Week 2</i>	<i>Week 3</i>	<i>Week 4</i>	<i>Week 5</i>	<i>Week 6</i>	<i>Totals since 8/16</i>
Bay Farm	0	0	0	1	0	0	1
Earhart	0	0	0	0	0	0	0
Edison	0	0	0	0	0	1	1
Franklin	1	0	0	3	1	0	5
Love	0	2	4	0	0	0	6
Maya Lin	1	3	1	1	0	1	7
Otis	1	0	0	0	0	0	1
Paden	1	0	0	0	1	0	2
Ruby Bridges	0	1	1	0	1	1	4
<i>All Elementary</i>	4	6	6	5	3	3	27

All Positive Cases Since 8/16 by Elementary School Campus as of 9/24

AUSD Elementary Schools: Total Cases by Week and Campus 8/16/21-9/24/21

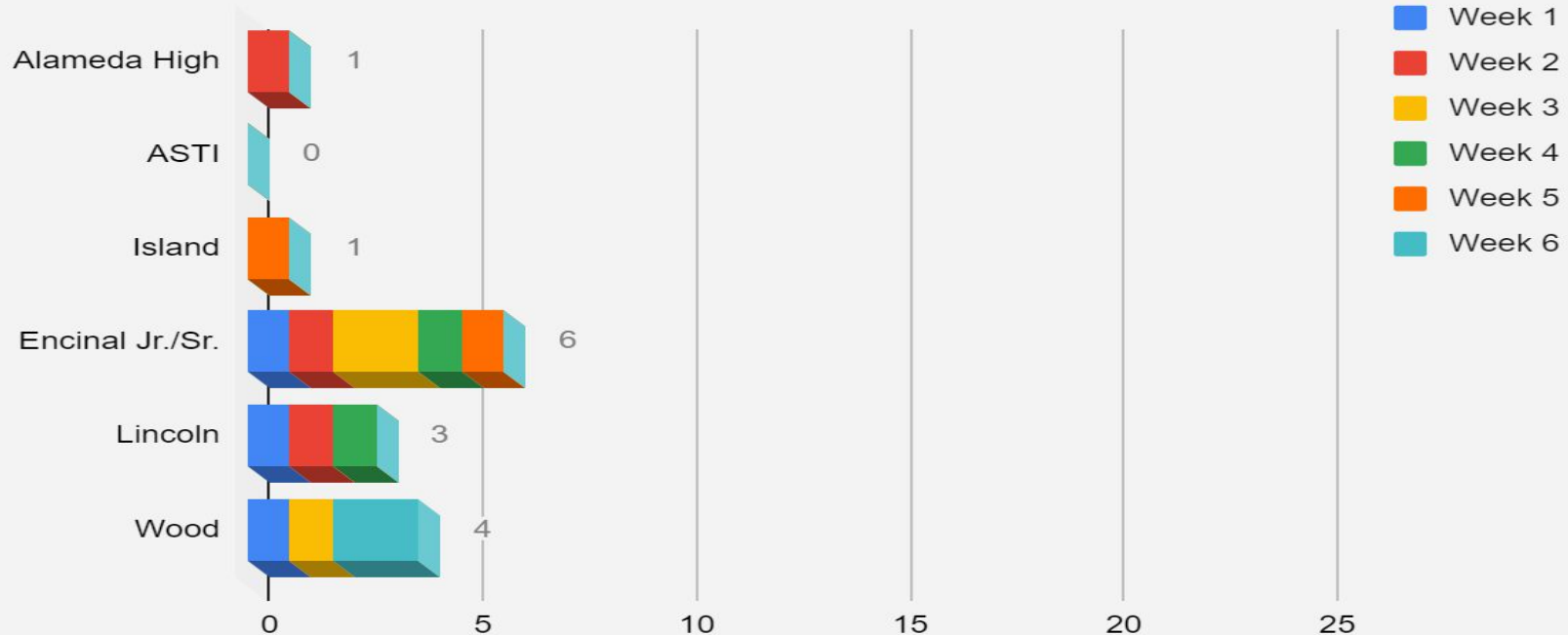


Cumulative Cases Middle and High School: Data as of 9/24

	<i>Week 1</i>	<i>Week 2</i>	<i>Week 3</i>	<i>Week 4</i>	<i>Week 5</i>	<i>Week 6</i>
Alameda High	0	1	0	0	0	0
ASTI	0	0	0	0	0	0
Island	0	0	0	0	1	0
Encinal Jr. & Sr.	1	1	2	1	1	0
Lincoln	1	1	0	1	0	0
Wood	1	0	1	0	0	2
<i>All Secondary</i>	3	3	3	2	2	2

All Positive Cases Since 8/16 by Middle or High School School Campus as of Friday 9/24

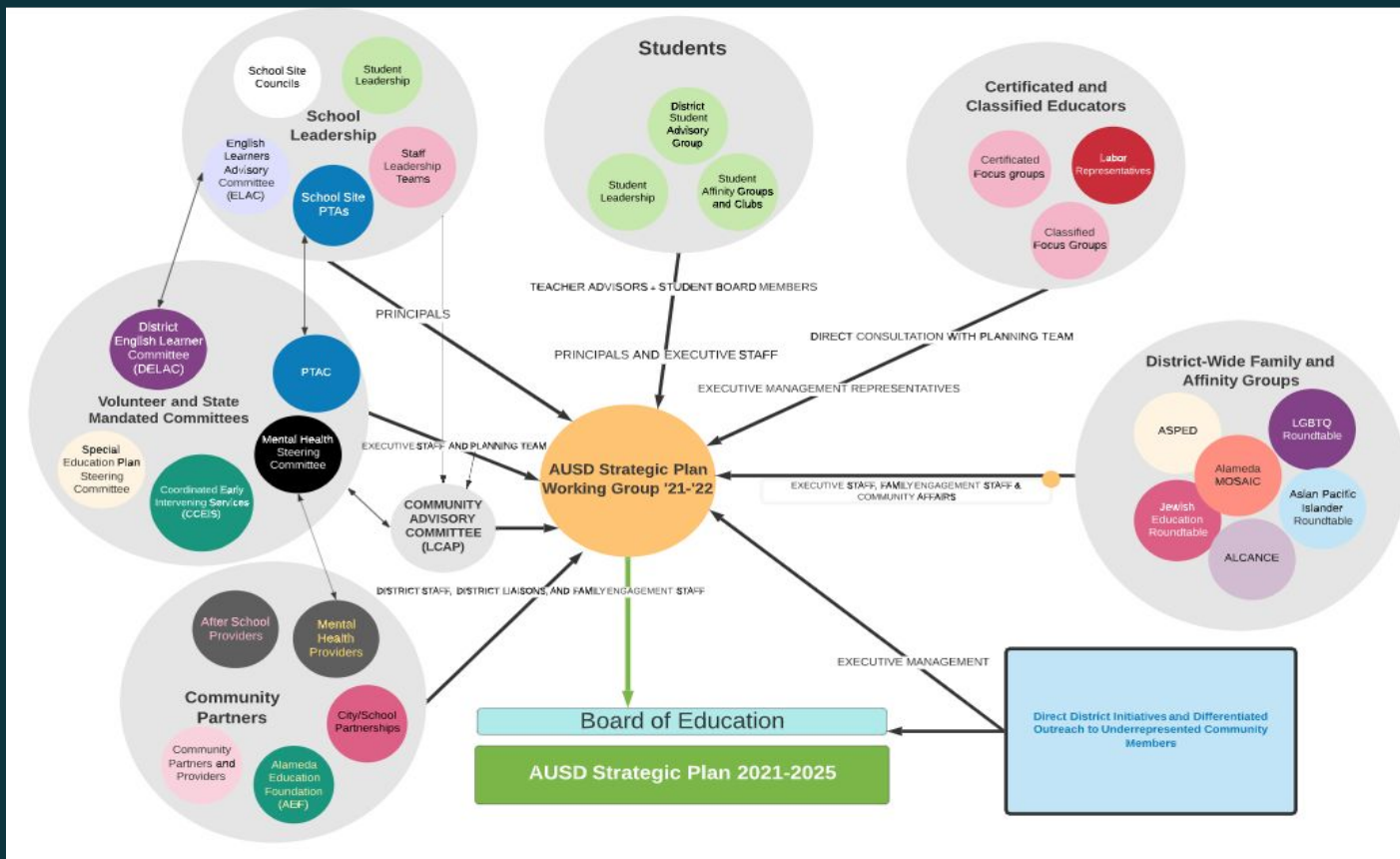
AUSD Middle and High Schools: Total cases by Week and Campus 8/16-21-09/24/21



COVID-19 Screening Testing: September 2 - September 25

Monday 9/27	Tuesday 9/28	Wednesday 9/29	Thursday 9/30	Friday 10/1	Saturday 10/2
Maya Lin 9:00 am - 2:30 pm	Maya Lin 9:00 am - 2:30 pm	Paden 9:00 am - 2:30 pm	Paden 9:00 am - 11:00 a.m.	Ruby Bridges 9:00 am - 2:30 pm	Alameda High School (all students) ALL DAY 9:00 pm - 5:00 pm
			Ruby Bridges 12:00 pm - 2:30 pm		
Alameda High School (all students) 3:00 pm - 6:00 pm	Encinal Jr. & Sr. High School (all students) 3:00 pm - 6:00 pm	Alameda High School (all students) 3:00 pm - 6:00 pm	Encinal Jr. & Sr. High School (all students) 3:00 pm - 6:00 pm	Encinal Jr. & Sr. High School (all students) 3:00 pm - 6:00 pm	
Lincoln 8:00 am - 4:30 pm	Wood Middle 8:00 am - 4:30 pm		Lincoln 8:00 am - 4:30 pm	Wood Middle 8:00 am - 4:30 pm	

Connecting and Engaging With A Diverse Network of Stakeholders



ALAMEDA UNIFIED SCHOOL DISTRICT
BOARD AGENDA ITEM

Item Title:	Approval of Provisional Policies to be Used at School Sites in Cases of Unhealthy Air Quality (5 Mins/Action)
Item Type:	Information
Background:	<p>With wildfire smoke now consistently contributing to annual periods of poor air quality in our region, AUSD staff will discuss with the board both its general approach and responses to the impact of these air quality conditions on schools.</p> <p>Additionally, with the unique aspects of this school year in mind, staff and Board will discuss specific considerations and potential adjustments to our responses and decision-making within the air quality ranges and thresholds outlined in the Environmental Protection Agency's (EPA) Air Quality Index (AQI). This is critical in this unique year given the fact that several strategies we employ daily to mitigate and reduce the risk of COVID-19 transmission in schools are essentially in conflict with those strategies we would employ to mitigate the impact of unhealthy air quality on our students, staff, and schools in general.</p> <p>At its meeting on September 14th, the Board discussed this issue and possible approaches staff plan to take in the event of unhealthy air quality days during the 2021-2022 school year.</p> <p>Tonight, staff is asking the Board to approve provisional policies to be enacted in the event of these unhealthy air quality days.</p>
AUSD LCAP Goals:	1. Eliminate barriers to student success and maximize learning time. 2a. Support all students in becoming college and career ready. 2b. Support all English Learners (ELs) in becoming college and career ready. 3. Support parent/guardian development as knowledgeable partners and effective advocates for student success. 4. Ensure that all students have access to basic services.
Fund Codes:	
Fiscal Analysis	
Amount (Savings) (Cost):	N/A
Recommendation:	This item is presented for information only.
AUSD Guiding Principle:	#1 - All students have the ability to achieve academic and personal success. #5 - Accountability, transparency, and trust are necessary at all levels of the organization.
Submitted By:	Pasquale Scuderi, Superintendent with the AUSD Executive Cabinet Team

ATTACHMENTS:

Description	Upload Date	Type
□ Provisional Air Quality Policies	9/22/2021	Presentation

Managing Air Quality Concerns During COVID-19

Presented by Pasquale Scuderi, Superintendent
September 28, 2021

Air Quality and School Operations for School Year 2021-2022

AUSD monitors AQI hourly on smokey days via:

- [EPA's AirNow](#)
- [Bay Area Air Quality Management District](#)

COVID-19 Responses vs. AQI Responses

Response to Wildfire Smoke (pre-COVID)	Response to COVID-19
Close doors and windows	Open doors and windows (in some cases)
Shut off air circulation and ventilation	Increase air circulation and improve ventilation
Bring students inside as much as possible	Take students outside as much as possible
<i>Additional consideration: SB 167 will not allow districts to apply for waiver funding if schools need to be closed due to smokey conditions.</i>	

Requesting Board Approval

- Provisional guidelines through June 2022
- Key temporary components from School Activity Recommendations in a typical year:
 - **At AQI 151-200 (unhealthy): absences excused for parents opting to keep kids home**
 - **At AQI 201-300 (very unhealthy): In-person school cancelled**
 - **Multi-day in-person closures would trigger TEMPORARY online protocols**

Board Action Slated for September 28

AQI 0-50 Good	AQI 51-100 Moderate	AQI 101-150 Unhealthy for Sensitive Groups	AQI 151-200 Unhealthy	AQI 201-300 Very Unhealthy
Normal school operations	Normal school operations	<p>Normal school operations BUT...</p> <p>Sensitive individuals exercise extra caution and refrain from vigorous outdoor activity</p> <p>Alternative indoor options for lunch and recess can be provided for sensitive individuals where distancing is possible</p> <p>Will work with principals in advance to identify students with chronic or confirmed sensitivities</p> <p>Less strenuous activity and more breaks during athletics practice.</p> <p>Ventilation systems continue exchange/filter air.</p>	<p>During COVID:</p> <p>Recess will not include vigorous outdoor exercise</p> <p>(Exercising indoors is not an option as it would be in typical years)</p> <p>Students would continue to eat outdoors (indoors spaces may have to come in to play at higher AQI and on weather days)</p> <p>District would offer option for excused absences for parents opting to keep families home in this range</p> <p>Ventilation systems continue exchanging/filtering air (Merv 13 will filter particulates but not smell)</p>	<p>IN PERSON SCHOOL CANCELLED</p> <p>In typical years this means all persons refrain from all outdoor activities.</p> <p>Until further notice, this range would result in AUSD campus closures AND short-term, home-based independent study for all.</p> <p>(protocols and obligations for the above will need to be developed in light of proposed changes to the law see SB 167)</p>

AUSD Developing Recommendations on Athletics and P.E. for School Year 2021-2022 (COVID-19)

AQI 0-50 Good	AQI 51-100 Moderate	AQI 101-150 Unhealthy for Sensitive Groups	AQI 151-200 Unhealthy	AQI 201-300 Very Unhealthy
<p>All athletic and physical education programs normal operations.</p> <p>COVID protocols remain in effect.</p>	<p>All athletic and physical education programs normal operations.</p> <p>COVID protocols remain in effect.</p>	<p>All athletic and physical education programs normal operations.</p> <p>COVID protocols remain in effect.</p> <p>Sensitive individuals exercise refrain from vigorous outdoor activity including games and practices</p> <p>Less strenuous activity and more breaks during athletics practice.</p> <p>Remind families of sensitive individuals to actively manage student medical conditions and communicate with staff regarding participation</p>	<p>PRACTICES AND GAMES CANCELLED</p> <p>Physical education classes/recess either:</p> <ol style="list-style-type: none"> 1. Remain outdoors and refrain from vigorous activity 2. Move indoors if distancing of 3"-6" is possible with face coverings. 3. <i>District would offer option for excused absences for parents opting to keep families home in this range</i> <p>All persons avoid vigorous outdoor activities OR exercise indoors.</p> <p>During COVID:</p> <p>(Exercising indoors is not a guaranteed option as it would be in typical years)</p>	<p>PRACTICES AND GAMES CANCELLED</p>

School Activity Recommendations

Developed by consortium of educational and environmental agencies, including:

- California Department of Education
- California Air Resources Board
- California Air Pollution Control Officers Association
- California County Superintendents Educational Services Association
- Association of California School Administrators
- California School Boards Association

School Activity Recommendations (pre-COVID-19)

Protect student health during poor air quality:

- Air quality is an important consideration for schools when planning student activities.
- The Bay Area Air Quality Management District is available to assist schools with understanding local air quality and actions to take to protect student health.

Please visit:

<https://www.baaqmd.gov/>
for more information

Activity	Air Quality Level				
	Level 1 = Good 0-50	Level 2 = Moderate 51-100	Level 3 = Unhealthy for Sensitive Groups 101-150	Level 4 = Unhealthy 151-200	Level 5 = Very Unhealthy 201-300
Recess (15min)	No restrictions	Ensure that sensitive individuals are medically managing their condition.*	Sensitive individuals should exercise indoors or avoid vigorous outdoor activities.*	Exercise indoors or avoid vigorous outdoor activities. Sensitive individuals should remain indoors.*	No outdoor activity. All activities should be moved indoors.
P.E. (1hr)	No restrictions	Ensure that sensitive individuals are medically managing their condition.*	Sensitive individuals should exercise indoors or avoid vigorous outdoor activities.*	Exercise indoors or limit vigorous outdoor activities to a maximum of 15 minutes. Sensitive individuals should remain indoors.*	No outdoor activity. All activities should be moved indoors.
Athletic Practice & Training (2-4hrs)	No restrictions	Ensure that sensitive individuals are medically managing their condition.*	Reduce vigorous exercise to 30 minutes per hour of practice time with increased rest breaks and substitutions. Sensitive individuals are medically managing their condition.*	Exercise indoors or reduce vigorous exercise to 30 minutes of practice time with increased rest breaks and substitutions. Sensitive individuals should remain indoors.*	No outdoor activity. All activities should be moved indoors.
Scheduled Sporting Events	No restrictions	Ensure that sensitive individuals are medically managing their condition.*	Increase rest breaks and substitutions per CIF guidelines for extreme heat. Sensitive individuals are medically managing their condition.*	Increase rest breaks and substitutions per CIF guidelines for extreme heat.** Ensure that sensitive individuals are medically managing their condition.*	Event must be rescheduled or relocated.

* Sensitive Individuals include all those with asthma or other heart/lung conditions. Note: An AQI of more than 300 is considered hazardous.
 ** School districts may consider school closures based on site-by-site concerns.
 *** To meet the conditions for approval of a waiver due to emergency conditions (Form J-13A) from the State Superintendent of Public Instruction poor air quality must be shown to be caused by an emergency event such as a wildfire.

ALAMEDA UNIFIED SCHOOL DISTRICT
BOARD AGENDA ITEM

Item Title: Results of the AUSD Public Opinion Poll of a Potential Bond Measure Presented by TBWBH Props & Measures and EMC Research (15 Mins/Information)

Item Type: General Business

Background: On August 10, 2021, the Board approved the Management Consulting Agreement with Terris Barnes Walters Boigon Heath Lester, Inc (TBWBH Props & Measures) to evaluate the electoral feasibility of a bond measure. Included in the Management Consulting Agreement with TBWBH Props & Measures was the collaboration with EMC Research to design, conduct and analyze an opinion survey of voters in the District to assess the viability of such bond measure.

Tonight, representatives from TBWBH Props & Measures and EMC Research will present their findings.

AUSD LCAP Goals:

Fund Codes:

Fiscal Analysis

Amount (Savings) (Cost):

Recommendation: This item is presented for information only.

AUSD Guiding Principle: #5 - Accountability, transparency, and trust are necessary at all levels of the organization. | #6 - Allocation of funds must support our vision, mission, and guiding principles.

Submitted By: Susan Davis, Sr. Manager of Community Affairs

ATTACHMENTS:

Description	Upload Date	Type
□ Presentation	9/22/2021	Presentation



Alameda Unified School District

Survey of Likely Voters

*Summary of Research Results
Presented to AUSD Board of Education
September 28, 2021*

- ▶ Survey of likely November 2022 voters in Alameda Unified School District
 - Results in this report generally represent the November 2022 likely electorate; for select questions, a June 2022 electorate is modeled as well.
- ▶ Mixed-mode telephone/web methodology
 - Phone interviews conducted by trained, professional interviewers; landlines and mobile phones included
 - Email and text message invitations to complete the survey online
- ▶ Survey conducted August 2 - 9, 2021
- ▶ 600 interviews; overall margin of error ± 4.0 percentage points
- ▶ Survey was offered in English and Chinese
- ▶ Where applicable, results compared with prior voter surveys in the district of similar sample sizes.
 - Methodological changes over time may impact the reliability of tracking data, but general trends are observable.

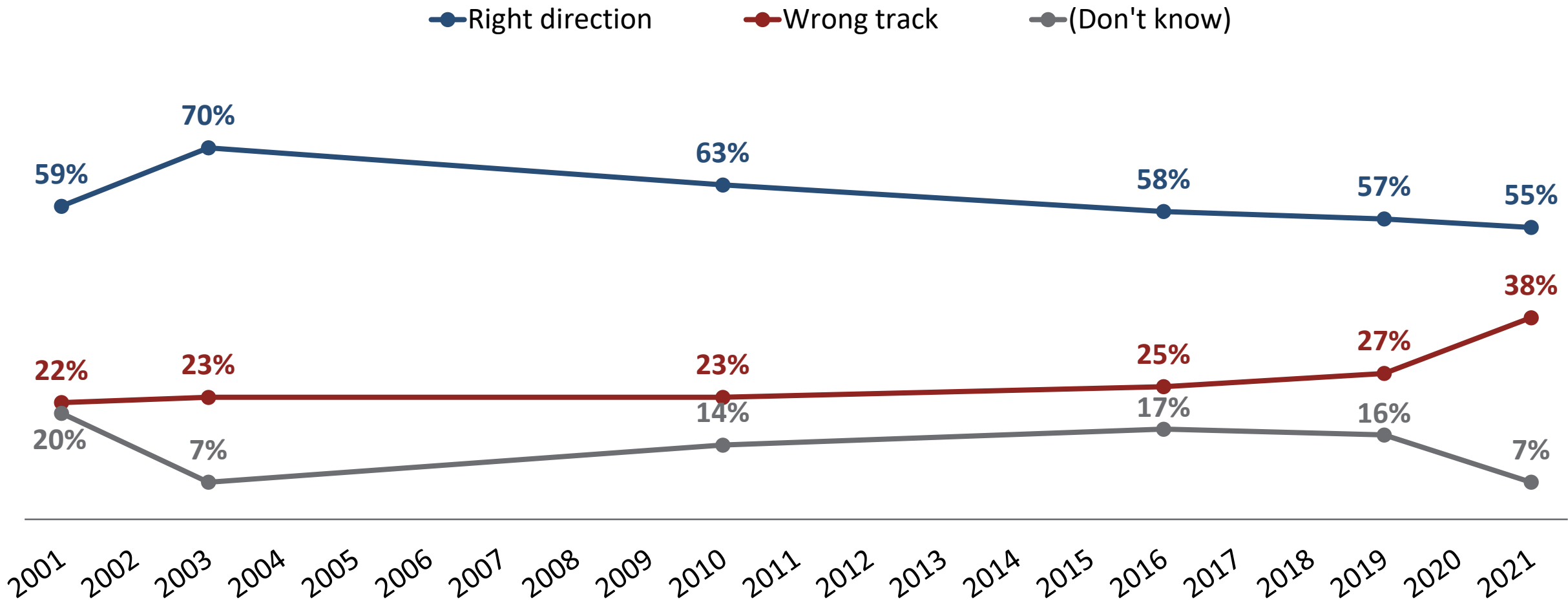
Please note that due to rounding, some percentages may not add up to exactly 100%.

Key Findings

- ▶ **Voters in Alameda are positive** about the direction of the area and rate the job Alameda Unified School District is doing positively.
- ▶ Voters also **recognize the need for additional funding** for the District, and three-quarters agree that high-quality schools are crucial, even if it means raising taxes.
- ▶ A potential bond measure for the District is **supported by nearly three-in-five voters**, with support consistent across November or June 2022 election models.
- ▶ Interest is high for a **wide range of investments**, including improvements to classrooms and science labs to support high-quality academic programs and prepare students for college and careers, keeping schools well maintained, addressing basic health and safety needs, and updating facilities used for programs like arts, music, and athletics.

Right Direction/Wrong Track: Alameda

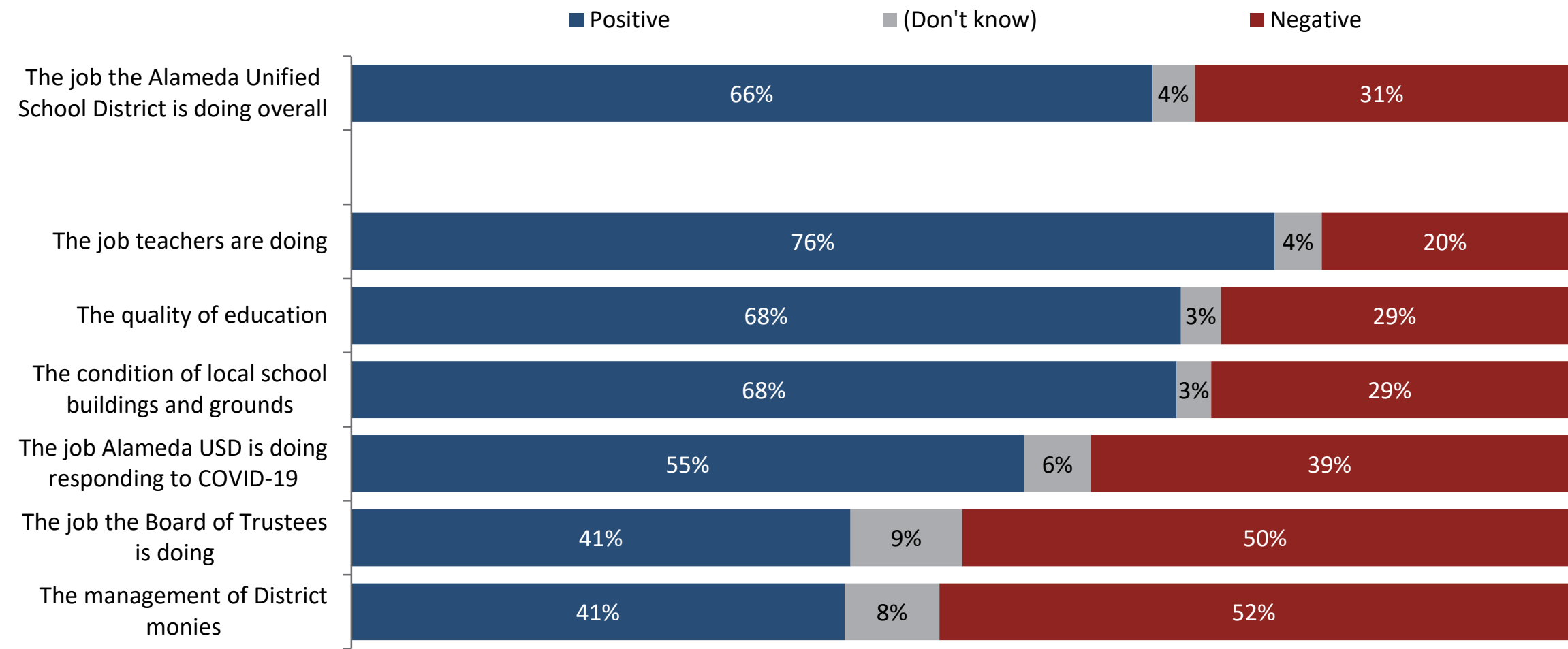
Just over half of voters feel things in Alameda are going in the right direction.



Q4. Do you think things in Alameda are generally going in the right direction or do you feel things have gotten pretty seriously off on the wrong track?

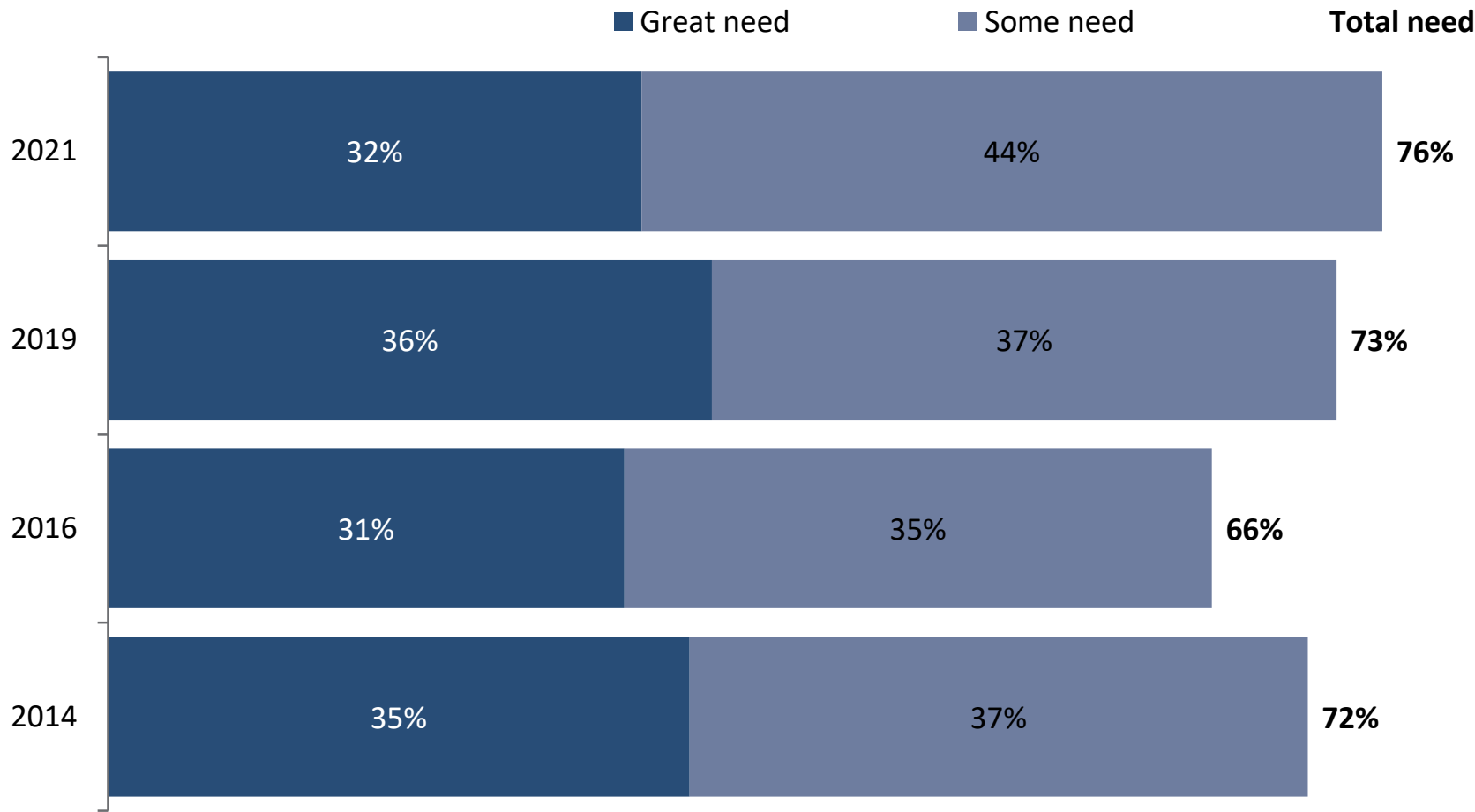
District Ratings

Two thirds give AUSD a positive job rating overall, and three quarters give teachers positive ratings. Ratings for buildings and grounds are generally positive, but not strongly held.



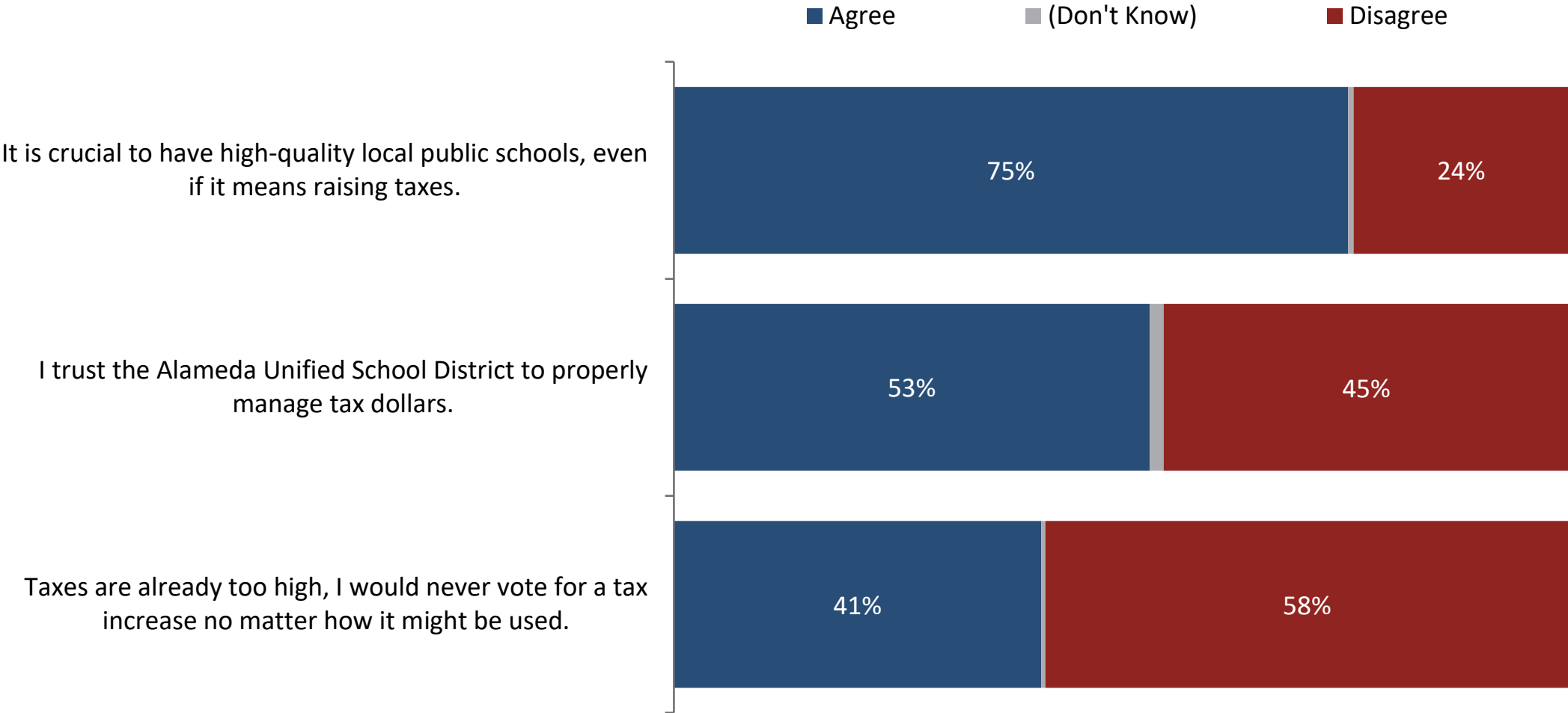
AUSD Need for Additional Funding Over Time

Three quarters of voters feel the schools in Alameda Unified School District have at least some need for more money.



Tax Sentiment

Three quarters value high-quality public schools enough to consider raising taxes, while just two in five are inclined to vote against any tax increase.

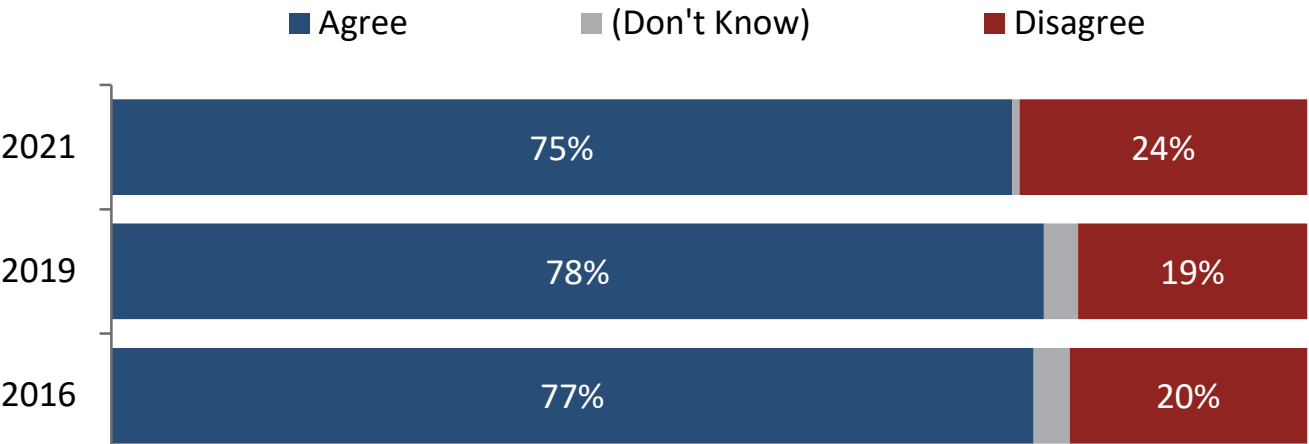


Q15-17. Please tell me whether you strongly agree, somewhat agree, somewhat disagree, or strongly disagree with each of the following statements.

Tax Sentiment Over Time

There is some evidence of increased tax aversion among District voters.

It is crucial to have high-quality local public schools, even if it means raising taxes.



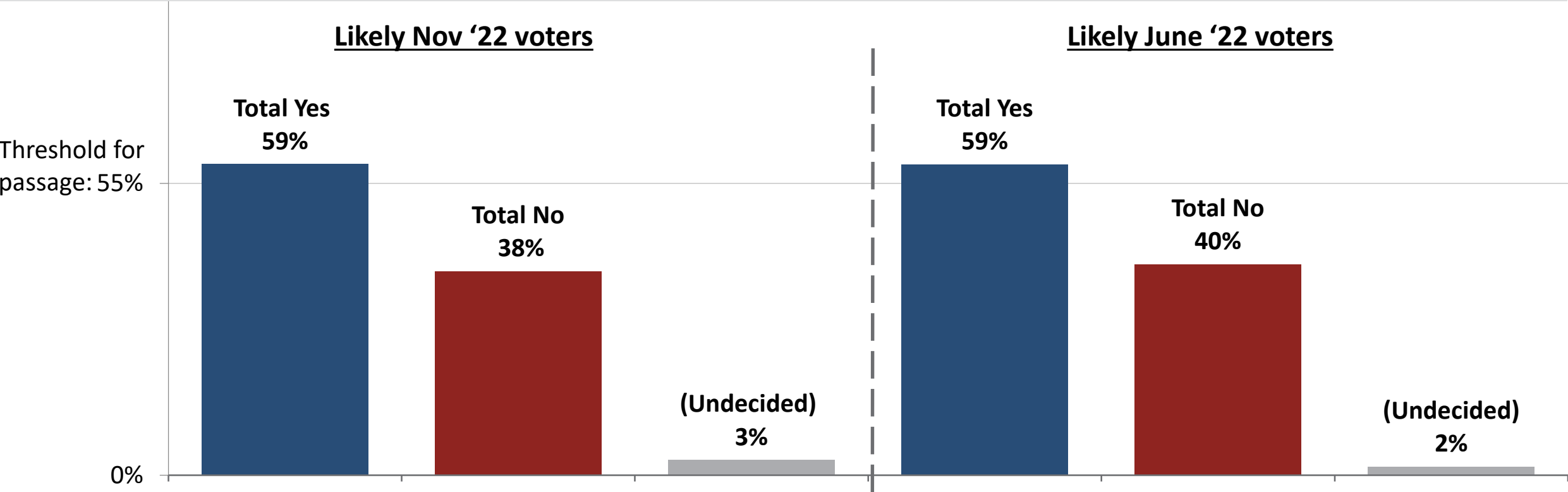
Taxes are already too high, I would never vote for a tax increase no matter how it might be used.



Bond Measure: Support Today

Nearly six-in-ten voters say that they would vote yes on the measure today. The difference in support between a June or November electorate is negligible.

To upgrade local classrooms and science labs for high quality education; improve earthquake safety and school security; update career training facilities and equipment for careers in science, technology and media; and renovate, acquire, construct classrooms, sites, facilities, equipment, shall Alameda Unified School District issue \$298 million in bonds at legal rates, raising approximately \$13.5 million annually at an estimated \$56 per \$100,000 of assessed value while bonds are outstanding, with annual audits, independent oversight, no money for administrators, and all funds used locally?



Q13. There may be a measure on the ballot next year that reads as follows...
If the election were held today, would you vote yes to approve or no to reject this measure?

Justification for Support/Opposition

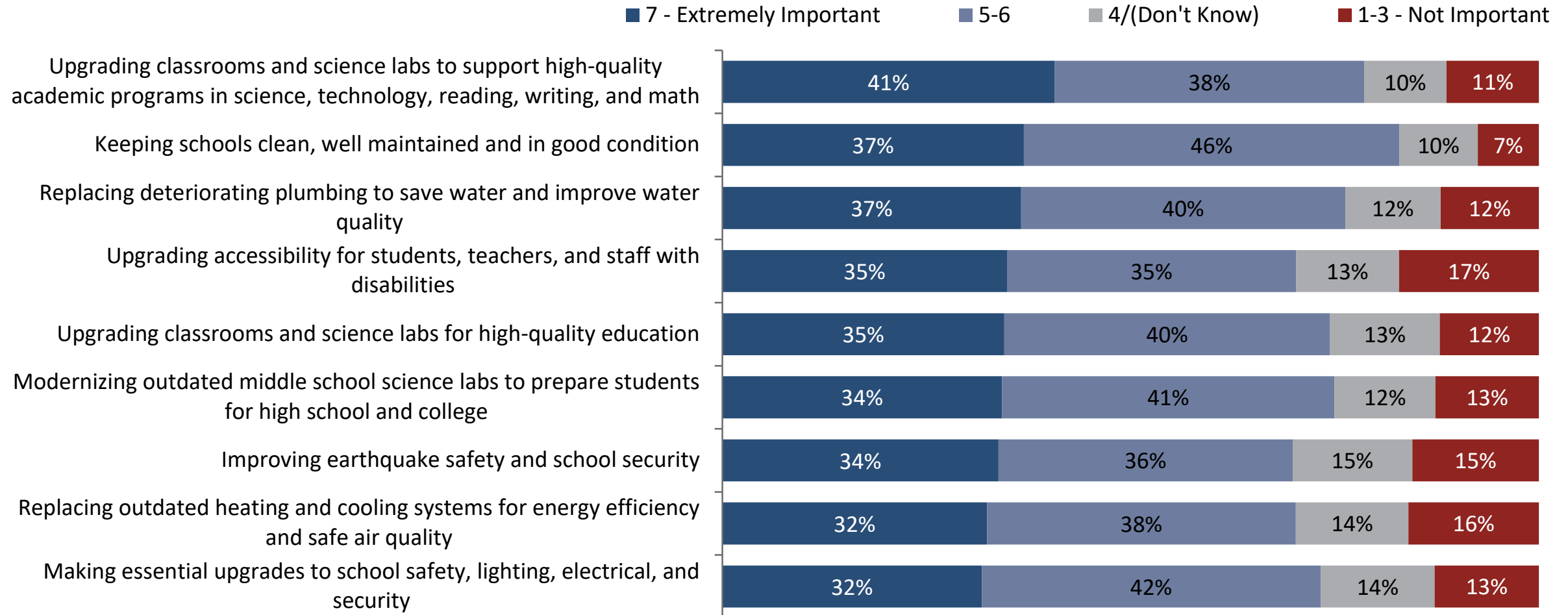
General support for school funding and investment in schools are driving support for a measure, while opposition is largely driven by financial management concerns and general tax aversion.

Reason for Voting Yes (59%, n=362)	% of Yes
Education is a priority/Kids are a priority	24%
Maintenance/Upgrades/Safety	19%
Schools are underfunded/need more money	16%
Schools deserve our support/Generally support of funding schools	8%
Good investment/Good schools improve the community	8%
General positive	5%
Programs/careers for kids	4%
Teacher-related	4%
Approve of bonds/The bond language	4%
Other	5%
Not sure/Don't know	1%
No response	1%

Reason for Voting No (38%, n=223)	% of No
District needs to better manage existing funds	23%
Taxes are already too high/Too much burden on homeowners	22%
Schools always keep asking for more money	10%
No need for additional funding	9%
Need more information/Need to know where the money will go	8%
Disagrees with the content of the measure	7%
Public sector spends too much money/Corrupt	6%
Other	10%
Not sure/Don't know	2%
No response	3%

Top Bond Measure Priorities

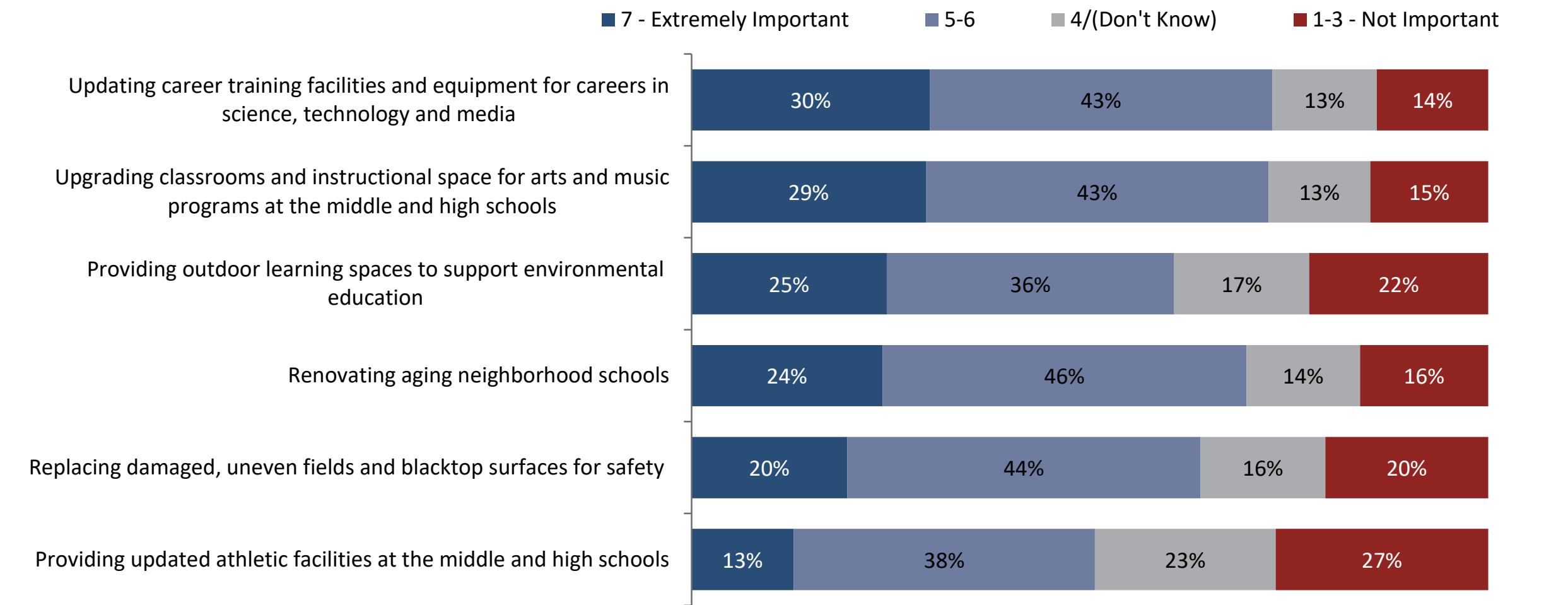
Upgrading classrooms and keeping schools in general good repair are among the top voter priorities for a measure.



Q18-32. I'm going to read you a list of projects that could be funded by an Alameda Unified School District bond measure. After each one, please rate how important that project is to you, using a scale of 1 to 7, where 1 means not at all important, and 7 means extremely important.

Additional Bond Measure Priorities

Other priorities for the bond measure are rated lower. Athletic facilities are important to a narrower set of voters than other improvements, but few voters find those improvements unimportant.

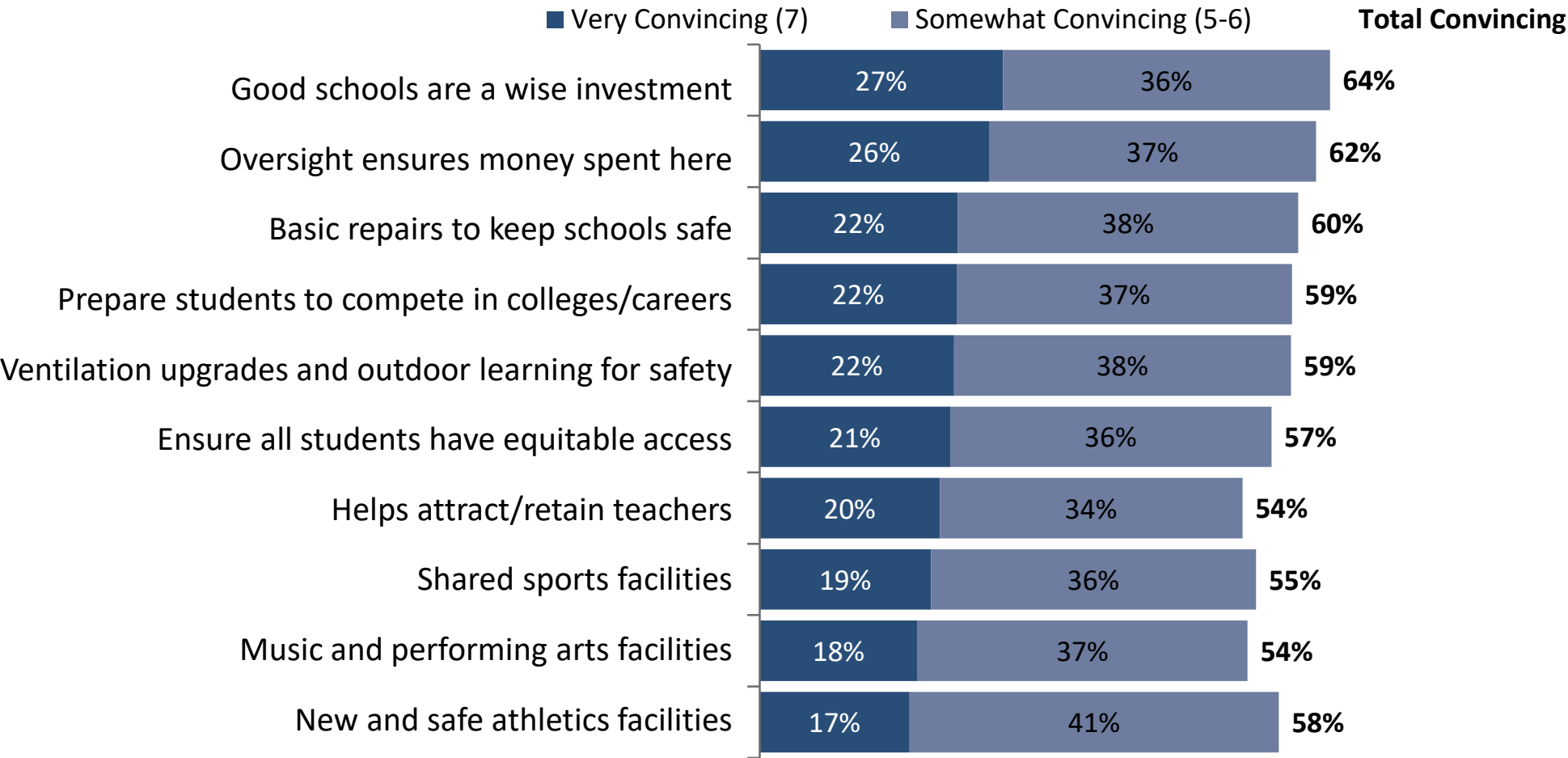


Q18-32. I'm going to read you a list of projects that could be funded by an Alameda Unified School District bond measure. After each one, please rate how important that project is to you, using a scale of 1 to 7, where 1 means not at all important, and 7 means extremely important.

Impact of Information

Investing in schools, ensuring schools are in good repair, ensuring safe facilities, and strong oversight are all significant reasons voters support a potential bond measure.

Text of messages condensed
for presentation.

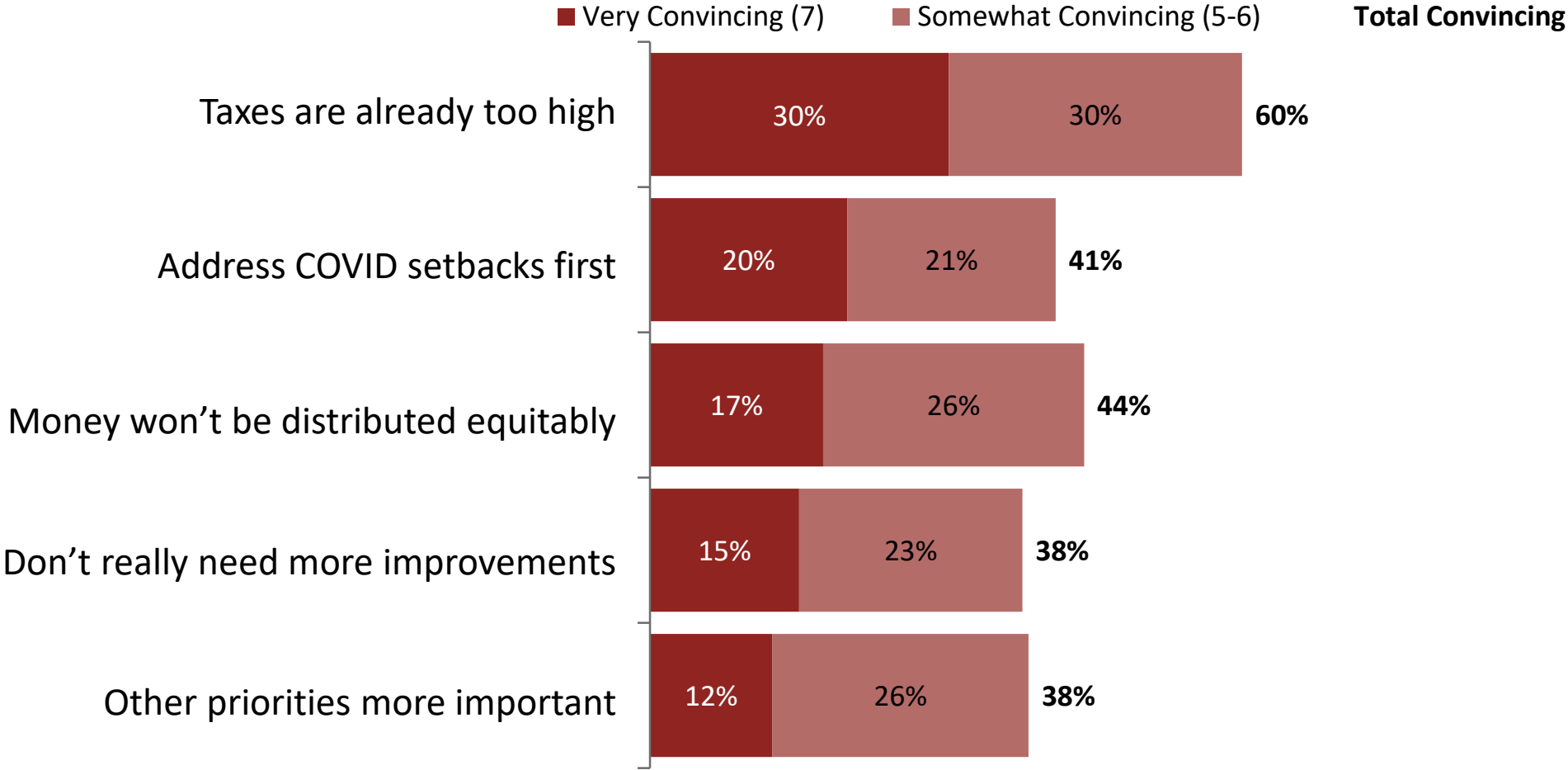


Q33-42. Next, I'd like to read you statements from people who support a bond measure for the Alameda Unified School District. After each, please tell me how convincing it is as a reason to vote for the bond measure, using a scale from 1 to 7, where 1 means not at all convincing and 7 means a very convincing.

Impact of Opposition

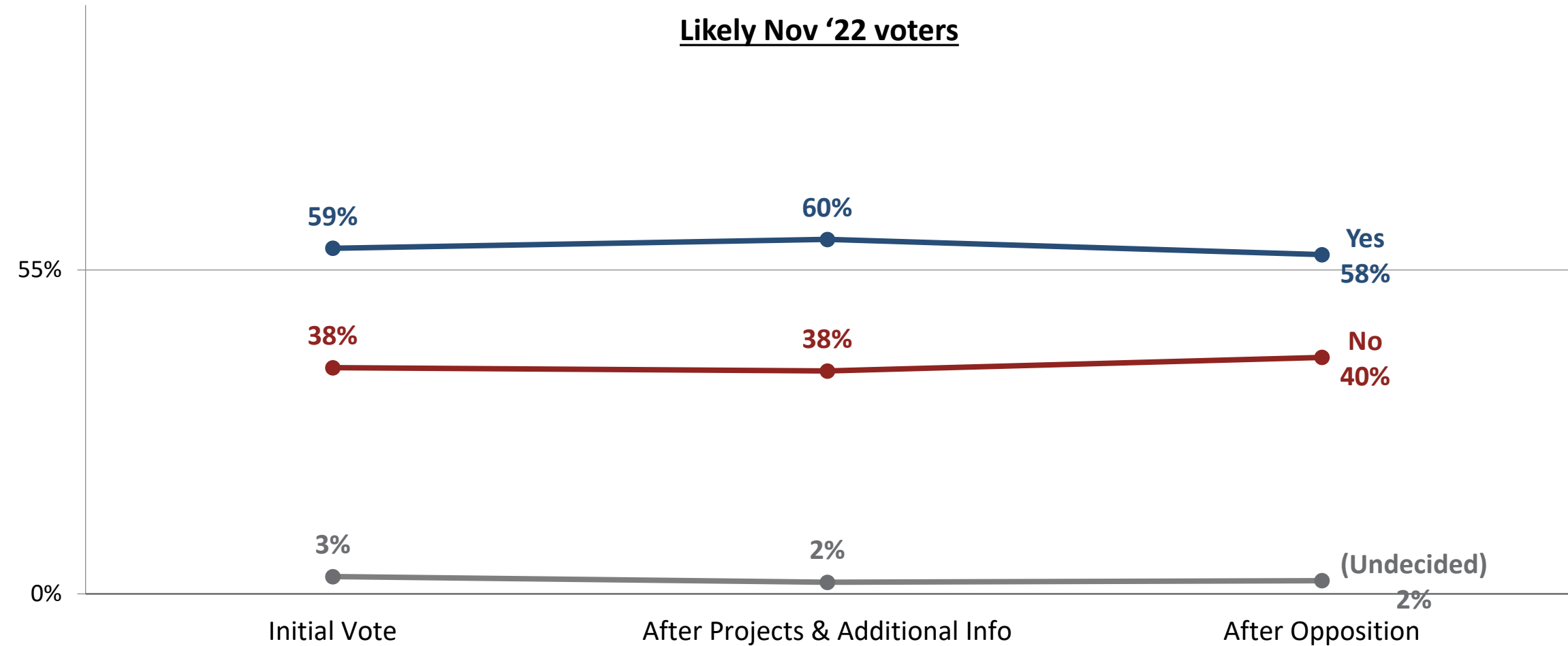
Reminding voters about the burden of school taxes on homeowners at a challenging time is compelling to many voters.

Text of messages condensed
for presentation.



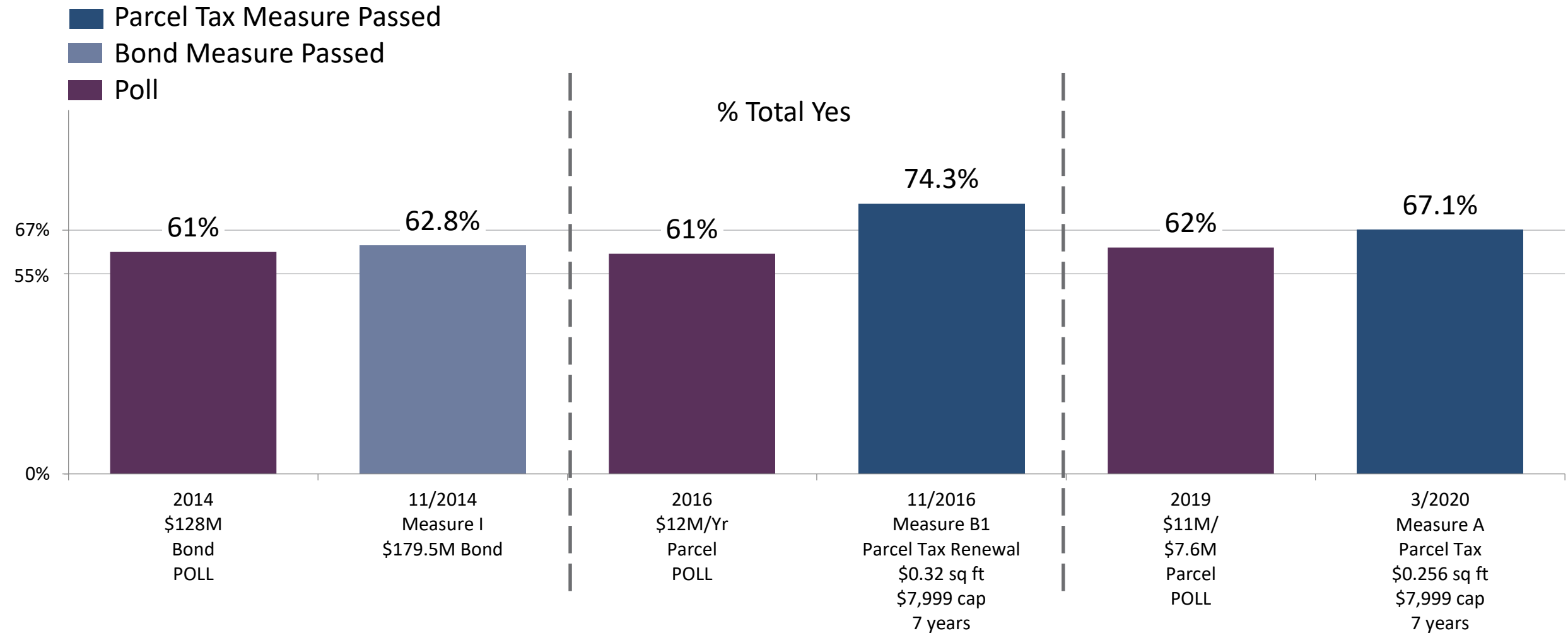
Vote Progression

Exposing survey participants to additional information does little to change the level of support or opposition to the potential measure. The June election model showed the same pattern.



AUSD Recent Ballot Measures

AUSD has historically outperformed polling numbers.



66.7% - threshold for parcel tax to pass
55% - threshold for GO bond to pass

- ▶ A bond measure for the 2022 ballot appears to be feasible with a majority of voters identifying a need for additional funding, valuing investments in school facilities, and supporting the measure.
- ▶ There is little difference in support for the measure between likely November 2022 voters and likely June 2022 voters.
- ▶ Interest is high for a wide range of investments, including improvements to classrooms and science labs to support high-quality academic programs and prepare students for college and careers, keeping schools well maintained, addressing basic health and safety needs, and updating facilities used for programs like arts, music, and athletics.
- ▶ Sensitivity to taxes and general concerns about spending are potential vulnerabilities for a bond measure in the current environment, but support is consistently above the threshold even with that context.
- ▶ The District should continue to communicate the need for this measure by highlighting the connection between schools and community, the state of good repair needs that are important to ensure health and safety, and the enhancements it would bring to high-quality education in the District.

Recommended Next Steps

- ▶ Begin public outreach and engagement process in order to solicit community feedback, educate key stakeholders and develop the bond project list
 - Informational communications sent to all registered voters via direct mail and digital channels
 - Updates to the District's website and social media accounts
 - Development of an FAQ and informational presentation
- ▶ Site meetings to gather community input for bond priorities
- ▶ Using feedback from public outreach, begin crafting the necessary legal documents in early 2022, including:
 - 75-word ballot statement
 - Bond project list
 - Tax rate statement
- ▶ First reading of resolution in January for input from Board and public
- ▶ Board adopts resolution calling election ahead of the March 11 deadline



2022 Bond Measure Planning Timeline





PROPS & MEASURES
STRATEGY & COMMUNICATIONS

Sara LaBatt

sara@emcresearch.com
510.550.8924

Ayse Toksoz

ayse@emcresearch.com
206.204.8047

Aaron Kelley

aaron@emcresearch.com
614.827.9679

Charles Heath

cheath@propsandmeasures.com
415.810.8053

Jeremy Hauser

jhauser@propsandmeasures.com
925.247.4528

ALAMEDA UNIFIED SCHOOL DISTRICT
BOARD AGENDA ITEM

Item Title: Update on the Process and Timeline for the Selection of Appointee for Vacant Board Seat (10 Mins/Information)

Item Type: Information

Background: With the recent resignation of former Board President Mia Bonta, there is currently a vacant seat on the Board of Education. Education Code gives the Board two options for filling the vacant seat: calling a special election, or appointing an applicant. At its meeting on September 14th, the Board voted unanimously to use the appointment method to make a provisional appointment of a new Board member who will fill former Board President Bonta's vacancy on the Board until the end of her term, which is November, 2022.

Tonight, Superintendent Scuderi will update the Board on the steps taken in the last two weeks to draft, announce, and distribute the Board vacancy application to the Alameda community.

Superintendent Scuderi will also give the Board and community information of important dates and steps in the process of filling the vacant seat on AUSD's Board of Education.

AUSD LCAP Goals:

Fund Codes: 01 General Fund

Fiscal Analysis

Amount (Savings) (Cost): Special Election: \$50,000 - \$250,000 Appointment: None

Recommendation:

AUSD Guiding Principle: #4 - Parental involvement and community engagement are integral to student success. | #5 - Accountability, transparency, and trust are necessary at all levels of the organization.

Submitted By: Roy Combs, Fagen Friedman & Fulfroost

ATTACHMENTS:

Description	Upload Date	Type
❑ Board Vacancy Timeline Presentation	9/24/2021	Presentation

Update on Process and Timeline for Selection of Appointee for Vacant Board Seat



Presented to the Board of Education

September 28, 2021

Pasquale Scuderi, AUSD Superintendent

Board Appointment Process: Background

- With former Board President Mia Bonta being elected to the state assembly, there is a vacant seat on the Board of Education.
- Education Code gives the Board two options for filling the vacant seat: calling a special election, or appointing an applicant.
- At its regularly scheduled meeting on September 14th, the Board voted unanimously to select the appointment method to appoint new Board member who will provisionally fill former Board President Bonta's vacancy on the Board until the end of her term, November 2022.

Board Appointment Process: Steps Completed

Date	Task	Status
September 14	Board voted for appointment process	Complete
September 15 - 17	Draft application and announcement	Complete
September 21	Announcement placed in newspapers and sent to community via <i>Parent Square</i> , etc.	Complete
September 21	Application posted online, sent to school sites, and paper applications printed for District Office and School Sites.	Complete
September 21 - October 1	Application Period	Ongoing

Board Appointment Process: Timeline of Steps Yet to be Completed

Date	Task	Status
October 4 - October 5	Applications reviewed to determine eligibility	Yet to be completed
October 6	Board agenda posted with applications	Yet to be completed
October 12	Board meeting: interview and selection of candidate	Yet to be completed
October 26	Candidate sworn in	Yet to be completed

Board Appointment Process

Board Discussion and Public Comments

ALAMEDA UNIFIED SCHOOL DISTRICT
BOARD AGENDA ITEM

Item Title: Resolution No. 2021-2022.15 Certification of Requirement of Education Code Section 60119 for Pupil Textbooks and Instructional Materials for Grades K-12 for Fiscal Year 2021-2022 (5 Mins/Public Hearing/Information)

Item Type: Public Hearing/Information

Background: This Public Hearing and Board Resolution are a required routine annual review of textbook sufficiency in AUSD schools. School districts must ensure that they have fully complied with the requirements of Education Code Section 60119. In order to be eligible to receive funds available for the purposes of this article, districts must conduct an annual public hearing to determine whether each pupil in the district has sufficient textbooks or instructional materials, or both, that are aligned to the content standards adopted pursuant to Section 60605 in each of the following subjects, as appropriate, that are consistent with the content and cycles of the curriculum framework adopted by the state board:

- Mathematics
- Science
- History-social science
- English/language arts, including the English language development component of an adopted program

Resolution No. 2021-2022.15 certifies that the District has adhered to all laws and to all State Board of Education rules, regulations, and policies regarding the purchase of instructional materials.

Staff will seek final approval of this Resolution at the October 12, 2021 Board of Education Meeting.

AUSD LCAP Goals: 1. Eliminate barriers to student success and maximize learning time.| 2a. Support all students in becoming college and career ready.| 2b. Support all English Learners (ELs) in becoming college and career ready.| 4. Ensure that all students have access to basic services.

Fund Codes:

Fiscal Analysis

Amount (Savings) (Cost): N/A

Recommendation: This item is presented for information and will return to the Board for approval at a subsequent meeting.

AUSD Guiding Principle: #1 - All students have the ability to achieve academic and personal success.| #2 - Teachers must challenge and support all students to reach their highest academic and personal potential.| #3 - Administrators must have the knowledge, leadership skills and ability to ensure student success.| #5 - Accountability, transparency, and trust are necessary at all levels of the

organization. | #6 - Allocation of funds must support our vision, mission, and guiding principles.

Submitted By:

Kirsten Zazo, Assistant Superintendent of Educational Services

ATTACHMENTS:

	Description	Upload Date	Type
▣	Presentation: Sufficiency of Pupil Textbooks and Instructional Materials _2021-22	9/22/2021	Presentation
▣	Resolution: 2021-2022.15 Sufficiency of Pupil Textbooks and Instructional Materials	9/22/2021	Resolution Letter
▣	Signature Page: Sufficiency of Pupil Textbooks and Instructional Materials	9/22/2021	Backup Material

Public Hearing: Sufficiency of Pupil Textbooks and Instructional Materials for Grades K-12 for 2021-22 SY

Kirsten Zazo
Asst. Superintendent of Educational Services
September 28, 2021

Ed Code

[Education Code §60119](#) states in part:

In order to be eligible to receive funds available for purposes of this article, the governing board of a school district shall take the following actions:

- Hold a public hearing and make a determination, through a resolution, as to whether each pupil in each school in the school district has sufficient textbooks and/or instructional materials that are aligned to the content standards adopted by the state board in each of the following subjects:
 - Mathematics
 - Science
 - History-Social Science
 - English Language Arts, including the English language development component of an adopted program

Ed Code, *cont...*

- The public hearing shall take place on or before the end of the eighth week from the first day pupils attend school for that year
- The governing board of a school district shall make a written determination as to whether each pupil enrolled in a world language or health course has sufficient textbooks or instructional material that are consistent with the content and cycles of the curriculum frameworks adopted by the state board for those subjects. The governing board shall also determine the availability of laboratory science equipment as applicable to science laboratory courses offered in grades 9-12, inclusive.

Notice of Public Hearing

Additionally, per [Education Code §60119](#):

- The governing board of a school district shall provide 10 days' notice of the public hearing
- The notice shall contain the time, place, and purpose of the hearing and shall be posted in three public places in the school district
- The hearing shall be held at a time that will encourage the attendance of teachers, and parents and guardians of pupils who attend the schools in the school district and shall not take place during or immediately following school hours

The [Notice of Public Hearing](#) was posted between September 13 and September 15 to:

1. The [Alameda Unified School District Website](#) under Curriculum and Instruction
2. The [City of Alameda Website](#)
3. The [Alameda Free Library Website](#)

Timeline

- Notice of Public Hearing: 10 days prior to the public hearing
- Public Hearing: September 28, 2021
- Approval of Resolution: October 12, 2021

Sufficiency of Pupil Textbooks and Instructional Materials

Board Discussion

ALAMEDA UNIFIED SCHOOL DISTRICT
Alameda, California
Resolution

September 28, 2021

Resolution No. 2021-2022.15

**CERTIFICATION OF REQUIREMENT OF EDUCATION CODE SECTION 60119 FOR SUFFICIENCY OF
PUPIL TEXTBOOKS AND INSTRUCTIONAL MATERIALS INCENTIVE PROGRAM**

WHEREAS, the Governing Board of Alameda City Unified School District, in order to comply with the requirements of Education Code section 60119, held a public hearing on September 28, 2021, at approximately 7:00 pm, which is on or before the eighth week of school and which did not take place during or immediately following school hours; and

WHEREAS, the Governing Board provided at least 10 day notice of the public hearing posted in at least three public places within the district that stated the time, place, and purpose of the hearing, and

WHEREAS, the Governing Board encouraged participation by parents, teachers, members of the community, and bargaining unit leaders in the public hearing; and

WHEREAS, information provided at the public hearing and to the Governing Board at the public meeting detailed the extent to which textbooks and instructional materials were provided to all students, including English learners, in the district/county office of education; and

WHEREAS, the definition of “sufficient textbooks or instructional materials” means that each pupil has textbook or instructional materials, or both, to use in class and to take home; and

WHEREAS, the definition of “sufficient textbooks or instructional materials” also means that all students who are enrolled in the same course within the Alameda Unified School District have standards-aligned textbooks or instructional materials from the same adoption cycle; and

WHEREAS, sufficient textbooks and instructional materials were provided to each student, including English Learners, which are aligned to the academic content standards and consistent with the cycles and content of the curriculum frameworks within the following subjects:

- Mathematics
- Science
- History-Social Science
- English/Language arts, including the English Language Development component of an adopted program; and

WHEREAS, sufficient textbooks or instructional materials were provided to each pupil enrolled in foreign language or health classes; and

WHEREAS, laboratory science equipment was available for science laboratory classes offered in grades 9-12, inclusive;

NOW, THEREFORE, BE IT RESOLVED, that for the 2021-2022 school year, the Alameda Unified School District has provided each pupil with sufficient textbooks and instructional materials aligned to the academic content standards and consistent with the cycles and content of the curriculum frameworks.

PASSED AND ADOPTED by the following votes this 28th day of September, 2021.

AYES:_____MEMBERS:_____

NOES:_____MEMBERS:_____

ABSENT:_____MEMBERS:_____

Jennifer Williams, President
Board of Education
Alameda Unified School District
Alameda County, State of California

ATTEST:

By: _____
Pasquale Scuderi, Secretary
Board of Education
Alameda Unified School District
Alameda County, State of California

ALAMEDA UNIFIED SCHOOL DISTRICT
BOARD AGENDA ITEM

Item Title: Resolution No. 2021-2022.17 Proclaiming a Local Emergency Ratifying the Proclamation of a State of Emergency by Governor Newsom Dated March 4, 2020 and Authorizing Remote Teleconference Meetings for the Period October 1, 2021 Through October 30, 2021 (10 Mins/Action)

Item Type: Action

Background: On September 20, 2021 Governor Gavin Newsom signed an executive order waiving the application of [AB 361](#) until October 1, 2021, when the provisions of a prior executive order that established certain requirements for public agencies to meet remotely during the COVID-19 emergency will expire.

AB 361 extends the flexibilities provided in the Governor’s prior executive order to local and state bodies to hold public meetings electronically beyond the executive order’s September 30, 2021 expiration date. The order specifies that for any meetings held to determine if remote meetings are justified beyond September 30, local legislative bodies must follow the statutory requirements established by AB 361.

The action provides clarity for local legislative and state bodies about the applicable requirements for holding remote meetings.

The text of the Governor’s executive order can be found [here](#).

With AB 361, AUSD can continue to hold remote Board meetings provided a few conditions are met. Since Alameda County’s Public Health Department no longer has a social distancing requirement, the District’s Board must make a finding that in-person meetings “present imminent risks to the health or safety of attendees.” Superintendent Scuderi is presenting a resolution stating this is the case.

Superintendent Scuderi asks that the Board approve the attached resolution. This resolution can only be valid for 30 days, so the Board will need to approve a new resolution each month in order to continue to hold remote meetings.

AUSD LCAP Goals: 1. Eliminate barriers to student success and maximize learning time.| 2a. Support all students in becoming college and career ready.| 2b. Support all English Learners (ELs) in becoming college and career ready.| 3. Support parent/guardian development as knowledgeable partners and effective advocates for student success.| 4. Ensure that all students have access to basic services.

Fund Codes:

Fiscal Analysis

Amount (Savings) (Cost): N/A

Recommendation: Approve as submitted.

AUSD Guiding Principle: #1 - All students have the ability to achieve academic and personal success. | #2 - Teachers must challenge and support all students to reach their highest academic and personal potential. | #3 - Administrators must have the knowledge, leadership skills and ability to ensure student success. | #5 - Accountability, transparency, and trust are necessary at all levels of the organization. | #6 - Allocation of funds must support our vision, mission, and guiding principles.

Submitted By: Pasquale Scuderi, Superintendent

ATTACHMENTS:

Description	Upload Date	Type
□ Resolution 2021-2022.17	9/22/2021	Resolution Letter

ALAMEDA UNIFIED SCHOOL DISTRICT
Alameda, California
Resolution

September 28, 2021

Resolution No. 2021-2022.17

**Resolution Proclaiming a Local Emergency Ratifying the Proclamation of a State of
Emergency by Governor Newsom Dated March 4, 2020 and Authorizing Remote
Teleconference Meetings for the Period October 1, 2021 Through October 30, 2021**

WHEREAS, the Alameda Unified School District is committed to preserving and nurturing public access and participation in meetings of the Board of Trustees; and

WHEREAS, all meetings of the Alameda Unified School District's legislative bodies are open and public, as required by the Ralph M. Brown Act (Cal. Gov. Code 54950 – 54963), so that any member of the public may attend, participate, and watch the District's legislative bodies conduct their business; and

WHEREAS, the Brown Act, Government Code section 54953(e), as amended by Assembly Bill 361, Chapter 165 of the Statutes of 2021, makes provisions for remote teleconferencing participation in meetings by members of a legislative body, without compliance with the requirements of Government Code section 54953(b)(3), subject to the existence of certain conditions; and

WHEREAS, a required condition is that a state of emergency is declared by the Governor pursuant to Government Code section 8625, proclaiming the existence of conditions of disaster or of extreme peril to the safety of persons and property within the state caused by conditions as described in Government Code section 8558; and

WHEREAS, a proclamation is made when there is an actual incident, threat of disaster, or extreme peril to the safety of persons and property within the jurisdictions that are within the District's boundaries, caused by natural, technological, or human-caused disasters; and

WHEREAS, it is further required that state or local officials have imposed or recommended measures to promote social distancing, or that the legislative body meeting in person would present imminent risks to the health and safety of attendees; and

WHEREAS, such conditions now exist in the District, specifically, a State of Emergency has been proclaimed by the Governor on March 4, 2020 based on an outbreak of respiratory illness due to COVID-19; and

WHEREAS, in-person meetings continued to present imminent risk to health and safety of attendees due to the continued prevalence of highly-contagious COVID variants and the fact that only 55.4% of the California population are fully vaccinated; and

WHEREAS, the Board of Trustees does hereby find that the Governor's March 4, 2020 State of Emergency proclamation due to the outbreak of COVID-19 and continued prevalence of highly contagious COVID various and inadequately low rates of fully vaccinated people in California has caused, and will continue to cause, conditions of peril to the safety of persons within the District that are likely to be beyond the control of services, personnel, equipment, and facilities of the District, and desires to proclaim a local emergency and ratify the proclamation of state of emergency by the Governor of the State of California; and

WHEREAS, as a consequence of the local emergency, the Board of Trustees does hereby find that the legislative bodies of the Alameda Unified School District shall conduct their meetings without compliance with paragraph (3) of subdivision (b) of Government Code section 54953, as authorized by subdivision (e) of section 54953, and that such legislative bodies shall comply with the requirements to provide the public

with access to the meetings as prescribed in paragraph (2) of subdivision (e) of section 54953; and

WHEREAS, the District will continue to provide access to Board meetings through live-streamed video feed which allows for public comment and a real-time closed-caption feed.

NOW, THEREFORE, THE BOARD OF TRUSTEES OF THE ALAMEDA UNIFIED SCHOOL DISTRICT DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. Recitals. The Recitals set forth above are true and correct and are incorporated into this Resolution by this reference.

Section 2. Proclamation of Local Emergency. The Board hereby proclaims that a local emergency now exists throughout the District, and meeting in person would present an imminent risk due to the prevalence of COVID variants and low vaccination rates among the general population.

Section 3. Ratification of Governor's Proclamation of a State of Emergency. The Board hereby ratifies the Governor of the State of California's Proclamation of a State of Emergency, effective as of its issuance date of March 4, 2020.

Section 4. Remote Teleconference Meetings. The Superintendent and legislative bodies of the Alameda Unified School District are hereby authorized and directed to take all actions necessary to carry out the intent and purpose of this Resolution including, conducting open and public meetings in accordance with Government Code section 54953(e) and other applicable provisions of the Brown Act.

Section 5. Effective Date of Resolution. This Resolution shall take effect October 1, 2021 and shall be effective until the earlier of (i) October 31, 2021, or such time the Board of Trustees adopts a subsequent resolution in accordance with Government Code section 54953(e)(3) to extend the time during which the legislative bodies of the Alameda Unified School District may continue to teleconference without compliance with paragraph (3) of subdivision (b) of section 54953.

PASSED AND ADOPTED by the following vote this 28th day of September, 2021:

AYES: _____ MEMBERS: _____

NOES: _____ MEMBERS: _____

ABSENT: _____ MEMBERS: _____

Jennifer Williams, President
Board of Education
Alameda Unified School District
Alameda County, State of California

ATTEST:

By: _____

Pasquale Scuderi, Secretary
Board of Education
Alameda Unified School District
Alameda County, State of California