LEASE LEASEBACK AGREEMENT
MASTER SITE LEASE

This master site lease **Master Site Lease**") dated as of **9/12/2018** ("**Effective Date**"), is made and entered into by and between the **San Leandro Unified School District**, a school district duly organized and validly existing under the laws of the State of California, as lessor ("**District**"), and **JL Construction**U, a California company duly organized and existing under the laws of the State of California, as lessee ("**Contractor**") (together, the "**Parties**").

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

School Site(s)	Address
Garfield Elementary School	13050 Aurora Drive, San Leandro, CA 94577
Wilson Elementary School	1300 Williams Street, San Leandro, CA 94577

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

WHEREAS, the District desires to provide for the **District Wide – New Modular Classrooms** ("**Project(s)**"); and

WHEREAS, the District determines that a portion of the School 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 lease the Project Site(s) back to the District and perform the work of the Project ("Master Facilities Lease"), which Master Facilities Lease is incorporated herein by this reference; and

WHEREAS, the Board of Education of the District ("**Board**") has determined that it is in the best interests of the 3District 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 Master Facilities Lease under which District will lease back the Project from Contractor; and

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

WHEREAS, the District is authorized under Education Code section 17406 to lease the Project Site(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 Master Facilities Lease, and the Board has duly authorized the execution delivery of this Master Site Lease in order to effectuate the foregoing, based upon a finding that it is in the best interest of the District to do so; and

WHEREAS, Contractor as lessee is authorized and competent to lease the Project Site(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 Master Site Lease; and

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

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

1. Definitions. **Unless the context clearly otherwise requires, all words and phrases defined in the Master Facilities Lease shall have the same meaning in this Master Site Lease.**

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

2.1. Exhibit A: **Descriptions of the School Site(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 Master Site Lease, to have and to hold for the term of this Master Site Lease. This Master Site Lease shall only take effect if the Master Facilities Lease is executed by the District and Contractor within three (3) days of execution of this Master Site Lease.

3.1. Work in Phases. If the Work of the Project is to be performed in phases, then the only areas bound by the terms of this Master Facilities Lease are:

3.1.1. As indicated to be within specific phases of the Project and

3.1.2. For which portions of the Lease Payments are still owing,

4. **Leaseback of the Project Site(s).** The Parties agree that the Project Site(s) will be leased back to the District pursuant to the Master Facilities Lease for the term thereof.

5. **Term**. The term of this Master Site Lease shall commence as of the Effective Date and shall terminate on the last day of the Term of the Master Facilities Lease, provided the District has paid to the Contractor, or its assignee, all payments which may be due under the Master Facilities Lease, and provided this Master Site Lease has not been terminated pursuant to the termination provisions of the Master Facilities Lease.

6. **Payment**. In consideration for the lease of the Project Site(s) by the District to the Contractor and for other good and valuable consideration, the Contractor shall pay One Dollar ($1.00) U per year to the District upon execution of this Master Site Lease.

7. Definitions. **Unless the context clearly otherwise requires, all words and phrases defined in the Master Facilities Lease shall have the same meaning in this Master Site Lease.**

8. Exhibits. **The following Exhibits are attached to and by reference incorporated and made a part of this Master Site Lease.**

8.1. Exhibit A: **Descriptions of the School Site(s)**

8.2. Exhibit B: **Descriptions of the Project Site(s) and Descriptions of the Project(s)**

9. 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 Master Site Lease, to have and to hold for the term of this Master Site Lease. This Master Site Lease shall only take effect if the Master Facilities Lease is executed by the District and Contractor within three (3) days of execution of this Master Site Lease.

9.1. Work in Phases. If the Work of the Project is to be performed in phases, then the only areas bound by the terms of this Master Facilities Lease are:

9.1.1. As indicated to be within specific phases of the Project and

9.1.2. For which portions of the Lease Payments are still owing,

10. Leaseback of the Project Site(s). The Parties agree that the Project Site(s) will be leased back to the District pursuant to the Master Facilities Lease for the term thereof.

11. Term. The term of this Master Site Lease shall commence as of the Effective Date and shall terminate on the last day of the Term of the Master Facilities Lease, provided the District has paid to the Contractor, or its assignee, all payments which may be due under the Master Facilities Lease, and provided this Master Site Lease has not been terminated pursuant to the termination provisions of the Master Facilities Lease.

12. 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)U per year to the District upon execution of this Master Site Lease.

13. Termination

13.1. Termination Due to Default by Contractor. If Contractor defaults pursuant to the provision(s) of the Master Facilities Lease and the District terminates the Master Facilities Lease pursuant to the Master Facilities Lease provision(s) allowing termination, then the Contractor shall be deemed to be in default of this Master Site Lease and this Master Site Lease shall also terminate at the same time as the Master Facilities Lease.

13.1.1. Default of Contractor includes, without limitation:

13.1.1.1. 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

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

13.1.1.3. Contractor persistently fails or refused to perform Work or provide material of sufficient quality as to follow Contract Documents; or

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

13.1.1.5. Contractor makes a general assignment for the benefit of its creditors, or a receiver is appointed because of its insolvency; or

13.1.1.6. Contractor persistently or repeatedly refuses 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

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

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

13.1.1.9. 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

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

13.1.2. 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:

13.1.2.1. 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

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

7.1.2.3 If Surety fails to notify District or begin performance as indicated herein, District may take over 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 bonded storage, or previously paid for.

7.1.2.4 **Conversion to Termination for Convenience.** In the event the Contract is terminated under this "Termination Due to Default by Contractor" section and it is finally determined by an arbitrator, court, jury or other tribunal having jurisdiction, for any reason, that the Contractor was not in default under the provisions hereof or that the District's exercise of its rights this section was defective, deficient, ineffective, invalid or improper for any reason, the termination shall be deemed a termination for convenience of the District under the "Termination of Contractor for Convenience" section in **Exhibit D** to this Facilities Lease and thereupon, the rights and obligations of the District and the Contractor shall be determined in accordance with the "Termination of Contractor for Convenience" section therein.

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

7.2.2 Take possession of the Project Site(s);

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

7.2.4 Relets the Project Site(s).

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

10 **No Merger.** The leaseback of the Project Site(s) by the Contractor to the District pursuant to the Master Facilities Lease shall not affect 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 Master Site Lease throughout the term hereof.

11 **Right of Entry.** The District reserves the right for any of its duly authorized representatives to enter upon the Project Site(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 Master 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 Master Site Lease and the Master Facilities Lease.

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

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

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

15.3 **No Violations.** To the best of the District's actual knowledge, neither the execution and delivery of this Master Site Lease nor the Master Facilities Lease, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the District is now a party or by which the District is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the District, or upon the Project Site(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, to the knowledge of District, threatened action or proceeding before any court or federal, state, municipal, or other government authority or administrative agency which will materially adversely affect the ability of District to perform its obligations under this Master Site Lease.

15.6 Condemnation Proceedings.

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

15.6.3 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 Master 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 Master Site Lease will not conflict with local, state or federal law.

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

15.9 Hazardous Materials. District is not currently aware of any contamination to the Project Site(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 Master Site Lease and the Master Facilities Lease; is possessed of full power to lease, leaseback, and hold real and personal property and has duly authorized the execution and delivery of all of the aforesaid agreements.

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

16.3 No Violations. Neither the execution and delivery of this Master Site Lease or the Master Facilities Lease, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the

Contractor is now a party or by which the Contractor is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the Contractor, or upon the Project Site(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 Master Site Lease or the Master Facilities Lease.

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

18 **Assignment and Subleasing**. This Master Site Lease may be assigned and/or the Project Site(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 Master Site Lease in any way that would interfere with or diminish Contractor's interests indicated in this Master Site Lease.

20 **Liens and Further Encumbrances**. Contractor agrees to keep the Project Site(s) and every part thereof free and clear of 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 Master Facilities Lease, Contractor further agrees to pay promptly and fully and discharge 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: San Leandro Unified School District 14735 Juniper Street San Leandro, CA 94579 ATTN: Aaron Kerrigan	**If to Contractor:** JL Construction 70 Stony Point Rd, Suite D, Santa Rosa, CA 95401 ATTN: Jeff Luchetti
With a copy to: Orbach Huff Suarez & Henderson 1901 Harrison Street, Suite 1630 Oakland, CA 94612 Attention: Glenn Gould, Esq.	

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

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

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

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

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

26 **Obligations Absolute.** The Contractor agrees that the obligations of the Contractor are absolute and unconditional and not subject to any charges or setoffs against the District whatsoever.

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

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

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

30 **Attorney's Fees**. If either party brings an action or proceeding involving the School Site(s) or to enforce the terms of this Master Site Lease or to declare rights hereunder, each party shall bear the cost of its own attorneys' fees.

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

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

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

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

35 Time of the Essence. Time is of the essence with respect to each of the terms, covenants, and conditions of this Master Site Lease.

36 Force Majeure. A party shall be excused from the performance of any obligation imposed in this Master Site Lease and the exhibits hereto for any period and to the extent that a party is prevented from performing such obligation, in whole or in part, as a result of delays caused by the other party or third parties, a governmental agency or entity, an act of God, war, terrorism, civil disturbance, forces of nature, fire, flood, earthquake, strikes or lockouts, and such nonperformance will not be a default hereunder or a grounds for termination of this Master Site Lease.

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

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

ACCEPTED AND AGREED on the date indicated below:

Dated: _____, 20_____	Dated: _____, 20_____
San Leandro Unified School District	**JL Construction**
By: _____	By: _____
Print Name: Michael McLaughlin	Print Name: Jeff Luchetti
Print Title: Superintendent	Print Title: President

EXHIBIT A-1
TO MASTER SITE LEASE

DESCRIPTION OF GARFIELD SCHOOL SITE

Garfield Elementary School, located at 13050 Aurora Drive, San Leandro, CA 94577



EXHIBIT A-2
TO MASTER SITE LEASE

DESCRIPTION OF GARFIELD SCHOOL SITE

Garfield Elementary School, located at 1300 Williams Street, San Leandro, CA 94577



EXHIBIT B
TO MASTER SITE LEASE

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

PROJECT(S) DESCRIPTION:

The project includes the Design and Construction (Design Build) of a New Modular Classrooms at the Garfield and Wilson Elementary Schools as further described in Exhibit K to the Facilities Lease.

MASTER FACILITIES LEASE

This master facilities lease ("**Master Facilities Lease**"), dated as of U **9/12/2018** ("**Effective Date**"), is made and entered into by and between **JL Construction** ("**Contractor**"), a California company duly organized and existing under the laws of the State of California, as sublessor, and **San Leandro Unified School District,** a school district duly organized and validly existing under the laws of the State of California, as sublessee ("**District**") (together, the "**Parties**").

RECITALS

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

School Site(s)	Address
Garfield Elementary School	13050 Aurora Drive, San Leandro, CA 94577
Wilson Elementary School	1300 Williams Street, San Leandro, CA 94577

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

WHEREAS, the District desires to provide for the **District Wide – New Modular Classrooms** ("**Project(s)**"); and

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

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

- [HKIT Architects] to prepare Civil and Site Plans and Specifications for the [Garfield and Wilson Elementary Schools] School Site(s)

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

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

WHEREAS, the District is authorized under Section 17406 of the Education Code of the State of California to lease the Project Site(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 Master 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 Master Facilities Lease; and

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

District will lease back the Project Site(s) and the Project from Contractor and if necessary, make Lease Payments as indicated in **Exhibit C** attached hereto and incorporated herein by reference); and

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

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

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

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

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

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

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

1.4. "**District**" or "**Lessee**" means the **San Leandro 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 Master Facilities Lease.

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

1.6.1. Liens for general and valorem taxes and assessments, if any, not then delinquent, or which the District may permit to remain unpaid;

1.6.2. The Project Master Site Lease;

1.6.3. This Master Facilities Lease,

1.6.4. Easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions or restrictions which exist of record as of the date of this Master Facilities Lease.

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 Master Facilities Lease and to which Contractor and the District consent in writing which will not impair or impede the operation of the Project Site(s); and

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

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

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

2.3. Exhibit C: Guaranteed Project Cost and Other Project Cost, 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 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: Terms and Conditions for Preliminary Services [NOT USED]

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

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

2.11. Exhibit K: Revisions to Contract Documents

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 Master 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 Master Facilities Lease and its fee estate as lessor under the Master Site Lease. Contractor shall continue to have and hold a leasehold estate in the Project Site(s) pursuant to the Master Site Lease throughout the term thereof and the term of this Master Facilities Lease.

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

3.4. No Disruption to Educational Activities

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.

4. Term.

4.1. Master Facilities Lease is Legally Binding. This Master Facilities Lease is legally binding on the Parties upon execution by the Parties and the District Board's approval of this Master Facilities Lease. The Term of this Master Facilities Lease for the purposes of District's occupancy and obligation to make Lease Payments shall commence on the earlier of the following two (2) events ("**Commencement Date**") and shall terminate T**welve (12) months** after the Commencement Date (the "**Term**"):

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

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

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

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

6. Termination; Lease Terminable Only as Set Forth Herein.

6.1. Except as otherwise expressly provided in this Master Facilities Lease, this Master Facilities Lease shall not terminate, nor shall District have any right to terminate this Master Facilities Lease or be entitled to the abatement of any all necessary payments pursuant to the Guaranteed Project Cost Provisions 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 Master 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 Guaranteed Project Cost Provisions 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 Master Facilities Lease.

6.2. 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 Master Facilities Lease in accordance with its terms.

6.3. Following Project Completion, that the District will not take any action to terminate, rescind or avoid this Master 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 Master 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 Master Facilities Lease, District waives all rights now or hereafter conferred by law to quit, terminate or surrender this Master Facilities Lease or the Project or any part thereof.

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

6.5. Termination of Contractor for Convenience. The District in its sole discretion may terminate for convenience this Master 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, through the date of termination, plus necessary and reasonable documented demobilization costs.

7. Title.

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

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

7.3. During the Term of this Master 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 Master Facilities Lease and transfer of title to the Project.

8. Quiet Enjoyment. Upon District's possession of the Project, Contractor shall thereafter provide the District with quiet use and enjoyment of the Project, and 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 Master Facilities Lease. Contractor will, at the request of the District and at Contractor's cost, join in any legal action in which the District asserts its right to such possession and enjoyment to the extent Contractor may lawfully do so. Notwithstanding the foregoing, Contractor shall have the right to inspect the Project and the Project Site(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 Master Facilities Lease, and to perform all of its duties and obligations hereunder and has duly authorized the execution of this Master Facilities Lease.

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

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

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

9.6. Condemnation Proceedings.

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

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 Master Facilities Lease.

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

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

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

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

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

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

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

11. Preliminary Services

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

contained in **Exhibit H** shall control regarding the performance of preliminary services.

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

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 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 Master 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. 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 Master 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 Master 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 Modification 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.

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 Agreement. Contractor represents to the District that all "subcontractors" (as defined by Labor Code section 1722.1) are registered pursuant to Labor Code section 1725.5.

12.2.8.3. 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.

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

16. Insurance

16.1 Contractor's Insurance. The Contractor shall comply with the insurance requirements as 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. U**mbrella Liability Insurance**

16.1.2.1. Contractor shall procure and maintain, during the life of the Contract, an Excess Liability and/or Umbrella Liability Insurance Policy. Any Umbrella Liability Insurance Policy shall protect Contractor, District, State, Construction Manager(s), Project Manager(s), and Architect(s) in the amounts indicated herein and shall comply with all requirements for Commercial General Liability and Automobile Liability and Employers' Liability Insurance. This coverage shall be provided in a form at least as broad as the Insurance Services Office (ISO) standard form.

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.

16.1.2.3. Whether this Excess Liability and/or Umbrella Liability Insurance Policy is written on a "follow form" or "stand alone" form, the coverages shall equal or greater than the Contractor's Commercial General Liability and Automobile Liability and Employers' Liability Insurance with no exclusions that reduce or eliminate coverage items.

16.1.3. S**ubcontractor:** 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 equal to at least fifty percent (50%) of the amounts required of the Contractor.

16.1.4. W**orkers' 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.

16.1.4.2. 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.

16.1.5. C**ontractor's Risk Insurance: Contractor's Risk "All Risk" Insurance.**

16.1.5.1. 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.

16.1.5.2. 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, 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.

16.1.5.3. **Earthquake and Flood Coverage.** The District may require the Contractor to include coverage for "earthquake(s)" and/or "flood" and Contractor shall provide the price for those additional coverages for the District's consideration prior to including or charging the District for those coverages.

16.1.5.4. The deductible for this insurance shall be paid by Contractor.

16.1.6. P**rofessional 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.

16.1.7. P**roperty of Others Insurance (if not expressly stated as part of above insurance policies)**U**.** 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.

16.1.7.1. 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."

16.1.8. P**roof of Insurance and Other Requirements: Endorsements and Certificates**

16.1.8.1. 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.

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

16.1.8.2.1. 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."

16.1.8.2.2. 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.

16.1.8.3. 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.

16.1.8.4. 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).

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

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

16.1.8.7. All of Contractor's insurance shall place with insurers U**ADMITTED**U in California with a current A.M. Best's rating of no less than U**A—**U or U**A: VII.**U Contractor shall provide documentation to the District demonstrating this rating.

16.1.9. I**nsurance Policy Limits** The limits of insurance shall not be less than the following amounts:

Commercial General Liability	Combined Single Limit	$2,000,000 per occurrence; $4,000,000 aggregate
	Product Liability and Completed Operations	$2,000,000 per occurrence; $4,000,000 aggregate
Automobile Liability – Any Auto	Combined Single Limit	$2,000,000 per occurrence; $4,000,000 aggregate
Excess Liability (Umbrella)		$6,000,000 per occurrence; $6,000,000 aggregate
Workers Compensation		Statutory limits pursuant to State law
Employers' Liability		$2,000,000
Builder's Risk (Course of Construction)		Issued for the value and scope of Work indicated herein.
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

16.2. District's Insurance.

16.2.1. 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 include Contractor as an additional covered party on those policies:

16.2.1.1. Property Program Liability Coverage
16.2.1.2. Interruption of Business / Extra Expense and Rental Value Coverage
16.2.1.3. Excess Liability

17. Indemnification.

Contractor's Indemnity Obligation. 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

17.1. 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 (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 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. 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.

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 Master Facilities Lease, only:

17.2.1.1. If those claims, damages, expenses or liabilities relate to District's status as a sublessee under this 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 are not covered by Contractor's warranty(s) or guarantee(s) and that arise from the District's use of the Facilities.

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 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 Master Facilities Lease shall continue in full force and effect and shall not be terminated by virtue of that partial taking and the Parties waive the benefit of any law to the contrary, and

18.3.2. There shall be a partial abatement of any principal payments pursuant to the Guaranteed Project Cost Provisions 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 still 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 Master Facilities Lease. The Term shall cease at that time.

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

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

20.3.1. Repair the Project to full use;

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

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

21. Access

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

21.2. By District. The District shall always have the right to enter upon the Project Site(s). 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 the following conditions:

22.1.1. This Master Facilities Lease and the obligation of the District to make the payments required pursuant to the Guaranteed Project Cost Provisions indicated in **Exhibit C** shall remain obligations of the District; and

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

22.2. Assignment by Contractor. Contractor may assign its right, title and interest in this Master Facilities Lease, in whole or in part to one or more assignees, only after the written consent of District, which District will not unreasonably withhold. No assignment shall be effective against the District unless and until the District has consented in writing. Notwithstanding anything to contrary contained in this Master Facilities Lease, no consent from the District shall be required in connection with any assignment by Contractor to a lender for purposes of financing the Project as long as there are 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 Master Facilities Lease. The terms "Event of Default" and "Default" shall mean, whenever they are used as to the District in the Master Site Lease or this Master 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 Guaranteed Project Cost Provisions 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 Master 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 Master 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 Master 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 Master 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 Master 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 Master 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 Master 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 Master 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 Master Facilities Lease. The terms "Event of Default" and "Default" shall mean, whenever they are used as to the Contractor in the Master Site Lease or this Master Facilities Lease, shall only be one or more of the following events:

24.1.1.1. 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;

24.1.1.2. 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;

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

24.1.2. failure by the Contractor to perform any material covenant, condition or agreement in this Master 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 Master Site Lease and Master Facilities Lease.

24.2.1. If District terminates the Master Site Lease and the Master 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 Master Site Lease and Master 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: San Leandro Unified School District 14735 Juniper Street San Leandro, CA 94579 ATTN: Aaron Kerrigan	**If to Contractor:** JL Construction 70 Stony Point Rd, Suite D, Santa Rosa, CA 95401 ATTN: Jeff Luchetti
With a copy to: Orbach Huff Suarez & Henderson 1901 Harrison Street, Suite 1630	

Oakland, CA 94612
Attention: Glenn N. Gould, Esq.

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

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

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

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

29. Amendments, Changes and Modifications. Except as to the termination rights of both Parties as indicated herein, this Master 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 Master Facilities Lease shall be deemed and construed to be a "net-net-net lease"
and the District hereby agrees that all payments it makes pursuant to the Guaranteed Project Cost Provisions indicated in **Exhibit C** shall be an absolute net return to Contractor, free and clear of any expenses, charges or set-offs.

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

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

33. Applicable Law. This Master Facilities Lease shall be governed by and construed in accordance with the laws of the State of California, and venue in the County within which the 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 Master 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 Master Facilities Lease are for convenience only and in no way define, limit or describe the scope or intent of any provisions or Sections of this Master Facilities Lease.

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

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

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

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

40. **Force Majeure**. A party shall be excused from the performance of any obligation imposed in this Master Facilities Lease and the exhibits hereto for any period and to the extent that a party is prevented from performing such obligation, in whole or in part, as a result of delays caused by the other party or third parties, a governmental agency or entity, an act of God, war, terrorism, civil disturbance, forces of nature, fire, flood, earthquake, strikes or lockouts , and such nonperformance will not be a default hereunder or a grounds for termination of this Master Facilities Lease.

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

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

ACCEPTED AND AGREED on the date indicated below:

Dated: 9/12/2018	Dated: 9/12/2018
San Leandro Unified School District	**[Contractor Name]**
By: _____	By:_____
Print Name: _____	Print Name: _____
Print Title: _____	Print Title: _____

EXHIBIT C-1
TO
FACILITIES LEASE

PRELIMINARY SERVICES PAYMENTS, GUARANTEED PROJECT COST AND OTHER PROJECT COST, FUNDING, AND PAYMENT PROVISIONS FOR GARFIELD ELEMENTARY SCHOOL SITE

1. Preliminary Services Payments

1.1. If Contractor performs Preliminary Services for the District for the Project(s), the District shall pay to Contractor **Forty-One Thousand Two Hundred Sixty-Four Dollars ($41,264)** ("**Preliminary Services Payment(s)**"), based on the amount of Work satisfactorily performed and approved by the District.

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

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

2. Site Lease Payments. As indicated in the Site Lease, Contractor shall pay One Dollar ($1.00)U per year to the District as consideration for the Site Lease.

3. Guaranteed Project Cost (or Guaranteed Maximum Price). Pursuant to the Facilities Lease, Contractor will cause the Project to be constructed for **Four Million Three Hundred Twenty-Two Thousand Five Hundred Forty Dollars ($4,322,540)** ("**Guaranteed Project Cost" or "GPC" or "Guaranteed Maximum Price" or "GMP**"). Except as indicated herein for modifications to the Project approved by the District, Contractor will not seek additional compensation from District in excess of Guaranteed Project Cost. District shall pay the Guaranteed Project Cost to Contractor in the form of Tenant Improvement Payments and Lease Payments as indicated herein. The Guaranteed Project Cost includes the following components and as further detailed herein:

3.1. Cost to Perform Work.

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

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

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

3.4. **Allowances.**

Sitework Allowance – Three Hundred Eighty-Seven Thousand Five Hundred Twenty-Three Dollars ($387,523)

Any unused allowance or unused portion thereof shall be deducted from the Cost of the Work. The amount to deduct shall be calculated using the steps in the "Changes in the Work" provisions of **Exhibit "D"** to the Facilities Lease including the Deductive Change Order provisions therein.

3.5. **Bonds and Insurance**. 2.5%

3.6. **Overhead and Profit**. 8%

3.7. **Contingency**. N/A

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 **Three Million Eight Hundred Ninety Thousand Two Hundred Eighty-Six Dollars ($3,890,286)** ("**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**. After the Parties execute the Memorandum of Commencement Date, attached to the Facilities Lease as **Exhibit E**, the District shall pay to Contractor **Four Hundred Thirty-Two Thousand Two Hundred Fifty-Four Dollars ($432,254)** ("**Lease Payment(s)**") plus interest, as indicated below.

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

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

4.2.3. **Fair Rental Value**. District and Contractor have agreed and determined that the total Lease Payments plus interest constitute adequate consideration for the 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.

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

4.2.4.1. The District and Contractor understand and intend that the obligation of the District to pay Lease Payments plus interest and other payments hereunder constitutes a current expense of the District and shall not in any way be construed to be a debt of the District in contravention of any

applicable constitutional or statutory limitation or requirement concerning the creation of indebtedness by the District, nor shall anything contained herein constitute a pledge of the general tax revenues, funds or moneys of the District.

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

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

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

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

4.2.5. The Lease Payment Amount shall be paid pursuant to the following structure and the annual interest rate shall be at **four-point five percent (4.5%):**

Date of Payment	(A) Total Principal Due on Lease Payment	(B) Total Interest Due on Lease Payment	Total Lease Payment (A + B)
Thirty Days after NOC	**$35,284.25**	**$1,620.95**	**$36,905.21**
30 days thereafter	**$35,416.57**	**$1,488.64**	**$36,905.21**
30 days thereafter	**$35,549.38**	**$1,355.82**	**$36,905.21**
30 days thereafter	**$35,682.69**	**$1,222.51**	**$36,905.21**
30 days thereafter	**$35,816.50**	**$1,088.70**	**$36,905.21**
30 days thereafter	**$35,950.82**	**$954.39**	**$36,905.21**
30 days thereafter	**$36,085.63**	**$819.58**	**$36,905.21**
30 days thereafter	**$36,220.95**	**$684.26**	**$36,905.21**
30 days thereafter	**$36,356.78**	**$548.43**	**$36,905.21**
30 days thereafter	**$36,493.12**	**$412.09**	**$36,905.21**
30 days thereafter	**$36,629.97**	**$275.24**	**$36,905.21**
30 days thereafter	**$36,767.33**	**$137.88**	**$36,905.21**

4.2.6. **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.

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.

EXHIBIT C-2
TO
FACILITIES LEASE

PRELIMINARY SERVICES PAYMENTS, GUARANTEED PROJECT COST AND OTHER PROJECT COST, FUNDING, AND PAYMENT PROVISIONS FOR WILSON ELEMENTARY SCHOOL SITE

6. Preliminary Services Payments

6.1. If Contractor performs Preliminary Services for the District for the Project(s), the District shall pay to Contractor **Twenty-Eight Thousand One Hundred Forty-Five Dollars ($28,145)** ("**Preliminary Services Payment(s)**"), based on the amount of Work satisfactorily performed and approved by the District.

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

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

7. 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.

8. Guaranteed Project Cost (or Guaranteed Maximum Price). Pursuant to the Facilities Lease, Contractor will cause the Project to be constructed for **Three Million Twenty-Eight Thousand Seven Hundred Ninety-Eight Dollars ($3,028,798)** ("**Guaranteed Project Cost" or "GPC" or "Guaranteed Maximum Price" or "GMP**"). Except as indicated herein for modifications to the Project approved by the District, Contractor will not seek additional compensation from District in excess of Guaranteed Project Cost. District shall pay the Guaranteed Project Cost to Contractor in the form of Tenant Improvement Payments and Lease Payments as indicated herein. The Guaranteed Project Cost includes the following components and as further detailed herein:

8.1. Cost to Perform Work.

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

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

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

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

8.4. **Allowances.**

Sitework Allowance – Three Hundred Eighty-Seven Thousand Five Hundred Twenty-Three Dollars ($387,523)

Any unused allowance or unused portion thereof shall be deducted from the Cost of the Work. The amount to deduct shall be calculated using the steps in the "Changes in the Work" provisions of **Exhibit "D"** to the Facilities Lease including the Deductive Change Order provisions therein.

8.5. **Bonds and Insurance**. 2.5%

8.6. **Overhead and Profit**. 8%

8.7. **Contingency**. N/A

9. **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.

9.1. **Tenant Improvement Payments**. Prior to the District's taking delivery or occupancy of the Project, the District shall pay to Contractor **Two Million Seven Hundred Twenty-Five Thousand Nine Hundred Eighteen Dollars ($2,725,918)** ("**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.

9.2. **Lease Payments Plus Interest**. After the Parties execute the Memorandum of Commencement Date, attached to the Facilities Lease as **Exhibit E**, the District shall pay to Contractor **Three Hundred Two Thousand Eight Hundred Eighty Dollars ($302,880)** ("**Lease Payment(s)**") plus interest, as indicated below.

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

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

9.2.3. **Fair Rental Value**. District and Contractor have agreed and determined that the total Lease Payments plus interest constitute adequate consideration for 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.

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

9.2.4.1. The District and Contractor understand and intend that the obligation of the District to pay Lease Payments plus interest and other payments hereunder constitutes a current expense of the District and shall not in any way be construed to be a debt of the District in contravention of any

applicable constitutional or statutory limitation or requirement concerning the creation of indebtedness by the District, nor shall anything contained herein constitute a pledge of the general tax revenues, funds or moneys of the District.

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

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

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

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

9.2.5. The Lease Payment Amount shall be paid pursuant to the following structure and the annual interest rate shall be at **four-point five percent (4.5%):**

Date of Payment	(A) Total Principal Due on Lease Payment	(B) Total Interest Due on Lease Payment	Total Lease Payment (A + B)
Thirty Days after NOC	**$24,723.65**	**$1,135.80**	**$25,859.45**
30 days thereafter	**$24,816.36**	**$1,043.09**	**$25,859.45**
30 days thereafter	**$24,909.42**	**$950.02**	**$25,859.45**
30 days thereafter	**$25,002.83**	**$856.61**	**$25,859.45**
30 days thereafter	**$25,096.59**	**$762.85**	**$25,859.45**
30 days thereafter	**$25,190.70**	**$668.74**	**$25,859.45**
30 days thereafter	**$25,285.17**	**$574.28**	**$25,859.45**
30 days thereafter	**$25,379.99**	**$479.46**	**$25,859.45**
30 days thereafter	**$25,475.16**	**$384.28**	**$25,859.45**
30 days thereafter	**$25,570.70**	**$288.75**	**$25,859.45**
30 days thereafter	**$25,666.59**	**$192.86**	**$25,859.45**
30 days thereafter	**$25,762.84**	**$96.61**	**$25,859.45**

9.2.6. **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.

9.3. 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.

10. Changes to Guaranteed Project Cost.

10.1. 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.

10.2. 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.

10.3. 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.

10.4. 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.

ATTACHMENT ONE TO GROUP EXHIBIT C

PROPOSAL OF JL CONSTRUCTION

***Please See Attached Guaranteed Cost - Cost Proposal

Attachment 5

CONTRACTOR'S GPC SUMMARY

Proposer hereby submits the following **Guaranteed Project Cost (or Guaranteed Maximum Price)** for the construction of the Project, which includes all necessary labor, materials, tools, equipment, utilities, services, transportation, overhead, supervision, general conditions and administration costs, permits, taxes and profit:

GPC Summary

Name of Firm:	Jeff Luchetti Construction, Inc		
ITEM No.	**Description**	**Amount**	**Comments**
1	**Construction Cost Total (Direct Costs of Work)**	$6,856,618	Scope as indicated as the "**Cost to Perform Work**" in Exhibit C to the Facilities Lease to perform the "**Scope of Work for Construction Services**" indicated in this RFQ/P
	1.a **Subcontractor Performed Costs**	$_____	Provide a breakdown of Item 1
	1.b **Contractor Performed Costs**	$_____	
2	**General Conditions & General Requirements**	$494,720 or 6.73%	The Contractor's charge for General Conditions shall be expressed as a fixed amount
	3 **SUBTOTAL**	$7,351,338	**Sum of Item 1 and Item 2**
4	**Bonds and Insurance Costs**	2.5 %	The Contractor's charge for Bonds and Insurance shall be expressed as a fixed percentage of direct costs. Each Firm indicated its proposed bonds and insurance costs in its response to this RFQ/P. Each Firm now must confirm the value, or each Firm may reduce their previously proposed value.
5	**Fee / overhead & profit**	8 %	The Contractor's charge for fee/overhead & profit shall be expressed as a fixed percentage of direct costs. Each Firm indicated its proposed fee/overhead & profit in its response to this RFQ/P. Each Firm now must confirm the value, or each Firm may reduce their previously proposed value.
6	**Mark-up on Subcontractor work.**	Included in Item 5 %	The Contractor's charge for fee/overhead & profit shall be expressed as a fixed percentage of direct costs. Each Firm indicated its proposed mark-ups in its response to this RFQ/P. Each Firm now must

			confirm those mark-up values, or each Firm may reduce their previously proposed mark-up values.
7	**Mark-up on self-performed work.**	Included in item 5 _____%	The Contractor's charge for fee/overhead & profit shall be expressed as a fixed percentage of direct costs. Each Firm indicated its proposed mark-ups in its response to this RFQ/P. Each Firm now must confirm those mark-up values, or each Firm may reduce their previously proposed mark-up values.
	FIRM'S GPC	$7,351,338	**The total sum of Items 3 + 4 + 5 + 6 + 7**

Financing Cost

Estimated Financed Amount is anticipated to be less than 10% of the total GPC and that amount will be paid to Contractor in monthly payments over a twelve (12) month period for each Stadium. **State your Firm's proposed interest charge for this Project.**	2.5%

EXHIBIT D

TO
MASTER FACILITIES LEASE

GENERAL CONSTRUCTION PROVISIONS

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

1. CONTRACT TERMS AND DEFINITIONS

1.1. Definitions

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

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

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

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

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

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

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

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

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

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

1.1.9.1. Master Site Lease
1.1.9.2. Master Facilities Lease, with all of its Exhibits
1.1.9.3. These General Construction Provisions
1.1.9.4. Noncollusion Declaration
1.1.9.5. Workers' Compensation Certification
1.1.9.6. Prevailing Wage Certification
1.1.9.7. Disabled Veterans Business Enterprise Participation Certification
1.1.9.8. Drug-Free Workplace Certification

1.1.9.9. Tobacco-Free Environment Certification
1.1.9.10. Lead-Based Paint Certification
1.1.9.11. Hazardous Materials Certification
1.1.9.12. Imported Materials Certification
1.1.9.13. Criminal Background Investigation/Fingerprinting Certification
1.1.9.14. Roofing Contract Financial Interest Certification
1.1.9.15. Storm Water Pollution Prevention Plan
1.1.9.16. Performance Bond
1.1.9.17. Payment Bond (Contractor's Labor & Material Bond)
1.1.9.18. All Division 1 Documents, which shall only supplement these General Construction Provisions, but shall not control if their provisions contradict these Construction Provisions
1.1.9.19. All Plans, Technical Specifications, and Drawings
1.1.9.20. Any and all addenda to any of the above documents
1.1.9.21. Any and all change orders or written modifications to the above documents if approved in writing by the District

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

1.1.11. Contractor (or **"Contractor")**: The entity identified in the Master Facilities Lease as contracting to perform the Work to be done under this Contract, or the legal representative of such a person or persons.

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

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

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

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

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

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

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

1.1.17. DSA: Division of the State Architect.

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

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

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

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

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

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

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

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

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

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

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

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

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

1.1.31. Shop Drawings: All drawings, prints, diagrams, illustrations, brochures, schedules, and other

data that are prepared by the Contractor, a subcontractor, manufacturer, supplier, or distributor, that illustrate how specific portions of the Work shall be fabricated or installed.

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

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

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

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

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

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

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

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

1.2. Laws Concerning The Contract

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

1.3. No Oral Agreements

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

1.4. No Assignment

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

1.5. Notice And Service Thereof

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

1.6. No Waiver

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

1.7. Substitutions For Specified Items

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

1.8. Materials and Work

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

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

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

1.8.4. For all materials and equipment specified or indicated in the Drawings, the Contractor shall provide all labor, materials, equipment, and services necessary for complete assemblies and complete working systems, functioning as intended, including incidental items not indicated on Drawings, nor mentioned in the Specifications, that can legitimately and reasonably be inferred to belong to the Work described, or be necessary in good practice to provide a complete assembly or system. In all instances,

material and equipment shall be installed in strict accordance with each manufacturer's most recent published recommendations and specifications.

1.8.5. Contractor shall, after award of Contract by District and after relevant submittals have been approved, place orders for materials and/or equipment as specified so that delivery of same may be made without delays to the Work. Contractor shall, upon demand from District, present documentary evidence showing that orders have been placed.

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

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

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

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

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

2. [RESERVED]

3. ARCHITECT

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

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

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

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

4. CONSTRUCTION MANAGER

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

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

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

5. INSPECTOR, INSPECTIONS, AND TESTS

5.1. Project Inspector

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

5.1.2. No Work shall be carried on except with the knowledge and under the inspection of the Project Inspector(s). The Project Inspector(s) shall have free access to any or all parts of Work at any time. Contractor shall furnish Project Inspector(s) reasonable opportunities for obtaining such information as may be necessary to keep Project Inspector(s) fully informed respecting progress and manner of work and character of materials. Inspection of Work shall not relieve Contractor from an obligation to fulfill this

Contract. Project Inspector(s) and the DSA are authorized to stop work whenever the Contractor and/or its Subcontractor(s) are not complying with the Contract Documents. Any work stoppage by the Project Inspector(s) and/or DSA shall be without liability to the District. Contractor shall instruct its Subcontractors and employees accordingly.

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

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

5.1.5. Contractor acknowledges that the DSA inspection, approval and certification process for projects was revised in 2012-2013 and that Contractor must comply with the requirements of the most recent versions of DSA document PR 13-01. Below are provisions of this document from 2012-2013: PR 13-01 (Procedure: Construction Oversight Process) - Duties of Contractor related to the use of "Project Inspection Card" (Form DSA 152).

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

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

5.1.5.3. Verify that forms DSA 152 are issued for the project prior to the commencement of construction.

5.1.5.4. Meet with the design team, the Laboratory of Record and the Project Inspector to mutually communicate and understand the testing and inspection program and the methods of communication appropriate for the project.

5.1.5.5. Notify the Project Inspector, in writing, of the commencement of construction of each and every aspect of the work at least 48 hours in advance by submitting form DSA 156 (or other agreed upon written documents) to the Project Inspector.

5.1.5.6. Notify the Project Inspector of the completion of construction of each and every aspect of the work by submitting form DSA 156 (or other agreed upon written documents) to the Project Inspector.

5.1.5.7. Consider the relationship of the signed off blocks and sections of the form DSA 152 and the commencement of subsequent work. Until the Project Inspector has signed off applicable blocks and sections of the form DSA 152, the Contractor may be prohibited from proceeding with subsequent construction activities that cover up the unapproved work. Any subsequent construction

activities, that cover up the unapproved work, will be subject to a "Stop Work Order" from the DSA or the District and are subject to removal and remediation if found to be in non-compliance with the DSA approved construction documents.

5.2. Tests and Inspections

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

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

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

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

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

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

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

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

expenses from the next Tenant Improvement Payment.

6. CONTRACTOR

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

6.1. Status of Contractor

6.1.1. Contractor is and shall at all times be deemed to be an independent contractor and shall 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 Master 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 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 Project 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. <u>Duty to Provide Fit Workers / Required Personnel</u>

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. 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.

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

6.3.4. 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.

6.3.5. 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.

6.3.6. 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.

6.3.7. 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.

6.3.8. 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.

6.3.9. 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.

6.3.10. 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. <u>Prohibition on Harassment</u>

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.

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 brief description of all Work performed 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. 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. The 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. 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.

6.12.3. 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.

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

6.12.5. 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.

6.12.6. 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.

6.12.7. 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.

6.12.8. 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.

6.12.9. 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.

6.12.10. 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.

6.12.11. 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.

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

6.12.11.2. 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.

6.12.11.3. 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.

6.12.11.4. Contractor's indemnity obligations as indicated in the Master 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.

6.12.12. 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.

6.12.13. 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.

6.12.14. 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.

6.12.15. 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.

6.12.16. 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 Architect.

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.

6.12.17. 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.

6.12.18. 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).

6.12.19. 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).

6.12.20. 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.

6.12.21. 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.

6.13. 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 Premises 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. In addition to all legal requirements and District requirements that Contractor must comply with to procure and select Subcontractors, the 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. Prior to the Contractor seeking bids, the District and Contractor may negotiate a different minimum number of bona fide bids from Subcontractors, which shall be as indicated in **Exhibit K** to the Master Facilities Lease.

7.3.2. Contractor shall provide all bids received from all Subcontractors to the District and shall justify, to the District's satisfaction, if Contractor does not choose the lowest bidding Subcontractor for a specific scope of work.

7.3.3. Contractor must seek District's prior approval if it wishes to provide fewer than the minimum number of bona fide bids from Subcontractors

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.

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. 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.

9.4. 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.

9.5. 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.

9.6. Should any question arise concerning the intent or meaning of the Contract Documents, including the Plans and Specifications, the question shall be submitted to the District for interpretation. If a conflict exists in the Contract Documents, these General Construction Provisions shall control over the Master Facilities Lease, which shall control over the Master Site Lease, which shall control over Division 1 Documents, which shall control over Division 2 through Division 49 documents, which shall control over figured dimensions, which shall control over large-scale drawings, which shall control over small-scale drawings. In no case shall a document calling for lower quality and/or quantity material or workmanship control. However, in the case of discrepancy or ambiguity solely between and among the Drawings and Specifications, the discrepancy or ambiguity shall be resolved in favor of the interpretation that will provide District with the functionally complete and operable Project described in the Drawings and Specifications. In case of ambiguity, conflict, or lack of information, District will furnish clarifications with reasonable promptness.

9.7. 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.

9.8. 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 Master Facilities Lease as **Exhibits F** ("Construction Schedule") and shall provide all schedules and construction progress documentation as required in the Contract Documents**.** 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 loaded, unless waived by the District in writing, and detailed as required by the Contract Documents.

10.2. Schedule of Values

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

10.2.1.1. Divided into at least the following categories:

10.2.1.1.1. Overhead and profit;
10.2.1.1.2. Supervision;
10.2.1.1.3. General conditions;
10.2.1.1.4. Layout;
10.2.1.1.5. Mobilization;
10.2.1.1.6. Submittals;
10.2.1.1.7. Bonds and insurance;
10.2.1.1.8. Closeout documentation;
10.2.1.1.9. Demolition;
10.2.1.1.10. Installation;
10.2.1.1.11. Rough-in;
10.2.1.1.12. Finishes;
10.2.1.1.13. Testing;
10.2.1.1.14. Punch list and acceptance.

10.2.1.2. Divided by each of the following areas:

10.2.1.2.1. Site work;
10.2.1.2.2. By each building and phase;
10.2.1.2.3. By each floor.
10.2.1.2.4. By division of work.

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

10.2.1.3.1. Mobilization and layout combined to equal not more than 1%;

10.2.1.3.2. Submittals, samples and shop drawings combined to equal not more than 2%,
10.2.1.3.3. Bonds and insurance combined to equal not more than 3%.
10.2.1.3.4. Punchlist and acceptance value combined to equal not less than 1%.
10.2.1.3.5. No item on the Schedule of Value (except noted above) to equal more than 3%.

10.2.1.4. Closeout Documentation shall have a value in the schedule of values of not less than 3%. The value for Closeout Documentation shall be in addition to and shall not be a part of the Lease Payments.

10.2.1.5. 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.

10.3. **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. 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.

10.6. 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.

10.7. 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.

10.8. **Monthly Progress Schedule(s)**

10.8.1. 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.

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

10.9. **Material Safety Data Sheets (MSDS)** . Contractor is required to ensure Material Safety Data Sheets are available in a readily accessible place at the Work Site for any material requiring a Material 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 Material Safety Data Sheets shall also be submitted directly to the District.

10.10. **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.

11. SITE ACCESS, CONDITIONS, AND REQUIREMENTS

11.1. Site Investigation

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

11.2. Soils Investigation Report & Site Due Diligence

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

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

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

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

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

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

11.2.3. **Contractor's '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 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 California-licensed civil engineer surveyor 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 Article shall be deemed to require District to indicate the presence of existing service laterals, appurtenances, or other utility lines, within 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, 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

11.10.1. District is the generator of any hazardous materials that are on the Site and which are not brought to the Site by Contractor. Contractor is solely responsible for the exacerbation of Hazardous Materials. The cost of assessment, storage, and disposal of such shall be included in the Work.

11.10.2. Contractor shall give written notice to District, Construction Manager, and Architect promptly, before any of the following conditions are disturbed, and in no event later than twenty-four (24) hours after first observance, of any:

11.10.2.1. Material that Contractor believes may be material that is hazardous waste or hazardous material, 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;

11.10.2.2. Other material that may present a substantial danger to persons or property exposed thereto in connection with Work at the Project Site(s).

11.10.3. Contractor's written notice shall indicate whether the hazardous waste or material was shown or indicated in the Contract Documents to be within the scope of Work, and whether the materials were brought to the site by Contractor, its Subcontractors, suppliers, or anyone else for whom Contractor is responsible. As used in this section the term "hazardous materials" shall include, without limitation, asbestos, lead, Polychlorinated biphenyl (PCB), petroleum and related hydrocarbons, and radioactive material.

11.10.4. In response to Contractor's written notice, the District shall investigate the identified conditions.

11.10.5. If District determines that conditions do not involve hazardous materials or that no change in terms of Contract is justified, District shall so notify Contractor in writing, stating reasons. If District and Contractor cannot agree on whether conditions justify an adjustment in Contract Price or Contract Time, or on the extent of any adjustment, Contractor shall proceed with the Work as directed by District.

11.10.6. If after receipt of notice from District, Contractor does not agree to resume Work based on a reasonable belief it is unsafe, or does not agree to resume Work under special conditions, then District may order that portion of Work connected with the hazardous condition or affected area, be deleted from the Work, or performed by others, or District may invoke its rights to terminate the Contract in whole or in part. District will determine entitlement to or the amount or extent of an adjustment, if any, in Contract Price or Contract Time as a result of deleting such portion of Work, or performing the Work by others.

11.10.7. If Contractor stops Work in connection with any hazardous condition and in any area affected thereby, Contractor shall immediately redeploy its workers, equipment, and materials, as necessary, to other portions of the Work to minimize delay and disruption.

11.10.8. Additional Warranties and Representations

11.10.8.1. Contractor represents and warrants that it, its employees, and its subcontractors and their employees, shall at all times have the required levels of familiarity with the Project Site(s) and the Work, training, and ability to comply fully with all applicable law and contract requirements for safe and expeditious performance of the Work, including whatever training is or may be required regarding the activities to be performed (including, but not limited to, all training required to address adequately the actual or potential dangers of Contract performance).

11.10.8.2. Contractor represents and warrants that it, its employees, and its subcontractors and their employees, shall at all times have and maintain in good standing any and all certifications and licenses required by applicable federal, state, and other governmental and quasi-governmental requirements applicable to the Work.

11.10.8.3. Contractor represents and warrants that it has studied carefully all requirements of the Specifications regarding procedures for demolition, hazardous waste abatement, or safety practices,

specified in the Contract, and prior to submitting its bid, has either (a) verified to its satisfaction that the specified procedures are adequate and sufficient to achieve the results intended by the Contract Documents, or (b) by way of approved "or equal" request or request for clarification and written Addenda, secured changes to the specified procedures sufficient to achieve the results intended by the Contract Documents. Contractor accepts the risk that any specified procedure will result in a completed Project in full compliance with the Contract Documents.

11.10.9. Monitoring and Testing

11.10.9.1. District reserves the right, in its sole discretion, to conduct air monitoring, earth monitoring, Work monitoring, and any other tests (in addition to testing required under the agreement or applicable law), to monitor Contract requirements of safe and statutorily compliant work methods and (where applicable) safe re-entry level air standards under state and federal law upon completion of the job, and compliance of the work with periodic and final inspection by public and quasi-public entities having jurisdiction.

11.10.9.2. Contractor acknowledges that District has the right to perform, or cause to be performed, various activities and tests including, but not limited to, pre-abatement, during abatement, and post-abatement air monitoring, that District shall have no obligation to perform said activities and tests, and that a portion of said activities and tests may take place prior to the completion of the Work by Contractor. In the event District elects to perform these activities and tests, Contractor shall afford District ample access to the Site and all areas of the Work as may be necessary for the performance of these activities and tests. Contractor will include the potential impact of these activities or tests by District in the Contract Price and the Scheduled Completion Date.

11.10.9.3. Notwithstanding District's rights granted by this paragraph, Contractor may retain its own industrial hygiene consultant at Contractor's own expense and may collect samples and perform tests including, but not limited to, pre-abatement, during abatement, and post-abatement personal air monitoring, and District reserves the right to request documentation of all such activities and tests performed by Contractor relating to the Work and Contractor shall provide that documentation immediately upon request, but in no event later than **THREE (3)** days upon request.

11.10.10. Compliance with Laws

11.10.10.1. Contractor shall perform safe, expeditious, and orderly work in accordance with the best practices and the highest standards in the hazardous waste abatement, removal, and disposal industry, the applicable law, and the Contract Documents, including, but not limited to, all responsibilities relating to the preparation and return of waste shipment records, all requirements of the law, delivering of all requisite notices, and obtaining all necessary governmental and quasi-governmental approvals.

11.10.10.2. Contractor represents that it is familiar with and shall comply with all laws applicable to the Work or completed Work including, but not limited to, all federal, state, and local laws, statutes, standards, rules, regulations, and ordinances applicable to the Work relating to:

11.10.10.2.1. The protection of the public health, welfare and environment;

11.10.10.2.2. Storage, handling, or use of asbestos, PCB, lead, petroleum based products or other hazardous materials;

11.10.10.2.3. The generation, processing, treatment, storage, transport, disposal, destruction, or other management of asbestos, PCB, lead, petroleum, or hazardous waste materials or other waste materials of any kind; and

11.10.10.2.4. The protection of environmentally sensitive areas such as wetlands and coastal areas.

11.10.11. Disposal

11.10.11.1. Contractor has the sole responsibility for determining current waste storage, handling, transportation, and disposal regulations for the Project Site(s) and for each waste disposal facility. Contractor must comply fully at its sole cost and expense with these regulations and any applicable law. District may, but is not obligated to, require submittals with this information for it to review consistent with the Contract Documents.

11.10.11.2. Contractor shall develop and implement a system acceptable to District to track hazardous waste from the Project Site(s) to disposal, including appropriate "Hazardous Waste Manifests" on the EPA form, so that District may track the volume of waste deposited in each landfill and receive from each facility a certificate of receipt.

11.10.11.3. Contractor shall provide District with the name and address of each waste disposal facility prior to any disposal, and District shall have the right to reject any proposed disposal facility. Contractor shall not use any disposal facility to which District has objected. Contractor shall document actual disposal or destruction of waste at a designated facility by completing a disposal certificate or certificate of destruction forwarding the original to District.

11.10.12. Permits

11.10.12.1. Before performing any of the Work, and at such other times as may be required by applicable law, Contractor shall deliver all requisite notices and obtain the approval of all governmental and quasi-governmental authorities having jurisdiction over the Work. Contractor shall submit evidence satisfactory to District that Contractor and any disposal facility:

11.10.12.1.1. Have obtained all required permits, approvals, and the like in a timely manner both prior to commencement of the Work and thereafter as and when required by

applicable law, and

11.10.12.1.2. Are in compliance with all such permits, approvals and the regulations.

For example, before commencing any work in connection with the Work involving asbestos-containing materials, or PCBs, or other hazardous materials subject to regulation, Contractor agrees to provide the required notice of intent to renovate or demolish to the appropriate state or federal agency having jurisdiction, by certified mail, return receipt requested, or by some other method of transmittal for which a return receipt is obtained, and to send a copy of that notice to District. Contractor shall not conduct any Work involving asbestos-containing materials or PCBs unless Contractor has first confirmed that the appropriate agency having jurisdiction is in receipt of the required notification. All permits, licenses, and bonds that are required by governmental or quasi-governmental authorities, and all fees, deposits, tap fees, offsite easements, and asbestos and PCB disposal facilities expenses necessary for the prosecution of the Work, shall be procured and paid for by Contractor. Contractor shall give all notices and comply with the all applicable laws bearing on the conduct of the Work as drawn and specified. If Contractor observes or reasonably should have observed that Plans and Specifications and other Contract Documents are at variance therewith, it shall be responsible for promptly notifying District in writing of such fact. If Contractor performs any Work contrary to applicable laws, it shall bear all costs arising therefrom.

11.10.12.2. In the case of any permits or notices held in District's name or of necessity to be made in District's name, District shall cooperate with Contractor in securing the permit or giving the notice, but the Contractor shall prepare for District review and execution upon approval, all necessary applications, notices, and other materials.

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 Master 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 job 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 commissioning date for 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 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 Master 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, which shall be as indicated in **Exhibit K** to the Master Facilities Lease:

January	**7**	July	**0**
February	**7**	August	**0**
March	**4**	September	**0**
April	**3**	October	**2**
May	**1**	November	**2**
June	**1**	December	**2**

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.

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 Master 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 notify the District pursuant to the claims provisions in these General Conditions of any anticipated delay and its cause.

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.

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 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; and

16.2.1.4. Contractor complies with the claims procedure 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 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 Conditions.

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 acts of God; acts of a public enemy; fires; floods; windstorms; tornadoes; earthquakes; wars; riots; insurrections; epidemics; quarantine restrictions; strikes; lockouts; fuel shortages; freight embargoes; and Adverse Weather that satisfies the requirements herein.

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, 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. <u>Computation of Time / Adverse Weather</u>

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 **<u>all</u>** 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 the Special Conditions;

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 Special Conditions.

16.3.6.2. A day-for-day extension will only be allowed for those days in excess of those indicated in the Special Conditions.

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.

16.3.6.4. 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.

16.4. <u>Unexcused Delay(s) – Liquidated Damages</u>

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 Agreement 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 Architect written notice within three (3) working 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) working days of any verbal order, direction, instruction, interpretation or determination shall be deemed Contractor's waiver 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. 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 so 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/or the Architect 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 and the Architect, 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 force account 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 to proceed with the Work on a force account 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 overheard 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 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 work or exceeding the force account budget.

17.5.6. Contractor shall diligently proceed with the work, and on a daily basis, submit a daily force account 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 force account work only. The names of the individuals performing the force account work shall be included on the daily force account 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 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 force account 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 or the Architect requesting the Contractor to submit to the District and/or the Architect 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.

17.7. 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. A PCO shall be submitted by the Contractor to the Owner within ten (10) days of the event giving rise to the PCO. Contractor's failure to submit a PCO within ten (10) days of the event giving rise to the PCO shall be a complete waiver all rights to additional compensation or time otherwise resulting from the events giving rise to the PCO.

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. 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.

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

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 the address the basis for the PCI. 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.

17.8. Format for Proposed Change Order

17.8.1. 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

	SUBCONTRACTOR PERFORMED WORK	ADD	DEDUCT
(A)	**Labor Charge** 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 labor category.		
(B)	**Labor Burden & Worker's Compensation Charge** 1. This shall be no more than twenty percent (20%) of **item (A)**, the Labor Charge. 2. This shall be the total cumulative labor burden & worker's compensation charge permitted for all Subcontractors or Subcontractor's Subcontractor(s) (i.e., all "lower-tier" Subcontractor(s)).		
(C)	**Subtotal (A+B)**		
(D)	**Material Charge** Attach itemized quantity and unit cost plus sales tax and invoice(s) from vendor(s).		
(E)	**Equipment Charge** Attach invoice(s) from supplier(s).		
(F)	**Subtotal (C+D+E)**		
(G)	**Subcontractor's Overhead and Profit Charge** 1. This shall be no more than thirteen-point five percent (13.5%) of **item (F)**. 2. This shall be the total cumulative overhead and profit mark-up permitted for the Subcontractors and		

	Subcontractors' Subcontractor(s) (i.e., all "lower-tier" Subcontractor(s)).		
(H)	**Subtotal (F+G)**		
(I)	**Contractor's Overhead, Profit, Bond and Insurance** 1. This shall be no more than seven percent (7%) of **Item (H)**. 2. This shall be the total overhead and profit and bond and insurance mark-up permitted for Contractor.		
(J)	**Subtotal (H+I)**		
(K)	**Time**	**_____ Days**	
(L)	**Contractor's Home Office Overhead** This shall be no more than $200 times the number of days of Item (K) (i.e., not to exceed $200/day)		
(M)	**TOTAL (J+L)**		

FORMAT FOR PROPOSED CHANGE FOR <u>CONTRACTOR</u> PERFORMED WORK

	<u>CONTRACTOR PERFORMED WORK</u>	ADD	DEDUCT
(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 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 labor burden & worker's compensation 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>Contractor's Overhead, Profit, Bond and Insurance</u>** 1. This shall be no more than seven percent (7%) of **Item (F)**. 2. This shall be the total overhead and profit and bond and insurance mark-up permitted for Contractor.		
(H)	**<u>Subtotal (F+G)</u>**		
(I)	**<u>Time</u>**	**_____ Days**	
(J)	**<u>Contractor's Home Office Overhead</u>** This shall be no more than $200 times the number of days of Item (I) (i.e., not to exceed $200/day)		
(M)	**<u>TOTAL (H+J)</u>**		

17.8.2. All proposed cost requests by Contractor for a change shall include a complete itemized breakdown with the following detail:

17.8.2.1.1. 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.

17.8.2.1.1.1. 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.

17.8.2.1.2. Material. Material quantities, and types of products, and transportation costs, if applicable.

17.8.2.1.3. Equipment. Equipment breakdown by make, type, size, rental rates, equipment hours and transportation costs, if applicable.

17.8.2.1.3.1. 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.

17.8.2.1.3.2. The actual time to be paid for equipment shall be the time that the equipment is in productive operation on the Work under Contract Modification. 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 Contract Modification.

17.8.2.1.3.3. 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.

17.8.2.1.3.4. 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.

17.8.2.1.3.5. 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.

17.8.2.1.4. 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:

17.8.2.1.4.1. All field, field office and home 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.

17.8.2.1.4.2. All field, field office and home office expenses including, but not limited to, field trailers, parking, storage sheds, office equipment and supplies, telephone service and long distance telephone calls, 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.

17.8.2.1.4.3. 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.

17.8.2.1.4.4. 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.

17.8.2.1.4.5. All costs for Contractor's bonds and insurance.

17.8.2.1.4.6. Taxes: Federal excise tax shall not be included. District will issue an exemption on request.

17.8.2.1.5. 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 Conditions 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.

17.9. <u>Change Order Certification</u>

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 which 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 Master 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 on 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 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 Master 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 (5^{th}) 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. Verified material invoices, evidence of equipment purchases, rentals, and other support and details of cost as the District may require from time to time;

19.2.1.1.9. The percentage of completion of the Contractor's Work by line item;

19.2.1.1.10. Schedule of Values updated from the preceding Application for Tenant Improvement Payment;

19.2.1.1.11. 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:

19.2.1.1.11.1. 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;

19.2.1.1.11.2. Verified invoices for equipment and materials that are stored off-site and are in the Contractor's possession;

19.2.1.1.11.3. 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;

19.2.1.1.12. 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;

19.2.1.1.13. 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

19.2.1.1.14. A certification by the Contractor of the following:

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.

19.2.1.1.15. 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.

19.2.1. Prerequisites for Tenant Improvement Payments

19.2.1.1. 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:

19.2.1.1.1. Schedule of unit prices, if applicable;

19.2.1.1.2. Receipt by Architect of all submittals due as of the date of the payment application;

19.2.1.1.3. Copies of authorizations and licenses from governing authorities;

19.2.1.1.4. Initial progress report;

19.2.1.1.5. Surveyor qualifications;

19.2.1.1.6. Written acceptance of District's survey of rough grading, if applicable;

19.2.1.1.7. List of all Subcontractors, with names, license numbers, telephone numbers, and Scope of Work;

19.2.1.1.8. All bonds and insurance endorsements; and

19.2.1.1.9. Resumes of Contractor's project manager, and if applicable, job site secretary,

record documents recorder, and job site superintendent.

19.2.1.2. 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 **Exhibits 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 one hundred percent (100%) 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. 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 only pay as Lease Payments under this Contract and, therefore, the Tenant Improvement Payments may be paid at one hundred percent (100%) for work the Contractor satisfactorily performs.

19.3.5.3. 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.

19.3.5.4. 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.

19.3.7. Decisions to Withhold Payment

19.3.7.1. 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:

19.3.7.1.1. Defective Work not remedied within **FORTY-EIGHT (48)** hours of written notice to Contractor;

19.3.7.1.2. Stop payment notices or other liens served upon the District as a result of the Contract;

19.3.7.1.3. Liquidated damages assessed against the Contractor

19.3.7.1.4. 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;

19.3.7.1.5. Damage to the District or other contractor(s);

19.3.7.1.6. Unsatisfactory prosecution of the Work by the Contractor:

19.3.7.1.7. Failure to store and properly secure materials;

19.3.7.1.8. 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;

19.3.7.1.9. Failure of the Contractor to submit As-Built Drawings;

19.3.7.1.10. Erroneous estimates by the Contractor of the value of the Work performed, or other false statements in an Application for Payment;

19.3.7.1.11. Unauthorized deviations from the Contract Documents;

19.3.7.1.12. 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;

19.3.7.1.13. 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;

19.3.7.1.14. 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;

19.3.7.1.15. Failure to properly maintain or clean up the Site;

19.3.7.1.16. Payments to indemnify, defend, or hold harmless the District;

19.3.7.1.17. Any payments due to the District, including but not limited to payments for failed tests, utilities changes, or permits;

19.3.7.1.18. Failure to pay Subcontractor(s) or supplier(s) as required by law and by the Contract Documents;

19.3.7.1.19. Contractor is otherwise in breach, default, or in substantial violation of any provision of this Contract.

19.3.7.1.20. Extra services for Architect.

19.3.7.1.21. 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.

19.3.7.1.22. Any other obligation(s) of the District which the District is authorized and/or compelled by law to perform.

19.3.7.2. 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.

19.3.7.3. 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.

19.3.8. 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

19.4.7. 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.

19.4.8. 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.

19.4.9. 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. The Project may only be accepted by action of the governing board of the District.

20.1.2. District, at its sole option, may accept the Project and have a Notice of Completion recorded when Project Completion has been completed to the satisfaction of District, 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, 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.

20.1.3. 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'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 sepias 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 (DSA 6-C, Rev 03/22/13, or more recent revision if available).

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 and Architect, who shall again inspect such Work. If the Architect finds 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 of itself constitute or acceptance of the Project not complying with the requirements of the Contract Documents.

21. FINAL PAYMENT

21.1. Final Payment

Upon receipt and approval of a valid and final Application for Tenant Improvement Payment, the Architect will 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 (absent unusual circumstances, will occur when the Punch List items have been satisfactorily completed), the District shall 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.

21.2.10. After approval by the District of the Architect's Certificate of Payment,

21.2.11. After the satisfaction of the conditions set forth herein, and

21.2.12. After thirty-five (35) days following Project Completion.

21.2.13. 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. **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 Master Facilities Lease. In the event of a termination of the Master 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 Master 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. In the event that sufficient funds are not appropriated to complete the Project or the District determines that sufficient funds are not available to complete the Project, District may terminate or suspend the completion of the Project at any time by giving written notice to the Contractor.

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.

23.2.3. 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.

23.3. 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.

("**Claim**")

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.

24.7. Subcontractors.

24.7.1. 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.

24.7.2. 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.

24.7.3. Contractor Must Timely Identify, Present and Document Any Claim

24.7.3.1. 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:

24.7.3.1.1. Identify all of the issues, events, conditions, circumstances and/or causes giving rise to the Claim;

24.7.3.1.2. 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

24.7.3.1.3. Identify in detail line-item costs if the Claim seeks money.

24.7.3.1.4. 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).

24.7.3.1.5. If the Claim involves an error or omission in the Contract Documents:

24.7.3.1.5.1. 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

24.7.3.1.5.2. 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.

24.7.3.1.6. Contractor shall not be entitled to compensation for escalation of materials costs unless Contractor demonstrates to the satisfaction of the District that such cost escalation is the result of unusual, unforeseeable market conditions, not the fault of the Contractor, and were not reasonably foreseeable at the time of the award of the Contract. Contractor shall provide evidence to District of the costs included in the Contract for those materials and that those costs were reasonable at the time and that Contractor timely ordered the materials at issue.

24.7.3.2. The writing shall be accompanied by all documents substantiating Contractor's position regarding the Claim.

24.7.3.3. 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.

24.7.4. 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

24.7.5. 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.

24.7.6. Contractor Must Demand an Informal Meet and Confer Conference if Contractor Pursues Any Claim

24.7.6.1. 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.

24.7.6.2. 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.

24.7.6.3. 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.

24.7.6.4. 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.

24.7.6.5. 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.

24.7.6.5.1. 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.

24.7.6.5.2. 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.

24.7.6.5.3. Contractor's costs incurred in seeking relief for Claims are not recoverable from District.

24.7.7. Mediation.

24.7.7.1. 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.

24.7.7.2. 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.

24.7.8. 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.

24.7.9. Post Mediation Provisions

24.7.9.1. 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.

24.7.9.2. 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.

24.7.10. 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.

24.8. Documentation of Resolution.

If a Claim is resolved, the District shall determine if that resolution shall be documented in an Agreement and Release of Any and All Claims form or other document, as appropriate.

24.9. Claim Resolution Process – Non-Applicability.

The procedures and provisions in this Claims Resolution section shall **not** apply to:

24.9.1. 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;

24.9.2. 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;

24.9.3. Personal injury, wrongful death or property damage claims;

24.9.4. Latent defect or breach of warranty or guarantee to repair;

24.9.5. Stop notices or stop payment notices; or

24.9.6. Any other District rights as set forth herein.

24.10. 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.

24.11. If District fails 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. 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."

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 Agreement. Contractor represents to the District that all "subcontractors" (as defined by Labor Code section 1722.1) are registered pursuant to Labor Code section 1725.5.

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.

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 (a), 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 Public Contract Code section 2601(d), 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 governing board of 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 work force requirements described in Public Contract Code section 2602 ("Workforce Report(s)").

25.8.2.1. Each monthly Workforce Report shall 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.)

25.8.2.2. No Report or Incomplete Report. If the Contractor fails to provide a Workforce Report or provides a Workforce Report that is incomplete, the District shall withhold further payments until

Contractor provides a complete Workforce Report for that month.

25.8.2.3. Report Without All Levels Met. If the Contractor provides a Workforce Report that does not demonstrate that each apprentice able occupation (as defined in Public Contract Code section 2601(a)) has met the applicable participation level, the District shall withhold further payments until the Contractor provides a plan to achieve substantial compliance the requirements of the Workforce Report, with respect to the relevant apprentice able occupation, prior to Completion of the Contract.

25.8.3. In the event the required participation level for all work that falls within an apprentice able occupation is not reached by the time the work of the out of compliance apprentice-able occupation is completed, District shall have the right to permanently retain ten percent (10%) of the price for the out of compliance apprentice-able occupation's Work as reflected in the Project's schedule of values.

25.8.4. At the end of the Project, Contractor must demonstrate that it has met the applicable participation level for all work that falls within an apprentice able occupation as defined in Public Contract Code section 2601(a).

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 (commending 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-1
TO
MASTER FACILITIES LEASE

MEMORANDUM OF COMMENCEMENT DATE OF LEASE TERM FOR GARFIELD ELEMENTARY SCHOOL SITE

[TO BE ENTERED INTO AFTER CONSTRUCTION IS COMPLETE TO COMMENCE THE LEASE TERM – DO THIS AFTER NOC]

This MEMORANDUM OF COMMENCEMENT DATE is dated _____, 20__, and is made by and between **JL Construction** ("Contractor"), as Lessor, and the **San Leandro Unified School District** ("District"), as Lessee.

1. Contractor and District have previously entered into a Master Facilities Lease dated as of September 12, 2018, (the "Lease") for the leasing by Contractor to District of multiple sites, including the Garfield Elementary School Project Site ("Garfield Site") and Project in San Leandro, 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 Master Facilities Lease on the Monroe Site has been completed by Contractor in all respects;

B. That District has accepted and entered into possession of the Garfield Site and now occupies same; and

C. That the term of the Master Facilities Lease term for the Garfield Site as referenced in Exhibit C-1, commenced on _____, 20___, and will expire at 11:59 P.M. on _____ _____, 20___.

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

Dated: _____, 20_____	Dated: _____, 20_____
San Leandro Unified School District	**JL Construction**
By: _____	By: _____
_	_
Print Name: _____	Print Name: _____
Print Title: _____	Print Title: _____

EXHIBIT E-2
TO
MASTER FACILITIES LEASE

MEMORANDUM OF COMMENCEMENT DATE OF LEASE TERM FOR WILSON ELEMENTARY SCHOOL SITE

[TO BE ENTERED INTO AFTER CONSTRUCTION IS COMPLETE TO COMMENCE THE LEASE TERM – DO THIS AFTER NOC]

This MEMORANDUM OF COMMENCEMENT DATE is dated _____, 20___, and is made by and between **JL Construction** ("Contractor"), as Lessor, and the **San Leandro Unified School District** ("District"), as Lessee.

1. Contractor and District have previously entered into a Master Facilities Lease dated as of September 12, 2018, (the "Lease") for the leasing by Contractor to District of multiple sites, including the Wilson Elementary School Project Site ("Wilson Site") and Project in San Leandro, 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 Master Facilities Lease on the Wilson Site has been completed by Contractor in all respects;

B. That District has accepted and entered into possession of the Wilson Site and now occupies same; and

C. That the term of the Master Facilities Lease term for the Wilson Site as referenced in Exhibit C-2, commenced on _____, 20___, and will expire at 11:59 P.M. on _____ _____, 20___.

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

Dated: _____, 20_____	Dated: _____, 20_____
San Leandro Unified School District	**JL Construction**
By: _____	By: _____
Print Name: _____	Print Name: _____
Print Title: _____	Print Title: _____

EXHIBIT F
TO
MASTER FACILITIES LEASE

CONSTRUCTION SCHEDULES
FOR
DISTRICT WIDE SCHOOL SITE(S)

EXHIBIT F-1
TO
MASTER FACILITIES LEASE

CONSTRUCTION SCHEDULE FOR GARFIELD SITE

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.

[INSERT SCHEDULE]

EXHIBIT F-2
TO
MASTER FACILITIES LEASE

CONSTRUCTION SCHEDULE FOR WILSON SITE

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.

[INSERT SCHEDULE]

EXHIBIT G
TO
MASTER FACILITIES LEASE

SCHEDULE OF VALUES FOR DISTRICT WIDE SCHOOL SITE(S)

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.

EXHIBIT G-1
TO
MASTER FACILITIES LEASE

SCHEDULE OF VALUES FOR GARFIELD SITE

EXHIBIT G-2
TO
MASTER FACILITIES LEASE

SCHEDULE OF VALUES FOR WILSON SITE

EXHIBIT H
TO MASTER FACILITIES LEASE

TERMS AND CONDITIONS FOR PRELIMINARY SERVICES

[NOT USED]

EXHIBIT I
TO
MASTER FACILITIES LEASE

CERTIFICATES AND BONDS TO LEASE-LEASEBACK DOCUMENTS
AND
DIVISION 1 DOCUMENTS TO LEASE-LEASEBACK DOCUMENTS

San Leandro Unified School District
Multi-Site Modular Project

San Leandro Unified School District

and

JL Construction

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)

WORKERS' COMPENSATION CERTIFICATION

Labor Code section 3700 in relevant part provides:

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

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

Date: _____

Proper Name of Contractor: _____

Signature: _____

Print Name: _____

Title: _____

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

PREVAILING WAGE AND

RELATED LABOR REQUIREMENTS CERTIFICATION

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

Date: _____

Proper Name of Contractor: _____

Signature: _____

Print Name: _____

Title: _____

DISABLED VETERAN BUSINESS ENTERPRISE

PARTICIPATION CERTIFICATION

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

1. **Disabled Veteran Business Enterprise.** A DVBE is a business enterprise certified by the California Office of Small Business as a DVBE.

2. **DVBE Participation Policy.** The District is committed to achieving this DVBE participation goal. The District encourages Contractor to ensure maximum opportunities for the participation of DVBEs in the Work of the Contract.

3. **DVBE Participation Goal.** The three percent (3%) participation goal is not a quota, set-aside or rigid proportion.

4. **Certification of Participation.** At the time of execution of the Contract, the Contractor will provide a statement to the District of anticipated participation of DVBEs in the contract.

5. **Submission of Report.** During performance of the Contract, Contractor shall monitor the Work of the Contract, award of subcontracts and contracts for materials, equipment and supplies for the purpose of determining DVBE participation in the Work of the Contract.

    a) Contractor shall report on a monthly basis all DVBEs utilized in the performance of the Work, the type or classification of the Work performed by each DVBE, and the dollar value of the Work performed by each DVBE.

    b) Upon completion of the Work of the Contract, Contractor shall submit a report to the District in the form attached hereto identifying all DVBEs utilized in the performance of the Work, the type or classification of the Work performed by each DVBE, and the dollar value of the Work performed by each DVBE.

        i) The submission to the District of this report is a condition precedent to the District's obligation to make payment of the Final Payment under the Contract Documents. The submission of this report shall be in addition to, and not in lieu of, any other conditions precedent set forth in the Contract Documents for the District's obligation to make payment of the Final Payment.

        ii) The District reserves the right to request additional information or documentation from the Contractor evidencing efforts to comply with the three percent (3%) DVBE participation goal.

DVBE PARTICIPATION REPORT

Contractor Name: _____ **Date:** _____

Project Name: _____ **Project Number:** _____

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

Does the cumulative dollar value of these DVBE contracts meet or exceed the participation goal of three percent (3%) of the final 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: _____

_____

DRUG-FREE WORKPLACE CERTIFICATION

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

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

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

1 Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the person's or organization's workplace and specifying actions which will be taken against employees for violations of the prohibition;

2 Establishing a drug-free awareness program to inform employees about all of the following:
   a. The dangers of drug abuse in the workplace.
   b. The person's or organization's policy of maintaining a drug-free workplace.
   c. The availability of drug counseling, rehabilitation, and employee-assistance programs.
   d. The penalties that may be imposed upon employees for drug abuse violations.

3 Requiring that each employee engaged in the performance of the contract or grant be given a copy of the statement required above, and that, as a condition of employment on the contract or grant, the employee agrees to abide by the terms of the statement.

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

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

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

Date: _____

Proper Name of Contractor: _____

Signature: _____

Print Name: _____

Title: _____

TOBACCO-FREE ENVIRONMENT CERTIFICATION

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

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

Date: _____

Proper Name of Contractor: _____

Signature: _____

Print Name: _____

Title: _____

HAZARDOUS MATERIALS CERTIFICATION

1. Contractor hereby certifies that no Asbestos, or Asbestos-Containing Materials, polychlorinated biphenyl (PCB), or any material listed by the federal or state Environmental Protection Agency or federal or state health agencies as a hazardous material, or any other material defined as being hazardous under federal or state laws, rules, or regulations ("New Hazardous Material"), shall be furnished, installed, or incorporated in any way into the Project or in any tools, devices, clothing, or equipment used to affect any portion of Contractor's work on the Project for District.

2. Contractor further certifies that it has instructed its employees with respect to the above-mentioned standards, hazards, risks, and liabilities.

3. Asbestos and/or asbestos-containing material shall be defined as all items containing but not limited to chrysotile, crocidolite, amosite, anthophyllite, tremolite, and actinolite. Any or all material containing greater than one-tenth of one percent (.1%) asbestos shall be defined as asbestos-containing material.

4. Any disputes involving the question of whether or not material is New Hazardous Material shall be settled by electron microscopy or other appropriate and recognized testing procedure, at the District's determination. The costs of any such tests shall be paid by Contractor if the material is found to be New Hazardous Material.

5. All Work or materials found to be New Hazardous Material or Work or material installed with equipment containing "New Hazardous Material" will be immediately rejected and this Work will be removed at Contractor's expense at no additional cost to the District.

6. Contractor has read and understood the document Hazardous Materials Procedures & Requirements, and shall comply with all the provisions outlined therein.

Date: _____

Proper Name of Contractor: _____

Signature: _____

Print Name: _____

Title: _____

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

LEAD-BASED MATERIALS CERTIFICATION

This certification provides notice to the Contractor that:

(1) The Contractor's work may disturb lead-containing building materials.

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

1. Lead as a Health Hazard

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

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

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

2. Overview of California Law

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

Any school that undertakes any action to abate existing risk factors for lead is required to utilize trained and state-

certified contractors, inspectors, and workers. (Ed. Code, § 32243, subd. (b).) Moreover, lead-based paint, lead plumbing, and solders, or other potential sources of lead contamination, shall not be utilized in the construction of any new school facility or the modernization or renovation of any existing school facility. (Ed. Code, § 32244.)

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

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

a. Demolition or salvage of structures where lead or materials containing lead are present;

b. Removal or encapsulation of materials containing lead;

c. New construction, alteration, repair, or renovation of structures, substrates, or portions thereof, that contain lead, or materials containing lead;

d. Installation of products containing lead;

e. Lead contamination/emergency cleanup;

f. Transportation, disposal, storage, or containment of lead or materials containing lead on the site or location at which construction activities are performed; and

g. Maintenance operations associated with the construction activities described in the subsection.

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

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

the Project, along with all current insurance certificates.

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

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

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

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

4. Contractor's Liability

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

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

It shall be the responsibility of the Contractor to properly dispose of any and all waste products, including, but not limited to, paint chips, any collected residue, or any other visual material that may occur from the prepping of any painted surface. It will be the responsibility of the Contractor to provide the proper disposal of any hazardous waste by a certified hazardous waste hauler. This company shall be registered with the Department of Transportation (DOT) and shall be able to issue a current manifest number upon transporting any hazardous material from any School Site(s) within the District.

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

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

1. Has received notification of potential lead-based materials on the District's property;

2. Is knowledgeable regarding and will comply with all applicable laws, rules, and regulations governing work with, and disposal of, lead.

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

Date: _____

Proper Name of Contractor: _____

Signature: _____

Print Name: _____

Title: _____

IMPORTED MATERIALS CERTIFICATION

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

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

Certification of:	□ Delivery Firm/Transporter	□ Supplier	□ Manufacturer
	□ Wholesaler	□ Broker	□ Retailer
	□ Distributor	□ Other _____	
Type of Entity:	□ Corporation	□ General Partnership	
	□ Limited Partnership	□ Limited Liability Company	
	□ Sole Proprietorship	□ Other _____	

Name of firm ("Firm"): _____

Mailing address: _____

Addresses of branch office used for this Project: _____

If subsidiary, name and address of parent company: _____

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

behalf of the Firm.

Date: _____

Proper Name of Contractor: _____

Signature: _____

Print Name: _____

Title: _____

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

CRIMINAL BACKGROUND INVESTIGATION / FINGERPRINTING CERTIFICATION

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

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

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

_____ Pursuant to Education Code section 45125.2, Contractor has installed or will install, prior to commencement of work , a physical barrier at the Project Site(s), 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(s) 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(s) and the employees of the Subcontractor(s) that will be on the Project Site(s) are **not** listed on California's "Megan's Law" Website (http://www.meganslaw.ca.gov/).

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

Date: _____

Proper Name of Contractor: _____

Signature: _____

Print Name: _____

Title: _____

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

I, _____, _____

Name Name of Contractor

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

Furthermore, I _____, _____

Name

Name of Contractor

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

I, _____, _____

Name Name of Contractor

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

Name of firm ("Firm"): _____

Mailing address: _____

Address of branch office used for this Project: _____

If subsidiary, name and address of parent company: _____

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

Date: _____

Proper Name of Contractor: _____

Signature: _____

Print Name: _____

Title: _____

PERFORMANCE BOND (100% of 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 **San Leandro Unified School District** ("District") and _____, ("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 warrantees 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 **San Leandro Unified School District** (or "District") and _____, ("Principal") have entered into a contract for the furnishing of all materials and labor, services and transportation, necessary, convenient, and proper to

_____ (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.

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 Master 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-Builts") showing all changes incorporated into the Work since the preceding monthly submittal. The As-Builts 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.

EXHIBIT J
TO MASTER FACILITIES LEASE

PLANS, TECHNICAL SPECIFICATIONS, AND DRAWINGS

EXHIBIT J-1
TO
MASTER FACILITIES LEASE

PLANS, TECHNICAL SPECIFICATIONS, AND DRAWINGS FOR GARFIELD SITE

EXHIBIT J-2
TO
MASTER FACILITIES LEASE

PLANS, TECHNICAL SPECIFICATIONS, AND DRAWINGS FOR WILSON SITE

EXHIBIT K
TO MASTER FACILITIES LEASE

SCOPE OF WORK AND SPECIAL CONDITIONS
FOR MULTI-SITE MODULAR PROJECT

Design Bid Scope of Work

Division 1
Architecture and Engineering for modular buildings only. District Architect will provide set of bridging documents. All site design by District Architect. Coordination as needed to provide a complete set of documents for Submittal to DSA.

Division 2
Ramps and Stairs for building access
Acceptance of Certified building pad as provided by others
Connection to Site utilities stubbed to within 5' of building pad by others.

Division 3
Building foundations and slab on grade; soil conditions per Geo-tech Report.

Division 5
Prefabricated moment frame steel building structure
Metal Stud framing interior and exterior walls

Division 6
4 Lineal feet of base cabinets per classroom
16 lineal feet of teaching wall per classroom
4 lineal feet of tall storage cabinets per classroom

Division 7
Thermal wall and roof insulation; exterior rigid insulation
Sound insulation at interior walls
Metal Roofing, gutters and downspouts
Sheet metal flashings

Division 8
Hollow metal doors and frames at the exterior, painted
Hollow metal frames and wood doors at the interior, prefinished
All Weather Aluminum windows – 4 each 8-0x5-0 and 4 each 4-0x5-0 classrooms

Division 9
Plaster exterior
Drywall with vinyl covered tack wall
Acoustical ceilings
Carpet Throughout
Rubber base throughout
Paint exposed drywall, ceilings, doors, exterior siding and flashings

Division 10
Fire extinguishers per code
Markerboards
Signage per code

Division 12
Horizontal Louver Blinds at all windows

Division 15
Fire Sprinklers – Add Alternate, if needed
Plumbing – classroom sink, gas and condensate to HVAC, 4 hose bibs
HVAC – furnace and condensing unit, no EMS system figured
Division 16
Power and lighting throughout buildings
Conduit and back boxes only for low voltage systems and fire alarm

SUPPLEMENTAL SCOPE PROVISIONS

Contractor agrees to perform their scope of work in a timely and continuous manner according to an approved schedule to be submitted prior to the start of work. Contractor acknowledges and agrees to include all the "Work" described in coordination with their Design Build Documents.

The Design Build Documents will be provided to contractor who are pre-qualified.

The Contractor shall submit durations for #4 project's Milestones for approval as follows:

	Description:	**Number of Days Allowed:**
1. Milestone #1	Submission of all design build documents	Duration of 42 Calendar days from Notice to proceed.
2. Milestone #2	Review and approval of documents	Duration of 15 Calendar days from the completion of Milestone # 1.
3. Milestone #3	NTP	Duration of 1 Calendar day from the completion of Milestone # 2.
4. Milestone #4	Construction Duration	Duration of TBD Calendar days from the completion of Milestone # 3.
5. Milestone #5	Commissioning start up Punch List and Punch List work	Duration of 14 Calendar days from the completion of Milestone #4.
6. Milestone #6	Closeout	Duration of 30 Calendar Days.

1.0 The Contractor shall assume changes and modifications to the milestones and the schedule will be required during the Project. Each milestone may require more than one mobilization. These changes shall be at no additional cost to the District. The Contractor is required to attend coordination meetings, as may be requested or required, at the jobsite for adjusting his efforts to complement project progress and work of other trades or separate contracts.

This Contract specifically includes:

1.0 The Contractor shall Design, Build, furnish and install all materials, labor, equipment and services needed for a complete code and Title 24 compliant project and will provide all drawings and specifications required to complete the New Modular Classrooms project and satisfy the requirements of any agencies with jurisdiction over said work. The Contractor and their Subcontractors shall be responsible for timely performance of the work. Contractor or their Subcontractors will provide and install all material, labor and equipment related to New Modular Classrooms.

2.0 The Contractor if in possession of the appropriate license or their appropriately licensed Subcontractor will provide and install all required materials, labor and equipment necessary to build New Modular Classrooms.

3.0 The Contractor if in possession of the appropriate license or their appropriately licensed Subcontractor will provide and install all new water supply for New Modular Buildings.

4.0 The Contractor will have a Foreman skilled in its craft and able to communicate with the Construction Manager and other District representatives on site at all times during the performance of New Modular Classrooms Contractor scope.

5.0 The Contractor shall perform all work in accordance with the construction schedule, including all revisions thereto. Contractor shall be responsible at all times to be aware of the current construction schedule and to ensure it commences, performs and completes its work so as not to delay or impede any other work on the project or the District's activities.

6.0 The Contractor shall provide all lay out and coordination of all work and support related to design and build New Modular Classrooms.

7.0 Work shall be scheduled per the approved schedule submitted by the Contractor. The work will primarily be accomplished after school, on weekends and during Summer Breaks. Only work that will not disturb school activities and that are approved by the District and their representatives will be allowed during regular school hours. If work is delayed due to circumstances beyond the contractor's control, then the Construction Manager may adjust the schedule and/or authorize overtime via change order in order to maintain the schedule at the direction of the District.

8.0 Before making any connections or doing any work which interrupts service to existing buildings, the Contractor shall notify Owner in writing at least 72 hours in advance; and such work performed as quickly as possible and only at such times as designated by Owner.

9.0 Outage durations are to be approved by Owner.

10.0 The Contractor shall protect materials, equipment and apparatus provided under this Division from damage from, water, dust or similar impairment, both in storage and installation until Notice of Completion has been filed. Materials, equipment or apparatus damaged because of improper storage or protection will be rejected and must be removed from the site.

11.0 The Contractor shall cap openings in pipes and ends of valves with manufactured caps and fittings. Do not use taped caps.

12.0 Should any of the work be covered up or enclosed prior to all required inspections and approvals, uncover the work as required and, after it has been completely inspected and approved, make all repairs and

replacements with such materials as are necessary to the approval of the Architect and at no additional cost to the Owner.

13.0 The Contractor shall provide all required seismic bracing.

14.0 The Contractor shall support and laterally brace all ducts, pipes and equipment.

15.0 The Contractor shall provide and install all access panels/ doors required for your work and as required to access interfaces and detectors. Access doors to be fire-rated to match fire-rating of wall or ceiling where door is to be installed. All access doors shall have key operated lock.

16.0 The Contractor shall provide identify all piping with self-sticking pipe markers consisting of pipe content wording and arrow indicating directions of flow on A.S.A. color background. All pipe, duct labeling and equipment identification shall be coordinated with final room identification signage.

17.0 The Contractor shall provide correct conditions at no cost to the Owner if noise or vibrations because of improper material or installation occurs in the building.

18.0 The Contractor shall provide all required sleeves, chases, concrete inserts, anchor bolts, etc., and be responsible for correct location, installation of same.

19.0 The Contractor shall provide all controls as required by the plans and specifications for your work, including the installation of interfaces and detectors with new or existing Fire Alarm and Fire Sprinkler systems as required by code or jurisdictions with authority over the work.

20.0 The Contractor shall provide furnish and install all material and equipment necessary to build New Modular Classroom

21.0 Painting as required for your work to match adjacent surface.

22.0 The Contractor shall provide as-builts of a quality acceptable to the CM, Design Team and District will be received prior to the release of final retention.

23.0 The Contractor shall provide Two (2) Year Warranty Which shall be included in the project specifications. Warranty period starts from the date on the Notice of Completion.

24.0 The Contractor must respond immediately to any warranty item that prohibits the District's use of any part of the project.

25.0 The Contractor will coordinate all required tests and inspections associated with their work including safe access for inspections.

26.0 The Contractor shall make a site inspection, refer to the existing documents and to locate the extent of work and the point of connection for each utility as it pertains to the work. The scope of work shall include all coordination, connections, labor, material and required appurtenances for a complete system as required for each building.

27.0 Unistrut related to your work.

28.0 The Contractor shall provide test reports for installed material and equipment where ever necessary for approval.

29.0 The Contractor shall provide as-builts of a quality acceptable to the CM, Design Team and District will be received prior to the release of final retention.

30.0 The Contractor shall provide Two (2) Year Warranty Which shall be included in the project specifications. Warranty period starts from the date on the Notice of Completion.

31.0 The Contractor must respond immediately to any warranty item that prohibits the District's use of any part of the project.

32.0 The Contractor will coordinate all required tests and inspections associated with their work including safe access for inspections.

33.0 The Contractor shall make a site inspection, refer to the existing documents and to locate the extent of work and the point of connection for each utility as it pertains to the work. The scope of work shall include all coordination, connections, labor, material and required appurtenances for a complete system as required for each building.

Contractor agrees to perform the scope of work in a timely and continuous manner according to the requirements listed above. Contractor acknowledges and agrees to include all the requirements of this Section and all other contract documents in their scope of work. Contractor shall assume changes and modifications to the project construction schedule will be made during the project. These changes may require more than one mobilization. Such changes shall be at no additional cost to the District or the Districts representatives. Contractor is required to attend coordination meetings as may be requested or required at the jobsite for adjusting efforts to compliment project progress and the work of other trades or separate contracts.