

## NATOMAS UNIFIED SCHOOL DISTRICT

### Northpointe K-5 RFP 21-01

#### ADDENDUM NO. 1

Date: February 16, 2021

Owner: Natomas Unified School District  
1901 Arena Blvd.  
Sacramento, CA 95834

This Addendum has been prepared to clarify, modify, delete, or add to the drawings and/or specifications for the above referenced project, and revisions to items listed here shall supersede description thereof prior to the above stated date. All conditions not specifically referenced here shall remain the same. It is the obligation of the Prime Contractor to make subcontractors aware of any items herein that may affect submitted bids.

In case of conflict between the bid documents and his Addendum, this Addendum shall govern. This Addendum shall be considered part of the Plans, Specifications, and Contract Documents. All addenda items refer to the plans and project manual(s) unless specifically noted otherwise.

Acknowledge receipt of this addendum by inserting its number and date on the BID FORM at time of bid. Failure to do so may subject the bidder to disqualification.

TOTAL PAGES IN THIS ADDENDUM (excluding attachments): **3 Pages**

**1. Question:** Please reference Exhibit A of the RFP. The anticipated Construction Cost is \$36,000,000. Please confirm if this number reflects the Direct Cost of Construction or the Total Cost of Construction inclusive of the Overhead and profit, preconstruction services fee, general conditions, and bonds and insurance.

**Answer:** \$36,000,000 is the total anticipated cost of the total construction contract, inclusive of Overhead and Profit, Preconstruction Services, General Conditions and Bonds and Insurance.

**2. Question:** Please reference Exhibit A of the RFP. The anticipated Construction Cost is \$36,000,000. Please confirm if this number reflects Phase 1 only or includes all phases.

**Answer :** \$36,000,000 is the total construction contract amount for Phase 1 and 1A if possible.

**3. Question:** There are two sets of “Allowable General Conditions Costs” matrices included as pages 13-17 and 12-16. Please confirm which is correct as the information varies on each matrix.

**Answer:** The matrix that should be used is attached.

**4. Question:** New Dual Immersion School (Northpointe) - Please confirm whether this current scope includes Phase 1 only or Phases 1 and 1A.



**Answer:** Phase 1A will be included in the project if the budget affords. The only work to be included in the area of phase 2 is rough grading, utility stub-outs, and hydroseeding. Otherwise, all building and site finish work shown in the area of phase 2 to occur at a future date TBD.

5. **Question:** Please confirm the Liability Insurance and Builders Risk requirements.

**Answer:** Liability Insurance and Builders Risk requirements can be found in the Facilities Lease documents.

**Attachments:**  
**Updated Responsibility Matrix**  
**Facilities and Site Leases**

**Exhibit B**  
**Allowable General Condition Costs**  
**Construction Phase Scope Detail**  
**RFP 21-01**

<b>Project (On Site Jobsite Staff)</b>		<b>Direct Cost of the Work</b>	<b>LLB General Conditions</b>	<b>LLB Overhead and Profit</b>	<b>Paid by District</b>
1	Operations Manager		X		
2	Project Manager		X		
3	Project Superintendent		X		
4	Project Engineer		X		
5	Home Office Engineer		X		
6	Scheduling Engineer		X		
7	Field Engineer		X		
8	Draftsman/Detailer		X		
9	Record Drawings		X		
10	Field Accountant		X		
11	Time Keeper/Checker		X		
12	Secretarial/Clerk Typist		X		
13	Independent Surveyor	X			
14	Safety &. E.E.O. officer		X		
15	Runner/Water Boy		X		
16	Vacation Time/Job Site Staff		X		
17	Sick Leave/Job Site Staff		X		
18	Bonuses/Job Site Staff			X	
19	Quality Control Program		X		
20	Qualified SWPPP Practitioner (QSP)	X			
21	SWPPP Creation, Approval, Notifications				X
22	Safety - Pre-task Planning & MOPs	X			

<b>Temporary Utilities</b>		<b>Direct Cost of the Work</b>	<b>LLB General Conditions</b>	<b>LLB Overhead and Profit</b>	<b>Paid by District</b>
1	Telephone Installation		X		
2	Telephone Monthly Charges		X		
3	Elect Power Installation	X			
4	Elect Power Distribution - Wiring/Spider boxes/ Lighting for construction	X			
5	Elect Power Monthly Charges				X
6	Water Service for construction	X			

7	Deleted item (N/A)				
8	Heating & Cooling Costs for construction	X			
9	Light Bulbs & Misc. Supplies for construction	X			
10	Clean-Up-Periodical	X			
11	Clean-Up-Final	X			
12	Dump Permits and Fees	X			
13	Recycling/Trash Dumpster Removal/Hauling	X			
14	Flagger/Traffic Control	X			
15	Dust Control	X			
16	Temporary Road and Maintenance if required	X			
17	Trash Chute & Hopper (if applicable)	X			

		Direct Cost of the Work	LLB General Conditions	LLB Overhead and Profit	Paid by District
<b>Direct Job Costs</b>					
1	Wages of Construction Labor	X			
2	Labor/Fringe Benefits & Burden	X			
3	Subcontract Costs	X			
4	Material & Equipment/Included				
	a. Contractor Owned Equip, trucks	X			
	b. Small Tools - Purchase	X			
	c. Small Tools - Rental d. Superintendent or Project Manager vehicles	X	X		
5	Warranty Work & Coordination			X	

		Direct Cost of the Work	LLB General Conditions	LLB Overhead and Profit	Paid by District
<b>Temporary Facilities</b>					
1	Office Trailer including shared office for IOR & CM (office must include a lockable door, furniture (2 desks, 2 chairs, 1 file cabinet, etc and wi-fi connection)		X		
2	Storage Trailer & Tool Shed Rental		X		
3	Office Furniture/Equip/computers		X		
4	Xerox Copies/Misc Printing		X		
5	Postage/UPS/FedEx		X		
6	Project Photographs		X		
7	Temporary Toilets		X		
8	Project Sign		X		

9	Temporary Fencing/Enclosures- jobsite perimeters		X		
10	Covered Walkways if required	X			
11	Barricades	X			
12	Temporary Stairs	X			
13	Opening Protection	X			
14	Safety Railing & Nets	X			
15	Drinking Water/Cooler/Cup		X		
16	Safety/First Aid Supplies		X		
17	Fire Fighting Equipment		X		
18	Security Guards, Cameras and /or Monitoring	X			
19	Watchman Service required for Safety, eg fire watch	X			
20	Phone/fax lines, cell phones, WiFi		X		

		Direct Cost of the Work	LLB General Conditions	LLB Overhead and Profit	Paid by District
<b>Miscellaneous Project Costs</b>					
1	Contractor Performance and Payment Bonds	X			
2	Contractor provided insurance	X			
3	Printing - Drwgs & Specs (Max of 15 sets)				X
4	Initial Soils Investigation				X
5	Testing and Inspection				X
6	Maintenance After Occupancy				X
7	Facility Operator/Training	X			
8	Fees				X
		Direct Cost of the Work	LLB General Conditions	LLB Overhead and Profit	Paid by District
<b>Hoisting</b>					
1	Hoist & Tower Rental	X			
2	Hoist Landing & Fronts	X			
3	Hoist Operator	X			
4	Hoist Safety Inspections	X			
5	Hoist Material Skips/Hoppers	X			
6	Erect & Dismantle Hoists	X			
7	Crane Rental	X			
8	Crane Operators	X			

9	Crane Safety Inspections	X			
10	Erect & Dismantle Crane	X			
11	Fuel, Repairs, Maintenance	X			
12	Crane Raising/Jumping Costs	X			
13	Safety Inspections	X			
14	Forklift Rental	X			
15	Forklift Operator	X			
16	Forklift Safety Inspections	X			
17	Fuel, Repairs, Maintenance	X			

		Direct Cost of the Work	LLB General Conditions	LLB Overhead and Profit	Paid by District
<b>Contractor's Main Office Staff</b>					
1	Corporate Executives			X	
2	Principal in Charge			X	
3	Estimating Cost Engineering			X	
4	Value Engineering			X	
5	Scheduling			X	
6	Drafting and Detailing			X	
7	Purchasing & Contracts			X	
8	Accounting & Bookkeeping			X	
9	Safety & E.E.O Officer			X	
10	Secretarial			X	
11	Clerk/Typist			X	
12	Computer/Data Processing			X	
13	Legal (General Services/Pertaining to Project)			X	
14	Travel & Subsistence			X	
15	Fringe Benefits & Burden			X	
16	Vacation Time/Main Office			X	
17	Bonuses/Main Office			X	

**FACILITIES LEASE**  
**and**  
**CONSTRUCTION PROVISIONS**

By and Between

**COMPANY**  
as Lessor

and

**NATOMAS UNIFIED SCHOOL DISTRICT**  
as Lessee



## FACILITIES LEASE

**THIS FACILITIES LEASE** ("Facilities Lease" or "Agreement") is dated and entered into as of **DATE** for reference purposes only, and is made by and between **COMPANY**, as Lessor ("Lessor" or "Contractor"), and the **NATOMAS UNIFIED SCHOOL DISTRICT**, a school district duly organized and validly existing under the Constitution and laws of said State of California, as Lessee ("District").

### RECITALS

**WHEREAS**, District desires to provide for **PROJECT Description** site ("Project") at the location described in the Site Lease and has retained an Architect ("Architect") to prepare Plans and Specifications as herein defined, as more particularly described in the Project Manual, which is Exhibit B to this Facilities Lease, and as are on file at District and incorporated herein by this reference. The Parties acknowledge that Plans and Specifications may be amended subject to mutual agreement between the parties;

**WHEREAS**, Contractor has reviewed the General Construction Provisions set forth in the Project Manual (Exhibit B to this Facilities Lease) and incorporated herein;

**WHEREAS**, District and Contractor agree that the General Construction Provisions shall govern the construction of the Project;

**WHEREAS**, on the date hereof, District has leased to Contractor, for the development and construction of the Project, the Site ("Site") located in Sacramento, California, as more particularly described in the Legal Description of the Site, Exhibit C to this Facilities Lease, pursuant to the terms of a Site Lease by and between District and Contractor;

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

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

**WHEREAS**, the Board of Trustees of District ("Board") has determined that it is in the best interests of District and for the common benefit of the citizens residing in District to construct the Project by leasing the Site to Contractor and by immediately entering into this Facilities Lease under which District will lease back the Site from Contractor and make Lease Payments on the dates and in the amounts set forth in the payment schedule attached to this Facilities Lease as Exhibit D ("Lease Payment Schedule");

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

**WHEREAS**, District has a substantial need for modern school facilities to be provided by the Project and has entered into the Site Lease and this Facilities Lease under the authority granted to District by Section 17406 of the Education Code of the State of California in order to fill that need; and

**WHEREAS**, District and Contractor further acknowledge and agree that they have entered into the Site Lease and this Facilities Lease pursuant to Education Code section 17406 as the best available means for District to satisfy its substantial need to complete the Project described in Architect's plans and specifications for the Project.

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

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## ARTICLE 1

### DEFINITIONS AND EXHIBITS

- 1.1 Definitions. Unless the context otherwise requires, the terms defined in this Section 1.1 shall, for all purposes of this Facilities Lease, have the meanings herein specified.
- 1.1.1 "District" means the Natomas Unified School District, a school district duly organized and existing under the laws of the State of California.
- 1.1.2 "District Representative" means the Superintendent of District, or any other person authorized by the Board of Trustees of District to act on behalf of District under or with respect to this Facilities Lease. The person or persons so designated to act as District Representative(s) shall be authorized in writing with notice served to Contractor's Authorized Representative.
- 1.1.3 "Event of Default" means one or more events as defined in this Facilities Lease.
- 1.1.4 "Facilities Lease" means this Facilities Lease together with any duly authorized and executed amendment hereto.
- 1.1.5 "Lease Payment" means any payment required to be made by District pursuant to Section 4.5 of this Facilities Lease, and as set forth in the Lease Payment Schedule, Exhibit D attached to this Facilities Lease.
- 1.1.6 "Lease Payment Schedule" shall mean the payment schedule attached to this Facilities Lease as Exhibit D.
- 1.1.7 "Permitted Encumbrances" means, as of any particular time: (i) liens for general and valorem taxes and assessments, if any, not then delinquent, or which District may, pursuant to provisions of Section 5.3 of this Facilities Lease, permit to remain unpaid; (ii) the Site lease; (iii) this Facilities Lease, (iv) easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions or restrictions which exist of record as of the date of this Facilities Lease; (v) easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions or restrictions established following the date of recordation of this Facilities Lease and to which Contractor and District consent in writing which will not impair or impede the operation of the Site.
- 1.1.8 "Plans and Specifications" means the plans and specifications for the Project as finally approved by the Division of State Architect ("DSA"), and as further defined in the General Construction Provisions which are Part I of the Project Manual, Exhibit B to this Facilities Lease.
- 1.1.9 "Project" or "Work" means the improvements and equipment to be constructed and installed by Contractor as more particularly described in the Plans and Specifications and the Project Manual (Exhibit B to this Facilities Lease).
- 1.1.10 "Lessor" or "Contractor" means Contractor organized and existing under the laws of the State of California, and its successors and assigns.
- 1.1.11 "Lessor's Representative" or "Contractor's Representative" means Contractor, its President or Vice President, or any person subsequently authorized in writing to act on behalf of Contractor under or with respect to this Facilities Lease as evidenced by a resolution conferring upon that subsequently named representative with such authorization adopted by the Board of Directors of Contractor.
- 1.1.12 "Site" means that certain parcel of real property and improvements thereon more particularly described in the Legal Description of the Property (Exhibit C to this Facilities Lease).
- 1.1.13 "Site Lease" means the Site Lease executed herewith, by and between District and Contractor together with any duly authorized and executed amendments thereto under which District leased the Site to Contractor.
- 1.1.14 "Tenant Improvement Payment[s]" means payment(s) for Work as set forth and further defined in Article 3 of the Facilities Lease and discussed in Section 12 of the General Conditions.
- 1.1.15 "Term of this Facilities Lease" or "Term" means the time, commencing with District issuing to Contractor a notice to commence performance of the pre-construction services, through the period during which District's obligation to make the Lease Payments under this Facilities Lease is in effect, as provided for in Section 4.2 of this Facilities Lease, unless terminated earlier pursuant to Article 4 of this Facilities Lease.

Capitalized terms defined in this Facilities Lease shall have the same meaning in the other Contract Documents and capitalized terms defined in the other Contract Documents will have the same meaning in this Facilities Lease.

1.1.16 "Adverse Weather" means sever weather that causes unsafe conditions.

## 1.2.1 PROJECT SPECIFIC CONDITIONS

### Contractor Information

Name:

Address:

Telephone:

Email:

### Financing

The Parties mutually recognize that this Agreement may need to be revised at a later date to allow for alternative types of financing to occur.

### Liquidated Damages

For each day past the time specified in Exhibit A that Contractor fails to achieve "Completion" as defined in Section 21.05 (as may be extended consistent with the Contract Documents) Contractor may be assessed liquidated damages at the daily rate of:

**Costs will be calculated based on the construction cost.**

Liquidated damages are the exclusive remedy of the District for any delays in completing the Project.

The cost for preconstruction services shall not exceed: **Written in dollars and numbers**

## Insurance Coverage Levels

### Commercial General Liability.

Commercial general liability insurance coverage shall be maintained on policy forms at least as broad as ISO form CG 0001 covering all operations performed by or on behalf of Construction Manager, including but not limited to, the following coverages and minimum limits:

- i. Premises & Operations
- ii. Products and Completed Operations, which shall be maintained through the expiration of all applicable statutes of limitation following completion of the work
- iii. Personal and Advertising Injury Liability
- iv. Contractual Liability insuring the obligations assumed by Subcontractor in this Agreement
- v. Broad Form Property Damage, including Completed Operations

Limits shall be at least:

\$2,000,000 Each Occurrence for Bodily Injury and Property Damage Liability  
\$2,000,000 Personal Injury and Advertising Liability  
\$2,000,000 Products and Completed Operations Aggregate  
\$2,000,000 General Aggregate

For Projects anticipated to be greater than \$10 million in Project Costs, or where building height is greater than three stories, the Limits shall be at least:

\$5,000,000 Each Occurrence for Bodily Injury and Property Damage Liability  
\$5,000,000 Personal Injury and Advertising Liability  
\$5,000,000 Products and Completed Operations Aggregate  
\$5,000,000 General Aggregate

### Automobile Insurance

All auto - Two Million Dollars (\$2,000,000).

### Worker's Compensation

Per statute

**Preconstruction Rates And Amounts**

<b>Name</b>	<b>Position</b>	<b>Hourly Rate</b>

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

Exhibit A - GUARANTEED MAXIMUM PRICE, CONTINGENCY, FINAL SCHEDULE MILESTONES, AND EXCLUSIONS

Exhibit B - THE PROJECT MANUAL:

The description of the Project, General Conditions, Construction Provisions.

Exhibit C - THE SITE:

The descriptions of the real property constituting the Site.

Exhibit D - LEASE PAYMENT SCHEDULE:

The schedule of Lease Payments to be paid by District hereunder.



**ARTICLE 2**  
**REPRESENTATIONS, COVENANTS AND WARRANTIES**

2.1 Representations, Covenants and Warranties of District. District represents, covenants and warrants to Contractor as follows:

2.1.1 Due Organization and Existence. District is a school district, duly organized and existing under the Constitution and laws of the State of California has the power to enter into this Facilities Lease and the Site Lease; is possessed of full power to own, rent and hold real and personal property, and to lease same; and has duly authorized the execution and delivery of all of the aforesaid agreements.

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

2.2 Representations, Covenants and Warranties of Contractor. Contractor represents covenants and warrants to District as follows:

2.2.1 Due Organization and Existence. Contractor is a corporation duly organized and existing under the laws of the State of California, has the power to enter into this Facilities Lease and the Site Lease; is possessed of full power to own, rent and hold real and personal property, and to lease and sell the same; and has duly authorized the execution and delivery of all of the aforesaid agreements.

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

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

2.2.4 No Encumbrances. Contractor shall not pledge the Lease Payments or other amounts derived from the Site and from its other rights under this Facilities Lease, and shall not mortgage or encumber the Site, except as allowed under the provisions of this Facilities Lease and/or the Site Lease to finance construction of the Project.

2.2.5 Continued Existence. For up to one (1) year following the term of this Lease, Contractor shall not voluntarily commence any act intended to dissolve or terminate the legal existence of Contractor, provided District is not in uncured default under this Facilities Lease. Contractor shall give District sixty (60) days' written notice prior to dissolving or terminating the legal existence of Contractor.

**ARTICLE 3**  
**CONSTRUCTION OF PROJECT**

3.1 Site Conditions and Plans and Specifications. Contractor acknowledges that it has visually investigated the Site (or will prior to finalization of the GMP), subject to Section 5 of the General Conditions, to the extent necessary to complete the Project, investigated the Site, including, without limitation, a review of the soils and hazardous materials reports for the Site as provided by District, and that the soils reports disclose no currently known problems with respect to the site conditions, and to prepare its Guaranteed Maximum Price. Contractor further acknowledges that it has (or that prior to commencement of construction, it will have) performed services, including value engineering and a constructability review of the Plans and Specifications as necessary to satisfy itself that said documents are adequate for the Project's construction and that contractor has not identified any errors or omissions in the Plans and Specifications that will adversely affect construction of the Project.

3.1.1. Intentionally left blank.

3.1.2. Preconstruction Activity, Schedule and GMP Development.

3.1.2.1 Pursuant to this Agreement, Contractor shall provide pre-construction development and related services required during the Project's design and approval phases. Such services shall commence upon approval of this Agreement by District.

3.1.2.2 Contractor's pre-construction development and service arrangements shall include:

- a. Contractor shall work with District staff and Architect and any other applicable consultants of the District related to the Project to develop an overall Project budget and Project schedule.
- b. Contractor shall assist District by providing detailed and on-going evaluations of the Project, including the Plans and Specifications, detailed construction budget cost projections, project schedule and phasing requirements, analysis of the District's overall Project budget, project constructability reviews of Architect's work. Such evaluations shall include alternative approaches to design, development and construction of the Project.
- c. Contractor shall attend regular meetings during Project design, development, and document production phases between the District's Architect, any Construction Manager hired by the District, and any pertinent District staff, and any other applicable consultants of District, as required.
- d. Contractor shall assist with considering operating or maintenance costs with respect to selecting systems (mechanical, electrical, lighting, bell/intercom, etc.) for the Project. Contractor will provide life cycle costing analyses as requested by District.
- e. Contractor shall perform a detailed analysis of both the preliminary and the final Plans and Specifications and provide District with value engineering and recommendations regarding scope and budget of the Project, suggested value engineering items, long lead purchases and a plan for revising the Plans and Specifications to the extent necessary to achieve District's goals and objectives, including Project completion dates.
- f. Contractor shall assist District in obtaining all local and State licenses, permits, requirements, and approvals including, but not limited to, approval from the Division of the State Architect ("DSA"), approval from the Office of Public School Construction, and requirements of the California Environmental Quality Act.
- g. Contractor shall assist District in the District's design for the Project and obtaining materials and long lead items necessary to facilitate completion of the Work according to the District's schedule for completion. However, Contractor shall not be responsible for designing the Project, but shall provide consultation on cost estimates, schedule implications, construction feasibility, and coordination of long-lead item procurements.

- h. Contractor shall provide construction cost estimates at the following design milestones; Schematic Design, Design Development, and 50% Construction Documents.
- i. Contractor shall provide budget tracking during the course of design to determine the cost impact of the development of the design and scope changes.
- j. During the Construction Document phase of the design the Contractor shall coordinate the work of the Subcontractors.
- k. Contractor shall negotiate with District a guaranteed maximum price for the construction of the Project, a milestone schedule, and any exclusions. Once completed, these shall be presented to the school board for final approval and upon approval, shall be attached as Exhibit A to this Facilities Lease.
- l. Contractor's total cost of services provided under this 3.1.2.2 shall be based upon rates, and not to exceed amounts set forth in the Project Specific Conditions.

The cost of services provided under this section 3.1.2.2 shall be in addition to the GMP. Contractor shall be paid monthly for the value of services provided in the previous month.

The costs shall be included in all Project budgets.

No work for which a contractor is required to be licensed in accordance with Article 5 (commencing with Section 7065) of Chapter 9 of Division 3 of the Business and Professions Code and for which Division of the State Architect approval is required can be performed before receipt of the required Division of the State Architect approval.

Contractor shall invoice District in thirty (30) day increments for services actually rendered in the previous month. Payment for the preconstruction services shall be made for all undisputed amounts invoiced by Contractor within thirty (30) days after the Contractor submits an invoice to the District for Work actually completed and after the District's written approval of the Work, or the portion of the Work for which payment is to be subsequently made.

- 3.2 Construction of Project. Contractor agrees to cause the Project to be diligently developed, constructed, and installed in accordance with the express provisions of the Contract Documents, including those things reasonably inferable from the Plans and Specifications as being within the scope of the Project and necessary to produce the stated result. Contractor shall time construction of the Project to commence within five (5) days after receiving from District a Notice to Proceed.

Contractor shall provide District a complete copy of the executed construction contract documents consistent with section 12.02 and Attachment 9 to the Project Manual. District and Contractor may also approve additional changes in the Work for the Project as provided in the Contract Documents. District and Contractor will cooperate at all times in bringing about the timely completion of the Project.

Contractor shall cooperate with District's efforts to obtain State funding for the Project by complying with any State requirements as reasonably requested by District, including, without limitation Sections 1859.104 to 1859.106 of Title 2 of the California Code of Regulations.

- 3.3 Guaranteed Maximum Price. Contractor will cause the Project to be constructed within the Guaranteed Maximum Price as set forth in the Contract Documents, and as calculated per Exhibit A to this Facilities Lease.

District shall only be responsible for costs in addition to the GMP if:

- (a) The District orders changes to the Work pursuant to Section 15 after the GMP is established;
- (b) costs increase due to Compensable Delays, each in a manner consistent with section 14.01 of the General Conditions, or
- (c) there are concealed or unknown Site conditions (including Pre-Existing Hazardous Materials) discovered after the execution of this Facilities Lease which could not reasonably have been foreseen by Contractor in its review of the Site as required by Article 3.1 and which require additional costs.

Unless one of these conditions apply, in no event shall the cumulative total of the Tenant Improvement Payments, along with the balance of the Construction Contingency, Lease Payments and anticipated retention, ever exceed the Guaranteed Maximum Price.

The GMP includes the Lease Payments, which shall be paid by District, as set forth in Exhibit D.

A "Construction Contingency" is included in Exhibit A to this Facilities Lease. The Construction Contingency may be drawn to cover, by way of example, and not limitation, subcontract buy-out gaps, costs to correct damage or fixes resulting from general activity without a clearly responsible party, coordination issues, and escalation costs not reasonably anticipated at the time the GMP was established. The Construction Contingency shall not be used for changes to the Work ordered by the District pursuant to Article 15 of the General Conditions.

If the Work is completed and the District releases the Final Tenant Improvement Payment, and if the District has no dispute for which it is withholding retention funds, and if there are funds remaining in the Construction Contingency, then the Construction Contingency funds shall be disbursed as follows: 50% to District, 50% to Contractor. Otherwise, the entire balance remaining in the Construction Contingency at any time shall be returned to District on termination of this Agreement.

All proposed Construction Contingency draws must be approved in writing prior to the work related to the Construction Contingency draw commencing and prior to payment by District, in District's sole and absolute discretion, and shall be supported by detailed Contractor estimates or job cost records, including full documentation of the labor, material, equipment and Subcontractor costs involved, as described in Article 15 of the General Conditions. The timing and processing of approval of requested Construction Contingency draws shall be the same as the timing of the approval of Contractor's application for normal progress payments.

Should the amount of the Construction Contingency be exceeded, the unfunded costs shall be borne by Contractor without increase to the total cost under the Guaranteed Maximum Price.

The District shall bear an owner controlled allowance of 1-5% of the Construction Cost, based on the District's discretion. The owner controlled allowance shall be used for changes to Work ordered by the District.

3.4 Tenant Improvement Payments. As further set forth in Section 12 of the General Conditions, each month while Contractor is providing construction services, District shall pay Contractor a sum equal to ninety percent (90%) of the value of the Work performed through the last day of the prior month, less the aggregate of previous payments (the "Tenant Improvement Payments").

Five percent (5%) of the value of such work shall be held by the District as retention, and five percent (5%) shall be payable as Lease Payments after the Work is Complete.

Tenant Improvement Payments shall not exceed estimates of the value of Work completed which shall be prepared by Contractor on a form approved by District and certified by the Architect and District's Project Inspector and any other approved representative of District, and filed before the fifth (5<sup>th</sup>) day of the month during which payment is subsequently to be made.

Work completed as estimated shall be an estimate only and no inaccuracy or error in said estimate shall release Contractor or any surety from responsibility for the satisfactory performance of such Work or from enforcing each and every provision of the Contract Documents.

District shall have the right subsequently to correct any error made in any estimate for payment. Contractor shall not be entitled to have any payment estimates processed or be entitled to have any payment made for Work performed so long as District, or any of the public agencies with jurisdiction, has not accepted or waived compliance with any lawful or proper direction concerning non-complying Work or any portion thereof.

District may withhold from the Tenant Improvement Payments one hundred fifty percent (150%) of the estimated value of non-complying Work, as determined by District, unless corrected or remedied to District's satisfaction. To the extent a Tenant Improvement Payment is made that is less than the stated amount, the balance may be added to the next scheduled Tenant Improvement Payment. Payment of Tenant Improvement Payments and retention on such payments shall be as set forth in the Contract Documents.

**ARTICLE 4**  
**AGREEMENT TO LEASE; TERMINATION OF LEASE; LEASE PAYMENTS; TITLE TO THE SITE**

- 4.1 Lease of Project and Site; No Merger. Contractor hereby leases the Project to District, and District hereby leases said Project from Contractor, upon the terms and conditions set forth in this Facilities Lease. The leasing by Contractor to District of the Project shall not affect or result in a merger of District's leasehold estate pursuant to this Facilities Lease and its fee estate as Contractor under the Site Lease, and Contractor shall continue to have and hold a leasehold estate in said Site pursuant to the Site Lease throughout the term thereof and the term of this Facilities Lease. As to the Site, this Facilities Lease shall be deemed and constitute a sublease.
- 4.2 Term of Facilities Lease. The Term of this Facilities Lease, for the purposes of District's obligation to make Lease Payments, shall commence when District issues a notice to commence pre-construction services for the Project, and shall terminate twelve months after the Project's Notice of Completion is filed by District.
- 4.3 Termination of Term. Notwithstanding Section 4.2 hereof, the Term of this Facilities Lease shall terminate upon the earliest of any of the following events:
- 4.3.1 An Event of Default by District and Contractor's election to terminate this Facilities Lease pursuant to Section 8.2 of this Facilities Lease; or
- 4.3.2 The arrival of the last day of the Term of this Facilities Lease and payment of all Lease Payments and Tenant Improvement Payments hereunder; provided, however, that if on the scheduled date for expiration of this Facilities Lease, the Lease Payments shall not have been fully paid by District, then the Term of this Facilities Lease and Site Lease shall be extended until the date upon which all such Lease Payments shall be fully paid, notwithstanding anything to the contrary in this Facilities Lease and the Site Lease, and all terms and conditions of the Site Lease and Facilities Lease shall continue in full force and effect.
- 4.3.3 Exercise of District's Purchase Option pursuant to Section 9.1 of this Facilities Lease.
- 4.4 Project Completion. Upon final completion of the Work, District shall record a Notice of Completion that shall be filed with the County Clerk at District's expense. District shall not unreasonably withhold, delay or condition the preparation and issuance of the Notice of Completion.
- 4.5 Lease Payments.
- 4.5.1 Obligation to Pay. Subject to the provisions herein, District agrees to pay to Contractor, its successors and assigns, as rental for the use and occupancy of the Project, without deduction or setoff, except as provided for in Section 6.2.5 of this Facilities Lease, the Lease Payments during the Term in the manner and amounts specified in the Lease Payment Schedule, attached as Exhibit D. Lease Payments shall be payable in arrears on the last day of each calendar month. All Lease Payments are part of, and shall not increase the final Guaranteed Maximum Price.
- 4.5.2 Lease Payments to Constitute Current Expense of District. District and Contractor understand and intend that the obligation of District to pay Lease Payments and other payments hereunder constitutes a current expense of District and shall not in any way be construed to be a debt of District in contravention of any applicable constitutional or statutory limitation or requirement concerning the creation of indebtedness by District, nor shall anything contained herein constitute a pledge of the general tax revenues, funds or moneys of District. Lease Payments due hereunder shall be payable only from current funds which are budgeted and appropriated or otherwise made legally available for such purpose. This Facilities Lease shall not create an immediate indebtedness for any aggregate payments which may become due hereunder. Contractor acknowledges that District has not pledged the full faith and credit of District, State of California or any state agency or state department to the payment of Lease Payments or any other payments due hereunder. District shall not finalize and enter into an addendum to this contract to add Exhibit A (the GMP) to this Facilities Lease with Contractor unless current funds are available equal to or greater than the GMP as adjusted.
- 4.5.3 Quiet Enjoyment. Contractor shall provide District with quiet use and enjoyment of the Project and the Site, and District shall, during such Term, peaceably and quietly have and hold and enjoy the Site subject to Contractor's construction of the Project, without suit, trouble or hindrance from Contractor, except as otherwise may be set forth in this Facilities Lease and as necessary to construct the Project.

Notwithstanding the foregoing, Contractor shall have the right to inspect the Project and the Site as provided in Section 7.1 of this Facilities Lease.

- 4.6 Title. During the Term of this Facilities Lease, District shall hold fee title to the Site. During the Term of this Facilities Lease, Contractor shall have a leasehold interest in the Site pursuant to the Site Lease. If District exercises its Purchase Option to accelerate the termination of this Facilities Lease pursuant to Article 9 hereof, or if it pays all Lease Payments during the Term of this Facilities Lease as the same become due and payable, all right, title and interest of Contractor, its assigns and successors-in-interest in and to the Project and the Site shall be transferred to and vested in District at the expiration of the Term or upon the payment by District of the final Lease Payment, whichever shall come first. Title shall be transferred to and vested in District hereunder without the necessity for any further instrument or transfer, provided, however, that Contractor agrees to execute any instrument requested by District to memorialize such termination of this Facilities Lease and transfer title to District.
- 4.7 Fair Rental Value. The Lease Payments constitute the total rental for the Project and shall be paid by District as set forth in Exhibit D and in consideration of the right to use and occupy, and the continued quiet use and enjoyment of, the Site during each month. District and Contractor have agreed and determined that the total Lease Payments do not exceed the fair rental value of the Site. In making such determination, consideration has been given to the obligations of the parties under this Facilities Lease and the Site Lease, the uses and purposes which may be served by the Site, and the benefits there from which will accrue to District and the general public. Lease payments shall be paid monthly, prior to, or contemporaneously with, the Tenant Improvement Payments.
- 4.8 Lease Terminable Only As Set Forth Herein.
- 4.8.1 Except as otherwise expressly provided in this Facilities Lease, this Facilities Lease shall not terminate, nor shall District have any right to terminate this Facilities Lease or be entitled to the abatement of any Lease Payments or Additional Payments or any reduction thereof, nor shall the obligations hereunder of District be otherwise affected by reason of any damage to or destruction of all or any part of the Project from whatever cause, the taking of the Site or any portion thereof by condemnation or otherwise, the prohibition, limitation or restriction of District's use of the Site, interference with such use by any private person or corporation, or District's acquisition of the ownership of the Site (other than pursuant to an express provision of this Facilities Lease), or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding. It is the intention of the parties hereto that the Lease Payments and Additional Payments and all other charges payable hereunder to or on behalf of Contractor shall continue to be payable in all events, and the obligations of District hereunder shall continue unaffected unless the requirement to pay or perform the same shall be terminated or modified pursuant to an express provision of this Facilities Lease.
- 4.8.2 Nothing contained herein shall be deemed a waiver by District of any rights that it may have to bring a separate action with respect to any default by Contractor hereunder or under any other agreement to recover the costs and expenses, including attorneys' fees, if District is prevailing party, associated with such separate action.

**ARTICLE 5**  
**MAINTENANCE; TAXES; INSURANCE AND OTHER MATTERS**

- 5.1 Maintenance. Following delivery of possession of the Project by Contractor to District, the repair, improvement, replacement and maintenance of the Project and the Site shall be at the sole cost and expense and the sole responsibility of District, subject only to all warranties against defects in materials and workmanship provided in the Project Manual (Exhibit B to this Facilities Lease) hereto, and 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.
- 5.2 Utilities. Prior to completion of the Project by Contractor, Contractor shall pay for all onsite utility costs as they relate to the Work Contractor is performing under the General Construction Provisions (Part I of the Project Manual, which is Exhibit B to this Facilities Lease). Contractor may, with written permission of the District, use the District's existing utilities by making payments to the District for utilities used by Contractor for construction and/or providing for an offset in the GMP. Following Completion of the Project by Contractor, the cost and expenses for all utility services, including, but not limited to, electricity, natural gas, telephone, water, sewer, trash removal, cable television, security, heating, water, internet service and all other utilities of any type, shall be paid by District.
- 5.3 Taxes and Other Impositions. Contractor shall keep the Project and Site free and clear of all levies, liens and encumbrances and shall pay all license fees, registration fees, assessments, charges and taxes (municipal, state and federal) which may now or hereafter be imposed upon the ownership, leasing, renting, sale, possession or use of the Project or Site, excluding, however, all taxes on or measured by District's income.
- 5.4 Intentionally Left Blank.
- 5.5 Liability Insurance. District shall at all times during the Term of this Facilities Lease carry and maintain in force a policy of Commercial General Liability Insurance. After Completion of the Project, District shall name Contractor as an additional insured on this policy. The District's obligation to name Contractor as an additional insured on this policy will end with the termination of the Facilities Lease.
- 5.6 Contractor Insurance. Contractor shall at all times comply with the insurance requirements in the General Conditions included in the Project Manual (Exhibit B to this Facilities Lease).
- 5.7 Compliance with Laws and Regulations. District has, after due inquiry, no knowledge and has not given or received any written notice indicating that the Site or the past or present use thereof or any practice, procedure or policy employed by it in the conduct of its business, materially violates any applicable law, regulation, code, order, rule, judgment or consent agreement, including, without limitation, those relating to zoning, building, use and occupancy, fire safety, health, sanitation, air pollution, ecological matters, environmental protection, hazardous or toxic materials, substances or wastes, conservation, parking, architectural barriers to the handicapped, or restrictive covenants or other agreements affecting title to the Site. Excluded from the representations and warranties are those hazardous materials in those amounts ordinarily found in the inventory of, or used in the maintenance of, school buildings and facilities.
- 5.8 Disabled Veteran Business Enterprises The District is an equal opportunity employer and encourages the participation of disabled veteran business enterprises (DVBE) businesses.

In Accordance with the Education Code Section 17076.11, The District has a participation goal for disabled veteran business enterprises (DVBE) of at least three percent (3%) per year of the overall dollar amount of funds expended each year by the District for construction on District property.

Contractor shall submit all certifications required under Section 1865.16 of the regulation adopted by the State Allocation Board on the appropriate forms as part of closeout so that the District can assess its success at meeting this goal.

## ARTICLE 6

### **EMINENT DOMAIN; DAMAGE AND DESTRUCTION**

#### 6.1 Eminent Domain.

- 6.1.1 Total Taking. If the Project and the Site shall be taken permanently under the power of eminent domain, the Term of this Facilities Lease shall cease as of the day possession shall be so taken and the remaining balance of any earned but unpaid Lease Payments shall become immediately due and payable and all proceeds of the eminent domain proceedings shall be paid to the District. If the Total Taking occurs before the Final Tenant Improvement Payment has been made, earned but unpaid Lease Payments shall be equivalent to the value of the portion of the Work completed by Contractor through the date of the Total Taking, plus any retention and Lease Payments withheld at the time of the Total Taking, up to the total GMP. If the Total Taking occurs after the Final Tenant Improvement Payment has been made, earned but unpaid Lease Payments shall mean the balance of any funds withheld by District at the time the Final Tenant Improvement Payment was made plus the remaining balance of the Lease Payments.
- 6.1.2 Partial Taking. If less than all of the Project and the Site shall be taken permanently, or if all of the Project and the Site or any part thereof shall be taken temporarily, under the power of eminent domain: (i) this Facilities Lease shall continue in full force and effect and shall not be terminated by virtue of such taking and the parties waive the benefit of any law to the contrary; and (ii) the net proceeds of any eminent domain award may be applied towards the prepayment of the Lease Payments hereunder. No partial taking shall limit District's obligation to pay any Tenant Improvement Payments earned and otherwise owed under this Facilities Lease. District shall revise the design of the Project so that any buildings on the Project affected by the partial permanent taking are useable by District and a Change Order will be issued to Contractor to modify the Project in accordance with the revised design. Notwithstanding the foregoing, Contractor shall be entitled to Tenant Improvement Payments only for work satisfactorily performed and accepted. Nothing herein shall restrict District's ability to terminate this Facilities Lease for convenience pursuant to Section 18.

#### 6.2 Damage and Destruction. If the Project and the Site 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, Contractor and District agree that the obligation to repair or replace the Project and the Site shall be in accordance with the following provisions:

- 6.2.1 Escrow. Any proceeds payable to Contractor and District from property insurance policies shall be immediately deposited in an escrow (the "Escrow").
- 6.2.2 Total Destruction. In the event that ninety percent (90%) or more of the Project and the Site is destroyed or damaged (a "Total Destruction"), then District, at District's option, may elect to terminate this Facilities Lease and the Site Lease, and shall use any funds available to it (including but not limited to insurance proceeds) to pay an amount to Contractor equal to the earned but unpaid balance of the Lease Payments, any earned but unpaid Tenant Improvement Payments, including any earned but unpaid and undisputed retainage and the value of all work completed by Contractor pursuant to the provisions found in the Project Manual (Exhibit B to this Facilities Lease), with any remaining insurance proceeds to be retained by District. In the alternative, District may elect to continue with this Facilities Lease in effect and have the Project and the Site rebuilt utilizing the insurance proceeds. Contractor shall have no obligation to contribute funds for the rebuilding of the Project should the cost of rebuilding exceed the insurance proceeds. Anything less than a Total Destruction of the Project and the Site shall be deemed a "Partial Damage or Destruction."
- 6.2.3 Partial Damage or Destruction. In the event that the Project and the Site is partially damaged or destroyed District may repair or have repaired the Site utilizing the proceeds from insurance which were deposited into the Escrow.
- 6.2.4 Deductibles; Self Insurance. Where any loss is covered by insurance required by this Facilities Lease which contains provisions for any deductible amount, the party making a claim on the insurance policy shall pay the cost of rebuilding any such deductible amount or the amount of any self-insurance maintained by District.
- 6.2.5 Intentionally Left Blank



6.2.6 Personal Property. Any insurance proceeds payable to District for losses to personal property contents within the Site shall be for the exclusive use of District, and may be utilized in whatever manner District, in its sole discretion, may designate.

**ARTICLE 7**  
**ACCESS; WARRANTIES**

- 7.1 By Contractor. Contractor shall have the right at all reasonable times to enter upon the Site to construct the Project pursuant to this Facilities Lease. Following the Completion of the Project, 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 and for purposes of inspection to ascertain whether District is satisfying its obligation to maintain and repair the Project as required by this Facilities Lease.
- 7.2 By District. Prior to the Completion of the Project, District, and its agents and consultants, shall have the right to enter upon the Site at all times for the purposes of inspection of the progress of the Work on the Project and District shall comply with all safety precautions required by Contractor. Following the Completion of the Project, District shall thereafter have the right at all times to enter upon the Site for the purposes of this Facilities Lease.
- 7.3 Warranties. Contractor agrees that materials and equipment used by the contractor will be new and of good quality unless otherwise required, the work will be free from defects other than those inherent in the work as specified, and the work will conform to the requirements of the contract documents. In addition, Contractor agrees to use its best efforts to assist District in enforcing any product warranty.

**ARTICLE 8**  
**EVENTS OF DEFAULT AND REMEDIES**

- 8.1 Events of Default by District Defined. The following shall be “Events of Default” under this Facilities Lease and the terms “Event of Default” and “Default” shall mean, whenever they are used in this Facilities Lease, any one or more of the following events:
- 8.1.1 Failure by District to pay any Lease Payment required to be paid hereunder at the time specified herein (unless properly withheld pursuant to provisions found in the Project Manual, Exhibit B to this Facilities Lease) when due and payable hereunder, and the continuation of such failure for a period of thirty (30) days after District’s receipt of written notice from Contractor.
  - 8.1.2 Failure by District to pay any Tenant Improvement Payment (unless properly withheld pursuant to provisions found in the Project Manual, Exhibit B to this Facilities Lease) when due and payable hereunder, and the continuation of such failure for a period of thirty (30) days after District’s receipt of written notice from Contractor.
- 8.2 Remedies on Default. Upon an Event of Default referred to in Section 8.1 hereof, it shall be lawful for Contractor to exercise any and all remedies available pursuant to law or granted pursuant to this Facilities Lease; provided, however, there shall be no right under any circumstances to accelerate the Lease Payments or Tenant Improvement Payments or otherwise declare any Lease Payments or Tenant Improvement Payments not then in default to be immediately due and payable. Each and every covenant hereof to be kept and performed by District is expressly made a condition hereof and upon the breach thereof, Contractor may exercise any and all rights of entry and re-entry upon the Project and the Site, and also, at its option, with or without such entry, may terminate this Facilities Lease; provided, that no such termination shall be affected either by operation of law or acts of the parties hereto, except only in the manner herein expressly provided. In the event of such default and notwithstanding any re-entry by Contractor, District shall, as herein expressly provided, continue to remain liable for the payment of the Lease Payments and/or damages for breach of this Facilities Lease and the performance of all conditions herein contained and, in any event such rent and/or damages shall be payable to Contractor at the time and in the manner as herein provided. Notwithstanding the foregoing, Contractor shall use commercially reasonable efforts to mitigate its damages.
- 8.3 Intentionally Left Blank.
- 8.4 No Additional Waiver Implied by One Waiver. In the event any agreement contained in this Facilities Lease should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder. There shall be no waiver unless it is confirmed in writing. The conduct of the parties shall not modify the terms of this Agreement.
- 8.5 Application of Proceeds. All amounts derived by Contractor as a result of an Event of Default hereunder shall be applied by Contractor to any obligation of District owing to Contractor and in any order, in Contractor’s sole discretion.

**ARTICLE 9**  
**PURCHASE OPTION**

9.1 District's Option. If District is not then in Default hereunder, District shall have the option to purchase not less than all of Contractor's interests under this Facilities Lease and terminate this Facilities Lease and Site Lease, and shall pay Contractor for Work satisfactorily performed, as that term is defined in the Project Manual (Exhibit B to this Facilities Lease) and Exhibit A to this Facilities Lease, less any Lease Payments paid and Tenant Improvement Payments paid or owed by District. Upon payment as aforesaid and payment of all other amounts owed, Contractor shall deliver to District all reasonably necessary documents in recordable form to terminate this Facilities Lease and the Site Lease and transfer title to District. District may record all such documents at District's cost and expense.

Notwithstanding the above, the warranty and indemnification provisions found in Section 7.3 of this Facilities Lease and the Project Manual (Exhibit B to this Facilities Lease) and shall survive the termination of this Facilities Lease under this Section 9.1.

## ARTICLE 10

### MISCELLANEOUS

- 10.1 Notices. Any notice to either party shall be in writing and given by delivering the same to such party to the addresses set forth below in any of the following ways: (i) by personal delivery; (ii) by deposit in the United States express mail or first class mail, registered or certified, return receipt requested, postage prepaid; (iii) by overnight courier service, or (iv) by facsimile or e-mail transmission, provided that the original of such facsimile notice, or a copy of such e-mail notice, is sent by certified U.S. Mail, postage prepaid, no later than one (1) business day following such facsimile or e-mail transmission. All such notices shall be deemed delivered upon actual receipt (or upon the first attempt at delivery pursuant to the methods specified in clauses (a), (b) or (c) above if the intended recipient refuses to accept delivery).

If to District:                   NATOMAS UNIFIED SCHOOL DISTRICT  
1901 Arena Blvd  
Sacramento, CA 95834  
Attention: Facilities and Strategic Planning  
Telephone: (916) 567-5400  
Facsimile: (916) 567-5453

With copy to:                   Fagen Friedman & Fulfroost, LLP  
520 Capitol Mall, Suite 400  
Sacramento, CA 95814  
Attention:           Paul G. Thompson  
                          Jim Traber  
Telephone:           (916) 443-0000

If to Contractor:           See Project Specific Conditions

Any party may change its mailing address at any time by giving written notice of such change to the other parties in the manner provided therein. All notices under this Facilities Lease shall be deemed given, received, made or communicated on the date personal delivery is effected, or if mailed or sent by overnight delivery service, on the delivery date or attempted delivery date shown in the return receipt. No party shall refuse or evade delivery of any notice.

- 10.2 Binding Effect. This Facilities Lease shall inure to the benefit of and shall be binding upon Contractor and District and their respective successors, transferees and assigns.
- 10.3 Severability. In the event any provision of this Facilities Lease shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof, unless elimination of such invalid provision materially alters the rights and obligations embodied in this Facilities Lease or the Site Lease.
- 10.4 Amendments, Changes and Modifications. This Facilities Lease shall not be amended, changed, modified or altered without the written agreement of both parties hereto
- 10.5 Further Assurances and Corrective Instruments. Contractor and District agree that they will, from time-to-time, execute, acknowledge and deliver such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Site or the Project hereby leased or intended to be leased.
- 10.6 Execution in Counterparts. This Facilities Lease may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.
- 10.7 Applicable Law. This Facilities Lease shall be governed by and construed in accordance with the laws of the State of California. The parties further agree that any action of proceeding brought to enforce the terms and conditions of this Facilities Lease shall be maintained in Sacramento County, California.

- 10.8 Intentionally left blank.
- 10.9 Captions. The captions or headings in this Facilities Lease are for convenience only and in no way define, limit or describe the scope or intent of any provisions or Sections of this Facilities Lease.
- 10.10 Interpretation. It is agreed and acknowledged by District and Contractor that the provisions of this Facilities Lease and its Exhibits have been arrived at through negotiation, and that each of the parties has had a full and fair opportunity to revise portions of this Facilities Lease and its Exhibits and to have such provisions reviewed by legal counsel. Therefore, the rule of construction that any ambiguities are to be resolved against the drafting party shall not apply in construing or interpreting this Facilities Lease and its Exhibits.
- 10.11 Time. Time is of the essence of each and all of the terms and provisions of this Facilities Lease and its Exhibits.
- 10.12 Force Majeure. A party shall be excused from the performance of any obligation imposed in this 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 non performance will not be a default hereunder or a grounds for termination of this Facilities Lease.
- 10.13 Recitals Incorporated. The Recitals set forth at the beginning of this Facilities Lease are hereby incorporated into its terms and provisions by this reference.
- 10.14 Challenges to Transaction. Notwithstanding any provision in the Site Lease, Facilities Lease, or any other Contract Document with District, Contractor's actual construction Work, and the Work or calendar days allowed for completion, shall not commence until at least ninety days (90) days following the authorized vote of the Owner's governing board to approve and enter into this Agreement with Contractor. Nothing herein will prevent Contractor from performing preconstruction Work prior to the expiration of the 90 day period.

In the event any proceeding is filed that contests, directly or indirectly, the validity of this Agreement, including any of the Contract Documents, whether pursuant to Code of Civil Procedure section 860, et. seq., or any other regulation, statute, ordinance, or law (hereinafter referred to as a "Reverse Validation Action"), Contractor's rights and obligations under this Agreement and any of its part may be immediately suspended and/ or terminated for convenience, at District or Contractor's option. If either party elects to terminate for convenience, Contractor's compensation shall be in accordance with the Termination for Convenience provisions in the Contract Documents.

**IN WITNESS WHEREOF**, the parties hereto have caused this Facilities Lease to be executed by their respective duly authorized officers, to be effective as of the day and year first written above.

**NATOMAS UNIFIED SCHOOL DISTRICT**,  
a school district organized and existing under the laws  
of the State of California

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

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

**CONTRACTOR**

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

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

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

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

**Exhibit A  
to the Facilities Lease**

**GUARANTEED MAXIMUM PRICE, CONTINGENCY, FINAL SCHEDULE MILESTONES, AND EXCLUSIONS**

The parties acknowledge that certain non-DSA project staging work may need to occur prior to the finalization of a GMP. In such a case, the Parties anticipate approving this Exhibit A in stages, with the first addressing the scope, cost and time for the staging type work, and a second stage addressing the scope, cost and time for the DSA approved Work.

**DRAWINGS INDEX AND SPECIFICATIONS**

The following plans and specifications are included and incorporated herein by reference.

[To be inserted upon completion and DSA approval.]

**GMP Spreadsheet**

[To be Inserted Upon Completion and School Board Approval.]

Any exclusions to the GMP shall be listed upon finalization of the GMP.

**Schedule**

[Schedule Milestones to be completed and inserted with GMP for each project at each site.]



**Exhibit B  
to the Facilities Lease**

**PROJECT MANUAL**

**Drawings and specifications will be added to Exhibit A after DSA approval.**

**PART I: GENERAL CONSTRUCTION PROVISIONS**

These General Construction Provisions are included as an exhibit to the Facilities Lease and shall govern the construction of the Project by [CONTRACTOR] (“Contractor”).

**NOW, THEREFORE**, in consideration of the mutual promises and covenants contained herein, and in exchange for valuable considerations hereinafter mentioned, the receipt and adequacy of which is hereby acknowledged, District and Contractor agree as follows:

**Article 1. The Work and Contractor.**

Contractor agrees to furnish all labor, materials, apparatus, facilities, transportation, tools and equipment and to perform all the Work required to construct and complete in a good and workmanlike manner and in strict accordance with these General Construction Provisions, those certain improvements entitled:

**PROJECT NAME**

**Article 2. Purpose of Document.**

These General Construction Provisions set forth the construction provisions which will govern Contractor’s construction of the Project, as that term is defined herein.

**Article 3. Guaranteed Maximum Price.**

District agrees to pay Contractor, and Contractor agrees to receive and accept, for the performance of the Work, the amount specified as the GMP in Exhibit A of this Facilities Lease as full compensation for furnishing all materials, labor, apparatus, facilities, transportation, tools, and equipment, and for doing all the Work contemplated and embraced in this Facilities Lease and for all risks of every description connected with the Work and for all expenses incurred by or in consequence of the suspension or discontinuance of the Work, and for well and faithfully completing the Work and the whole thereof in the manner and according to these General Construction Provisions and the requirements of the Architect under them. Contractor expressly agrees that the Work contemplated hereby shall be performed in a good and workmanlike manner under the direction of and to the satisfaction of the Architect as provided in these General Construction Provisions.

**Article 4. Payments.**

District shall make payments on the account of this Facilities Lease as specified in the General Conditions and the Lease Payment Schedule (Exhibit D to this Facilities Lease).

**Article 5. Time of Performance.**

Upon the Board of the District approving the GMP, DSA’s approval of the Plans, and upon Contractor’s receipt of a Notice to Proceed with construction Work from District for commencement of the construction Work, Contractor shall prepare the schedule(s) identified in Article 13 of the General Conditions, Part II of the Project Manual (Exhibit B to the Facilities Lease) Section 13.05. See also school year calendar, A copy of the school year calendar has been included for reference (see School Year Calendar, Attachment 1 to the Project Manual, Exhibit B to the Facilities Lease).

**PART II: GENERAL CONDITIONS**

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## **SECTION 1: DEFINITIONS AND PRINCIPLES OF INTERPRETATION**

### **Section 1.01**

Whenever the following terms, titles, or phrases are used in the Contract Documents, as defined below, the intent and meaning thereof shall be as defined in this Article.

### **Section 1.02 Architect**

The "Architect" is the architectural firm engaged as an agent by District to perform the services set forth in the Contract Documents.

The Architect is designated by District as District's agent to perform all functions delegated to the Architect by the Contract Documents.

### **Section 1.03 Architect's Instruction Bulletin**

"Architect's Instruction Bulletins" are supplemental drawings or instructions which may be issued as necessary from time to time to make clear or define in greater detail the intent of the Contract Drawings and Specifications. There may be a change in Guaranteed Maximum Price or Contract Time involved with the work shown in the Bulletin.

### **Section 1.04 Architect's Supplemental Instruction (ASI)**

"Architect's Supplemental Instruction" is a written order issued by the Architect, directing Contractor to conduct minor changes in Work involving neither extra cost nor extra time, and being consistent with the scope and functioning of the project.

### **Section 1.05 Board of Trustees**

"Board of Trustees" shall mean the duly elected officials constituting the Board of Trustees of the Natomas Unified School District.

### **Section 1.06 Change Order**

"Change Order" shall mean a written order to Contractor, issued after execution of the Contract and a Construction Change Directive, signed by the District Representative and/or Architect, authorizing a change in the Work and, potentially, use of the Construction Contingency.

### **Section 1.07 Closeout Documents**

"Closeout Documents" are documents as required to meet the requirements of final completion as defined in Article 21 of the General Conditions, Part II of this Project Manual.

### **Section 1.08.1 Construction Change Directive (CCD)**

"Construction Change Directive" shall mean a written order to Contractor, issued after execution of the Contract, signed by the District Representative and/or Architect and Contractor, authorizing a change in the Work and potentially a Change Order.

### **Section 1.08.2 Contract Documents**

The "Contract Documents" shall include the Site Lease, Facilities Lease, the Performance Bond, the Payment Bond, the General Construction Provisions, these General Conditions, the Project Specific Conditions, Exhibits, the Technical Specifications, the Contract Drawings and Plans, all duly issued Addenda, Interpretations, Change Orders, Supplemental Drawings, Contractor's Guarantee and Bond, the Hazardous Materials Requirements, Preliminary Construction Schedule, and the Contract Schedule. The Request for Proposal and Contractor's Proposal for the Work shall be considered part of the Contract Documents. However, in the event of a conflict, all other Contract Documents will take precedence and control over the Request for Proposals and Contractor's Proposal.

### **Section 1.09 Contract Drawings or Plans**

The "Contract Drawings" or "Drawings" are the plans and working drawings which show the location, character, dimensions and details of the Work to be performed, and all supplemental drawings issued by District. Once approved, all such drawings are incorporated into and become a part of the Contract Documents.

**Section 1.10 Contract Schedule**

The “Contract Schedule” is the schedule produced by Contractor in response to the requirements of the Contract Documents. See Article 13 hereof, for specific requirements.

**Section 1.11 Date of Commencement**

“Date of Commencement” is the date established in the Notice to Proceed with construction Work. If there is no Notice to Proceed, it shall be the date of the executed Facilities Lease or such other date as may be established therein.

**Section 1.12 Date of Completion**

The terms “Date of Completion” and "Completion" shall have the meaning set forth in Section 21.05 of the General Conditions.

**Section 1.13 Day**

Unless otherwise expressly defined, a “day” shall mean a calendar day of twenty-four (24) hours, including each and every day of the year.

**Section 1.14 District**

“District” shall mean the Natomas Unified School District, a California school district.

**Section 1.15 District Representative**

“District Representative” shall mean District’s designated agent engaged to perform all functions delegated to the District Representative by the Contract Documents. The District Representative is the Superintendent or Designee. The District Representative will be Contractor’s primary contact during construction of the Project.

**Section 1.16 Division of the State Architect (DSA)**

“Division of the State Architect” is the California State agency responsible for checking contract documents for compliance with Title 24, California Code of Regulations, and monitoring compliance on the Site. The Division of the State Architect also approves inspectors on all public school projects.

**Section 1.17 Equal (as in “or equal”)**

“Equal” shall mean a system, process, product or material which is similar in all respects to that shown or specified but produced by a manufacturer not listed in the specification. See *also*: Substitution.

**Section 1.18 First Line Supervision**

“First Line Supervision” shall mean a working foreman or lead craft worker other than the project superintendent.

**Section 1.19 Interpretations**

“Interpretations” are all clarifications, additional instructions, and explanations issued by the Architect pursuant to Article 5 of the General Conditions, Part II of this Project Manual, after execution of this Facilities Lease.

**Section 1.20 Intentionally left blank.**

**Section 1.21 Intentionally left blank.**

**Section 1.22 Contractor**

“Contractor” shall mean the person or persons, partnership, or corporation, who has entered into this Facilities Lease with District or its legal representatives, or successors, assigns, executors, or heirs. Contractor is required by law to be licensed and will perform work or render services as a Prime Contractor in or about the construction of the Work.

### **Section 1.23 Materials**

“Materials” is a generic term which shall include all building materials, articles, supplies, and equipment delivered to the Project for incorporation in the Work. “Materials” includes everything incorporated into the Work except labor, unless otherwise noted.

“Equipment” shall mean all pre-manufactured or partially preassembled products or components, assembled or partially assembled before delivery to the Site.

### **Section 1.24 Not Used**

### **Section 1.25 Notice to Proceed**

“Notice to Proceed” is the notice given to Contractor according to Article 5 of the General Construction Provisions. The Notice to Proceed establishes the start of the Work and authorizes Contractor to begin construction.

### **Section 1.26 Office of Public School Construction (OPSC)**

“Office of Public School Construction” is the California State agency responsible for apportionment, disbursement and monitoring of State-provided school district capital improvement funds.

### **Section 1.27 Preliminary Construction Schedule**

“Preliminary Construction Schedule” is a schedule that establishes the milestone dates for completion of each major trade activity as well as the phasing of work by building and the overall duration of the Project.

### **Section 1.28 Product Data**

“Product Data” shall mean illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by Contractor to illustrate a material, product or system for some portion of the Work.

### **Section 1.29 Project**

“Project” shall be as defined in the Facilities Lease at Article 1, Section 1.1.9.

### **Section 1.30 Project Inspector / Inspector of Record**

The “Project Inspector” shall mean the person or persons employed or engaged as (an) independent contractor(s) by District to inspect the performance of the Work by Contractor for compliance with the Contract Documents. The Project Inspector is hereby designated as an agent of District for such purpose and no other. The Project Inspector is supervised by, and reports to, District. The authority of the Project Inspector to monitor the Work shall be strictly limited to that authority specified herein and in Title 24, California Code of Regulations, and no additional authority has been granted nor shall be inferred.

### **Section 1.31 Provide**

“Provide” shall mean to furnish, install, and connect, complete and ready for use.

### **Section 1.32 Reference to Codes**

Unless otherwise noted, all references to statutes are to the laws of the State of California and/or of the United States, as codified in the various specified codes.

### **Section 1.33 Request for Information (RFI)**

“Request for Information” is the name given to a document issued by Contractor seeking clarification and/or additional information regarding an aspect of the Work. The response to the RFI does not constitute authorization or direction to proceed with any changed or additional work. Changed or additional work must be separately authorized by District.

### **Section 1.34 Request for Proposal (RFP)**

“Request for Proposal” is the name given to a document issued by the District Representative or Architect requesting pricing information and/or an adjustment in the Term of this Facilities Lease for a described scope of work. An RFP is not a Change Order or a direction to proceed with the scope of work described in the RFP. Contractor’s response to the RFP shall be in the form of a Proposed Change Order (PCO).

### **Section 1.35 Samples**

“Samples” shall mean physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

### **Section 1.36 Shop Drawings**

“Shop Drawings” shall mean drawings, diagrams, schedules and other data specifically prepared by Contractor or any Subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work as more particularly described in section 11.02.

### **Section 1.37 Site**

“Site” is the area within which the Project is to be constructed.

### **Section 1.38 Special Inspector**

The “Special Inspector” shall mean the person or persons employed or engaged as (an) independent contractor(s) by District to inspect the performance of specific aspects of the work as required by Title 24, California Code of Regulations.

### **Section 1.39 Specifications**

“Specifications” include the special provisions, general conditions, general requirements, and technical specifications applicable to the Work, all duly executed and issued addenda and interpretations, and all modifications approved by District pursuant to a Change Order.

### **Section 1.40 Subcontractor**

“Subcontractor” shall mean each person or firm who is required by law to be and who is licensed to and will perform work, labor, or render services to Contractor in or about the construction of the Work, or who, under subcontract to the Contractor, fabricates and installs a portion of the Work or improvement.

“Subcontractor” shall include all persons or firms within the authority of the Subletting and Subcontracting Fair Practices Act, Chapter 2 of Division 5, Title I of the Public Contract Code, commencing with Section 4100.

### **Section 1.41 Submittal**

“Submittal” shall mean all product data, Shop Drawings, manufacturers’ instructions, samples, Equals, substitution requests and all other submissions that Contractor is required to provide to District and/or the Architect.

### **Section 1.42 Substitution**

“Substitution” shall mean a system, process, product or material similar in form or function and equal in quality and performance to that shown or specified, but differing in some essential element, e.g., chemical composition, mechanism of action, surface finish, dimensions, durability, electrical or mechanical or plumbing requirements. See *a/so*: Equal.

### **Section 1.43 Project Specific Conditions**

The “Project Specific Conditions” are specific clauses setting forth conditions or requirements peculiar to the Project, and supplementary to these General Conditions and Technical Specifications.

### **Section 1.44 Supply**

“Supply” shall mean to furnish only, complete and ready for installation, including shipping, delivery, protection, and any assembly required prior to installation.

## **SECTION 2: CONTRACT DOCUMENTS**

### **Section 2.01 The Facilities Lease**

This Facilities Lease and all other Contract Documents represent the entire and integrated agreement between District and Contractor and supersedes all prior negotiations, representations or agreements, either written or oral. This Facilities Lease may be amended or modified only by a Change Order as defined in Section 1.06 of these General Conditions. Nothing contained in the Facilities Lease or other Contract Documents shall create any contractual relationship between District, the District Representative or the Architect and any Subcontractor or sub-Subcontractor, or between the District Representative or the Architect and Contractor.

### **Section 2.02 General Intent of Contract Documents**

It is the overriding intent of the Contract Documents that the Work performed shall result in a complete and operable Project in satisfactory condition for occupancy, with all mechanical equipment in functional operating condition and fit for the use for which it is intended, and which complies with the Contract Documents. No extra compensation will be allowed for anything omitted but fairly implied to be included in the Contract Documents. The Guaranteed Maximum Price shall include full compensation for furnishing all labor, materials, tools, equipment and incidentals, and doing all items necessary to complete the Work as provided by the Contract Documents.

Unless otherwise specified in the Contract Documents, all materials shall be new and the best of their representative kinds and grades as noted or specified, and workmanship shall be of good quality.

### **Section 2.03 Labor and Materials**

Unless otherwise provided in the Contract Documents, Contractor shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, light, heat, utilities, transportation and other facilities and services necessary for the execution and completion of the Work in accordance with the Contract Documents and perform its Work in compliance with applicable codes or statutes, whether or not specifically described herein, as long as same is reasonably inferable therefrom as being necessary to produce the intended results, whether temporary or permanent, and whether or not incorporated or to be incorporated in the Work.

### **Section 2.04 Complementary Feature of Various Parts of Contract Documents**

The Contract Documents, including the Plans and Specifications and Contract Drawings, are complementary, and what is called for by any shall be as binding as if called for by all. In case of conflict, large scale (detail) drawings shall govern over small-scale drawings, the specifications shall govern over the Contract Drawings except as noted below, special provisions shall govern over both the Contract Drawings and the General Conditions, and subsequent addenda, interpretations, or approved Change Orders shall govern over the original documents, unless a different order of precedence is noted elsewhere in conjunction with a specific portion of the documents.

In case of conflict between the Drawings and Specifications, the Drawings shall govern in matters of quantity and size, the Specifications in matters of quality. In case of conflict within the Drawings involving quantities or within the Specifications involving quality, the greater quantity and the higher quality shall be provided.

Where on any Drawing a portion of the Work is drawn out and the remainder is indicated in outline, the drawn-out parts shall apply to all other like portions of the Work. Where ornament or other detail is indicated as starting, such detail shall be continued throughout the courses or parts in which it occurs and shall also apply to other similar parts in the Work, unless otherwise indicated.

Scale drawings, full-size details, and specifications are intended to be fully coordinated and to agree. Where not specifically stated otherwise, all labor and materials necessary for each unit of construction, even though only briefly mentioned or indicated, shall be furnished and installed fully and completely, including, but not limited to, the manufacturer's instructions and/or recommendations, as part of this Facilities Lease.

Any material specified by reference to the number, symbol, or title of a specified standard such as a Commercial Standard, a Federal Specification, a trade association standard, or other similar standards, shall comply with the requirements in the latest approved revision thereof and any amendments or supplements thereto in effect on the date of Notice to Lease Leaseback Entities except as limited to type, class, or grade, or modified in such reference. The standards referred to, except as modified in the Specifications, shall have full force and effect as though printed in the Specifications.

## **Section 2.05 Detail Drawings and Instructions**

In case of ambiguity or lack of information, Architect shall furnish additional instructions by means of drawings or otherwise, necessary for proper execution of work. All such drawings and instructions shall be consistent with Contract Documents, true developments thereof, and reasonably inferable therefrom. Such additional instructions shall be furnished with reasonable promptness, provided that Contractor informs the Architect of the relationship of the request to the critical path of construction.

Work shall be executed in conformity therewith and Contractor shall do no work without proper drawings and instructions.

The Architect will furnish necessary additional details to more fully explain the Work, which details shall be considered as part of the Contracts Documents.

Should any details be more elaborate, in the opinion of Contractor, than scale drawings and specifications warrant, Contractor shall give written notice thereof to the Architect within five (5) days of the receipt of same. In case no notice is given to the Architect within five (5) days, it will be assumed the details are reasonable developments of the scale drawings. In case notice is given, then it will be considered, and if found justified, the Architect will either modify the drawings or shall recommend to District a Change Order for the extra work involved.

All parts of the described and shown construction shall be of the quality of their respective kinds required by the Contract Documents and Contractor is hereby advised to use all diligence to become fully involved as to the required construction and finish, and in no case to proceed with the different parts of the Work without obtaining first from the Architect such directions and/or drawings as may be necessary for the proper performance of the Work.

If it is found at any time, before or after completion of the Work (but subject to the period for correction of the Work under section 17.02 below) that Contractor has materially varied from the Drawings and/or Specifications, in materials, quality, form or finish, the Architect shall make a recommendation:

- (a) that all such improper Work should be removed, remade and replaced, and all work disturbed by these changes be made good at Contractor's expense; or
- (b) that 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. Architect shall determine such difference in value for District review. District, at its option, may pursue either recommendation made by the Architect.

If it is determined that Contractor has varied from the Contract Documents and described above, District Representative will contact Contractor for their input and cooperation on resolving any related issue.

## **Section 2.06 Ownership and Use of Documents**

All original drawings, specifications and other incidental architectural and engineering work or materials and other project documents prepared by the Architect and furnished by District are and shall remain the property of District. They are not to be used by Contractor in other work and are to be returned to District on request at completion of the Work, and may be used by District as it may require, without any additional costs to District.

## **Section 2.07 Successors and Assigns**

District and Contractor each binds itself, its partners, successors, assigns and legal representatives to the other party hereto and to the partners, successors, assigns and legal representatives of such other party in respect to all covenants, agreements and obligations contained in the Contract Documents. Contractor shall not assign this Facilities Lease or sublet it in whole or part without the written consent of District nor shall Contractor assign any moneys due or to become due to it hereunder without the prior written consent of District. Any other attempt to assign, transfer, convey, sublet, or otherwise dispose of this Agreement or its right, title or interest therein, or any part thereof, such attempted or purported assignment, transfer, conveyance, sublease, or other disposition shall be null, void and of no legal effect whatsoever; and this Facilities Lease may, at the option of District, be terminated, revoked and annulled, and District shall thereupon be relieved and discharged from any and all liability and obligations flowing out of the same to Contractor, and to its purported assignee or transferee.



## **Section 2.08 Written Notice**

Written notice may be accomplished by personal delivery, United States mail, telegram, facsimile or any other form of commercially accepted communication. The written notice shall become effective upon delivery. Delivery is complete when the notice is hand-delivered to Contractor's home office, job-site office, or to Contractor's superintendent; or when the facsimile transmission is complete; or two (2) days after mailing by U.S. mail; or upon actual delivery as evidenced by a delivery receipt.

## **Section 2.09 Rights and Remedies**

The duties and obligations of Contractor imposed by the Contract Documents and the rights and remedies of District available there under shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

The failure of District, the District Representative, the Project Inspector or the Architect to insist in any one or more instances upon the strict performance of any one or more of the provisions of this Facilities Lease or to exercise any right herein contained or provided by law, shall not be construed as a waiver or relinquishment of the performance of such provision or right(s) or of the right to subsequently demand such strict performance or exercise such right(s) and the rights shall continue unchanged and remain in full force and effect.

Contractor agrees that it can be adequately compensated by money damages for any breach of this Facilities Lease which may be committed by District; and hereby agrees that no default, act or omission of District, the District Representative, the Project Inspector or the Architect, shall constitute a material breach of this Facilities Lease entitling Contractor to cancel or rescind the provisions of this Facilities Lease or to suspend or abandon performance of all or any part of the Work. Contractor hereby waives any and all rights and remedies to which it might otherwise be or become entitled, saving only its right to money damages.

## **Section 2.10 Unenforceability of Any Clause**

If any clause or provision of the Contract Documents is held to be unenforceable or invalid, then that provision of this Facilities Lease shall be stricken and the remaining portion shall remain in full force and effect.

## **Section 2.11 Other Contracts**

District reserves the right to award or enter into other contracts in connection with this Work. Contractor shall afford other contractors reasonable opportunity for introduction and storage of their materials and execution of their work and shall properly connect and coordinate its Work with such other contractors.

If any part of Contractor's Work depends for proper execution or results upon work of any other contractor, Contractor shall inspect and promptly report to the District Representative in writing any defects in such work that render it unsuitable for such proper execution and results. Contractor's commencement of its Work shall serve as its certification that it has satisfied itself that the other contractor's work is fit and proper. Contractor will be held accountable for damages to District for that work which it failed to inspect or should have inspected. Contractor's failure to review and report shall constitute its acceptance of other contractor's work as fit and proper for reception of its Work, except as to defects which may develop in other contractor's work after execution of Contractor's Work.

To insure proper execution of its subsequent Work, Contractor shall measure and review work already in place and shall at once report to the District Representative in writing any discrepancy between executed work and Contract Documents.

Contractor shall ascertain to its own satisfaction the scope of the Project and nature of 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 Facilities Lease in the light of such other contracts, if any.

Nothing herein contained shall be interpreted as granting to Contractor exclusive occupancy at the site of the Project. Contractor shall not cause any unnecessary hindrance or delay to any other contractor working on the Project. If simultaneous execution of any contract for the Project is likely to cause interference with performance of some other contract or contracts, District shall decide which contractor shall cease work temporarily and which contractor shall continue or whether work can be coordinated so that contractors may proceed simultaneously.

District shall not be responsible for any damages suffered or extra costs incurred by Contractor resulting directly or indirectly from award or performance or attempted performance of any other contract or contracts on Project, or caused by any decision or omission of District respecting the order of precedence in performance of contracts.

## **SECTION 3: BONDS AND BONDING; INDEMNIFICATION AND INSURANCE**

### **Section 3.01 Bonds**

Contractor shall furnish a surety bond in an amount equal to one hundred percent (100%) of contract price as security for faithful performance of this Facilities Lease and shall furnish a separate bond in an amount of one hundred percent (100%) of the contract price as security for payment to persons performing labor and furnishing materials in connection with this Project. Bonds shall be in the form set forth in these Contract Documents.

Only bonds executed by admitted surety insurers as defined in Code of Civil Procedure Section 995.120 shall be accepted. Surety must be a California-admitted surety and listed by the U.S. Treasury with a bonding capacity in excess of the Project cost.

### **Section 3.02 Bonds: Time to Submit**

Before District will issue a Notice to Proceed, Contractor shall furnish and deliver to District bonds as set forth below in Sections 3.03, 3.04, 3.05 and 3.06 (if applicable).

### **Section 3.03 Qualifications of Surety**

All bonds shall be duly executed by a responsible corporate surety listed in the current version of the United States Department of the Treasury circular entitled "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies," admitted by the State of California Department of Insurance to do business in the State of California and acceptable to District.

Only bonds executed by admitted surety insurers as defined in Code of Civil Procedures Section 995.120 shall be accepted. Surety must be a California-admitted surety and listed by the U.S. Treasury with a bonding capacity in excess of the Project costs.

### **Section 3.04 Performance Bond**

The Contractor shall submit a faithful Performance Bond on the form provided in this contract conditioned upon the faithful performance by Contractor of all requirements of the Contract Documents. The amount of the bond shall be in a sum no less than one hundred percent (100%) of the total Guaranteed Maximum Price (including the Construction Contingency), as set forth in Exhibit A to the Facilities Lease).

### **Section 3.05 Labor and Materials Payment Bond**

Contractor shall also submit a bond on the form provided with the Contract Documents, which in all respects complies with Civil Code Sections 9550-9566, inclusive, . This bond, hereinafter referred to as a "Payment Bond," shall be in a sum no less than one hundred percent (100%) of the Guaranteed Maximum Price (including the Construction Contingency), as set forth in Exhibit A to the Facilities Lease.

### **Section 3.06 Reserved.**

### **Section 3.07 Additional Bonding Requirements**

All bonds submitted shall include the following:

- (a) Full name and address of Contractor, Surety, and District,
- (b) Contract Date,
- (c) Guaranteed Maximum Price,
- (d) Project name, address, and job number,
- (e) Signature of Contractor,
- (f) Corporate Seal, if applicable,
- (g) Signature of authorized Surety Representative,
- (h) Notarization of Contractor and Surety,
- (i) Power of Attorney,

- (j) Local contact for Surety, with name, phone number, and address to which legal notices may be sent.

### **Section 3.08 Indemnification**

To the extent allowed by the laws of the State of California, Contractor shall indemnify, defend with legal counsel reasonably acceptable to the District, keep and hold harmless the District, and its respective board members, officers, representatives, and employees, in both individual and official capacities ("Indemnitees"), against all suits, claims, damages, losses, and expenses ("Indemnification Claims") asserted by third parties (including but not limited to Subcontractors) that result from any negligence or willful misconduct by Contractor or its officers, agents, employees or Subcontractors, including, without limitation, Indemnification Claims for bodily injury, sickness, disease, death, 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 any liabilities created by Contractor's failure to comply with the Skillilled Labor provisions set forth in Section 8.02 below, except to the extent caused by the negligence or willful misconduct of the Indemnitees, or by defects in designs furnished by, or at the direction of, one or more the Indemnitees. This Agreement and obligation of 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. The indemnification obligation for a violation of a patent or copyright infringement shall not apply to any product, equipment, goods, material, design, service or other information specifically required by District.

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 Contractor's agreement to indemnify, defend, and hold harmless the Indemnitees as provided herein against 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 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.

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

To the extent allowed by the laws of the State of California, District shall indemnify, but shall not be obligated to defend, Contractor from and against any claims, damages, expenses or liabilities connected with this Facilities Lease, only (1) if those claims, damages, expenses or liabilities relate to District's status as a sublessee under this Facilities Lease; (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 (3) only if those claims, damages, expenses or liabilities are unrelated to District's obligations to pay the Guaranteed Maximum Price.

### **Section 3.09 Reserved.**

### **Section 3.10 Insurance**

Contractor shall obtain, and maintain during the entire Term of this Facilities Lease, at its sole cost and expense, all insurance required by this Article and Sections 3.13 – 3.19 hereof. Certificates of such insurance and copies of the insurance policies and endorsements shall be delivered to District before execution of this Facilities Lease.

Every policy shall be endorsed to state that it shall not be assigned, canceled, or reduced in coverage without thirty (30) days' prior written notice to District. Every policy shall also be endorsed to state that District shall be given notice of non-renewal at least thirty (30) days prior to the non-renewal date.

Contractor shall not commence Work until all required insurance documentation has been submitted to and accepted by District.

Failure of Contractor to maintain all required insurance during the entire Term of this Facilities Lease shall constitute a default entitling District to all rights and remedies that exist in the Contract Documents and/or by law.

### **Section 3.11 Subcontractor's Insurance**

Contractor shall not allow any Subcontractor to commence Work on its subcontract until the Subcontractor has provided the insurance specified below. Contractor shall require each of its Subcontractors to procure and to maintain, during the life of the subcontract, \$1,000,000 each occurrence bodily injury and property damage combined, \$1,000,000 for personal injury liability, \$2,000,000 products and completed operations aggregate, \$2,000,000 general aggregate and \$1,000,000 workers' compensation insurance per statute, including, without limitation, the requirement that the Subcontractor's policy shall be endorsed (1) to include by name Contractor, District, District Representative, the District and their officers and employees as additional insured and shall provide that they are primary with any insurance maintained by District as non-contributory and will have severability of interest endorsement, and (2) to waive all rights of subrogation against Contractor, District, District Representative, or any of their respective officials, employees and volunteers for losses arising from work performed by Contractor for District.

It shall be the responsibility of Contractor to ensure that all Subcontractors comply with this provision, and to verify their compliance when requested by District.

If requested by District, Contractor shall deliver certificates of insurance or copies of the insurance policies and endorsements of all Subcontractors; provided, however, that this authority shall not relieve Contractor of its obligation to ascertain the existence of such insurance.

### **Section 3.12 Effective Date of Policies**

The insurance required by this Article shall be maintained by Contractor in full force and effect at all times during prosecution of the Work and (unless otherwise noted below) until two (2) years after the Date of Completion.

Builder's Risk insurance needs only to be in place during construction as discussed below.

### **Section 3.13 Liability Insurance**

Contractor and its Subcontractors shall procure and maintain insurance on all of their operations during the progress of the Work, with reliable insurance companies, on forms acceptable to District, for the following minimum insurance coverage's:

- (a) Commercial general liability insurance, including but not limited to protection for claims of bodily injury and property damage liability, personal and advertising injury liability and products completed operations liability. Coverage shall be with limits of not less than the limits stated in the Project Specific Conditions.

The insurance shall cover all operations of Contractor and its Subcontractors, including but not limited to the following:

- (1) premises, operations and mobile equipment liability;
  - (2) completed operations and products liability;
  - (3) contractual liability insuring the obligations assumed by Contractor, its Subcontractors and independent contractors under the Contract Documents;
  - (4) explosion, collapse, and underground property damage;
  - (5) broad form property damage liability endorsement.
- (b) Automobile bodily injury and property damage insurance, including all owned, hired and non-owned equipment with combined bodily injury and property damage liability of in the amounts stated in the Project Specific Conditions).
  - (c) Any excess liability coverage used to supplement both the general and automobile liability must either (1) be from the same carrier as the primary insurance, or (2) include the policy statement wherein it describes what the underlying primary coverage must be before the excess liability coverage takes effect.
  - (d) Additional coverage's and/or limits may be required in the Project Specific Conditions. If the Project Specific Conditions require limits of the General Liability and Automobile Liability insurances exceeding those stated above, Contractor shall carry excess or umbrella liability insurance providing excess coverage at least as broad as the underlying coverage with a limit equal to the amount stated in the Project Specific Conditions per occurrence and aggregate.

### **Section 3.14 Liability and Property Damage Insurance**

Before the commencement of the Work, Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in California as admitted carriers with a financial rating of at least A, Class VII status as rated in the most recent edition of Best's Insurance Reports, such insurance, in amounts as set forth in the Contract Documents, covering the type of claims set forth below, which may arise out of or result from Contractor's operations under this Facilities Lease and for which Contractor may be legally liable, whether such operations are by Contractor, by a Subcontractor, by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- (a) Claims for damages because of bodily injury, sickness, disease, or death of any person other than Contractor's employees;
- (b) Claims for damages insured by usual personal injury liability coverage, which are sustained by a person as a result of an offense directly or indirectly related to employment of such person by Contractor or by another person;
- (c) Claims for damage because of injury or destruction of tangible property, including loss of use resulting therefrom, arising from operations under the Contract Documents;
- (d) Claims for damages because of bodily injury, death of a person, or property damage arising out of the ownership, maintenance, or use of a motor vehicle, all mobile equipment, and vehicles moving under their own power and engaged in the work;
- (e) Claims involving blanket contractual liability applicable to Contractor's obligations under the Contract Documents, including liability assumed by and the indemnity and defense obligations of Contractor and the Subcontractors; and
- (f) Claims involving Completed Operations, Independent Contractors' coverage, and Broad Form property damage, without any exclusions for collapse, explosion, demolition, underground coverage, and excavating. (XCU)

Contractor shall require its Subcontractors to take out and maintain similar general liability insurance and property damage insurance required in this Article in like amounts. A "claims made" or modified "occurrence" policy shall not satisfy the requirements of this Article without prior written approval of District.

District shall be responsible for purchasing and maintaining District's usual liability insurance. Optionally, District may purchase and maintain other insurance for self protection against claims which may arise from operations under this Facilities Lease. Contractor shall not be responsible for purchasing and maintaining this optional District's liability insurance unless specifically required by the Contract Documents.

Contractor shall name, on any policy of insurance required under this Article, District, its trustees, officers, agents, employees and volunteers, individually and collectively, as additional insureds. Subcontractors shall name additional insured's per section 3.11 hereof. The Additional Insured Endorsement included on all such insurance policies shall state that coverage is afforded the additional insured with respect to claims arising out of operations performed by or on behalf of the insured. If the additional insureds have other insurance which is applicable to the loss, such other insurance shall be on an excess or contingent basis. The amount of the insurer's liability shall not be reduced by the existence of such other insurance.

Contractor shall submit proof of insurance and shall provide endorsements on the forms provided by District or on forms approved by District. Such endorsements shall be submitted concurrently with the Contract Documents.

### **Section 3.15 Fire Insurance**

Contractor will procure at Contractor's own expense and before commencement of any work under this Facilities Lease, fire insurance on the Project with course of construction, without exclusions, vandalism, and malicious mischief clauses attached. Amount of fire insurance shall be sufficient to protect against loss or damage in full until Completion, as defined in Section 21.05. Contractor shall submit proof of insurance and shall provide endorsements on forms provided by District or on forms approved by District. Such endorsements shall be submitted concurrently with the Contract Documents.

### **Section 3.16 Workers' Compensation Insurance**

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

Contractor shall provide, during the life of this Facilities Lease, workers' compensation insurance for all of its employees engaged in Work under this Facilities Lease, on or at the site of the Project, and, in case any of its Work is sublet, Contractor shall require the Subcontractor similarly to provide workers' compensation insurance for all the latter's employees. Any class of employee or employees not covered by a subcontractor's insurance shall be covered by Contractor's insurance. In case any class of employees engaged in work under this Facilities Lease, on or at the Site of the Project, is not protected under the workers' compensation statute, Contractor, upon learning of the situation, shall cause a Subcontractor to provide, adequate insurance coverage for the protection of such employees not otherwise protected before Subcontractor commences Work. Contractor shall file with District certificates of its insurance protecting its employees and a 30-day notice shall be provided to District before the cancellation or reduction of any policy of Contractor or Subcontractor. Contractor shall submit proof of insurance and shall provide endorsements on the forms provided by District or on forms approved by District. Such endorsements shall be submitted concurrently with the Contract Documents.

**Section 3.17 Builder's Risk Insurance.** Contractor, during the progress of the Work and until Date of Completion as defined in Section 21.05, shall maintain Builder's Risk, course-of-construction insurance issued on a completed value basis on all insurable work included under the Contract Documents. Coverage is to provide extended coverage and insurance for damage to the work and related materials including but not limited to vandalism, malicious mischief, perils of fire, sprinkler leakage, collapse, wind, lightning, smoke, debris removal (including demolition), including completed work and work in progress to the full insurable value thereof. Such insurance shall include District, its trustees, officers, agents, employees and volunteers, the Architect and the Architect's consultants, and any other person with an insurable interest designated by District, individually and collectively, as additional insureds.

The risk of the damage to the Work due to the perils covered by the Builder's Risks Insurance, as well as any other hazard which might result in damage to the Work, is that of Contractor and the surety, and no claims for such loss or damage shall be recognized by District nor will such loss or damage excuse the complete and satisfactory performance of this Facilities Lease. Notwithstanding the foregoing, if other insurance policies also provide coverage damage covered by Contractor's Builder's Risk policy, Contractor's Builder's Risk insurer may pursue any existing subrogation rights it may have, if any. This Builder's Risk insurance does not need to be in place during preconstruction work, but must be in place before construction work begins. Builder's Risk insurance does not include flood/earthquake or terrorism insurance coverage, and these coverages are not required. Natomas Unified will indemnify and hold harmless Contractor against all costs, fees, and losses caused by earthquake, flood or terrorism.

### **Section 3.18 Other Insurance**

Contractor shall provide all other insurance required to be maintained under applicable laws, ordinances, rules, and regulations.

### **Section 3.19 Proof of Carriage of Insurance**

Contractor shall not commence work nor shall it allow any Subcontractor to commence work under this Facilities Lease until all required insurance certificates and endorsements have been obtained and delivered in duplicate to and approved by District, subject to the requirements contained in this Article.

Certificates and insurance policies shall include the following:

- (a) A clause stating:  
**"This policy shall not be non-renewed, canceled or reduced in required limits of liability or amount of insurance until notice has been mailed to District. Date of non-renewal, cancellation or reduction may not be less than thirty (30) days after date of mailing notice."**
- (b) 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.
- (c) Statement that District, its trustees, officers, agents, employees and volunteers, individually and collectively, as additional insureds under the policy described and that such insurance policy shall be primary to any insurance or self-insurance maintained by District.
- (d) In the event of the failure of any by Contractor to furnish and maintain any insurance required by this Facilities Lease, Contractor shall be in default under this Facilities Lease. Compliance by Contractor with the requirement to carry insurance and furnish certificates or policies evidencing the same shall not relieve Contractor from liability assumed under any provision of the Contract Documents, including, without limitation, the obligation to defend and indemnify District, its trustees, officers, agents, employees and volunteers, the Architect and the Architect's consultants, individually and collectively, as additional insureds.

- (e) Contractor and its Subcontractors shall produce a certified copy of any insurance policy required under this Facilities Lease upon written request of District.
- (f) In case of Contractor's failure to provide insurance as required by this Facilities Lease, District may, at District's option, take out and maintain at the expense of Contractor, such insurance in the name of Contractor, or Subcontractor, as District may deem proper and may deduct the cost of taking out and maintaining such insurance from any sums which are due or to become due to Contractor under this Facilities Lease.

## **SECTION 4: PERMITS, LICENSES, ORDINANCES, AND REGULATIONS**

### **Section 4.01 Basic Standard**

Contractor shall conduct the Work so that all laws and ordinances for the protection of the public and the workers shall be obeyed fully both by Contractor and by all Subcontractors on the Site.

Contractor shall comply with the requirements of the California State Licensing Board and have a valid contractor's license which is to be active as to the date of the receipt of project proposals and/or quotes and maintained in "Good Standing" from the receipt of project proposals and/or quotes throughout the Project. The class of license required is as indicated in the Project Index.

### **Section 4.02 Permits**

District will pay all fees required by the Division of the State Architect, Department of General Services, State of California. District will reimburse Contractor for utility connection fees, encroachment permits, utility service charges other than temporary utility charges; as necessary for the completion of the Work (unless otherwise indicated in the Contract Documents). All other fees and permits shall be at the expense of Contractor and shall be part of the Guaranteed Maximum Price (see Exhibit A to the Facilities Lease). If specific fees are listed in the Contract Documents, those fees will also be the responsibility of Contractor and shall be part of the Guaranteed Maximum Price. Proper documentation of fee, permit, and utility service charges shall be submitted to District through the District Representative for review. No mark-up shall be allowed to Contractor on these reimbursable charges.

Contractor shall give all notices and comply with all laws, ordinances, rules, regulations or orders of any public authority bearing on the performance of the Work.

Except as provided above, District shall secure and pay for necessary approvals, easements, assessments and charges required for the construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

### **Section 4.03 Compliance with Laws and Regulations**

Contractor shall keep itself fully informed of and shall observe and comply with, and shall cause any and all persons, firms, or corporations employed by it or under it to observe and comply with all federal and state laws, and county or municipal ordinances, regulations, orders, and decrees which in any manner affect those engaged or employed on the Work, or the materials used in the Work, or in any way affect the conduct of the Work.

All Work shall be performed in accordance with the rules and regulations, Title 24, Parts 1-5 and 9, California Code of Regulations, and Division of the State Architect, and a copy shall be kept on the job at all times during construction.

Contractor shall give all notices and comply with all laws, ordinances, rules, and regulations applicable to the Work as indicated and specified.

If Contractor observes that Plans or Specifications or Contract Drawings are at variance therewith, in consultation with District, Contractor shall promptly notify Architect in writing and any changes deemed necessary by the Architect shall be adjusted as provided for changes in Work. If Contractor performs any Work which it knew, or through exercise of reasonable care should have known, to be contrary to such laws, ordinances, rules or regulations, and without such notice to District, Contractor shall bear all additional direct costs arising therefrom. Contractor shall not be liable if the Architect's Plans and Specifications unambiguously require Work that is inconsistent with law. If Contractor suspects any of Architect's Plans and Specifications require Work that is inconsistent with law, Contractor shall ask Architect for clarification. Where Plans or Specifications or Contract Drawings state that materials, processes, or procedures must be approved by the Division of State Architect, State Fire Marshall, or other body or agency, Contractor shall be responsible for satisfying requirements of such bodies or agencies.

Contractor shall be responsible for familiarity with the Americans with Disabilities Act ("ADA") (42 USC § 12101 *et seq.*). Installations of equipment and other devices shall be in compliance with all ADA regulations. If Contractor discovers that the Contract Drawings are at variance with such regulations, Contractor shall submit a RFI to Architect under Section 5.05 below.



## **SECTION 5: INTERPRETATION OF DRAWINGS AND SPECIFICATIONS**

### **Section 5.01 Familiarity with Project Site Conditions and Contract Documents**

By entering into this Facilities Lease and subsequent finalization of Exhibit A, Contractor represents that Contractor has visited the Site, is satisfied as to the nature and location of the Work, is satisfied as to the character, quality and quantity of the Work, has become familiar with the local conditions under which the Work is to be performed, has made whatever contact and investigation with utility companies that it deems necessary, and has correlated its site observations with the requirements of the Contract Documents. Failure to visit the Site will not relieve Contractor of responsibility for observing and considering those conditions which a qualified contractor would have observed.

### **Section 5.02 Subsurface Conditions**

Where investigations of subsurface conditions have been made by or on behalf of District with respect to subsurface conditions, utilities, foundations, or other structural designs, and that information is shown on the Contract Drawings or Plans, it represents only a statement by District as to the character of the materials which have been encountered by District's investigation. This information is only included for the convenience of prospective Contractors, the Contractor and Subcontractors.

Investigations of subsurface conditions are made for the purpose of design only. District assumes no responsibility with respect to the sufficiency or accuracy of borings or of the log of test borings or other preliminary investigations or of the interpretation thereof. There is no guaranty, express or implied, that the conditions indicated are representative of those existing throughout the Project or the Work, or any part of the Project or the Work, or that unanticipated conditions may not occur. When a log of test borings, soils studies and/or any other report of subsurface conditions is included with the Contract Drawings or Plans, it is expressly understood that such log, soils studies and/or report of subsurface conditions are a part of the Contract Documents, represents only a consultant's opinion as to the character of the materials to be encountered but Contractor may rely on the information in such report.

Nothing herein contained shall be deemed a waiver by Contractor to pursue any available legal right or remedy it may have at any time against any third party who may have prepared any report and/or test relied upon by Contractor.

### **Section 5.03 Concealed or Unknown Conditions**

If conditions are encountered at the Site which are subsurface or otherwise concealed physical conditions, which differ materially from those indicated in the Contract Documents, or unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than ten (10) calendar days after first observance of the conditions. Architect, in consultation with District, will promptly investigate such conditions, and if they differ materially and cause an increase or decrease in Contractor's cost of, time required for, or performance of any part of the work, will recommend an equitable Change Order. If Architect, in consultation with District, determines that the conditions at the site are not materially different from those indicated in the Contract Documents the Architect, in consultation with District, shall so notify Contractor in writing, stating the reasons. Architect's response to the claim must be made within ten (10) calendar days of receipt of the claim.

### **Section 5.04 Sections of Drawings and Specifications**

For convenience, the Plans, Specifications and Contract Drawings in the Contract Documents (see Attachment 4 to this Project) are arranged in several sections, but this separation shall not be considered as the limits of the work required of any separate trade. The scope of work is that indicated in the Project Index (which is part of this Project Manual). The terms and conditions of the work to be performed by any Subcontractor are strictly between Contractor and the Subcontractor.

### **Section 5.05 Interpretation and Additional Instructions**

Should Contractor discover any conflicts, omissions, or errors in the Contract Documents, or have any question concerning interpretation or clarification of the Contract Documents, or if it appears that the Work to be done or any matters relative thereto are not sufficiently detailed or explained in the Contract Documents, then before proceeding with the work affected, Contractor shall within forty-eight (48) hours notify the District Representative in writing and request interpretation, clarification, or additional detailed instructions and/or drawings concerning the work. All such questions shall be resolved and instructions to Contractor issued by the Architect, in consultation with District.

Should Contractor proceed with the Work affected before receipt of instructions from the Architect, and, in the case of a change to the Work, before receipt of authorization to proceed, it shall remove and replace or adjust any Work which is not in accordance therewith, and it shall be responsible for any resultant damage, defect, or added cost without an extension of the Term of this Facilities Lease.

#### **Section 5.06 Architect's Instruction Bulletins, ASI's and Drawings**

In addition to the Contract Drawings incorporated in the Contract Documents, the Architect, through the District Representative, may furnish such supplemental drawings or instructions from time to time as may be necessary to make clear or to define in greater detail the intent of the Contract Drawings and Specifications. In furnishing additional drawings or instructions, District, via the Architect, shall have the authority to make minor changes in the Work, not involving any extra cost, and not inconsistent with the overall design of the Project. These supplemental drawings and instructions shall become a part of the Contract Documents; Contractor shall make its work conform to them.

#### **Section 5.07 Notification of Disagreement Regarding Scope of Work**

If agreement cannot be reached as to cost, and Contractor does not agree that work due to an interpretation or supplemental drawing or instruction is within the scope of the Contract Documents, Contractor shall, within seven (7) days after receipt of the interpretation or instruction, submit a change request to the District Representative specifying in detail in what particulars the contract requirements were exceeded and request that a Change order be issued to adjust the GMP and/or the Date of Completion resulting therefrom. The District Representative shall then determine whether a Change Order is issued.

Contractor shall nevertheless perform such work without delay.

The time during which the protest is pending shall not affect the Term of this Facilities Lease.

#### **Section 5.08 As-Built Drawings and Specifications**

Contractor will prepare and maintain on a current basis an accurate and complete set of Record Drawings showing clearly all changes, revisions, and substitutions during construction, including, without limitation, field changes and the final location of all mechanical equipment, utility lines, ducts, outlets, structural members, walls, partition, and other significant features, and annotated specifications showing clearly all changes, revisions, and substitutions during construction. Record drawings are to remain on site. Contractor shall require each trade to do its own Record Drawings. A copy of such Record Drawings and annotated specifications will be delivered to District in accordance with the schedule prepared by Contractor.

The information to be recorded by Contractor will be determined by the Architect, who will be responsible for preparing the final, reproducible as-built drawings based upon the information submitted by Contractor. Contractor's as-built information shall be clear and legible, and at a minimum, the following information shall be inserted and dimensioned on those drawings and specifications, in RED, by Contractor: the exact horizontal and vertical location of all installations in their finished condition, including all electrical, plumbing and mechanical installations; all changes in construction, materials and installed equipment; posting of all issued addenda and Architectural/Engineer Instructional Bulletins to the approved project documents; adequate dimensional data, both horizontal and vertical, to allow location of covered installations; the identification of changes authorized by Change Order, and the number of that Change Order. The updated drawings and specifications shall be available for review by the District Representative and the Project Inspector.

Written confirmation from the District Representative that the as-builts have been properly updated weekly shall be submitted with each pay application request, and the existence of such properly updated as-builts shall be a condition precedent to payment. Failure to comply with the preparation and submission of as-builts may result in District withholding the current progress payment.

As a condition to certification of final completion, Contractor shall provide the original as-built drawings and specifications, together with all additional information requested by the Architect to enable the Architect to prepare a set of final, reproducible as-built drawings and specifications. Timely submission of complete as-built documents shall be a condition precedent to certification of final completion and to issuance of the final Tenant Improvement Payment. Delays in the submission of complete as-built documents may subject Contractor to liquidated damages. Final as-builts may be provided in an electronically generated format mutually agreeable to District's Representative and Contractor.

**Section 5.09 Drawings and Compliance with the Law**

Contract 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, said laws, ordinances, rules and regulations shall be considered as a part of this Facilities Lease within the limits specified. Contractor shall bear all expenses of correcting work done contrary to said laws, ordinances, rules and regulations.

**Section 5.10 Layout and Field Engineering**

All field engineering required for laying out of this Work and establishing grades for earthwork operations shall be furnished by Contractor at its expense. Such Work shall be done by a qualified civil engineer. Any required Record Drawings of site development shall be prepared by the approved civil engineer.

**Section 5.11 Ownership Of Drawings, Specifications And Other Documents**

All Contract Drawings, Specifications, and other incidental architectural and engineering work or materials and other Contract Documents and copies thereof furnished by District are District's property. They are not to be used in other work and are to be returned to District on request at completion of the Work, and may be used by District as it may require, without any additional costs to District, and without approval from Contractor.

**Section 5.12 Notification of Non-compliance**

Before commencing any portion of the Work, Contractor shall check and review the Drawings and Specifications for such portion for conformance and compliance with all laws, ordinance, codes, rules and regulations of all governmental authorities and public utilities affecting the construction and operation of the physical plant of the Project, and quasi governmental and other regulations affecting the construction and operation of the physical plant of the Project, and other special requirements, if any, designated in the Contract Documents. In the event Contractor observes any violation of any law, ordinance, code, rule or regulation, or inconsistency with any such restrictions or special requirements of the Contract Documents, Contractor shall promptly notify Architect and District in writing of same and shall ensure that any such violation or inconsistency shall be corrected in the manner provided hereunder prior to the construction of that poriton of the Project.

## **SECTION 6: SUBCONTRACTOR LISTING AND SUBSTITUTION**

### **Section 6.01 Subcontracting**

If Contractor subcontracts any Work to be performed or materials to be supplied pursuant to this Facilities Lease, Contractor shall be as fully responsible to District for the acts and/or omissions of such Subcontractor or supplier and of the persons either directly or indirectly employed or engaged as Subcontractor by such Subcontractor or supplier as it is for its own acts and omissions.

Contractor shall bind every Subcontractor or supplier, and every subcontractor of a Subcontractor, by the terms of the Contract Documents.

Contractor shall cause each of its Subcontractors by contract, to have a valid contractor's license pertaining to its classification of Work maintained in "good standing" from receipt of project proposals throughout the Project.

Contractor shall not perform Work on the Project with a Subcontractor who is ineligible to perform work on public works project pursuant to Labor Code sections 1777.1 or 1777.7.

### **Section 6.02 Disputes Between Subcontractor and/or The Contractor**

If, through acts or neglect on the part of Contractor, including failure to supervise and control its subcontractor or suppliers, any other contractor, subcontractor or supplier, or worker suffers loss or damage, Contractor agrees to settle with such other contractor, subcontractor, supplier, or worker by agreement or arbitration, if such other contractor, subcontractor, or worker shall assert any claim against District or any of its officers, agents, or employees, on account of any damage alleged to have been so sustained.

In the event of the receipt of any such claim, District shall notify Contractor, who shall defend, indemnify, and save harmless District and all of its officers, agents, and employees against any such claim.

### **Section 6.03 Subcontractor Listing for Labor Compliance Program**

Contractor shall provide the District's Labor Compliance Program Representative ("LCPR") with a list of all Subcontractors performing Work on the Project, regardless of contract amount and regardless of whether the Subcontractor is under contract with Contractor or under contract with a Subcontractor, for purposes of Labor Compliance Program ("LCP") monitoring. Contractor shall not substitute a person or entity as a Subcontractor in place of a Subcontractor on the subcontractor list from commencement of the Work through final completion of the Project without prior written consent from the District.

### **Section 6.04 Dealings with Subcontractor**

District and its representatives will deal only with Contractor, and Contractor shall be responsible for the proper execution of the Work. Any and all discussions between any Subcontractor or supplier and District or any of its representatives shall be initiated through Contractor or its representative.

Nothing contained in the Contract Documents shall create any contractual relationship between any Subcontractor or supplier and District or any of its representatives, nor shall this Facilities Lease be construed to be for the benefit of any Subcontractor or supplier.

However, a copy of each subcontract shall be filed with District within a reasonable time after any request by the District. Each subcontract shall contain a reference to this Facilities Lease between District and Contractor and the terms of this Facilities Lease and all parts of the Contract Documents shall be made a part of such subcontract insofar as applicable to the work covered thereby. Each subcontract will provide for termination in accordance with Section 18 of these General Conditions.

### **Section 6.05 Termination of Unsatisfactory Subcontractor**

When any portion of the Work that has been subcontracted by Contractor is not being prosecuted in a satisfactory manner, or when materials supplied do not conform to the Contract Documents and these deficiencies form the basis of a default notice issued pursuant to Article 16 of these General Conditions, District may direct Contractor to discharge the Subcontractor or supplier.

Any Subcontractor or supplier which is discharged shall not again be employed on this Project.

Any termination of a Subcontractor pursuant to this Section 6.05 shall be in strict conformity with the requirements of the Subletting and Subcontracting Fair Practices Act, Part 1 of Division 2 of the Public Contract Code, commencing with Section 4100.

**Section 6.06 Selection of Subcontractors**

In the interest of minimizing the expenditure of funds for the Work necessary to Complete the Project, Contractor acknowledges that it will provide public notice of availability of Work to be subcontracted in accordance with the publication requirements applicable to the competitive bidding process of the school district, including a fixed date and time on which qualifications statements, bids, or proposals will be due. Contractor shall award the subcontract either on a best value basis or to the lowest responsible bidder.

**Section 6.07 Self Performance of Work**

Nothing in this section shall be construed to prohibit Contractor from self-performing Work required to be Completed under this Facilities Lease, so long as such self-performance is in compliance with all other provisions of this Facilities Lease, subject to the GMP.

## **SECTION 7: STATE REQUIREMENTS REGARDING WAGE, HOUR, AND EQUAL OPPORTUNITY**

### **Section 7.01 Wage Rates**

Pursuant to the provisions of Article 2 (commencing at Section 1770), Chapter 1, Part 7, Division 2 of the California Labor Code, the governing body of District has ascertained the general prevailing rate of per diem wages in the locality in which this public work is to be performed for each craft, classification, or type of workmen needed to execute the contract.

Per diem wages shall be deemed to include employer payments for health and welfare, pension, vacation, travel time and subsistence pay as provided in Labor Code Section 1773.1 apprenticeship or other training programs authorized by Labor Code Section 3093, and similar purposes when the term "per diem wages" is used herein.

Each worker needed to execute the Work must be paid travel and subsistence payments as defined in the applicable collective bargaining agreements filed in accordance with Labor Code Section 1773.8.

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.

Each worker of the Contractor or any of its Subcontractors engaged in Work on the Project shall be paid not less than the prevailing wage rate, regardless of any contractual relationship which may be alleged to exist between the Contractor or any Subcontractors and such workers.

Copies of the determined prevailing wage rates are on file and available upon request at the District's office and are otherwise available at <http://www.dir.ca.gov/>. Contractor shall be responsible for knowing and implementing all prevailing wage rates at all times during the Project. Contractor shall post, at appropriate conspicuous points on the site of the Project, a schedule showing all determined general prevailing wage rates.

### **Section 7.02 Labor Compliance Program; Record of Wages Paid; Inspection**

Contractor shall be required to comply with all the requirements of the California Labor Code and the California Code of Regulations, including, but not limited to: Chapter 1 of Part 7 of Division 2 of the Labor Code (Section 1720 et seq.); California Code of Regulations, Title 8, Chapter 8, Subchapters 3 & 4 (Section 16000 et seq.); and California Code of Regulations, Title 8, Chapter 8, Subchapter 4.5 (Section § 16450 et seq.). It shall be the Contractor's responsibility to evaluate the cost of complying with the Department of Industrial Relations. The Contractor shall include all costs of compliance with specified requirements in the GMP.

a. Contractor and Subcontractors shall not be qualified to bid on, be listed on a bid proposal (subject to the requirements of Public Contract Code section 4104), or engage in the performance of any public work unless currently registered with the Department of Industrial Relations pursuant to Labor Code Section 1725.5, except under the limited circumstances set forth in Labor Code Section 1771.1(a).

b. Pursuant to Labor Code Section 1771.4, this Agreement is subject to compliance monitoring and enforcement by the Department of Industrial Relations. Each Contractor and Subcontractor performing Work under the Agreement shall be required to comply with the provisions of the California Labor Code Section 1720 et seq., and the regulations of the Department of Industrial Relations' Division of Labor Standards Enforcement (i.e., the Labor Commissioner), including, but not limited to, the standard provisions requiring payment of prevailing wages, maintenance and submission of certified payroll records, and the hiring of apprentices as appropriate. Unless otherwise specified, the Contractor shall be required to post job site notices regarding the requirements of this paragraph, as prescribed by regulation.

The requirements of Labor Code section 1776 are incorporated herein by reference.

The requirements of Government Code section 8546.7 are incorporated herein by reference.

### **Section 7.03 Wage Rate for Crafts Not Listed**

The responsibility to check prevailing wage rates is Contractor's. Pursuant to Labor Code Section 1773, Contractor may file with the Director of DIR or the Chief of the Division of Labor Standards Enforcement ("DLSE") a petition to review a determination of any rate or rates made by the Director of DIR. Contractor may also petition the Director of DIR to make a determination for a particular craft, classification or type of work not covered by a general determination. Pending the review or determination, the wages may be assumed to be those in the applicable collective bargaining agreement, but no adjustment in the project proposal or Contract Price shall be made if such assumption is incorrect.

### **Section 7.04 Records of Hours Worked and Wages**

Contractor shall maintain, and shall cause all Subcontractors on the Project to maintain, records of the hours and wages of all employees employed on the Project in accordance with existing law.

### **Section 7.07 Penalties**

The penalties prescribed by Articles 2 and 3, Chapter 1, Part 7, Division 2 of the Labor Code, particularly Sections 1775, 1776, 1777.7 and 1813 are incorporated herein by reference.

### **Section 7.08 Apprentices**

Contractor acknowledges and agrees that, if this Facilities Lease involves a dollar amount greater than or a number of working days greater than that specified in Labor Code Section 1777.5, this Facilities Lease 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 apprenticing occupations. Contractor shall comply with all applicable laws regarding apprentices.

### **Section 7.09 Hours of Work; Approval of Schedules**

Eight (8) hours of labor constitutes a legal day's work, and forty (40) hours constitutes a legal work week. No worker employed at any time by Contractor, or by any Subcontractor upon the Project, shall be required or permitted to work more than eight (8) hours in any one (1) calendar day or forty (40) hours in any one week, except as provided in Labor Code Sections 1810 through 1815.

All applicable laws and penalties pertaining to hours of work and overtime and related penalties are incorporated herein by reference.

### **Section 7.10 Compliance with State Anti-Discrimination Laws**

Contractor shall comply with Section 1735 of the Labor Code, which provides as follows:

"No discrimination shall be made in the employment of persons upon public works because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, handicap, medical condition, marital status, or gender of such persons, except as provided in Section 12940 of the Government Code, and every contractor for public works violating this Section is subject to all the penalties imposed for a violation of [Chapter 1 of Part 7, Division 2 of the Labor Code]."

### **Section 7.11 Job Start Meeting**

District may, at its option, conduct a mandatory labor compliance pre-job meeting ("Job Start Meeting") which is for Contractor and Subcontractors. District's LCP will be discussed with all in attendance. The Job Start Meeting will discuss the payment of prevailing wages, apprenticeship training, penalties, certified payroll records as well as non-discrimination in employment, kickbacks, acceptance of prohibited fees, proper licensing, unfair competition, and worker's compensation insurance. Follow up web conference training session may be required and should be planned by Contractor and Subcontractor in advance of submitting certified payroll records.

## **SECTION 8: SUPERVISION AND LABOR**

### **Section 8.01 Supervision Procedures**

Contractor shall supervise and direct the Work using its best skill and attention. Contractor shall be solely responsible for all construction means, methods, techniques, and procedures and for coordinating all portions of the Work under this Facilities Lease.

Contractor shall be responsible to District for the acts and omissions of its employees, Subcontractor and their agents and employees and other persons performing any of the Work. Contractor shall supervise and direct the work competently and efficiently, devoting such attention thereto and applying such skills as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall carefully study and compare all Contract Drawings, specifications, and other instructions and shall at once report to District Representative any error, inconsistency or omission which Contractor or its employees may discover. Contractor represents itself to District as a skilled, knowledgeable, and experienced contractor. Contractor shall carefully study and compare the Contract Documents with each other, and shall at once report to District Representative any errors, inconsistencies, or omissions discovered. Contractor shall be liable to District for damage resulting from errors, inconsistencies, or omissions in the Contract Documents that Contractor recognized and which Contractor knowingly failed to report and which a similarly skilled, knowledgeable, and experienced contractor would have discovered.

Contractor shall hire and supervise employees and Subcontractors in accordance with law.

Contractor shall not be relieved from its obligations to perform the Work in accordance with the Contract Documents either by the activities or duties of the Architect or the District Representative in their administration of this Facilities Lease or by inspections, tests or approvals (or the lack thereof) required or performed under Article 9 of these General Conditions by persons other than Contractor.

### **Section 8.02 Skilled Labor**

All non-apprentice labor shall have the skills of a journeyman in the applicable trade. All workmanship shall be of the quality and finish required by the Contract Documents in all respects.

The Contractor shall comply with Education Code section 17407.5, Public Contract Code section 2600 et seq., and applicable provisions of law which require the Contractor and its Subcontractors at every tier to employ a "skilled and trained workforce", to perform all Work on the Project that falls within an apprenticeable occupation in the building and construction trades. For the purpose of this Article, the definitions set forth in Public Contract Code section 2600 et seq. shall apply.

Contractor shall provide written compliance reports to the Owner on a monthly basis while the Project is being performed, using in a format acceptable to the District and sufficient to demonstrate compliance with this Article. Such compliance reports shall be subject to the California Public Records Act (commencing with Government Code section 6250), and shall be open to public inspection.

Notwithstanding any other provision of the Agreement, if Contractor fails to provide any required compliance report pursuant to this section on or before the last business day of each month while the Project is being performed, Owner shall have the right to immediately cease making payments to Contractor that would otherwise be due and payable under the terms of this Agreement, until any and all compliance reports for any preceding month have been submitted to the Owner.

### **Section 8.03 No Tenancy**

All workers, contractors, or contractors representatives are admitted to the Site only for the proper execution of the Work, and have no tenancy.

### **Section 8.04 Dismissal of Unsatisfactory Employees**

All employees engaged in the Work will be considered employees of Contractor or the specific Subcontractor that retained the individual.

Contractor shall at all times enforce strict discipline and good order among all employees including compliance with the District Guidelines for Conduct on the School Site and shall not employ on the Work any unfit person or anyone not skilled in the assigned task as defined in Section 8.02 hereof. Contractor shall remove, or cause a Subcontractor to remove from the Project, any incompetent employee, or any employee not skilled for the type of work required as defined in Section 8.02



hereof, or any employee who does not comply with the District Guidelines for Conduct on the School Site. District may require that Contractor immediately remove from the Work any employee for cause.

#### **Section 8.05 Personal Attention and Superintendence; Contractor's Agent**

Contractor shall supervise the Work to the end that it shall be faithfully prosecuted. Contractor shall at all times, while Contractor's Work is in progress, keep a full-time superintendent who is fully empowered to act as agent for Contractor on the Site. If the Facilities Lease includes more than one site, the Contractor shall keep a full-time superintendent on each of the sites while the Contractor's scope of work is in progress. The superintendent must be competent, English-speaking and satisfactory to District. Contractor shall advise District in writing of its agent prior to the start of any Work. Contractor shall provide résumés for all of Contractor's supervisory employees to be assigned to the Project for District review, and District may reject any supervisory employees not deemed to be qualified at the sole discretion of District. Contractor shall be responsible for the faithful observation of all instructions delivered to its authorized agent(s).

If Contractor's superintendent performs labor on the Project, Contractor shall cause the superintendent to be paid at the prevailing wage for the classification of Work performed and in accordance with law without any increase to the GMP.

#### **Section 8.06 Inspection of the Work of Other Contractors or Subcontractors**

It shall be the duty of Contractor and all of its Subcontractors, before beginning any Work, to examine all construction and work of other contractors that may affect their Work, and to satisfy themselves that everything is in proper condition to receive such Work. Contractor shall notify the District Representative in writing prior to starting Work of any discrepancies or conditions which deviate from the Contract Documents or are otherwise unacceptable. Failure on the part of Contractor to so notify the District Representative shall constitute an acceptance by Contractor and all Subcontractors of all construction in place as being suitable in all respects to receive further work by Contractor or Subcontractors.

Notwithstanding the foregoing, Contractor's examination shall be limited to a reasonable visual inspection, except where circumstances would cause a reasonable contractor to conduct further examination. Contractor shall not be responsible for latent conditions or conditions which could not be discovered based on said examination.

#### **Section 8.07 Contractor's Coordination of Work**

District reserves the right to do other work in connection with the Project by separate contract or otherwise. Contractor shall at all times conduct its work so as to impose no hardship on District or others engaged in the Work. Contractor shall adjust, correct and coordinate its work with the work of others so that no delays or discrepancies shall result in the whole Project. District shall also adjust, correct, and coordinate its work by separate contract so that no delays or discrepancies shall result in the whole Project.

#### **Section 8.08 Reports**

No less than on a weekly basis, Contractor's superintendent shall submit to the District Representative daily field reports on a form mutually acceptable to Contractor and District's Representative. Daily field reports shall include, without limitation, the identity of Subcontractor on the Site; an accurate headcount of workers on the Site; materials and equipment delivered to the Site; visitors to the Site; and any problems encountered.

#### **Section 8.09 Fingerprinting**

In accordance with Education Code section 45125.2 the Contractor shall, at Contractor's own expense, either (a) install a physical barrier to limit contact with students by Contractor and/or Contractor's employees, or (b) provide for the continuous supervision and monitoring of the Contractor and/or Contractor's employees (including but not limited to any employees involved in the contract closeout process), by an employee of the Contractor who has received fingerprint clearance from the California Department of Justice, or (c) provide for the surveillance of the Contractor and Contractor's employees by a District employee; and (d) Contractor and Contractor's employees shall not use student restroom facilities.

## **SECTION 9: INSPECTION AND TESTING**

### **Section 9.01 Inspection**

Tests and inspections will comply with California Code of Regulations Title 24, Section 4-335.

If this Facilities Lease, District's instructions, laws, ordinances, or any public authority require any Work to be specially tested or approved, Contractor shall give notice in accordance with such authority of its readiness for observation or inspection at least two (2) working days prior to being tested or covered up. Contractor shall complete and submit the Request for Inspection form to the District Representative and/or Project Inspector, Form J of the Procedures Manual, Attachment 4 to this Project Manual. If inspection is by authority other than District, Contractor shall inform the District's Project Inspector of the date fixed for such inspection. Required certificates of inspection shall be secured by Contractor. Observations by District's Project Inspector shall be promptly made, and where practicable, at source of supply. If any Work should be covered up without approval or consent of District's Project Inspector, it must be uncovered for examination and satisfactorily reconstructed at Contractor's expense in compliance with this Facilities Lease. Costs of any tests, inspections or any materials found to be not in compliance with this Facilities Lease shall be paid for by Contractor. Other costs for test and inspection shall be paid by District.

### **Section 9.02 Authority of Project Inspector; Stop Work Notices**

One or more Project Inspector (s), including special inspectors, as required, will be employed by District in accordance with requirements of Title 24 of the California Code of Regulations and will be assigned to the Project. Duties of an Inspector are specifically defined in Section 4-342 of Title 24. The Project Inspector shall have all rights and duties prescribed by law.

No Work shall be performed by Contractor solely upon the instructions or comments by the Project Inspector. The Project Inspector has no authority to interpret the Contract Documents or order extra work and any extra work performed without the written instruction of District shall be at Contractor's sole cost and expense and there will be no delay damages incurred by District for such work. The Project Inspector is not authorized to make changes in the Contract Drawings or Specifications nor shall the Project Inspector's approval of the Work and the methods relieve Contractor of responsibility for the correction of subsequently discovered defects, or from its obligation to comply with the Contract Documents.

No Work shall be carried on except with the knowledge and under the inspection of said Project Inspector(s). He/she shall have free access to any or all parts of work at any time. Contractor shall furnish Project Inspector reasonable opportunities for obtaining such information as may be necessary to keep Project Inspector fully informed respecting progress and manner of Work and character of materials. Inspection of the Work shall not relieve Contractor from any obligation to fulfill the Contract Documents. District and District's Representative shall have authority to stop Work whenever provisions of Contract Documents are not being complied with and such noncompliance is discovered. In addition, District and District Representative may stop any Work which poses a probable risk of harm to persons or property. Contractor shall instruct its employees, Subcontractors, material and equipment suppliers, etc., accordingly. The absence of any Stop Work order or rejection of any portion of the work shall not relieve Contractor from any of its obligations pursuant to the Contract Documents.

Upon issuance of a stop work notice, Architect shall review the Work in question and determine whether it does or does not comply with the Contract Documents. The decision of District shall be final. Contractor shall thereafter comply with the instructions of the Architect regarding corrections needed to cure the defect, subject to the dispute resolution process below. The suspended Work shall be resumed only when the instructions are fulfilled. Contractor shall not be entitled to an extension of time in the event of such suspension of Work.

Prior to issuing a Stop Work Notice Whenever provisions of Contract Documents are not being complied with, the Project Inspector or Architect may elect to notify Contractor with a "Notice of Non-Compliance." Form K (see Procedures Manual, Attachment 4 to the Project Manual, Exhibit B to the Facilities Lease). Contractor shall thereafter comply with the instructions of the District Representative regarding corrections needed to cure the defect. Should Contractor comply with the Notice of Non-Compliance, Work will not be suspended and a Stop Work Notice will not be issued. Should Contractor not comply with the Notice of Non-Compliance, District may correct the same and charge the expense to the Guaranteed Maximum Price, per Section 17 of these General Conditions.

District and District's Representative have the option of not issuing a Notice of Non-Compliance and may issue a Stop Work Notice immediately.

### **Section 9.03 Effect of Inspections**

Neither the final inspection and payment, nor any interim inspection or progress payment shall relieve Contractor of its obligation to fulfill this Facilities Lease as required by the Contract Documents.

Any Work, materials or equipment not meeting the requirements of the Contract Documents may be rejected, and unsuitable Work or materials shall be made good, notwithstanding the fact that such Work or materials may previously have been inspected and/or payment therefore may have been made.

Notwithstanding the foregoing, Contractor shall not be required to comply with the Contract Documents if such deviation has been agreed upon in writing between Contractor and District.

### **Section 9.04 Notice to District of Inspection**

Where the Contract Documents, instructions by the Project Inspector, District Representative or the Architect, laws, ordinances, or any public authority having jurisdiction require Work to be inspected, tested or approved before the Work proceeds, such Work shall not proceed, nor shall it be covered up without inspection. If any part of the Work is covered prior to inspection, District may order the work to be uncovered so that inspection may be accomplished. Contractor shall bear all expenses of such examination and satisfactory reconstruction.

Contractor shall provide written notice to the Project Inspector at least twenty-four (24) hours in advance of the readiness for inspection. Contractor shall complete and submit the Request for Inspection form to the District Representative and/or the Project Inspector, per Section 9.01 hereof.

All Work shall be available for inspection and the Project Inspector shall have full access to review all Work during all working times. Contractor shall provide all necessary means of safe access (e.g. ladders) for the Project Inspector to perform his/her duties. Contractor shall furnish the Project Inspector with any information necessary to fully inform him/her of conditions. Inspection does not relieve Contractor from fulfilling the requirements of the Contract Documents.

### **Section 9.05 Inspector's Field Office**

Contractor may be required to establish a field office, at the District's discretion. If so required:

- a. Contractor shall provide for the use of the inspector a separate trailer or temporary private office of not less than seventy-five square feet of floor area to be located as directed by the inspector and to be maintained until removal is authorized by District. The field office shall be of substantial waterproof construction with adequate natural light and ventilation by means of stock design windows. Door shall have a key-type lock or padlock hasp. The inspector's field office shall have heating and air-conditioning and shall be equipped with a telephone, a telephone answering machine, a fax machine and use of an on-site copier at Contractor's expense.
- b. A table satisfactory for the study of plans and two chairs shall be provided by Contractor. Contractor shall provide and pay for adequate electric lights, local telephone service, and adequate heat and air conditioning for the field office until authorized removal.
- c. The provisions of this section are intended to be complementary to any requirements provided elsewhere in these Contract Documents. However, in the event of conflicts between this section and other provisions of these Contract Documents, this section shall prevail.

### **Section 9.06 DSA Field Representative**

For contracts requiring DSA approval, the Division of the State Architect will designate a field representative who will visit the Site periodically to review with the Project Inspector compliance of the Project with CCR Title 24 requirements. The DSA field representative may require certain modifications to the Project as constructed. Such information may also be disseminated through the District's Representative or the Architect. In the event Contractor believes they are outside the scope of this Facilities Lease, it shall proceed as set forth in Section 5.07 of these General Conditions.

### **Section 9.07 Overtime work**

Whenever Contractor arranges to Work at night or any time when Work is conducted other than the normal 40-hour week, or to vary the period during which Work is carried on each day, it shall give the District Representative and the Project Inspector a minimum of forty-eight (48) hours written notice so that inspection may be provided. Contractor shall complete and submit the Request for Inspection form to the District Representative and/or the Project Inspector, per Section 9.01

hereof. Additional inspection costs incurred because of overtime or shift work shall be paid by District. If this overtime work is necessitated by Contractor's error or failure to perform, the cost of inspection will be borne by Contractor.

#### **Section 9.08 Materials Which May be Tested**

District reserves the right to require Contractor to provide samples, and to perform tests on any materials, articles, equipment, installations, or construction performed by Contractor in addition to those specified in the Contract Documents. District shall assume the cost of sampling and testing materials only when the Contract Documents do not require Contractor to do so.

#### **Section 9.09 Testing**

All tests shall be performed under the supervision of the testing laboratory or consultant employed by District, and approved by DSA and at such times as are convenient to District. Contractor shall provide written notice to the District Representative or Project Inspector at least twenty-four (24) hours prior to the need for off-site tests or inspections, and the District Representative and/or the Project Inspector will arrange such tests or inspections. Contractor shall complete and submit the Request for Inspection form to the District Representative and/or the Project Inspector, per Section 9.01 hereof. Contractor shall bear all additional expenses (if any) of tests performed where Contractor failed to provide this minimum notice.

#### **Section 9.10 Selection of Samples**

All samples and specimens for testing shall be selected by the Project Inspector or by the testing laboratory, but not by Contractor. All samples submitted for testing shall remain the property of District.

#### **Section 9.11 Delivery of Samples**

As part of the costs covered by the GMP, Contractor shall provide and deliver all samples to be tested at locations other than the Site. Samples shall be delivered either to the Project Inspector or to the testing laboratory or such other address specified in the Contract Documents.

Delivery of all samples to the testing laboratory shall be made in ample time to allow the test to be made without delaying construction. No extra time will be allowed for the completion of the Work by reason of delay in testing samples required by the Contract Documents or due to Contractor's request for substitution.

Contractor shall allow free access at all times to the representatives of the testing laboratory to the Work, and shall point out the sources from which samples are taken.

All test reports shall be sent to all parties specified in the Contract Documents.

#### **Section 9.12 Approval of Samples**

No materials or Work of which samples and/or tests are required shall be used or covered until the District Representative or the Project Inspector informs Contractor that such samples and/or tests have been approved. If Contractor installs, uses, or covers any such material, article, or Work prior to testing and approval, such shall be at Contractor's sole risk and expense, and it shall bear all costs of uncovering, repair, and replacement thereof.

The approval of any samples shall be for the characteristics thereof, or for the uses named in such approval, and no other. No approval of any samples shall be deemed a change or modification in any requirement of the Contract Documents. Upon testing of any sample of material or work, no additional sample shall be considered. All material or Work installed after the sampling and testing is performed and approved shall be equal to or better than the approved sample in all respects and shall be accompanied by documentary proof that the material and Work sampled is actually representative of that installed.

#### **Section 9.13 Intentionally left blank.**

**Section 9.14 Retesting**

If as a result of any test, whether originally specified or not, any material or Work is found to be unacceptable, it shall be rejected, and all further sampling and testing required by District or District Representative shall be at Contractor's expense.

**Section 9.15 Effect of Sampling and Testing**

District assumes no obligation, and Contractor shall be relieved of no obligation undertaken pursuant to the Contract Documents by virtue of sampling and testing specified in this Article.

The responsibility for incorporating satisfactory materials and workmanship which meet the Contract Documents in the Work rests entirely with Contractor, notwithstanding any prior samples or tests.

## **SECTION 10: PROTECTION OF WORKERS, PUBLIC AND PROPERTY**

### **Section 10.01 Safety Precautions and Programs**

Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work, for maintaining all safety and health conditions on the Site and for ensuring against and/or correcting any hazardous conditions on the Site. Also, in no case shall District, the District Representative, the Architect, the Project Inspector, or their agents, employees or representatives, have either direct or indirect responsibility for the means, methods, techniques, sequences or procedures utilized by Contractor, or for safety precautions and programs in connection with the Work, or for maintaining any safety or health conditions on the Site, or for ensuring against or correcting any hazardous conditions on the Site created by the performance of the Work.

Certain Work may be ongoing at the time school is in session; therefore, Contractor shall take precautions to prevent injury and access to children and staff and shall comply with District's Guidelines for Onsite Safety. Material storage and vehicle access and parking shall be subject to District approval.

The use of alcohol, drugs, or tobacco will not be permitted on District property. Contractor access to areas outside construction area is prohibited, unless accompanied by the District Representative. Only incidental contact will be allowed with students. All representatives of Contractor will present themselves with appropriate language, actions and work wear while on construction site.

Contractor shall designate a responsible member of its organization at the Site whose duty shall be the prevention of accidents and overall jobsite safety for Contractor/Subcontractor employees and visitors. This person shall be the Contractor superintendent unless otherwise designated by Contractor in writing to the District Representative.

### **Section 10.02 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.A., Sec. 651 *et seq.*).

### **Section 10.03 Protection of Persons and Property**

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 Facilities Lease and shall take all reasonably necessary measures and be responsible for the proper care and protection of all materials delivered to Contractor and Work performed by Contractor until Completion as defined in Section 21.05 (such risk may be covered by insurance required to be maintained under this Facilities Lease). 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. By way of example only, Contractor shall not be responsible for damage caused by "acts of God" as defined in Public Contract Code Section 7105, or covered by insurance under this Facilities Lease.

Contractor shall take, and require Subcontractors to take, all necessary precautions for safety of workers 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 the Site and to provide a safe and healthful place of employment due to conditions created by the performance of the Work. Contractor shall furnish, erect and properly maintain at all times, as directed in writing by District or Architect or required by conditions and progress of Work, all necessary safety devices, safeguards, construction canopies, signs audible devices for protection of the blind, safety rails, belts and 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. Contractor shall designate a responsible employee, 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 due to conditions created by the performance of the Work. Name and position of person so designated shall be reported in writing to District by Contractor. Contractor shall correct any violations of safety laws, standards, orders, rules, or regulations due to conditions created by the performance of the Work. Upon the issuance of a citation or notice of violation by the Division of Occupational Safety and Health caused by Contractor or its Subcontractors, such violation shall be corrected immediately by Contractor at Contractor's expense.

In an emergency affecting safety of person or of the Work or of adjoining property, Contractor is hereby permitted to act, at its discretion, to prevent such threatened loss or injury; and Contractor shall so act if so authorized or instructed by Architect or District in writing. Any compensation or extension of time claimed by Contractor on account of emergency work shall be determined by written agreement with District.

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.

Contractor shall (unless waived by District in writing):

- (a) When performing new construction on existing sites, become informed and take into specific account the maturity of the students on the site; and perform work which does not interfere with school routine before or after school hours; enclose working area with a substantial barricade; and arrange work to cause a minimum amount of inconvenience and danger to students and faculty in their regular school activities.
- (b) Provide substantial barricades around any shrubs or trees indicated to be preserved.
- (c) Deliver materials to building area over route designated by Architect.
- (d) Take preventive measures to eliminate objectionable dust.
- (e) Enforce all instructions of District and Architect regarding signs, advertising, fires, and smoking and require that all workers comply with all regulations while on construction site.
- (f) Take care to prevent disturbing or covering any survey markers, monuments, or other devices marking property boundaries or corners. If such markers are disturbed by accident, they shall be replaced by an approved civil engineer at no cost to District.

#### **Section 10.04 Trenches**

Contractor shall provide adequate sheeting, shoring, and bracing, or equivalent method, for the protection of life and limb in trenches and open excavation which conform to applicable safety standards.

If the Contract Documents involve the excavation of any trench or trenches four feet or more in depth, Contractor shall, in advance of excavation, submit to the District Representative:

- (a) A detailed plan showing the design or shoring, bracing, sloping or other provisions to be made for worker protection from the hazard of caving ground during the excavation of such trench or trenches.
  - (1) If such plan varies from the Shoring System Standards established by the Construction Safety Orders of the Division of Industrial Safety, the plan shall be prepared by a registered civil or structural engineer employed by Contractor, and all costs therefore shall be included in the price named in this Facilities Lease for completion of the work as set forth in the Contract Documents.
  - (2) In no case shall such plan be less effective than that required by the Construction Safety Orders.
  - (3) No excavation of such trench or trenches shall be commenced until said plan has been accepted by CAL-OSHA and a CAL-OSHA permit for such plan delivered to the District. Labor Code Sections 6500 and 6705; Health and Safety Code Section 17922.5.

## **Section 10.05 Pre-Existing Hazardous Materials**

(a) Pre-Existing Hazardous Materials. If Contractor discovers any hazardous substances that were present on the Project Site before the Work commenced or that were brought on to the Project Site by the District or a separate contractor of the District or any contamination, spill or other condition requiring clean up, abatement or remediation caused by any act or omission of the District or its employees, agents or separate contractors ("Pre-existing Hazardous Materials"), Contractor shall discontinue its Work and give prompt notice of the discovery to the District. Upon giving such notice, Contractor shall have no further liability or responsibility for the removal, abatement, remediation or cleanup of any Pre-existing Hazardous Substances. The District agrees to indemnify, defend and hold harmless Contractor, and its respective employees, officers, directors and agents from and against any and all claims, costs, expenses, fees (including reasonable attorney's fees) arising from any Pre-existing Hazardous Substances. The Work will not resume until such Pre-existing Hazardous Substances are remediated, cleaned up, disposed of, removed or abated or provision is made to adequately secure the work areas to allow the Work to proceed safely. The Project Schedule (including the Completion Date) and all other scheduled dates shall be extended for the period of any such delay resulting from the discontinuance of the Work without any penalty, damages, costs or expenses being assessed or asserted against Contractor. In addition, the District shall adjust the GMP by Change Order to compensate Contractor for any additional costs incurred by Contractor because such Pre-existing Hazardous Substances were encountered. Contractor shall not be deemed to have released or generated the Pre-existing Hazardous Substances as a result of the discovery of the Pre-existing Hazardous Substances on the Project site.

## **Section 10.06 Existing Utility Lines: Removal, Restoration**

Pursuant to Government Code Section 4215, District assumes the responsibility for removal, relocation, and protection of utilities located on the Site at the time of commencement of construction under this Facilities Lease with respect to any such utility facilities which are not identified in the Contract Drawings, Plans and Specifications. Contractor shall not be assessed for liquidated damages for delay in completion of the Project caused by failure of District to provide for removal or relocation of such utility facilities. If Contractor, while performing Work under this Facilities Lease, discovers utility facilities not identified by District in the plans or specifications, Contractor shall immediately notify District and the utility in writing. Contractor shall be compensated according to the provisions governing changes in the Work.

This Section shall not be construed to preclude assessment against Contractor for any other delays in completion of the Work. Nothing in this Section shall be deemed to require District to indicate the presence of existing service laterals or appurtenances whenever the presence of such utilities on the Site 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.

As part of the work to be performed, Contractor shall provide the notices and proceed in accordance with Government Code Sections 4216.2, 4216.3 and 4216.4, and pay all fees charged pursuant to Government Code Section 4216, *et seq.*

## **Section 10.07 Protection and Repair of Work**

Contractor shall protect District's structures, facilities, equipment, tools, materials, and any other property on or adjacent to the Site against damage or loss caused by the performance of the Work. Contractor will provide adequate security measures for the Work and shall, until the Date of Completion of the Work, maintain such measures to protect its Work under this Facilities Lease from theft, defacement, or vandalism.

Contractor shall repair or replace any damage and remove any damaged or defaced material and/or equipment from the Site at no cost to District prior to the Date of Completion, and Section 17 of these General Conditions shall apply to such material or equipment.

## **Section 10.08 Protection of Workers**

Contractor shall take every precaution for the safety of all employees performing the Work, and to comply with all applicable provisions of federal, state and local safety laws and building codes to prevent accidents or injury to persons on, about, or adjacent to the premises where the Work is being performed.

Contractor shall erect and properly maintain at all times, as required by the conditions and progress of the Work, all necessary safeguards for the protection of workers and the public, and shall post danger signs warning against hazards created by construction.

Contractor shall immediately replace or repair any unsafe ladder, scaffolding, shoring, or bracing, or correct any other dangerous or hazardous situation that may exist.



The responsibility for maintaining a safe working site shall be Contractor's, and District and the District Representative undertake no obligation to suspend the Work or notify Contractor of any hazardous conditions or noncompliance with safety laws.

In no case shall District, the District Representative, the Architect, the Project Inspector, or their agents, employees or representatives, have either direct or indirect responsibility for maintaining any safety or health conditions, or for ensuring against or correcting any hazardous conditions on areas of the Site where Contractor's work is occurring.

#### **Section 10.09 Working Limits and Regulations**

Contractor shall confine its apparatus, storage and materials, and construction operations within the limits established by the District Representative, and shall not unreasonably encumber the Site or adjacent areas with its materials and/or equipment.

Contractor shall enforce any instructions from District or the District Representative regarding fires, placement of signs, danger signals, barricades, radios, noise and smoking.

#### **Section 10.10 Protection of Existing Improvements**

Contractor shall clean the portions of existing improvements and facilities which are used by, traversed or dirtied by the workers on the Work, normal maintenance due to use by District employees, activities of the District's separate contractors or the public excepted.

Contractor shall take all necessary precautions to protect all existing improvements and facilities from any damage resulting from the operations, equipment or workers of Contractor during the course of the construction and Contractor shall be strictly liable for failure to adequately protect any existing improvements and/ or facilities.

Contractor shall take all necessary precautions to protect existing facilities against the effects of the elements and Contractor shall be strictly liable for failure to adequately protect any facility.

All damaged improvements and facilities shall be replaced, repaired, and restored to their original condition without additional cost to District and without an extension of the Term of this Facilities Lease.

#### **Section 10.11 Traffic Signals and Traffic Control**

Existing signs, lights, traffic signals, control boxes, hydrants, meters, and other similar items occurring within the street or sidewalk areas shall be kept free of obstructions and accessible at all times. All such items shall be protected from Contractor's operations and shall not be obliterated or obscured by its equipment or materials.

Should it be necessary to cover up, move, or alter such items, this shall be done only with permission of the authorities having jurisdiction over the items involved.

Should it be necessary to block a street or sidewalk, Contractor shall first notify the District Representative and the police and fire departments and other agencies with jurisdiction, and shall comply with their instructions, including scheduling limitations.

#### **Section 10.12 Security of the Site**

Contractor's attention is directed to Specifications Section of this Project Manual regarding requirements for fencing the Site, gates, and screening.

#### **Section 10.13 Removal of Barricades**

Upon completion of the Work, Contractor shall remove from the Site all materials used for barricades, temporary scaffolding, or any other temporary uses.

#### **Section 10.14 Protection of Adjacent Property; Notices**

In addition to any requirements imposed by law, Contractor shall shore up, brace, underpin, and protect as may be necessary all foundations and other parts of all existing structures on the Site or adjacent to the Site which are in any way affected by the excavations or other operations connected with the completion of the Work.

Prior to excavation, Contractor shall notify all public utilities and governmental agencies of the Work proposed, and shall ascertain from them the exact location of their utilities.

Prior to commencing any Work which in any way affects adjoining or adjacent land or buildings thereon, or public utilities, Contractor shall notify the District Representative, who will send District and occupants thereof a notice, which specifies the type of Work to be done, the schedule of the Work, the impacts expected from the Work and the protective measures being taken by Contractor. The notice shall also specify that any person receiving notice who has questions regarding it may contact the District Representative.

Whenever any notice is required to be given to any adjoining or adjacent landowner, utility, governmental agency or other party before commencement of any work, the notice shall be given by Contractor at least seven (7) days in advance of the work, or longer if required by law or regulation, with a copy delivered to the District Representative.

Contractor shall, at the written instruction of the District Representative, meet with any recipient of such notice to explain and discuss the proposed work.

#### **Section 10.15 Fire Protection**

Contractor shall take all steps necessary to protect all structures from fires and sparks originating from the Work prior to Completion as defined in Section 21.05, shall comply with all laws and regulations regarding fire protection, and shall comply with all instructions of the fire department with jurisdiction.

Contractor shall notify the District Representative and the fire department in writing at least seventy-two (72) hours prior to disconnection of either water or electrical service to the Site, and shall comply with the fire department's instructions regarding fire safety.

Contractor must not take any action to render fire and intrusion detection systems inoperative throughout the duration and scope of its work, to the extent that they are currently operational. If such systems must be rendered inoperative for the necessary completion of the Work, Contractor shall ensure that alternative systems are available in the interim for the safety and security of the Site in accordance with CalOSHA and any other applicable law. This provision shall not be interpreted to require Contractor to provide continuous monitoring of the Site or install temporary water delivery systems.

#### **Section 10.16 Repairs or Replacement**

Any damage to existing conditions, or to any other improvement or property above or below the surface of the ground, whether private or public, arising from Contractor's performance of the Work shall be repaired within forty-eight (48) hours by Contractor without any addition to the GMP, unless disruption of school operation or creation of a safety hazard has occurred, in which case damage will be corrected immediately.

If the best interest of District requires that repairs be made prior to the execution of any further work, the District Representative will so notify Contractor who shall delay or discontinue that part of the Work until the necessary repair has been made. Such delay shall be considered non-compensable, and no extension of the Term of this Facilities Lease will be granted therefore unless the delay arises from site conditions that could not have reasonably been foreseen or additional work ordered by the District.

Upon the failure of Contractor to comply with any such order, or upon Contractor's failure to make immediate emergency repairs which are necessary to protect the Work, District shall do that work itself as is necessary to protect life and property, in its sole discretion, and deduct the total cost of such work from the next progress payment. No prior notice to Contractor shall be necessary for District to take this action.

#### **Section 10.17 Emergency Safety Actions**

In an emergency affecting the safety of life or property, including adjoining property, Contractor, without previous instructions or authorizations from District, is authorized and shall act at its discretion and risk to prevent such threatened loss or injury, and Contractor shall bear all costs of that action, unless an addition to the GMP is warranted under section 3 of the Facilities Lease. Contractor shall immediately notify the District Representative of such actions, and thereafter shall comply with any instructions issued by the District Representative.

## **SECTION 11: SUBMITTALS**

### **Section 11.01 Submittals**

Contractor shall without addition to the GMP furnish to the District Representative, via the Architect, all Submittals and other descriptive material as are required by the specifications or requested by the District Representative.

Contractor shall submit a "schedule of submittals" prior to the Notice to Proceed. Contractor shall submit shop drawings, samples and product data to the District Representative, via the Architect, according to the requirements of the Contract Documents. All submittals must be submitted no later than sixty (60) days after the date of Notice to Proceed ("Submittal Period") or earlier as required to meet the construction schedule as agreed upon by the parties.

All submittals shall be made to the District Representative, via the Architect, by way of Submittal Transmittal. The Submittal Transmittal shall be on a form mutually agreeable to District Representative and Contractor. A submittal log will be maintained by the Architect and Contractor. Updated logs are to be presented at the weekly construction meetings for review. Each Submittal shall, at a minimum, include the information per this Section 11.

### **Section 11.02 Shop Drawings, Product Data And Samples**

The term "Shop Drawings" as used herein means drawings, diagrams, schedules, and other data, which are prepared by Contractor, Subcontractors, manufacturers, suppliers, or distributors illustrating some portion of the Work, and includes: illustrations; fabrication, erection, layout and setting drawings; manufacturer's standard drawings; schedules; descriptive literature, instructions, catalogs and brochures; performance and test data including charts, wiring and control diagrams, and all other drawings and descriptive data pertaining to materials, equipment, piping, duct and conduit systems, and methods of construction as may be required to show that the materials, equipment, or systems and their position conform to the requirements of the seismic and other calculations; and all product data from equipment manufacturers.

The term "product data" as used herein are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by Contractor to illustrate a material, product, or system for some portion of the Work.

The term "manufactured" as used herein, applies to standard units usually mass-produced, and "fabricated" means items specifically assembled or made out of selected materials to meet individual design requirements.

The term "samples" as used herein are physical examples furnished by Contractor to illustrate materials, equipment, or quality and includes natural materials, fabricated items, equipment, devices, appliances, or parts thereof as called for in the specifications, and any other samples as may be required by the Architect to determine whether the kind, quality, construction, finish, color, and other characteristics of the materials, etc., proposed by Contractor conform to the required characteristics of the various parts of the Work. All Work shall be in accordance with the approved samples.

Shop Drawings shall: establish the actual detail of all manufactured or fabricated items; indicate proper relation to adjoining work; amplify design details of mechanical and electrical systems and equipment in proper relation to physical spaces in the structure; and incorporate minor changes of design or construction to suit actual conditions.

Contractor shall obtain and shall submit all required Shop Drawings and samples in accordance with Contractor's "Schedule for Submission of Shop Drawings and Samples" as required in the Specifications with such promptness as to cause no delay in its own Work or in that of any other contractor or Subcontractor.

Each Subcontractor shall submit all Shop Drawings, samples, and manufacturer's descriptive data for the review of District, Contractor, and the Architect through Contractor.

No extensions of time will be granted to Contractor or any Subcontractor because of its failure to have Shop Drawings and samples submitted in accordance with the schedule.

By submitting Shop Drawings, product data, and samples, Contractor or submitting party (if other than Contractor) represents that it has determined and verified all materials, field measurements, catalog numbers, related field construction criteria, and other relevant data in connection with each submission, and that it has checked, verified, and coordinated the information contained within such Submittals with the requirements of the work and of the Contract Documents. At the time of submission, any deviation in the Shop Drawings, product data, or samples from the requirements of the Contract Documents shall be narratively described in a transmittal accompanying the Submittal. However, Submittals shall not be used as a means of requesting a substitution, the procedure for which is defined in Section 11.09 hereof.

Review by District and Architect shall not relieve Contractor or any Subcontractor from its responsibility in preparing and submitting proper Shop Drawings in accordance with the Contract Documents. Contractor shall stamp, sign, and date each Submittal indicating its representation that the Submittal meets all of the requirements of the Contract Documents.

Any submission, which in Architect's opinion is incomplete, contains numerous errors, or has been checked only superficially, will be returned unreviewed by the Architect for resubmission by Contractor.

In reviewing Shop Drawings, the Architect will not verify dimensions and conditions existing in the field. The Architect will review and approve shop drawings, product data, and samples for aesthetics and for conformance with the design concept of the work and the information given in the Contract Documents. The Architect's review shall neither be construed as a complete check nor relieve Contractor, Subcontractor, manufacturer, fabricator, or supplier from responsibility for any deficiency that may exist or from any departures or deviations from the requirements of the Contract Documents unless Contractor has, in writing, called the Architect's attention to the deviations at the time of submission. The Architect's review shall not relieve Contractor or Subcontractors from responsibility for errors of any sort in Shop Drawings or schedules, for proper fitting of the work, or from the necessity of furnishing any work required by the Contract Documents, which may not be indicated on Shop Drawings when reviewed. Contractor and Subcontractors shall be solely responsible for any quantities, which may be shown on the Shop Drawings.

Contractor shall check and coordinate all Submittals with the Work of all Subcontractors involved before they are submitted. Contractor shall review each Submittal for conformance with the requirements of the Contract Documents.

All Submittals for the Project shall be made within the Submittal Period; however, the Contractor shall have the additional responsibility to coordinate the schedule of its Submittals with the requirements of the Contract Schedule so as not to delay the Project. District shall not be required to approve any delay claim related to Submittals which were originally received after the Submittal Period. District will not be required to accept limitations in materials, colors, quality, or any other aspect of products or materials due to Contractor's failure to provide Submittals as required.

Contractor shall submit a schedule of Submittals organized by specification section required for the Project. It shall delineate whether product data, installation instructions, Shop Drawings, samples, extra stock or mock-ups are required. This schedule of Submittals shall be submitted within ten (10) calendar days of the issuance of the Notice to Proceed. Any omissions or inaccuracies shall not relieve Contractor of the obligation for conforming to the requirements in the Contract Documents. Contractor's submittal schedule shall provide sufficient time for delivering the Submittal to the Architect, the Architect's review of each Submittal, delivering the Submittal to Contractor and re-submittal, as necessary. In no case shall Contractor allow fewer than fourteen (14) days, exclusive of delivery time, for the District Representative and the Architect to review each Submittal.

### **Section 11.03 Submittals of Drawings**

All Shop Drawings must be properly identified with the name of the Project and dates, and each lot submitted must be accompanied by a letter of transmittal referring to the name of the Project and to the specification section number for identification of each item clearly stating in narrative form, as well as "clouding" on the submissions, all qualifications, departures, or deviations from the Contract Documents, if any. Shop Drawings, for each section of the Work, shall be numbered consecutively, and the numbering system shall be retained throughout all revisions. All Subcontractor submissions shall be made through Contractor. Each drawing shall have a clear space for the stamps of Architect and Contractor. Only Shop Drawings required to be submitted by the Contract Documents shall be reviewed.

Each submittal shall include electric drawings, including fabrication, erection, layout and setting drawings, and such other drawings as required under the various sections of the specifications. Subcontractor shall submit copies, in an amount as requested by Contractor, of: manufacturers' descriptive data for materials, equipment, and fixtures, including catalog sheets showing dimensions, performance, characteristics, and capacities; wiring diagrams and controls; schedules; all seismic calculations and other calculations; and other pertinent information as required.

Contractor shall make any corrections required by Architect and shall resubmit as required by Architect the required number of corrected copies of Shop Drawings until approved. Contractor shall direct specific attention in writing or on resubmitted Shop Drawings to revisions other than the corrections required by the Architect on previous submissions. Professional services required for more than one (1) re-review of required Submittals of shop drawings and/or product data are subject to charge to Contractor. The costs for such additional services shall be deducted by District from the amounts due to Contractor for such additional Architect's fees and paid directly to the Architect.

No portion of the Work requiring a Shop Drawings submission shall be commenced until the submission has been reviewed by District and approved by Architect unless specifically directed in writing by District. All such portions of the Work shall be in accordance with approved Shop Drawings.

All Shop Drawings submitted shall become District's property.

The Submittals shall be submitted promptly, so as to cause no delay in the Work. The Submittals shall be submitted so as to allow the District Representative and the Architect a review period of no less than fourteen (14) days.

#### **Section 11.04 Submittal of Samples**

In case a considerable range of color, graining, texture, or other characteristics may be anticipated in finished products, a sufficient number of samples of the specified materials shall be furnished by Contractor to indicate the full range of characteristics, which will be present in the finished products; and products delivered or erected without submittal and approval of full range samples shall be subject to rejection. Except for range samples, and unless otherwise called for in the various sections of the specifications, samples shall be submitted in duplicate. All samples shall be marked, tagged, or otherwise properly identified with the name of the submitting party, the name of the Project, the purpose for which the samples are submitted, and the date and shall be accompanied by a letter of transmittal containing similar information, together with the specification section number for identification of each item. Each tag or sticker shall have clear space for the review stamps of Contractor and Architect.

Samples of materials, which are generally furnished in containers bearing the manufacturers' descriptive labels and printed application instructions, shall, if not submitted in standard containers, be supplied with such labels and application instructions.

Contractor shall make any corrections required by Architect and shall resubmit as required by Architect the required number of new samples until approved. Contractor shall direct specific attention in writing on resubmitted samples to revisions other than the corrections required by the Architect on previous submissions. Professional services required for more than one (1) re-review of required submittals of samples are subject to charge to Contractor. The costs for such additional services shall be deducted by District from the amounts due Contractor for such additional Architect's fees and paid directly to the Architect.

No portion of the work requiring a sample submission shall be commenced until the submission has been reviewed by District and approved by Architect unless specifically directed in writing by District. All such portions of the work shall be in accordance with approved samples.

Unless specified otherwise, sampling, preparation of samples and tests shall be in accordance with the latest standards of the American Society for Testing and Materials.

Samples shall, upon demand of Architect or District, be submitted for tests or examinations and considered before incorporation of same into the work. Contractor shall be solely responsible for delays due to samples not being submitted in time to allow for tests.

All samples submitted shall become District's property.

#### **Section 11.05 Review of Submittals**

Following submission, the Submittals will be returned with one (1) or more of five (5) possible responses by the District Representative or Architect. These possible responses are as follows:

- (a) Unreviewed: If the Submittal is not required, or if it is not complete, or if it does not meet the form, format, and number requirements specified, it may be returned unreviewed. If the Submittal is not required, Work may commence; if the Submittal was returned due to form requirements, it shall be resubmitted and approval obtained prior to commencement of the Work.
- (b) Approved, Reviewed, or No Exceptions Taken: In the event the Submittal is acceptable as submitted, it will be returned with this status. Work may proceed upon receipt of approved Submittal.
- (c) Make Corrections Noted: If the Submittal is acceptable except for certain items which have been noted by the Architect, it will be so designated. Work may proceed with the corrections made, and no resubmittal is necessary.
- (d) Revise and Resubmit: This status indicates that revisions are noted on the Submittal, and an additional Submittal is required to reflect those revisions and/or additional information. Work may not commence until the resubmittal is approved.
- (e) Rejected: A Submittal may be rejected if it is not in compliance with the Contract Documents, or if it proposes an "or equal" or substitution which is not acceptable to District or Architect. A superseding Submittal shall be submitted and approved prior to commencement of the work.

Should Contractor proceed with the Work shown on a Submittal before approval is received, it shall remove and replace or adjust any Work which is not in accordance with the Submittal as ultimately approved, and it shall be responsible for any resultant damage, defect, or added cost. District shall be under no obligation to pay for Work installed prior to approval of Submittals, until the Submittals are approved and the Work in place is found to be in compliance with the Contract Documents.

Contractor shall resubmit Submittals in categories (d) and (e), above, after making any changes required so that Submittals will comply with the Contract Documents. When resubmitting, Contractor shall direct specific attention to deficient areas. Resubmittals shall be made in the same number of copies as the original Submittal. Resubmittals shall be made within ten (10) days of return of the previous Submittal, and in any event in sufficient time so as to avoid delay to the Work. No delay claims related to resubmittals will be entertained on the Project for any resubmittal originally received after the ten (10) days.

The Architect shall determine the adequacy and completeness of all Submittals. Where the Architect deems a Submittal to be inadequate, incomplete, or otherwise unsuitable for proper review, Contractor shall submit all additional information requested by the Architect. There shall be no change to the Term of this Facilities Lease or the Guaranteed Maximum Price when such additional information is required.

#### **Section 11.06 Submittals Showing Variation from Contract**

It shall be the responsibility of Contractor to specifically point out any variation or discrepancy between the Submittals submitted and the Contract Documents. Contractor shall make specific mention of all variations, along with an explanation of why they are requested, in its letter of transmittal.

FAILURE BY CONTRACTOR TO IDENTIFY IN ITS LETTER OF TRANSMITTAL ANY VARIATION, DISCREPANCY, OR CONFLICT WITH THE CONTRACT DOCUMENTS SHALL RENDER THE APPROVAL NULL AND VOID, AND CONTRACTOR SHALL BEAR ALL RISK OF LOSS AND RECONSTRUCTION COSTS OR DELAYS.

If any architectural, plumbing, mechanical, electrical, or structural modifications are required as a result of the approval of Submittals which deviate from or do not comply with the Contract Documents, those modifications shall be made without extra cost to District, and without extension of the Term of this Facilities Lease. Any other resultant costs, including but not limited to design fees, construction management fees, costs incurred by other contractors, or inspection fees, shall be at the expense of Contractor.

#### **Section 11.07 Effect of Approval of Submittals**

The approval of Submittals shall not relieve Contractor of the obligation for accuracy of dimensions and details; for conforming the work to the requirements of the Contract Documents; or from responsibility to fulfill this Facilities Lease at no extra cost to District, within the Term of this Facilities Lease.

#### **Section 11.08 Intentionally left blank.**

#### **Section 11.09 Intentionally left blank.**

#### **Section 11.10 Time for Proposing Substitution**

All requests for Substitutions shall be made within the same time requirement for initial Submittals. Failure to timely submit a Substitution request shall constitute a waiver by Contractor and an acceptance of the specified systems, processes, products and materials. Late Submittals may be considered only when the District Representative consents in writing, and the District's best interests so require.

#### **Section 11.11 Samples and Testing of Proposed Substitutions; Costs of Adapting to Work**

When the District Representative or Architect determines that samples and testing are required to evaluate a request for a Substitution, the District Representative shall so advise Contractor, and specify the systems, processes, products, materials or work to be sampled. Contractor shall, at no cost to District, provide samples as required by these General Conditions dealing with samples and testing, or the Technical Specifications.

Contractor shall bear all costs of sampling and testing required to decide a request for Substitution, and if a Substitution is accepted, Contractor shall bear all costs associated therewith, without any increase to the GMP.

### **Section 11.12 Effect of Approval of Equal Materials or Substitution Request**

The District shall have the discretion to approve or reject an equal or substitution request. If an application for an Equal or Substitution request is approved, Contractor shall be responsible for setting approved Equal or Substitution systems, processes, products, materials and/or equipment into the available space, and for the proper operation of the Equal or Substitution systems, process, products, materials and/or equipment with all other systems, processes, products, materials and/or equipment with which it may be associated, all in a manner acceptable to District.

No time extensions nor any increases in the Guaranteed Maximum Price shall be granted on account of an Equal or Substitution.

### **Section 11.13 Quality of Materials and Products.**

Contractor shall, if required by the Architect, Project Inspector, or District Representative, furnish satisfactory evidence as to the kind and quality of materials provided.

The District Representative may require, and Contractor shall submit if required, a list designating the source of supply of each item of materials incorporated into the Work, and in such event, those materials or products shall not be delivered to the Work nor installed therein until after the District Representative has approved the list.

Contractor shall certify that the materials and equipment installed comply with the Contract Documents and to the best of Contractor's knowledge, no installed materials or equipment contain asbestos.

In the event of a specification that allows Contractor to select one of several brands, makes, or types of material or equipment, the annotations shall show which of the allowable items Contractor has furnished. Contractor will update the Record Drawings and annotate specifications as often as necessary to keep them current but no less often than weekly. The Record Drawings and annotated specifications shall be kept at the work site and available for inspection by District and the Architect.

### **Section 11.14 Non-Utilization of Asbestos Material**

Contractor will be required to execute and submit the Certificate Regarding Non-Asbestos Containing Materials.

Should asbestos containing materials be installed by Contractor in violation of this certification, or if removal of asbestos containing materials is part of the Project, decontaminations and removals will meet the following criteria:

- (a) Decontamination and removal of Work found to contain asbestos or work installed with asbestos containing equipment shall be done only under the supervision of a qualified consultant, knowledgeable in the field of asbestos abatement and accredited by the Environmental Protection Agency (EPA).
- (b) The asbestos removal contractor shall be an EPA accredited contractor qualified in the removal of asbestos and shall be chosen and approved by the asbestos consultant who shall have sole discretion and final determination in this matter.
- (c) The asbestos consultant shall be chosen and approved by District who shall have sole discretion and final determination in this matter.
- (d) The Work will not be accepted until asbestos contamination is reduced to levels deemed acceptable by the asbestos consultant.

Cost of all asbestos removal, including, but not necessarily limited to the cost of the asbestos removal contractor, the cost of the asbestos consultant, analytical and laboratory fees, time delays and additional costs as may be incurred by District shall be borne entirely by Contractor.

**Hold Harmless:** Interface of work for the Project with work containing asbestos shall be executed by Contractor at his/her risk and at his/her discretion with full knowledge of the currently accepted standards, hazards, risks and liabilities associated with asbestos work and asbestos containing products. By execution of this Facilities Lease, Contractor acknowledges the above and agrees to hold harmless District, its Governing Board, employees, agents, and Architect and assigns for all asbestos liability which may be associated with this work. Contractor further agrees to instruct his/her employees with respect to the above mentioned standards, hazards, risks and liabilities.

### **Section 11.15 Better Material or Process**

In the event that Contractor furnishes a material, product, process, or article better than that specified in the Contract Documents, the difference in cost of that material, product, process, or article shall be borne by Contractor.

### **Section 11.16 Industry Standards**

Any material specified by reference to the number, symbol, or title of a specified standard such as a Commercial Standard, a Federal Specification, a Trade Association Standard, or other similar standard, shall comply with the requirements in the latest revision thereof, including any amendments or supplements thereto, in effect on the date of execution of this Facilities Lease, except as limited to type, class, or grade, or modified in that reference.

The standard referred to, except as modified in the specifications, shall have full force and effect as though printed in these specifications. These standards are not furnished to the Contractor for the reason that the manufacturers and trades involved are assumed to be familiar with their requirements.

- (a) Where Federal Specifications are referred to as a measure of quality and standard, they refer to Federal Specifications established by the Procurement Division of the United States Government and are available from the Superintendent of Documents, U.S. Government Printing Office.
- (b) Where Federal Specification numbers are used, they refer to the latest edition including amendments thereto.
- (c) Where Commercial Standards (CS) or Product Standards (PS) are referred to as a measure of quality, standard, and method of fabrication, they refer to Commercial Standards and Product Standards issued by the U.S. Department of Commerce.
- (d) Where ASTM serial numbers are used, they refer to the latest tentative specifications, standard specifications, standard method or standard methods of testing, issued by the American Society for Testing Materials, unless specifically noted.

### **Section 11.17 Materials and Products Storage**

Contractor shall confine the on-Site storage of all materials, products, and equipment required in the performance of this contract to the areas specified by District. Contractor shall obtain prior approval from the District Representative regarding areas for storage and methods of protection. All material, products, and equipment shall be brought and used upon the premises in such manner as to leave driveways and parking areas clear for the regular use of the public and District employees.

### **Section 11.18 Original Packages or Containers; Labels**

All materials delivered to the Site shall be new, unless otherwise specified, of the type, capacity, and quality specified, and free from defects. All materials shall remain in their original packages or containers until ready for use. The labels of all packages or containers shall remain affixed, and kept legible. No product shall be stored in any container, the label of which does not accurately describe the contents of the container.

### **Section 11.19 Protection of Materials and Equipment**

Contractor shall protect the Work, materials, and equipment from damage due to the action of the elements, trespassers, or other causes. Contractor shall properly store materials and equipment and, when necessary, erect temporary structures to protect them from damage. Contractor shall replace any items damaged as a result of improper protection at no expense to District. Nothing in this Section 11.19 shall limit Contractor's rights to any insurance proceeds from any insurance coverage required by the Facilities Lease or these General Conditions.

### **Section 11.20 Providing and Paying for Materials**

Except as otherwise specifically stated in the Contract Documents, Contractor shall provide and pay for all materials, products, articles, processes, labor, tools, equipment, and installation, and all associated superintendence of every nature whatsoever necessary to execute and complete the Work within the Term of this Facilities Lease.

### **Section 11.21 Warranty of Title**

Contractor shall complete the Work using materials that are not subject to liens or similar interests by third parties. Contractor shall not use materials or supplies to complete the Work that would result in valid claims of ownership of the materials or supplies by third parties. Contractor warrants good and sufficient title to all material, supplies, and equipment installed or incorporated in the Work, and agrees upon completion of the Work to deliver the premises, together with all improvements and appurtenances, constructed or placed thereon by Contractor, to District, free from any claims, liens, or charges.

Contractor agrees that neither it nor any person, firm, or corporation furnishing any materials or labor for any work covered by this Facilities Lease shall have any right to a lien upon the premises or any improvement or appurtenances thereon; provided, however, that nothing contained in this Section 11.21 shall defeat or impair the rights of persons furnishing materials or labor



under the payment bond given by Contractor, nor any rights under any law permitting such persons to look to funds due to Contractor but retained by District.

Contractor shall cause the provisions of this Section 11.21 to be inserted in all subcontracts and material contracts executed by Contractor and notice of this provision shall be given to all persons furnishing materials for the Work. This Section 11.21 shall not disallow Contractor's installing any devices or equipment of utility companies or of governmental agencies, the title to which is commonly retained by the utility company or the agency.

**Section 11.22 Patents and Royalties**

All fees, claims, or royalties for any patented or copyrighted invention, article, arrangement, or plan that may be used upon or in any manner connected with the doing of the work or any part thereof shall be included in the project proposal for doing the work. Contractor and its sureties shall protect and hold harmless District, the District Representative, the Project Inspector, the Architect and its consultants, and each of their respective officers, agents, and employees against any and all demands made for such fees or claims and against any and all suits, demands, claims or causes of action brought or made by the holder of any invention, patent, copyright, or trademark, or arising from any alleged infringement of any invention, patent, copyright, or trademark.

Before final payment is made on account of this Facilities Lease, Contractor shall furnish acceptable proof to District of proper release from all such fees or claims.

**Section 11.23 Ownership of Submittals**

Upon submission, all Submittals shall become District's property.

**Section 11.24 Payment of Federal or State Taxes**

Any federal, state or local tax, specifically including sales and use taxes, payable on materials furnished by Contractor pursuant to this Facilities Lease, shall be included in the Guaranteed Maximum Price and paid by Contractor. 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 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 excise tax for such materials shall be included in any project proposal price.

## **SECTION 12: MEASUREMENT AND TENANT IMPROVEMENT PAYMENTS**

### **Section 12.01 Scope of Tenant Improvement Payment**

Contractor shall accept the compensation provided in the Guaranteed Maximum Price, Exhibit A to the Facilities Lease (including Lease Payments), as full payment for furnishing all labor, materials, tools, equipment, and incidentals necessary to the completed Work and for performing all Work contemplated and embraced under this Facilities Lease; also for loss or damage arising from the nature of the Work, or from the action of the elements, or from any unforeseen difficulties which may be encountered during the prosecution of the Work until the acceptance by District and for all risks of every description connected with the prosecution of the Work, also for all expenses incurred in consequence of the suspension or discontinuance of the Work as provided in this Facilities Lease; and for completing the Work according to the Specifications and Plans. Neither the payment of any estimate nor of any retained percentage shall relieve Contractor of any obligation to make good any defective Work or material.

No compensation will be made in any case for loss of anticipated profits.

The Work includes the preparatory work and operations needed for mobilization and demobilization of the Project. The Work, however, does not include establishing the Architect's field facility(s) of utility work and connections needed for these facilities.

### **Section 12.02 Progress Estimate**

Within ten days following the end of each calendar month, Contractor will prepare on the Districts standard "Application for Payment" Form B (see Procedures Manual, Attachment 4 to this Project Manual) and deliver to the Architect or District a written payment request setting forth Contractor's estimate of the percentage of Work completed during that month and the value of all such Work. In arriving at the value of the Work done, the Architect or District will give consideration to the value of labor and materials which have been incorporated into the permanent work, including any and all shop fabrication, by Contractor during the preceding month. Consideration will not be given to preparatory work done or for materials or equipment on hand.

In order to assist the Architect, Contractor shall furnish the Architect with copies of invoices for all such items delivered to the job site.

Prior to submission and acceptance of first application for preconstruction and construction payments, and unless waived or modified by District Representative in writing, Contractor shall provide to District or Architect the items as set forth in Attachment 9 to this Project Manual. These items must be submitted no later than sixty (60) days after the date of finalization and attachment of Exhibit A.

### **Section 12.03 Tenant Improvement Payments**

District's and/or the Architect's acceptance of any payment request and estimate delivered by Contractor pursuant to Section 12.02 hereof, shall not release Contractor or any surety from responsibility for the satisfactory performance of such Work and shall not prevent District from enforcing each and every provision of the General Construction Provisions (the Project Manual, Exhibit B to this Facilities Lease). District shall have the right subsequently to correct any error made in any estimate for payment. Contractor shall not be entitled to have any payment requests processed or be entitled to have any payment made for Work performed so long as District, Architect or any of the public agencies with jurisdiction has not accepted or waived compliance with any lawful or proper direction concerning non-complying Work or any portion thereof. District may withhold from the Tenant Improvement Payments one hundred fifty percent (150%) of the estimated value of non-complying Work as determined by District unless and until such Work is corrected or remedied to District's reasonable satisfaction. Failure of District to make any Tenant Improvement Payments (unless properly withheld by District under this Facilities Lease, Site Lease or the provisions found herein) as set forth shall be a Default under the Site Lease.

District will pay Contractor ninety percent (90%) of the undisputed amount of each Tenant Improvement Payment within thirty (30) days after receipt of an undisputed and properly submitted payment request less the Lease Payment due for that month. If District fails to pay an undisputed payment within the allotted thirty (30) days, District shall pay interest to Contractor equivalent to the legal rate set forth in subdivision (a) of Section 685.010 of the Code of Civil Procedure. Five percent (5%) of the amount of each estimate shall be retained by District until the Date of Completion, and five percent (5%) of the amount of each estimate shall be paid by District as Lease Payments as described elsewhere in this Agreement. Contractor may elect to complete and comply with the Escrow Agreement for Security Deposit in Lieu of Retention Form. Notwithstanding the above, at any time after fifty (50) percent of the Work has been completed District, subsequent to District Board finding that satisfactory progress is being made, may make any of the remaining Tenant Improvement Payments in full for the actual work completed.

- (a) Upon receipt of a payment request from Contractor, District shall act in accordance with both of the following:

- (1) Each payment request shall be reviewed by District as soon as practicable after receipt for the purpose of determining that the payment request is a proper payment request.
- (2) Any payment request determined not to be a proper payment request suitable for payment shall be returned to Contractor as soon as practicable, but not later than seven (7) days, after receipt. A request returned pursuant to this Section 12.03, shall be accompanied by a document setting forth in writing the reasons why the payment request is not proper.
  - (i) The number of days available to District to make a payment without incurring interest pursuant to this Section 12.03 shall be reduced by the number of days by which District exceeds the seven-day return requirement set forth in paragraph (2).
  - (ii) Contractor may, in accordance with the provisions of Public Contracts Code section 22300, substitute securities for any monies which District may withhold to ensure performance under this Facilities Lease.
  - (iii) Reserved.
  - (iv) No payment shall be considered to be an approval or acceptance of any Work, materials or equipment. Estimated amounts and values of Work done and materials and equipment furnished will be confirmed with actual amounts and values as they become available in subsequent progress estimates, payments and the final estimate and payment. All estimates and payments will be subject to correction in subsequent estimates and payments and the final estimate and payment.
  - (v) It is mutually agreed between the parties to this Facilities Lease that no payments made under this Facilities Lease, including Tenant Improvement Payments, and the final Tenant Improvement Payment shall be evidence of the performance of this Facilities Lease, either wholly or in part, and no payment shall be construed to be an acceptance of any defective or incomplete Work or improper materials.

#### **Section 12.04 Liens and Stop Notices**

Contractor agrees to keep the Work, the site of the Work and all monies held by District free and clear of all liens and stop notices related to labor and materials furnished in connection with the Work, if permitted by law. Furthermore, Contractor waives any right it may have to file any type of lien or stop notice in connection with the Work. Notwithstanding anything to the contrary contained in the General Construction Provisions (Part I of the Project Manual, Exhibit B to this Facilities Lease), if any such lien or stop notice is filed, District may withhold sufficient funds as permitted by applicable law, due or to become due to the direct contractor to pay the claim stated in the stop payment notice and to provide for the public entity's reasonable cost of any litigation pursuant to the stop payment notice. District may withhold such payment unless or until Contractor, shall furnish satisfactory evidence that the indebtedness and any lien or stop notice in respect thereof has been satisfied, discharged and released of record, or that Contractor has legally caused such lien or stop notice to be released of record pending the resolution of any dispute between Contractor and any person or persons filing such lien or stop notice. This Section 12.04 shall be specifically included in all Subcontracts and purchase orders entered into by Contractor.

#### **Section 12.05 Final Acceptance and Date of Completion**

Whenever Contractor shall deem all Work under this Facilities Lease to have been completed in accordance therewith, he shall so notify the Architect in writing, and the Architect shall promptly ascertain whether the Work has been satisfactorily completed and, if not, shall advise Contractor in detail and in writing of any additional Work required. When all the provisions of this Facilities Lease have been fully complied with, to the satisfaction of the Architect, the Architect shall proceed with all reasonable diligence to certify the final completion of the Work, and will file copies thereof with District and Contractor.

#### **Section 12.06 Right to Withhold Payments**

- (a) In addition to all other rights and remedies of District hereunder and by virtue of the law, District may withhold up to one hundred fifty percent (150%) of claimed or bona fide disputed amounts from any Tenant Improvement Payment (progress payment or final payment) to such extent as may reasonably be necessary to protect District from loss on account of:
  - (1) Failure of Contractor to comply with the Contract Documents, including but not limited to Defective Work not remedied, irrespective of when any such Work is found to be defective;

- (2) Claims or liens filed including, but not limited to claims under Sections 1775, 1776, or 1777.7 of the Labor Code, or as recodified in the future;
  - (3) Failure of Contractor to make payments for labor, materials, equipment, or other facilities, or to Subcontractors and/or suppliers, where such failure results in the delivery of a stop notice to District;
  - (4) Failure of Contractor to complete the Work by the Date of Completion to the extent of any associated liquidated damages sums that are due and owing; or
  - (5) Damage directly caused by Contractor to Work or property.
- (b) Whenever District shall, in accordance herewith, withhold any monies otherwise due Contractor, written notice of the amount withheld and the reasons therefore will be given Contractor. After Contractor has corrected the enumerated deficiencies, District will promptly pay to Contractor the amount so withheld. When monies are withheld to protect District against claims or liens of mechanics, material men, Subcontractors, etc., District may at its discretion permit Contractor to deliver a surety bond in terms and amount satisfactory to District, indemnifying District against any loss or expense, and upon acceptance thereof by District, District shall release to Contractor monies so withheld.
- (c) District may withhold from Progress Payments and retention funds due Contractor sufficient amounts (to a maximum of 150% of claimed or disputed amounts) as in its judgment may be necessary to cover (the following list is intended to be inclusive, but not exhaustive):
- (1) Claims against Contractor or any Subcontractors for labor/materials furnished in and about the performance of Work on the Project, for which a Stop Notice or other appropriate documentation has been received by District.
  - (2) Failure of Contractor to make proper payments to Subcontractors for material or labor.
  - (3) Failure to complete the Project in accordance with the Project Documents, if there exists reasonable doubt that the Project can be completed on the agreed upon schedule for the contract balance then unpaid.
  - (4) Poor quality or improperly executed work unless covered by bond, insurance or other appropriate mechanism to assure correction prior to filing Notice of Completion and release of retention.
  - (5) Damage to another contractor as may be applicable to the terms of this Agreement.
  - (6) Site clean-up.

**Section 12.07 Final Tenant Improvement Payment**

Within thirty (30) days after the Date of Completion, District will file in the Office of the County Recorder, a Notice of Completion of the Work herein agreed to be done by Contractor. On the expiration of thirty-five (35) days after the recordation of such Notice of Completion, the difference between the Guaranteed Maximum Price and all payments theretofore made to Contractor shall be due and payable to Contractor excepting only such sum or sums as may be withheld or deducted in accordance with the terms of this Facilities Lease. All prior certifications, upon which partial Tenant Improvement Payments may have been made, being merely estimates, shall be subject to correction in the final certificate.

**Section 12.08 Final Release**

Final payment of Tenant Improvement Payments to Contractor in accordance with the final estimate is contingent upon Contractor furnishing District with a signed written release of certain claims against District. Disputed Contract claims in stated amounts may be specifically excluded by Contractor from the operation of the release. The release shall be in substantially the following form:

**Section 12.9 Waiver of Interest**

District shall have no obligation to pay and Contractor hereby waives the right to recover interest with regard to monies which District is required to withhold by reason of judgment, order, statute or judicial process.

**CONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT**

NOTICE: THIS DOCUMENT WAIVES THE CLAIMANT'S LIEN, STOP PAYMENT NOTICE AND PAYMENT BOND RIGHTS EFFECTIVE ON RECEIPT OF PAYMENT. A PERSON SHOULD NOT RELY ON THIS DOCUMENT UNLESS SATISFIED THAT THE CLAIMANT HAS RECEIVED PAYMENT.

Identifying Information

Name of Claimant: \_\_\_\_\_  
Name of Customer: \_\_\_\_\_  
Job Location: \_\_\_\_\_  
Owner: \_\_\_\_\_

Conditional Waiver and Release

This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for labor and service provided, and equipment and material delivered, to the customer on this job. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived and release by this document, unless listed as an Exception below. This document is effective only on the claimant's receipt of payment from the financial institution on which the following check is drawn:

Maker of Check: \_\_\_\_\_  
Amount of Check: \_\_\_\_\_  
Check Payable to: \_\_\_\_\_

Exceptions

This document does not affect any of the following:  
Disputed claims forextras in the amount of : \$ \_\_\_\_\_

Signature:

Claimant's Signature: \_\_\_\_\_  
Claimant's Title: \_\_\_\_\_  
Date of Signature: \_\_\_\_\_

## **SECTION 13: TIME OF WORK**

### **Section 13.01 Preliminary Contract Schedule**

No later than thirty (30) days after receiving the Notice to Proceed under Section 5 of the General Construction Provisions, Contractor shall furnish to the District Representative three (3) hard copies and one copy in electronic format (CD) of an Preliminary Contract Schedule.

The Preliminary Contract Schedule shall be based on and incorporate the Contract Milestones and Completion Date specified in the Work Plan and Schedule (Attachment 2 to the Project Manual, Exhibit B to the Facilities Lease).

The Preliminary Contract Schedule shall indicate the detailed plan for the Work to be completed in the first ninety (90) days; details of planned mobilization of plant and equipment; sequence of early operations; and procurement of materials and equipment. Work beyond ninety (90) days shall be shown in summary form.

- (a) The Preliminary Contract Schedule shall be a time-scaled Critical Path Method (CPM) type schedule, prepared in software mutually agreed by the Parties.
- (b) Overall time of completion and time of completion for each milestone shown on the Preliminary Contract Schedule shall adhere to the times in the Contract Documents, unless an earlier (advanced) initial time of completion is requested by Contractor and agreed to by the District Representative. Any such agreement shall be formalized by a change order.

The District Representative will review the Preliminary Contract Schedule for conformance with the requirements of this Facilities Lease. The District Representative will return the Preliminary Contract Schedule with comments within seven (7) days after receiving it from Contractor.

### **Section 13.02 Contract Schedule Development**

Within sixty (60) days after receiving the Notice to Proceed under Section 5 of the General Construction Provisions, Contractor shall submit a detailed Proposed Contract Schedule presenting an orderly and realistic plan for completion of the Work, in conformance with the requirements of this specification. The Proposed Contract Schedule shall be in hard copy and electronic format (CD).

The Contract Schedule shall furnish or comply with the following requirements:

- (a) A time-scaled CPM type schedule.
- (b) No activity on the schedule shall have duration longer than fourteen (14) days, with the exception of fabrication and procurement activities, unless otherwise approved by the District Representative. Activity durations shall be the total number of actual days required to perform that activity including consideration of weather impact on completion of that activity.
- (c) Procurement of major equipment, through receipt and inspection at the job site, identified as a separate activity.
- (d) District-furnished materials and equipment if any, identified as separate activities.
- (e) Dependencies (or relationships) between activities.
- (f) Processing/approval of Submittals and shop drawings for major equipment. Activities that are dependent on Submittal acceptance and/or material delivery shall not be scheduled to start earlier than the expected acceptance or delivery dates.
- (g) Separate buildings and other independent project elements shall be individually identified in the network.
- (h) Fourteen (14) days for developing punch list(s), completion of punch list items, and final clean up for the work or any designated portion thereof. No other activities shall be scheduled during this period.
- (i) Interface with the work of other contractors (or entities).

The District Representative will review the Proposed Contract Schedule for conformance with the requirements of this Facilities Lease. Within seven (7) days after receipt, the District Representative will approve the Contract Schedule or will return it with comments. If the Proposed Contract Schedule is not approved, Contractor shall revise the schedule to incorporate comments and resubmit the schedule for approval within seven (7) days after receiving it. The approved schedule shall become the Contract Schedule.

The Contract Schedule shall be the basis for evaluating job progress, payment requests, and time extension requests. The responsibility for developing the Contract Schedule and monitoring actual progress as compared to the schedule rests with Contractor.

Failure of the Contract Schedule to include any element of the Work or any inaccuracy in the Contract Schedule will not relieve Contractor from responsibility for accomplishing all the Work in accordance with this Facilities Lease.

Approval of the Contract Schedule will not relieve Contractor of the responsibility for accomplishing the Work in accordance with this Facilities Lease.

Failure to obtain the approved Contract Schedule within ninety (90) calendar days of the Notice to Proceed may result in District withholding ten percent (10%) of each progress payment, or One Thousand Dollars (\$1,000), whichever is greater, until an approved Contract Schedule is obtained. This in addition to retention.

### **Section 13.03 Monthly Updates**

Contractor shall submit to the District Representative each month an up-to-date status report of the Work. The status report shall include:

- (a) Contractor's estimated percentage complete and remaining duration for each activity not yet complete.
- (b) Actual start/finish dates for activities as appropriate.
- (c) Identification of processing errors, if any on the previous update reports.
- (d) Revisions, if any, to the assumed activity durations including revisions for weather impact for any activities due to the effect of the previous update on the schedule.
- (e) Identification of activities that are affected by requested or proposed changes to the Work.
- (f) Resolution of conflict between actual Work progress and schedule logic. When out of sequence activities develop in the Contract Schedule because of actual construction progress, Contractor shall submit revision to schedule logic to conform to current status and direction.

The District Representative will review the updated information and meet with Contractor each month at the Site to determine the status of the Work. If agreement cannot be reached on any issue, Contractor will use the District Representative's determination in the processing of the update.

Progress payments pursuant to this Facilities Lease will be based on the update of the Contract Schedule. No progress payments will be made without the required monthly update of the Contract Schedule.

### **Section 13.04 Schedule Revisions**

If the sequence of construction differs significantly, as determined by the District Representative, from the Contract Schedule, Contractor shall submit within fifteen (15) days a revised schedule to the District Representative for approval.

When a requested or proposed change to the Work will have an impact on the critical path, Contractor shall submit a schedule fragment showing this impact. If the requested or proposed change is accepted by District, the schedule fragment shall be incorporated into the Contract Schedule. Time extensions will be considered only to the extent there is insufficient remaining float to accommodate these changes, and pursuant to Section 14 of these General Conditions. No additional cost will be allowed for the incorporation of approved changes into the Contract Schedule.

Should Contractor, after approval of the Contract Schedule, intend to change its plan of construction, it shall submit its requested revisions to the District Representative, along with a written statement of the revision, including a description of the logic for rescheduling the Work, methods of maintaining adherence to intermediate milestones and other specific dates and the reasons for the revisions. If the requested changes are acceptable to the District Representative, they will be incorporated into the Contract Schedule in the next reporting period.

Schedule revisions shall be submitted at least seven (7) days prior to the date of submission of update information. District will have seven (7) days to review the revisions.

### **Section 13.05 Contract Schedule Reports**

Contractor shall submit the following reports for the Proposed Contract Schedule, Contract Schedule, Contract Schedule Updates, Contract Schedule Revisions and Recovery Schedules:

- (a) A Schedule Logic Report listing the activities, their early/late and actual start and finish dates, duration, float and the logic relationship of activities sorted by early start.
- (b) A cost report listing each activity and its associated cost, percentage of Work accomplished, earned value to date, previous payments and amount earned for the update period.
- (c) A narrative report with the updated progress analysis, which shall include a description of problem areas, current and anticipated delaying factors and their impact, an explanation of corrective action taken and proposed revisions for recovery. Narrative report on Proposed Contract Schedule will outline Contractor's overall plan, strategy, crew movement and utilization and other considerations in developing the schedule.
- (d) Network Plots presenting time scaled network diagram showing activities and their relationships.

Contractor will provide three (3) copies of all reports including one (1) reproducible copy.

In addition, Contractor will provide an electronic copy on a CD.

### **Section 13.06 Three Week Schedules**

Contractor shall prepare a Three Week Schedule to be used throughout the duration of Work. The Three Week Schedule shall include all current activities and projected activities for the succeeding two (2) weeks. The Three Week Schedule shall include actual start/finish dates for the preceding one (1) week. Using a form mutually agreeable to Contractor and District Representative, the Three Week Schedule shall be submitted to the District Representative prior to the weekly construction meeting. Contractor shall participate in Three Week Schedule coordination during the weekly construction meetings.

### **Section 13.07 Commencement of Work**

Contractor shall commence procurement of long lead materials and equipment after execution of this Facilities Lease. It is Contractor's responsibility to procure such items sufficiently in advance of the Work. Any costs or delays caused by Contractor's failure to timely procure long lead materials shall be borne entirely by Contractor.

### **Section 13.08 Time of Essence**

Time is of the essence of this Facilities Lease. Contractor shall, to the fullest extent possible, carry on the various classes or parts of the Work concurrently, and shall not defer construction of any portion of the Work in favor of any other portion of the Work, without the express approval of the District Representative.

### **Section 13.09 Contract Time**

"Contract Time" is the duration between Contractor's receipt of a Notice to Proceed to commence construction and the deadline to achieve Completion as defined in Section 21.05, as defined herein. The Contract Time shall be established in conjunction with the GMP and made part of Exhibit A to the Facilities Lease. Contractor shall achieve Completion of the Work within the Contract Time.

### **Section 13.10 Utilities**

Contractor shall furnish and install necessary temporary distribution systems, if needed to complete the Work or requested by District, from distribution points to points on site where utility is necessary to carry on the work. Upon completion of work, Contractor shall remove all temporary distribution systems.

### **Section 13.11 Responsibility for Completion**

Contractor shall furnish sufficient manpower, materials, facilities and equipment and shall work sufficient hours, including night shifts, overtime operations, Sundays and holidays as may be necessary to insure the prosecution and completion of the Work in accordance with the Term of this Facilities Lease. If work on the critical path is fourteen (14) days or more behind the currently updated Contract Schedule and it becomes apparent that the Work will not be completed within the Term of this Facilities Lease, Contractor will implement whatever steps it deems necessary to make up all lost time. If Contractor's solution is not successful, it will make further attempts using the following sequence of events:



- (a) Reschedule activities to achieve maximum practical concurrence of accomplishment of activities.
- (b) If the above cannot be achieved then:
  - (1) Contractor shall increase manpower in such quantities and crafts as will substantially eliminate, in the judgment of the District Representative, the backlog of work; or increase the number of working hours, shifts per working day, working days per week or the amount of equipment or any combination of the foregoing sufficiently to substantially eliminate in the judgment of the District Representative the backlog of work.
  - (2) In addition, the District Representative may require Contractor to submit a Recovery Schedule demonstrating its program and proposed plan to make up a lag in scheduled progress and to ensure Completion of the Work within the Contract Schedule. If the District Representative finds the proposed Recovery Schedule unacceptable, it may require the Contractor to submit a new plan. If the actions taken by Contractor or the second plan proposed are unsatisfactory, the District Representative may require Contractor to take any of the actions set forth in the previous paragraph without additional cost to District to make up the lag in scheduled progress.

Failure of Contractor to comply with the requirements of this Section 13.11 shall be considered grounds for a determination by District, pursuant to Section 12.05 of these General Conditions, that Contractor is failing to prosecute the Work with such diligence as will ensure its completion within the time specified.

**Section 13.12 Daily Reports**

Contractor shall submit a Daily Field Report to the District Representative for each workday including weekends and holidays, when worked.

**Section 13.13 Intentionally left blank.**

**Section 13.14 Computation of Time / Adverse Weather**

13.14.1 The Contractor will only be allowed a time extension for Adverse Weather conditions if requested by Contractor in compliance with the time extension request procedures and only if all of the following conditions are met:

- (a) The weather conditions constitute Adverse Weather, as defined herein and further specified in the Project Specific Conditions;
- (b) 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;
- (c) The Contractor's crew is dismissed as a result of the Adverse Weather;
- (d) Said delay adversely affects the critical path in the Construction Schedule; and
- (e) The number of days for delay caused by Adverse Weather for the month exceeds the following:

January	11	July	0
February	5	August	0
March	8	September	0
April	4	October	3
May	1	November	6
June	0	December	4

13.14.2 If the aforementioned conditions are met, a non-compensable day-for-day extension will only be allowed for those days in excess of those indicated in Exhibit A.

13.14.3 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.

13.14.4 The Contract Time has been determined with consideration given to the average climate weather conditions prevailing for the last three years from data obtained from Sacramento Executive Airport. A rain day is .10 inches or more per day.

13.14.5 The Contract allows for forty-two (42) days per calendar year for weather delays and will be carried as on owner controlled allowance.

**Section 13.15 Temporary Access through Construction Areas**

Contractor shall provide temporary access to existing occupied facilities when scheduled work is not completed by the as provided in the Contract Schedule. Contractor will submit to the District Representative, for review and approval, a detailed plan for temporary access for approval prior to installation. The submitted plan shall include solution to recover delay.

## **SECTION 14: DELAYS AND EXTENSIONS OF TIME**

### **Section 14.01 Extensions of Time; Unavoidable Delays**

Contractor shall not be granted an extension of time except on the issuance of a Change Order by District, upon a finding of good cause for such extension.

- (a) As used herein, the following terms shall have the following meanings:
- (1) "Excusable Delay" means any delay that adversely impacts the critical path of the Work caused by conditions beyond the control and without the fault or negligence of Contractor. These events may include force majeure events, strikes, embargoes, fire, unavoidable casualties, national emergency, and Adverse Weather (per Section 13.14 of these General Conditions) in which the District Representative, Architect and Project Inspector agree that work on the critical path cannot continue.  
  
The financial inability of Contractor or any Subcontractor or supplier and any default of any Subcontractor, without limitation, shall not be deemed conditions beyond Contractor's control. An Excusable Delay may entitle Contractor to an extension of the Contract Time, in accordance with this Section 14.01, but shall not entitle Contractor to an adjustment of the Guaranteed Maximum Price.
  - (2) "Compensable Delay" means any delay that adversely impacts the critical path of the Work caused by acts or omissions by District or its separate contractors or requests by District to change the scope of Work after the GMP is established which causes a delay. A Compensable Delay may entitle Contractor to an extension of the Contract Time, in accordance with this Section 14.01, and/or an increase in the GMP. Except as provided herein, Contractor shall have no claim for damage or compensation for any delay, interruption, hindrance, or disruption. If District directs Contractor to perform additional work that requires additional time, the Parties may agree to a time extension and incorporate it by Change Order.
  - (3) "Inexcusable Delay" means any delay that adversely impacts the critical path of the Work resulting from causes other than those listed in Subparagraphs (a)(1) or and (a)(2) above due to the acts or omissions of Contractor or its Subcontractors. An Inexcusable Delay will not entitle Contractor to an extension of the Term of this Facilities Lease or an adjustment of the Guaranteed Maximum Price.
- (b) Contractor may make a claim for an extension of the Contract Time, for an Excusable Delay or a Compensable Delay, subject to the following:
- (1) If an Excusable Delay and a Compensable Delay occur concurrently, the maximum extension of the Contract Time of this Facilities Lease shall be the number of days from the commencement of the first delay to the cessation of the delay which ends last.
  - (2) If an Inexcusable Delay occurs concurrently with either an Excusable Delay and/or a Compensable Delay, the maximum extension of the Contract Time shall be the number of days, if any, by which the duration of the Excusable Delay and/or the Compensable Delay calculated in accordance with subparagraph (b)(1), above, if applicable, exceeds the Inexcusable Delay. The duration of the concurrence is non-compensable.

Delays in the prosecution of parts or classes of the Work which do not prevent or delay the Completion of the whole Work within the Contract Time are not to be considered Excusable or Compensable.

### **Section 14.02 Notice of Delays; Requests for Time Extensions**

Whenever Contractor foresees any delay in the prosecution of the Work, and in any event immediately upon the recognition of an occurrence of any delay which Contractor regards as good cause for an extension, Contractor shall notify the District Representative in writing of the delay. The notice shall specify with detail the cause asserted by Contractor to constitute good cause for an extension together with a detailed schedule analysis showing the effect of the delay on the critical path of the Contract Schedule and a quantification of the length of the requested extension of time. Failure of Contractor to submit such a notice within seven (7) days after Contractor discovers the initial occurrence of the event giving rise to the delay shall constitute a waiver by Contractor of any request for extension, and no extension shall be granted as a consequence of such delay.

District shall have no obligation to consider any time extension request unless the requirements of the Contract Documents are complied with. District shall not be responsible or liable to Contractor for any constructive acceleration due to failure of District to grant time extensions under the Contract Documents should Contractor fail to comply with the submission and justification requirements of the Contract Documents for time extension requests. Contractor's failure to perform in accordance

with the Contract Schedule shall not be excused because Contractor has submitted time extension requests, unless and until such requests are approved by District.

#### **Section 14.03 Investigation: Procedure**

Upon receipt of a request for extension, the District Representative shall conduct an investigation of the facts asserted by Contractor to constitute good cause for an extension. District Representative shall report the results of this investigation, as well as the propriety of the time extension requested, to Contractor in writing within ten (10) days of receipt of the request and shall indicate whether it will recommend for or against the extension.

Upon receiving the District Representative's recommendation, Contractor may either concur in the recommendation, or reject the recommendation and proceed with a claim as provided for in Articles 21 and 23 of these General Conditions.

#### **Section 14.04 Discretionary Time Extensions for Best Interest of District**

District reserves the right to extend the time for completion of the Work if District determines that such extension is in the best interest of District. In the event that a discretionary extension is granted at the request of Contractor, District shall have the right to charge to Contractor all or any part, as District may deem proper, of the actual cost of construction management, engineering, inspection, supervision, incidental and other overhead expenses that accrue during the period of the extension, and to deduct all or any portion of that amount from the final payment for the Work.

#### **Section 14.05 Liquidated Damages**

If the Work is not Completed by Contractor in the Contract Time specified in Exhibit A to Contract Documents or within any period of extension authorized pursuant to this Section 14, Contractor acknowledges and admits that District will suffer damage, and that it is impracticable and infeasible to fix the amount of actual damages. Therefore, it is agreed by and between Contractor and District that Contractor shall pay to District as fixed and liquidated damages, and not as a penalty, the sum specified in the Project Specific Conditions in the Facilities Lease for each calendar day of delay in achieving Completion as defined in Section 21.05 within the Contract Time, as adjusted by all time extensions memorialized in a change order, and that both Contractor and Contractor's surety shall be liable for the total amount thereof, and that District may deduct Liquidated Damages from any monies due or that may become due to Contractor. This liquidated damage stipulation is intended to constitute the sole and complete remedy for any Contractor caused delay and resulting failure to achieve Completion as defined in Section 21.05 within the Contract Time. If it appears during the course of construction that Contractor is behind schedule and the imposition of liquidated damages is likely, or if liquidated damages begin to accrue prior to the time for final payment of Tenant Improvement Payments, the amount accrued may be withheld from any progress payment for Tenant Improvement Payments or the Final Tenant Improvement Payment that would otherwise be due. This right to withhold funds is intended to complement District's rights under Section 12 of these General Conditions, as well as any other rights of District under the Facilities Lease.

This liquidated damages provision shall apply to all delays of any nature whatsoever, save and except only delays found to be excusable or compensable pursuant to Section 14.01 hereof, or time extensions granted by District pursuant to Section 14.04 hereof.

Contractor shall not pay fixed and liquidated damages for delay in Completion of the Project, as defined by Section 21.05 caused by the failure of District or the owner of utility facilities located on the Project Site to provide for removal or relocation of such facilities.

Payment by District of any progress payments after expiration of the Term of this Facilities Lease shall not constitute a waiver by District of its right to claim liquidated damages in accordance with this Section 14.05.

#### **Section 14.06 Extension of Time Not a Waiver**

Any extension of time granted Contractor pursuant to this Section shall not constitute a waiver by District of, nor a release of Contractor from Contractor's obligation to perform this Facilities Lease in the time specified by the Agreement, as modified by the particular extension in question.

District's decision to grant a time extension due to one circumstance set forth in one request, shall not be construed as a grant of an extension for any other circumstance or the same circumstance occurring at some other time, and shall not be viewed by Contractor as a precedent for any other request for extension.

#### **Section 14.07 Suspensions by District**

The District may at any time, by notice in writing to Contractor, suspend any part of the Work, for such period of time as may be necessary to prevent improper execution of the Work, or for other reasons in District's discretion, on the Project by Contractor, its Subcontractors or agents

- (b) In the event of any suspension of the Work, through no fault of Contractor, then the following shall apply:
  - (1) If Contractor does not choose to terminate the Contract, as set forth in Subsection (b)(2) hereof, Contractor shall be entitled to an extension of time, consistent with the policies and procedures set forth in this Article, wherein to complete the Work to the extent of the delay caused and reasonable compensation for all resulting damage such suspension caused, including Contractor's reasonable general condition and remobilization costs. Contractor agrees to provide District documentation supporting such costs prior to District having to provide such compensation.
  - (2) Contractor may, at its option, by written notice to District, terminate the Contract along with the Facilities Lease and Site Lease, if the Project as a whole is suspended for more than sixty (60) days. If Contractor terminates the Facilities Lease pursuant to this Section 14.07 (b)(2), then Contractor shall be entitled to: (1) all amounts owing to it under the Facilities Lease, these General Construction Provisions and the other Contract Documents for Work completed, and accepted by District, as of the date on which the termination notice is delivered including retentions and bond and insurance premiums; (2) any reasonable costs incurred by Contractor in canceling orders and contracts relative to this Contract that Contractor had placed or entered into prior to receipt of the cancellation notice and which Contractor cannot use on other unrelated work; and (3) any reasonable costs incurred by Contractor in preserving and protecting material and equipment at the Project site necessitated by cancellation of this Contract prior to completion of the Project. Contractor agrees to provide District documentation supporting such costs prior to District having to provide such compensation.

#### **Section 14.08 Suspensions Exceeding One Year**

Should the Work be suspended for a period exceeding one (1) calendar year due to war conditions, labor conditions, legal actions, or for other conditions constituting the legal defense of impossibility of performance, Contractor and District agree to enter into an agreement terminating the Facilities Lease upon the following terms and conditions.

District shall be responsible only to pay Contractor the actual value of the work performed from the Date of Commencement or from the date of the last progress payment, whichever is later, plus the ten percent (10%) retention from prior progress payments, less any deductions authorized by the Contract Documents.

As between Contractor and District, it shall be conclusively presumed that the actual value for Contractor's work to the date of the last progress payment is no more than the actual amount of prior progress payment plus the ten percent (10%) retention from those progress payments; provided, however, that this Section shall not preclude District from deducting charges for work or materials which do not meet the requirements of the Contract Documents.

#### **Section 14.09 Effect of Stop Work Notice**

If District orders a suspension of the Work pursuant to Section 9 of these General Conditions, the days on which the suspension is in effect shall be included in determining the required completion date, and shall not otherwise modify or extend the time within which Contractor is to perform. In such event, Contractor shall not be entitled to any damages or compensation on account of such suspension or delay, unless Contractor can establish that Stop Work Notice was not warranted.

## **SECTION 15: CHANGES TO THE WORK**

### **Section 15.01 No Changes Without Authorization**

There shall be no change whatsoever in the Drawings, Specifications, or in the Work without an executed Change Order or a written Construction Change Directive 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 or Construction Change Directive in advance of the changed Work being performed. 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 is duly adjusted in writing in the Change Order or Construction Change Directive. Contractor shall be responsible for any costs incurred by the DISTRICT for professional services and DSA fees and /or to accommodate the Contractor's means and methods. 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.

**15.01.02** Contractor shall perform immediately all work that has been authorized by a fully executed Change Order or Construction Change Directive. Contractor shall be fully responsible for any and all delays and/or expenses caused by Contractor's failure to expeditiously perform this Work.

**15.01.03** Should any Change Order result in an increase in the Contract Price or extend the Contract Time, the cost of or length of extension in that Change Order shall be agreed to, in writing, by the DISTRICT in advance of the Work by Contractor. In the event that Contractor proceeds with any change in Work without a Change Order executed by the DISTRICT or Construction Change Directive, Contractor waives any claim of additional compensation or time for that additional work. Under no circumstances shall Contractor be entitled to any claim of additional compensation or time not expressly requested by Contractor in a Proposed Change Order or approved by DISTRICT in an executed Change Order.

**15.01.04** 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, proceed without a Change Order, or alter the Project so that a change in Work becomes unnecessary.

### **Section 15.02 Architect Authority**

The Architect will have authority to order minor changes in the Work that do not involve: (a) any adjustment in the Contract Price, (b) an extension of the Contract Time, or (c) a change that is inconsistent with the intent of the Contract Documents. These changes shall be effectuated by executed Change Order, Construction Change Directive, by Architect's response(s) to RFI(s), or by Architect's Supplemental Instructions ("ASI").

### **Section 15.03 Change Orders**

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 Board of Trustees), the Contractor, the Architect, and approved by the Project Inspector (if necessary) and DSA (if necessary), stating their agreement regarding all of the following:

- 15.03.01 A description of a change in the Work;
- 15.03.02 The amount of the adjustment in the Contract Price, if any; and
- 15.03.03 The extent of the adjustment in the Contract Time, if any.

### **Section 15.04 Construction Change Directives**

A Construction Change Directive 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 Construction Change Directive and without invalidating the Contract, order changes in the Work consisting of additions, deletions, or other revisions. The adjustment of the Contract Price or Time, if any, is subject to the provisions of this section regarding Changes in the Work. 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 adjustment in the Contract Price, if any, of the Construction Change Directive or timing of payment shall be resolved pursuant to the Payment and Claims and Disputes provisions herein.

**15.04.01** The DISTRICT may issue a Construction Change Directive (CCD) in the absence of agreement of the terms of a Change Order.

**15.04.02** 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 CCD. However, the DISTRICT will only pay for actual costs verified in the field by the DISTRICT or its authorized representative(s) on a daily basis.

**15.04.03** The Contractor shall be responsible for all cost related to the administration of CCD. The markup for overhead and profit for Contractor modifications shall be full compensation to the Contractor to administer CCD, and Contractor shall not be entitled to separately recover additional amounts for overhead and/or profit.

**15.04.04** The Contractor shall notify the DISTRICT or its authorized representative(s) at least twenty-four (24) hours prior to proceeding with any of the CCD. 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. The Contractor will not be compensated for force account work in the event that the Contractor fails to timely notify the DISTRICT regarding the commencement of CCD, or exceeding the force account budget.

**15.04.05** The Contractor shall diligently proceed with the work, and on a daily basis, submit a daily CCD report on a form supplied by the DISTRICT no later than 5:00 pm each day. The report shall contain a detailed itemization of the daily labor, material, and equipment used on the CCD 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.

The 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 the Contractor for their records. The DISTRICT will not sign, nor will the Contractor receive compensation for work the DISTRICT cannot verify. The Contractor will provide a weekly CCD summary indicating the status of each CCD in terms of percent complete of the not-to-exceed budget and the estimated percent complete of the Work.

**15.04.06** In the event the Contractor and the DISTRICT reach a written agreement on a set cost for the Work while the Work is proceeding based on a CCD, the Contractor's signed daily CCD reports shall be discontinued and all previously signed reports shall be invalid.

#### **Section 15.06 Price Request**

A Price Request ("PR") is a written request prepared by the Architect requesting the Contractor to submit to the DISTRICT and the Architect an estimate of the effect of a proposed change in the Work on the Contract Price and the Contract Time.

#### **Section 15.07 Scope of Price Request**

A Price Request shall contain adequate information, including any necessary Drawings and Specification, 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.

#### **Section 15.08 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.

**15.08.01** A PCO shall include breakdowns and backup documentation sufficient in the DISTRICT's judgment to validate any change in Contract Price. In no case shall Contractor or any of its Subcontractors be permitted to reserve rights for additional compensation for Change Order Work.

**15.08.02** A PCO shall also include any changes in time required to complete the Project. Any additional time requested shall not include the number of days to make the proposed change, but must be based upon the impact to the Critical Path on 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, and waives any right to request, additional time and/or claim a delay. In no case shall Contractor or any of its Subcontractors be permitted to reserve rights for additional time for Change Order Work. A PCO that leaves the amount of time requested blank, or states that such time requested is "to be determined" is not permitted and shall also constitute a waiver of any right to request additional time and/or claim a delay.

**15.08.03** If Contractor submits a PCO requesting an increase in Contract Price 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, beyond a reasonable doubt and to the DISTRICT's satisfaction, demonstrates that the unknown and /or unforeseen condition(s) were actually unknown and /or unforeseen and that the condition(s) were reasonably unknown and /or unforeseen. If not, the DISTRICT shall deny the PCO as unsubstantiated, and the Contractor shall complete the Project without any increase in Contract Price and /or Contract Time based on the PCO.

**15.08.04** In submitting a PCO, Contractor certifies and affirms that the cost and/or time requested is submitted in good faith, that the cost and/or time requested is accurate and in accordance with the provision of the Contract Documents, and the Contractor submits the cost and/or request for extension of time recognizing the significant civil penalties and treble damages which follow from making a false claim or presenting a false claim under Government Code section 12650 et seq.

**Section 15.09 Format for Proposed Change Order**

The following format shall be used as applicable by the DISTRICT and the Contractor (e.g. Change Orders, PCOs) to communicate proposed additions and deductions to the Contract, supported by attached documentation. Any spaces left blank will be deemed no change to cost or time.



**Format for Subcontractor**

**0**

Cost Break down

Provided  
by : NUSD

Date:

Attachment  
to

Sub #1  
Name

0

Only Update the fields in light blue do not  
Update any other fields

**New**  
**Charges**

**Deduction**

<u>Description</u>	<u>Units</u>	<u>Unit</u> <u>prices</u>	<u>Description</u>	<u>Units</u>	<u>Unit</u> <u>prices</u>	<u>Difference</u>
Materials attached		0.00			0.00	0.00
Panels		0.00			0.00	0.00
Brackets		0.00			0.00	0.00
Concrete		0.00			0.00	0.00
Wire		0.00			0.00	0.00
Sub Total Of Materials		0.00	Sub Total Of Materials		0.00	0.00
Mark up 10%		0.00	Mark up 10%		0.00	0.00
Sub Total Of Materials		0.00	Sub Total Of Materials		0.00	0.00
Tax 8.50%		0.00	Tax 8.50%		0.00	0.00
<b>Sub Total Of Materials</b>		<b>0.00</b>	<b>Sub Total Of Materials</b>		<b>0.00</b>	<b>0.00</b>

**Equipment**

**Equipment**

<u>Type</u>	<u>Number</u> <u>of Units</u>	<u>Rate</u> <u>per</u> <u>unit</u>	<u>Type</u>	<u>Number</u> <u>of Units</u>	<u>Rate</u> <u>per</u> <u>unit</u>	<u>Difference</u>
		0.00		0	0.00	0.00
		0.00			0.00	0.00
		0.00		0	0.00	0.00
		0.00		0	0.00	0.00
Sub Total Equipment		0.00	Sub Total Equipment		0.00	0.00
Sub Mark Up 10%		0.00	Sub Mark Up 10%		0.00	0.00
<b>Sub Total Of Equipment</b>		<b>0.00</b>	<b>Sub Total Of Equipment</b>		<b>0.00</b>	<b>0.00</b>

**Labor**

**Labor**

<u>Hours</u>	<u>Per</u> <u>Hour</u>	<u>Labor</u>	<u>Hours</u>	<u>Per</u> <u>Hour</u>	<u>Difference</u>
		Plumber Journeyman		0.00	0.00
		Plumber Apprentice		0.00	0.00
		Underground asst Plumber		0.00	0.00

Glazier	0.00	Glazier	0.00	0.00
Sub total Labor	0.00	Sub total Labor	0.00	0.00
Sub Mark		Sub Mark Up		
Up 10%	0.00	Up 10%	0.00	0.00
<b>Sub total Labor</b>	<b>0.00</b>	<b>Sub total Labor</b>	<b>0.00</b>	<b>0.00</b>
Freight		Freight	0.00	0.00
<b>Grand Total of new charges from Sub</b>	<b>0.00</b>	<b>Grand Total of Deductions from Sub</b>	<b>0.00</b>	<b>0.00</b>

Total For Sub-  
Contractor after  
deductions

\$ -
---------

General Contractor  
Mark-up 5%

\$ -
---------

Total Of This Change  
Order

\$ -
---------



Format for General Contractor

BOARD OF TRUSTEES

- B. Teri Burns
- Scott Dosick
- Micah Grant
- Susan Heredia
- Lisa Kaplan
- Chris Evans, Superintendent

Project Name Here

0

Cost Break down

Provided by : NUSD

Date:

Attachment to

**General Contractor**

0

Contractor Name Here

Only Update the fields in light blue do not Update any other fields

**New Charges**

<u>Description</u>	<u>Units</u>	<u>Unit prices</u>
Pipe		0.00
		0.00
		0.00
		0.00
<b>Sub Total Of Materials</b>		<b>0.00</b>
Mark up	10%	
<b>Sub Total Of Materials</b>		<b>0.00</b>
Tax	8.50%	0.00
<b>Sub Total Of Materials</b>		<b>0.00</b>

**Deduction**

<u>Description</u>	<u>Units</u>	<u>Unit prices</u>
pipe		0.00
		0.00
		0.00
		0.00
<b>Sub Total Of Materials</b>		<b>0.00</b>
Mark up	10%	0.00
<b>Sub Total Of Materials</b>		<b>0.00</b>
Tax	8.50%	0.00
<b>Sub Total Of Materials</b>		<b>0.00</b>

**Difference**

<u>Difference</u>
0.00
0.00
0.00
0.00
0.00
0.00
0.00
0.00
0.00
0.00

**Equipment**

<u>Type</u>	<u>Number of Units</u>	<u>Rate per unit</u>
		0.00
		0.00
		0.00
<b>Sub Total Equipment</b>		<b>0.00</b>
Sub Mark Up	10%	0.00
<b>Sub Total Of Equipment</b>		<b>0.00</b>

**Equipment**

<u>Type</u>	<u>Number of Units</u>	<u>Rate per unit</u>
	0	0.00
	0	0.00
	0	0.00
<b>Sub Total Equipment</b>		<b>0.00</b>
Sub Mark Up	10%	0.00
<b>Sub Total Of Equipment</b>		<b>0.00</b>

**Difference**

<u>Difference</u>
0.00
0.00
0.00
0.00
0.00
0.00
0.00

**Labor**

Master installer		0.00
Inside wireman		0.00
Carpenter		0.00
Ironworker		0.00

**Labor**

Master installer		0.00
Inside wireman		0.00
Carpenter		0.00
Ironworker		0.00

**Difference**

0.00
0.00
0.00
0.00

Sub total Labor	0.00	Sub total Labor	0.00	0.00
Sub Mark Up 10%	0.00	Sub Mark Up 10%	0.00	0.00
<b>Sub total Labor</b>	<b>0.00</b>	<b>Sub total Labor</b>	<b>0.00</b>	<b>0.00</b>
Freight	0.00	Freight		0.00
<b>Grand Total of new charges from Sub</b>	<b>0.00</b>	<b>Grand Total of Deductions from Sub</b>	<b>0.00</b>	<b>0.00</b>

Total For Contactor after deductions	<b>0.00</b>
Bond Expense 2.00%	0.00
<b>Total Of This Change Order</b>	<b>0.00</b>

Sub #1 Totals		Total Change Order	Bond %
Subcontractor	0.00	Bond Mark Up on sub	<b>0.00</b> 2%
General Mark-up	0.00	General Mark Up on subs	<b>0.00</b>
Total Page 3	0.00	General Change order	<b>0.00</b>
Sub #2 Totals		Bond Mark Up on General	<b>0.00</b> 2%
Subcontractor	0.00	General	
General Mark-up	0.00	Totals	<b>0.00</b>
Total Page 4	0.00	Subcontractor	<b>0.00</b>
			<b>0.00</b>

**15.09.01** Contractor shall be compensated for the costs of labor actually and directly utilized in the performance of the Work. Such labor costs shall be limited to field of labor for which there is a prevailing wage rate classification. Wage rates for labor shall not exceed the prevailing wage rates in the locality of the Site and shall be in the labor classification(s) necessary for the performance of the Work. Natomas Unified uses a burden rate of 23% above prevailing wage to calculate final labor rates prior to overhead/profit. Labor costs shall exclude costs incurred by the Contractor in preparing estimates of the costs of the change in the Work, in the maintenance of records relating to the costs of the change in the Work, coordination and assembly of materials and information relating to change in the Work or performance thereof, or the supervision and other overhead and general conditions costs associated with the change in the Work or performance thereof, including but not limited to the cost for the job superintendent.

**15.09.02** Contractor shall be compensated for the costs of materials necessarily and actually used or consumed in connection with the performance of the change in the Work. Costs of material may include reasonable costs of transportation from a source closest to the Site of Work and delivery to the Site. If discounts by material suppliers are available for materials necessarily used in the performance of the change in the Work, they shall be credited to the DISTRICT. If materials necessarily used in the performance of the change in the Work are obtained from a supplier or source owned in whole or in part by the Contractor, compensation therefore shall not exceed the current wholesale price for such material. If, in the reasonable opinion of the DISTRICT, the costs asserted by the Contractor for materials in connections with any change in the Work are excessive, or if the Contractor fails to provide satisfactory evidence of the actual costs of such materials from its supplier or vendor of the same, the costs of such materials and the DISTRICT's obligation to pay for the same shall be limited to the then lowest wholesale price at which similar materials are available in the quantities required to perform the change in the Work. The DISTRICT may elect to furnish materials for the change in the Work, in which case even the Contractor shall not be compensated for the Costs of furnishing such materials or any mark-up herein.

**15.09.03** As a precondition for the DISTRICT's duty to pay for Equipment rental or loading and transportation, Contractor shall provide satisfactory evidence of the actual costs of Equipment from the supplier, vendor or rental agency of same. Contractor shall be compensated for the actual cost of the necessary and direct use of Equipment in the performance of the change in the Work shall be compensated in increments of fifteen (15) minutes. Rental time for Equipment moved by its

own power shall include time required to move such Equipment to the site for the Work from the nearest available rental source of the same. If Equipment is not moved to the Site by its own power, Contractor will be compensated for the loading and transportation costs in lieu of rental time. The Foregoing notwithstanding, neither moving time or loading and transportation time shall be allowed if the Equipment is used for performance of any portion of the Work other than the change in the Work. Unless prior approval in writing is obtained by the Contractor from the Architect, the Project Inspector and the DISTRICT, no costs or compensation shall be allowed for time while Construction Equipment is inoperative, idle or on standby, for any reason. There shall be no additional compensation for equipment or tools used in the performance of change in the Work where such Equipment or tools have a replacement value of \$500.00 or less. Equipment costs claimed by the Contractor in connection with the performance of any Work shall not exceed rental rates established by distributor or construction equipment rental agencies in the locality of the Site; any costs asserted which exceed such rental rates shall not be allowed or paid. Unless otherwise specifically approved in writing by the Architect, the Project Inspector and the DISTRICT, the allowable rate for the use of Equipment in connection with the Work shall constitute full compensation to the Contractor for the cost of rental, fuels, power, oil, lubrication, supplies, necessary attachments, repairs or maintenance of any kind, depreciation, storage, insurance labor (exclusive of labor costs of the Equipment operator), and any and all other costs incurred by the Contractor incidental to the use of such Equipment.

**15.09.04** The phrase "Overhead and Profit" shall include field and office supervisors and assistants, watchperson, use of small tools, consumable, insurance other than construction bonds and insurance required herein, and general field and home office expenses.

**Section 15.10 Change Order Certification**

All Change Orders and PCOs must include the following certification by the Contractor:

**15.10.01** The undersigned Contractor approves the foregoing as to the changes, if any, to the Contract Price specific for each item and as to the extension of time allows, if any, for completion of the entire Work as stated herein, and agrees to furnish all labor, materials, and service, and perform all work necessary to complete any additional work specific of 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.

**15.10.02** 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, direct and indirect, resulting from additional time required on the Project or resulting from delay to the Project. Contractor is not entitled to separately recover amounts for overhead or other indirect costs. Any costs, expenses, damages, or time extensions not included are deemed waived.

**Section 15.11 Determination of Change Order Cost**

The amount of the increase or decrease of the Contract Price form 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:

- 15.11.01** DISTRICT acceptance of a PCO;
- 15.11.02** By unit prices contained in Contractor's original bid;
- 15.11.03** By agreement between DISTRICT and Contractor.

**Section 15.12 Deductive Change Orders**

All deductive Change Order(s) must be prepared pursuant to the provisions herein. Where a portion of the work is deleted from the Contract, the reasonable value of the deducted work less the value of work performed shall be considered the appropriate deduction. The value submitted on the Schedule of Values shall be used to calculate the credit amount unless the bid documentation is being held in escrow as part of the Contract Documents. Unit Prices, if any may be used in DISTRICT's discretion calculating reasonable value. If Contractor offers a proposed amount for a deductive Change Order(s), Contractor shall include a minimum of five (5%) total profit on Subcontractor performed work and minimum of ten percent (10%) on self-performed work and overhead to be deducted with the amount of the work of the Change Orders). If Subcontractor work is involved, Subcontractors shall also include a minimum of ten percent (10%) profit and overhead to be deducted with the amount of its deducted work. Any deviation from the provision shall not be allowed.

**Section 15.13 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 hereof 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.

**Section 15.14 Accounting Records**

With respect to portions of the Work performed by Change Orders and Construction Change Directives, the Contractor shall keep and maintain cost-accounting records satisfactory to the DISTRICT, including without limitation, Job Cost Reports as provided in these General Conditions, 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. Such records shall include without limitation hourly records for Labor and Equipment and itemized records of materials and equipment used that day in connection with the performance of any Work. All records maintained hereunder shall be subject to inspection, review and/or reproduction by the DISTRICT, the Architect, or the Project Inspector upon request. In the event that the Contractor fails or refuses, for any reason to maintain or make available for inspection, review and/or reproduction of such records, the DISTRICT's reasonable good faith determination of the extent of adjustment to the Contract Price shall be final, conclusive and dispositive upon Contractor.

**Section 15.15 Notice Required**

If Contractor desires to make a claim for an increase in the Contract Price, or any extension in the Contract Time for completion, it shall notify the DISTRICT pursuant to the provisions herein, including the Sectionon Claims and Disputes. No claim shall be considered unless made in accordance with this subparagraph. Contractor shall proceed to execute the Work even though the adjustment may not have been agreed upon. Any change in the Contract Price or extension of the Contract time resulting from such claim shall be authorized by a Change Order.

## **SECTION 16: DISTRICT'S RIGHT TO CARRY OUT THE WORK**

### **Section 16.01 Notice of Default; Deduction of Cost**

If Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within fifteen (15) days after receipt of written notice from District to commence and continue correction of the default or neglect with diligence and promptness, District may, without prejudice to any other remedy it may have, correct the deficiencies and may further elect to complete that portion of the Work through such means as District may select, including the use of a new contractor. In such case, an appropriate Change Order shall be issued deducting from the payments then or thereafter due Contractor the cost of correcting the deficiencies, and any other appropriate costs.

### **Section 16.02 Intentionally left blank.**

### **Section 16.03 Assignment of Work**

District reserves the right to perform separate contracts with its own forces or with other contractors as it sees fit. Contractor will cooperate and coordinate with District's efforts in this regard.

## **SECTION 17: REJECTION AND REPLACEMENT OF WORK AND MATERIALS**

### **Section 17.01 Rejection of Materials and Workmanship**

District shall have the right to reject materials and workmanship which are determined by the District Representative, the Architect, or the Project Inspector to be defective or fail to comply with the Contract Documents. Rejected workmanship shall be corrected to the satisfaction of District and/or Architect, and rejected materials shall be removed from the premises and replaced, all without added cost to District and/or an increase in the Term of this Facilities Lease.

If Contractor does not correct such rejected Work and/or materials within a reasonable time, fixed by the District Representative or the Architect in a written notice to Contractor, District may correct the same and charge the expense to Contractor, and deduct such expense from the next Tenant Improvement Payment otherwise payable to Contractor.

If District determines that it is in its best interest not to correct defective workmanship and/or materials, or work not done in accordance with the Contract Documents, Contractor agrees that a fair and reasonable equitable deduction from the Guaranteed Maximum Price shall be made therefore, and deducted from the next Tenant Improvement Payment.

### **Section 17.02 Correction of Work**

Contractor shall promptly correct all work rejected by the District Representative, Project Inspector or the Architect as defective or as failing to conform to the Contract Documents, whether observed before or after final completion and whether or not fabricated, installed or completed. Contractor shall bear all costs of correcting such rejected work including compensation for the Architect's, Project Inspector's and the District Representative's additional services.

If Contractor does not correct such work within a reasonable time, fixed by written notice, District may remove it and may store the material at Contractor's expense. If Contractor does not pay expenses of such removal within ten (10) days' time thereafter, District may, upon ten (10) days written notice, sell such materials at auction or at private sale and shall account for net proceeds thereof, after deducting all costs and expenses that should have been borne by Contractor.

If within two (2) year after the Date of Completion of the Work or within such longer period of time as may be prescribed by law or by the terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be defective or not in accordance with the Contract Documents, Contractor shall correct any or all such work, together with any other work which may be displaced in so doing, without expense to District, promptly after receipt of a written notice from District unless District has previously given Contractor a written acceptance of such condition. District shall issue a correction notice promptly after discovering the condition. Contractor shall notify District upon completion of repairs. This obligation shall survive termination of this Facilities Lease with respect to work in place prior to termination.

Contractor shall bear the cost of making good work destroyed or damaged by such correction or removal.

Nothing contained in this Section 17.02 shall be construed to establish a period of limitation with respect to any other obligations which Contractor might have under the Contract Documents or by operation of law. The establishment of the time period of one (1) year after the Date of Completion, or such longer period of time as may be prescribed by law or by the terms of any warranty required by the Contract Documents, relates only to the specific obligation of Contractor to correct the Work and has no relationship to the time within which an action may be commenced to establish Contractor's liability with respect to its obligations other than specifically to correct the work.



## **SECTION 18: DISTRICT'S RIGHT TO TERMINATE CONTRACT**

### **Section 18.01 Termination by The District for Convenience**

The District in its sole discretion may terminate for convenience this Facilities Lease upon three (3) days written notice to the Contractor. In case of a termination for convenience, the Contractor shall have no claims against the District except the actual portion of the Guaranteed Maximum Price 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, and the portion of Contractor's Fee earned to the date of the termination. In the event of a Termination for Convenience, Contractor shall meet and confer with District regarding any outstanding materials orders, and District will be responsible for paying related demonstrable costs for completion of the order, or if District chooses to cancel the order, any charges created by cancellation. These recoverable costs shall also include demonstrable costs for work and materials that are not necessarily on site at the time of termination but which will arrive at the site for the benefit of the project at a later time.

### **Section 18.02 Termination by The District for Cause**

District may terminate this Facilities Lease, for default pursuant to the provisions of this Section, for the following causes:

- (a) Contractor is insolvent or has made a general assignment for the benefit of creditors, or a receiver has been appointed on account of the insolvency of Contractor.
- (b) Contractor or any of its subcontractors violate any of the provisions of the Contract Documents or fail to perform the work within the time specified in the current Contract Schedule.
- (c) Contractor should fail to make prompt payment to Subcontractor or material suppliers for material or for labor as required by statute.
- (d) Contractor or a Subcontractor persistently disregards laws, ordinances, or the instructions of the District Representative, Architect or District.
- (e) Contractor fails to abide by a Stop Work Notice issued pursuant to Section 9 of these General Conditions or fails to correct rejected work or materials as required by Section 17 of these General Conditions.
- (f) Contractor fails to provide and keep in full force and effect all insurance required by Section 3 of these General Conditions, or fails to cause all Subcontractor to so comply.
- (g) Contractor fails to supply a sufficient number of properly skilled workers or proper materials.
- (h) Contractor commits any substantial violation equivalent to a material breach of the terms and conditions of the Contract Documents or this Facilities Lease.
- (i) Contractor, or any member of Contractor, unreasonably refuses or fails to prosecute the Work on the Project with such reasonable diligence as will accomplish its completion within the Contract Time specified or any extension thereof.
- (j) Contractor defaults in its obligations under the Site Lease or Facilities Lease.

In the event of such a default which remains uncured for more than fifteen (15) days after District has given written notice to Contractor specifying the failure and requesting that it be remedied, District may, without prejudice to any other right or remedy, terminate this Facilities Lease in writing and shall have no further obligation to Contractor under this Facilities Lease and shall be entitled to exercise any remedy available to District at law or in equity including, without limitation, an action for specific performance. Specific performance includes, among other things, the right to require Contractor to assign its interest, to the extent necessary, in any plans and specifications, construction documents, construction contracts, warranties, bonds, guarantees, contractor's payment and performance bond, architect contracts, consulting agreements and any other document or instrument necessary or appropriate to complete construction of the school improvements and/or an action for damages.

### **Section 18.03 Procedure for Termination for Cause**

District may, without prejudice to any other right or remedy, give written notice to Contractor and its surety or sureties of its intention to terminate this Facilities Lease.

Unless within seven (7) days of the delivery of such notice, Contractor shall cease such violation and make satisfactory arrangements for a correction thereof, which arrangements are set forth in a written agreement signed by Contractor and the District Representative, Contractor's right to complete the Work shall cease and terminate.

In the event of any such termination, District shall immediately give written notice thereof to the surety and to Contractor, and the surety shall have the rights and obligations set forth in the Performance Bond. If District is forced to take over the Work, it may prosecute the same to completion by contract or by any other method it may deem advisable, for the account and at the expense of Contractor, and Contractor and its sureties shall be liable to District for any excess costs, including management, supervision, and design support, occasioned thereby. In such event, District may, without liability, take possession of and utilize in completing the Work, Contractor's materials whether stored at the Site or elsewhere, that are necessary for completion. Contractor hereby assigns to District all of its interest in orders and/or contracts existing at the time of termination. The assignment of said orders and/or contracts shall be effective upon notice of acceptance by District in writing, and only as to those orders and/or contracts which District designates in writing. Whenever Contractor's right to proceed is terminated, Contractor shall not be entitled to receive any further payment until the Work is finished and shall be liable to District for liquidated damages, if applicable, as well as for all losses incurred by District in completing the Work.

#### **Section 18.04 Provisions for Termination of Contract**

This Facilities Lease is subject to termination as provided by Sections 4410 and 4411 of the Government Code, being portions of the Emergency Termination of Public Contracts Act of 1949. Such a termination shall be deemed a termination for convenience.

#### **Section 18.05 Survival of Obligations**

No termination of this Facilities Lease or of Contractor's Work shall excuse or otherwise relieve Contractor of its responsibilities under the Contract Documents with respect to any Work performed prior to the date of termination, including, without limitation, its obligation to perform the Work in a good and workmanlike manner, free of defects, and in accordance with the Contract Documents, its warranty obligations with respect to the Work, and its obligation to make all payments due. All of Contractor's responsibilities under the Contract Documents with respect to the Work performed prior to the date of termination shall survive any termination.

## **SECTION 19: PRESERVATION AND CLEANING**

### **Section 19.01 Periodic Cleaning of Project**

Contractor shall properly clean its Work and the Site, and maintain its Work area in an orderly manner as described in this Section 19.01. Contractor shall remove all dirt, debris, waste, rubbish, and implements of service from the Project, the adjacent sidewalks and streets, and the working area daily or as directed by the District Representative. Debris, waste, or unused construction materials shall not be left under, in, or about the Project, nor allowed to accumulate on the Site or in the working area.

Contractor, at its cost, shall contract with a disposal company to remove all rubbish, and shall have the refuse containers emptied at frequent enough intervals so that waste does not overflow the containers.

If Contractor fails to clean up during progress or upon completion of the Work, District may, at Contractor's expense, do so as provided in Section 16 of these General Conditions.

### **Section 19.02 Final Cleaning of Project**

At completion of the Work and prior to occupancy by District, Contractor shall thoroughly clean the interior and exterior of the buildings, and the Site and adjacent areas, of all material related to its performance of the Work. In the event Contractor fails to do so, District may cause this work to be done at Contractor's expense, as provided in Section 16 of these General Conditions. The following list is not inclusive but to act as a guideline:

- (a) Removal of all spots, stains, paint spots, rubbish, debris, tools, equipment, trade markings and labels, and accumulated dust and dirt from all areas and broom clean. Steam clean all carpets and mop floors.
- (b) Cleaning interior and exterior of the buildings including all windows in any area affected by the Work.
- (c) Brush off, broom sweep, dust and clean ledges, stairs, doors, hardware, chalk board trays and any adjoining rooms or areas that were affected by the Work.
- (d) Contractor shall clear grounds and exterior paved areas and walks of all construction debris, dirt and dust and shall repair any Site areas damaged during the course of the Work.

Prior to final completion or District occupancy, Contractor shall conduct an inspection of sight-exposed surfaces, and all work areas, to verify that the entire Work is clean. In the event Contractor fails to do so, District may cause this work to be done at the Contractor's expense.

## **SECTION 20: COMPLETION, INSPECTION, AND OCCUPANCY BY DISTRICT**

### **Section 20.01 Notice of Punch List Inspection**

When Contractor believes that a phase of its Work is complete, it shall request in writing a punch list inspection. Within seven (7) days of the receipt of such request, the District Representative, the Project Inspector and the Architect shall make a punch list inspection. Contractor or its representatives shall be present at the punch list inspection. The purpose of the punch list inspection is to determine whether the Work has been completed in accordance with the Contract Documents, including all Change Orders, all interpretations and instructions previously issued.

If Contractor fails to attend any punch list inspection, or calls for a punch list inspection when the Work is not reasonably ready for inspection, Contractor shall be charged for the cost of the District Representative, Architect, Project Inspector, and other design professionals who attended the punch list inspection.

Completion of any phase of the Work does not result in final completion, or in any way alter the payment provisions after final completion.

District may request a punch list walk in accordance with this Section 20.01.

### **Section 20.02 Punch List**

The District Representative, Project Inspector and Architect shall notify Contractor in writing of any deficiencies to be remedied prior to final acceptance, by preparing a written list, known in the industry as a punch list.

Contractor shall remedy all items shown on the punch list prior to final acceptance by the District Representative, Project Inspector and Architect.

No one is authorized to amend the Contract Documents by use of the punch list; it is provided for the benefit of Contractor to enable it to determine what items must be corrected before final acceptance will be recommended by the District Representative, Project Inspector and Architect. District reserves the right to require compliance with the Contract Documents, notwithstanding the issuance of a punch list or the completion by Contractor of all items on the punch list.

In the event that the Work still does not comply with the Contract Documents, District reserves the right to issue such further punch lists as may be required

If punch list work needs to be performed after District has taken occupancy of a phase, the work shall be conducted outside of normal school hours at the direction of the District Representative.

### **Section 20.03 Use of Work Prior to Acceptance**

Whenever, in the opinion of District, the Work or any part thereof, is in a condition suitable for use, and the best interests of District require such use, District may take possession of, connect to, and open for public or District use that portion of the Work provided that such use or possession does not interfere with, delay or impede Contractor's ability to perform its Work.

### **Section 20.04 Repairs or Renewal in the Work**

Prior to the Date of Completion, Contractor shall make all repairs or renewals in the portion of the Work occupied pursuant to Section 20.03 hereof, made necessary due to defective material or workmanship, or the operations of Contractor, ordinary wear and tear excepted.

### **Section 20.05 Effect of Occupancy**

District's occupancy as contemplated in this Section or its acceptance as contemplated in Section 20.03 hereof, shall not constitute acceptance by District of the Work or any part thereof. Such use shall neither relieve Contractor of any of its responsibilities under the Contract Documents, nor act as a waiver by District of any of the terms or conditions of the Contract Documents. Any damage done by District is the responsibility of District.

### **Section 20.06 Coordination with Other Activities**

Contractor shall conduct its operations so as not to interfere unreasonably with District's use of the occupied portions of the Site. Contractor shall submit periodic schedules to the District Representative proposing the times, areas, and types of work to be done within such areas.

If the Work produces conditions rendering the occupied portions of building, the Site, or other areas uninhabitable, either because of noise, dust, vibration, smoke, fumes, or for any other cause whatsoever, the District Representative may suspend the Work or direct Contractor to modify the Contract Schedule, and Contractor shall comply.

If provided by Change Order, Contractor shall be entitled to a time extension or increase in the Guaranteed Maximum Price by virtue of conflicts between Contractor's Work and District's occupancy.

## **SECTION 21: CONTRACT CLOSEOUT**

### **Section 21.01 Contractor's Request for Final Tenant Improvement Payment**

When Contractor determines that all of the Work on the Project is complete and all items on the punch list have been satisfied, or contends that such items are not required by the Contract Documents, Contractor shall submit an application for final Tenant Improvement Payment on the form provided.

### **Section 21.02 Additional Submissions**

Simultaneously with Contractor's request for final Tenant Improvement Payment, Contractor shall submit the following items to the District Representative:

- (a) As-built (Record) drawing information pursuant to Section 5.08 of these General Conditions. Signed by Contractor, Project Inspector, Architect and District.
- (b) Three (3) sets of documentation completely covering the operation and maintenance of the mechanical and electrical installation, elevators, kitchen equipment, and all other equipment required by the technical specifications to be furnished with such manuals. The documentation shall include charts, diagrams, performance curves, catalog information, lubrication manuals, and details pertaining to the functioning of various items of equipment. The documentation shall be divided logically into "systems" on the basis of operation, without respect to trades, Subcontractor or arbitrary specifications sections. The relationship of the "systems" shall be clearly and concisely detailed.
- (c) Warranties as required per the Contract Documents.
  - (1) Contractor Guarantee Form (see Attachment 8 to the Project Manual, Exhibit B to the Facilities Lease).
  - (2) Subcontractor Guarantee Form (see Attachment 8 to the Project Manual, Exhibit B to the Facilities Lease).
  - (3) Manufacturers Warranty/Guarantee.
- (d) Completed Punch List: Signed by Contractor, Project Inspector, Architect and District.
- (e) DVBE Participation Goal
- (f) Material Receipt Form S (see Procedures Manual, Attachment 5 to the Project Manual, Exhibit B to the Facilities Lease) for all spare parts, extra stock, keys and other material and/or equipment turned over to District as specified in the Contract Documents.
- (g) Hazardous material documentation as required.
  - (1) Asbestos Documentation (if applicable)
  - (2) Letter Stating Impact to Hazardous Material (if applicable)
  - (3) Fluorescent Tube/PCB Handling Manifests (if applicable)
  - (4) Asbestos Hazard Emergency Response Act (AHERA) Report Letter
- (h) Form DSA 6 Final Verified Reports, Form M (see Procedures Manual, Attachment 5 to the Project Manual, Exhibit B to the Facilities Lease).
- (i) Intentionally left blank.
- (j) Waiver and Release Upon Final Completion, see Section 12.08 of these General Conditions.
- (k) Subcontractor Affidavit Form A to be signed by each Subcontractor (see Procedures Manual, Attachment 5 to the Project Manual, Exhibit B to the Facilities Lease)
- (l) Consent of Surety Company to Final Payment.
- (m) If requested, a copy of all permits or certificates acquired during the Project or a letter stating that none were required.
- (n) Other items as required in Closeout section and/or the Project Specific Conditions.
  - (1) Contractor's Subcontractors/Suppliers address and contact list

- (2) District issued site keys and badges
- (3) In Service Training Sign-in Sheets (if applicable)

**No payment will be processed unless accompanied by the listed documents in acceptable forms.**

### **Section 21.03 Final Tenant Improvement Payment Process**

Upon approval of the submittals required by this Section and receipt of Contractor's final Tenant Improvement Payment application, and upon verification that all of the Work is complete, including all punch list items, the District Representative shall either (1) recommend to District that the Tenant Improvement Payment application be accepted, which recommendation shall be made within five (5) business days of receipt of Contractor's final Tenant Improvement Payment application, or (2) send a notice to Contractor rejecting the Tenant Improvement Payment application, stating the basis therefore.

The Architect shall prepare a statement of final inspection, stating that the Work has been given a final inspection, that Contractor has submitted the required documents, setting forth with detail any deviations in the Work as completed from the Contract Documents, and estimating the cost of correction of such deviations.

The Architect's statement shall be transmitted to District along with Contractor's application for final payment approved by the District Representative, Architect and Project Inspector. The District Representative shall provide a copy of the Architect's statement of final inspection to Contractor.

### **Section 21.04 Intentionally left blank. Reserved.**

### **Section 21.05 Completion; Acceptance of the Work; Notice of Completion**

The final Tenant Improvement Payment of this Facilities Lease, including any retention amount, shall be made within thirty-five (35) days after filing the Notice of Completion, provided however, that in the event of a dispute between District and Contractor, District may withhold from the final Tenant Improvement Payment an amount not to exceed one hundred fifty percent (150%) of the disputed amount and/or any incomplete Punch List items. The Notice of Completion must be approved by the Board of Trustees after acceptance of a Date of Completion. "Date of Completion" as used in these Contract Documents means the earliest of any of the following events, which shall be deemed "Completion," as provided by Public Contract Code Section 7107:

- (a) The occupation, beneficial use, and enjoyment of a work of improvement, excluding any operation only for testing, startup, or commissioning, by the District, or its agent, accompanied by cessation of labor on the work of improvement.
- (b) The acceptance by the District, or its agent, of the work of improvement.
- (c) After the commencement of a work of improvement, a cessation of labor on the work of improvement for a continuous period of 100 days or more, due to factors beyond the control of the Contractor.
- (d) After the commencement of a work of improvement, a cessation of labor on the work of improvement for a continuous period of 30 days or more, if the District files for record a notice of cessation or a notice of completion.

Acceptance of the Work shall be made only by formal acceptance by District. Recordation of a Notice of Completion shall be in the manner prescribed by law, provided that the Work shall then be fully and satisfactorily completed and the provisions of the Contract Documents fully and satisfactorily performed in all respects.

### **Section 21.06 Release of Withheld Amounts**

As Contractor resolves the disputes and/or completes the Punch List items for which funds have been withheld after the Final Tenant Improvement Payment, the District shall pay the funds withheld for those disputes or items to Contractor within 30 days of such resolution or completion.

### **Section 21.07 Withholding for Stop Notices**

District may withhold from Contractor any sums authorized to be withheld by Civil Code section 9000 *et seq.* (or as recodified in the future).

**Section 21.08 Non-Waiver**

Neither acceptance of, nor payment for, the Work or any part thereof, nor any extension of time, nor any possession taken by District shall operate as a waiver of any of the provisions of this Facilities Lease, nor shall a waiver of any breach of this Facilities Lease be held to be a waiver of any other or subsequent breach. Also, the failure of District in any one or more instances to insist upon strict performance of any of the terms of this Facilities Lease 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. In addition, recordation of a Notice of Completion shall not be deemed an acceptance of latent defects, nor shall it constitute a waiver of any of the provisions of this Facilities Lease.



**SECTION 22: GUARANTEES**

See attachment 5 to the project manual.

### **SECTION 23: CLAIM REQUIREMENTS**

- a. Notwithstanding any other language in the Contract Documents, any Claims by Contractor against District for the Work hereunder shall be resolved pursuant to the provisions of Public Contract Code sections 9204 and 20104 as summarized herein, and any other applicable laws.
- b. For purposes of this section, "Claims" means a separate demand by the Contractor sent by registered mail or certified mail with return receipt requested, for one of the following: a time extension for relief from penalties for delay; payment of money or damages for Work done by or for Contractor and payment for which is not otherwise expressly provided; or payment disputed by the District. By way of example, demands or claims for indemnity or Lease Payments are not "Claims."
- c. All Claims must be submitted on or before the date of the Final Tenant Improvement Payment and shall include all documents necessary to substantiate the Claim. Contractor acknowledges and agrees that any untimely Claim shall be deemed waived. This limitation shall not apply to Claims which first arise after the Final Tenant Improvement Payment, including Claims asserted by third parties.
- d. Upon receiving a Claim, the District shall review and provide a written response within forty-five (45) days that identifies the disputed and undisputed portions of the Claim. District and Contractor may agree to extend the initial 45-day period by mutual agreement.
- i. District may request, in writing, within thirty (30) days of receipt of the Claim, any additional documentation supporting the Claim or relating to any defenses to the Claim which the District may have against the Contractor.
- ii. If District timely responds and does not dispute a portion of the Claim, payment on said undisputed portion must be processed and made within sixty (60) days after the District issues its written response.
- e. Within fifteen (15) days of receipt of the response or District's failure to timely respond (which shall be deemed a rejection) the Contractor may demand an informal conference to meet and confer for settlement of any remaining issues in dispute. Any such demand shall be in writing sent by registered mail or certified mail with return receipt requested.
- i. Following the conclusion of the meet and confer conference, the District shall provide a second written response within ten (10) business days that identifies the remaining disputed and undisputed portions of the Claim.
- ii. If any portion of the Claim is undisputed after the meet and confer conference, District shall make payment on said undisputed portion within sixty (60) days after the District issues its second written response.
- f. Any remaining disputed Claims shall be submitted to nonbinding mediation, with the District and Contractor sharing the associated costs equally. Both parties shall mutually agree to a mediator within ten (10) business days after the District issues its second written response. If the parties cannot agree on a mediator, each party shall select a mediator and those two mediators will select a qualified, neutral third party to mediate the remaining disputed portions.
- g. For Claims below \$375,000, if the matters remain in dispute after mediation, the case shall be submitted to judicial arbitration as set forth in Public Contract Code section 20104.4(b).
- h. Any arbitration, mediation or other forms of alternate dispute resolution shall be handled within the boundaries of the District unless otherwise mutually agreed.
- i. Failure by the District to respond to a Claim from a Contractor within the time periods described in this article or to otherwise meet the time requirements of this Section shall result in the Claim being deemed rejected in its entirety. A Claim that is denied by reason of the public entity's failure to have responded to a Claim, or its failure to otherwise meet the time requirements of this section, shall not constitute an adverse finding with regard to the merits of the Claim or the responsibility or qualifications of the Claimant.

**Section 23.01 Claim Certification**

Contractor acknowledges that it has read and is familiar with the provisions of the False Claims Act (California Government Code §12650 *et seq.*). Submission by Contractor of any Claim (as the term “claim” is defined in False Claims Act) to District in connection with the Project, whether on its behalf or on behalf of a Subcontractor or material supplier, shall constitute a representation by Contractor to District that to the best of its knowledge, submission of the Claim does not in any respect, violate the False Claims Act. Any party with an interest in the Claim, including Contractor and any Subcontractor or material supplier, shall certify under penalty of perjury the validity and accuracy of any Claim submitted to District, as provided below. In the event of a pass-through Claim from a Subcontractor or supplier, Contractor may qualify its Claim certification to certify that the Claim is made in good faith, the supporting data is complete and accurate to the best of Subcontractor’s knowledge and belief, and that the amount requested accurately reflects the contract adjustment for which Subcontractor believes District is liable. Subcontractor shall execute any pass-through Claim pursuant to the language of Section 23.04. Compliance with this Claims certification requirement shall be a condition precedent to any obligation District might otherwise have to review the Claim and failure to provide such certification shall constitute a waiver of the Claim. See Section 23.04 hereof, for Claim Certification Form.

**Section 23.02 Claim Certification Form**

The Claim certification required by this Section 23.04 shall provide as follows:

**CLAIM CERTIFICATION**

Under penalty of perjury, and with specific reference to the California False Claims Act, Government Code sections 12650, *et seq.*, I certify that submission of the attached Claim is made in good faith; that the supporting data prepared by the undersigned company are accurate and complete to the best of my knowledge and belief; that submission of the Claim to District does not violate the False Claims Act; and that I am duly authorized to certify the Claim on behalf of the Claimant.

Dated: \_\_\_\_\_

Company \_\_\_\_\_

*Corporate Seal*

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

Signature \_\_\_\_\_

Title \_\_\_\_\_

## **SECTION 24: ADDITIONAL PROVISIONS**

### **Section 24.01 Hazardous Materials**

Contractor shall not use or permit the Site or any part thereof to be used to generate, manufacture, refine, treat, store, handle, transport or dispose of, transfer, produce or process Hazardous Materials, except, and only to the extent, if necessary to maintain the improvements at the Project and then, only in compliance with all Environmental Regulations, and any state equivalent laws and regulations, nor shall it permit, as a result of any intentional or unintentional act or omission on its part or by any tenant, subtenant, licensee, guest, invitee, contractor, employee and agent, the storage, transportation, disposal or use of Hazardous Materials or the Release or threat of Release of Hazardous Materials on, from or beneath the Project or onto any other property excluding, however, those Hazardous Materials in those amounts ordinarily found in the inventory of schools and school facilities, the use, storage, treatment, transportation and disposal of which shall be in compliance with all Environmental Regulations. Upon the occurrence of any Release or threat of Release of Hazardous Materials through no fault of District, Contractor shall promptly commence and perform, or cause to be commenced and performed promptly, without cost to Contractor, all investigations, studies, sampling and testing, and all remedial, removal and other actions necessary to clean up and remove all Hazardous Materials so released, on, from or beneath the Site and Project or other property, in compliance with all Environmental Regulations.

Contractor, at its cost and expense, shall comply with all federal, state, and local laws relating to the use, storage, discharge, release and disposal of Hazardous Materials (as defined below) in or about the site and/or the Project. Contractor shall not cause or permit any Hazardous Materials to be brought upon, kept, or used in or about the Project site by Contractor or Contractor's agents, employees, or independent contractors or the agents, employees, or independent contractors of any Subcontractors in a manner or for a purpose prohibited by any federal, state, or local agency or authority.

Contractor shall immediately provide District with telephonic notice, which shall promptly be confirmed by written notice, of any and all discharge, release, and disposal of any Hazardous Materials onto or within the Project site which by law must be reported to any federal, state, or local agency.

Contractor shall be responsible for and shall indemnify, protect, defend, and hold harmless District and District's agents, employees, and independent contractors from any and all liability, damages, injuries, causes of action, claims, judgments, costs, penalties, fines, losses, and expenses which result from Contractor's (or from Contractor's agents, employees, and independent contractors) use, storage, accumulation, discharge, release, or disposal of Hazardous Materials in, upon, or about the Project site.

The obligations under this section 24.01 shall survive the expiration or early termination of this Agreement and shall not apply to Pre-existing Hazardous Materials.

Definition of Hazardous Materials. As used in this Agreement, the term "Hazardous Materials" means any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State of California, or the United States Government. The term "Hazardous Materials" includes, without limitation, any material or substance which is (i) petroleum, (ii) asbestos, (iii) designated as a "hazardous substance" pursuant to section 311 of the Federal Water Pollution Control Act (33 U.S.C. section 1317), (iv) defined as a "hazardous waste" pursuant to section 1004 of the Federal Resource Conservation and Recovery Act, 42 U.S.C. section 6901, et seq. (42 U.S.C. section 6903), or (v) defined as a "hazardous substance" pursuant to section 101 of the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. section 9601 et seq. (42 U.S.C. section 9601).

#### Compliance With Storm Water Permit for Construction.

Architect, per CA Green Code Section 5.106.1, shall develop a Storm Water Pollution Prevention Plan (SWPPP) that has been designed, specific to this site, conforming to the State Storm water NPDES Construction Permit or local ordinance, whichever is stricter, as is required for other projects one acre or more. The plan should cover prevention of soil loss by storm water run-off and/or wind erosion, of sedimentation, and/or of dust/particulate matter air pollution.

Contractor shall comply with all conditions of the State Water Resources Control Board ("State Water Board") to obtain a National Pollutant Discharge Elimination System General Permit for Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activity ("Permit") for all construction activity which results in the disturbance of in excess of one acre of total land area or which is part of a larger common area of development or sale.

Contractor shall be responsible for filing any required Notice of Intent and /or obtaining any Permits. District shall provide a draft of the Storm Water Pollution Prevention Program ("SWPPP") for the Project to Contractor upon request. It shall be Contractor's responsibility to evaluate the cost of compliance with the SWPPP in determining the GMP. Contractor shall include all costs of compliance with specified requirements in the GMP.

Contractor shall be responsible for implementing and complying with the provisions of Ca Green Code Section 5.106.1, any Permit and the SWPPP, including the standard provisions, monitoring and reporting requirements as required. Contractor shall provide copies of all reports and monitoring information to District.

Contractor shall comply with the lawful requirements of any applicable municipality, the County, drainage district, and other local agencies regarding discharges of storm water to separate storm drain system or other watercourses under their jurisdiction, including applicable requirements in municipal storm water management programs.

Failure to comply with the Permit is a violation of federal and state law. Contractor hereby agrees to indemnify and hold harmless District, its officers, agents, and employees from and against any and all claims, demands, losses or liabilities of any kind or nature which District, its officers, agents, and employees may sustain or incur for noncompliance with the Permit arising out of or in connection with the Project, except for liability resulting from the negligence or willful misconduct of District, its officers, agents or employees.

#### **Section 24.02 Lead-Safe Schools Protection Act**

LEAD. Pursuant to the Lead-Safe Schools Protection Act (Education Code section 32240, et seq.) and other applicable law, Contractor shall not use lead-based paint, lead plumbing or solders, or other potential sources of lead contamination in the construction of any new school facility or the modernization of any existing school facility.

#### **Section 24.03 Other General Conditions**

**Construction Documents** means those Documents for the Project, including by way of illustration and not limitation:

The plans, drawings, and specifications that have been adopted by the District and approved by all agencies having jurisdiction over the Project, and all modifications, addenda, and amendments thereto.

Site Lease

Facilities Lease

Acknowledgement of Project Schedule

Contractor's Certificate Regarding Workers' Compensation

Contractor Certification Regarding Non-Asbestos Containing Materials

Insurance Certificates

Payment Bond

Performance Bond

Guarantee(s)

Escrow Agreement for Security Deposit In Lieu of Retention

General Liability Endorsement

Automobile Liability Endorsement

Contractor's Certificate Regarding Drug-Free Workplace

Contractor's Certificate Regarding Alcohol and Tobacco

Specifications

Project Schedule

All Addenda as Issued

Shop Drawings (if applicable)

Record Drawings

Transmittals

Change Orders

Fingerprint Documentation

#### **Section 24.04 Conflict of Interest**

No official of District who is authorized on behalf of District to negotiate, make, accept, or approve, any architectural, engineering, inspection, construction, or materials supply contract, or any subcontract in connection with the construction of the Project, or any land acquisition in connection with the Project, shall become directly or indirectly interested personally in this Facilities Lease or in any part thereof.

No officer, employee, architect, attorney, engineer, or inspector of or for District who is authorized on behalf of District to exercise any executive, supervisory, or other similar function in connection with the construction of the Project shall become directly or indirectly interested personally in this Facilities Lease or any part thereof.

#### **Section 24.05 No Verbal Agreements**

No verbal agreement or conversation with any officer, agent, or employee of District, either before, during, or after the execution of the Contract Documents shall affect or modify any term or condition contained in the Contract Documents, nor shall such verbal agreement or conversation entitle Contractor to any additional payment or time to perform whatsoever under the terms of this Facilities Lease.

#### **Section 24.06 Anti-Trust Assignment**

By execution of the Contract Documents, or any subcontract awarded by Contractor, Contractor or any Subcontractor offers and agrees to assign and hereby does assign to District all rights, title, and interest in and to all causes of action Contractor or Subcontractor may have under Section 4 of the Clayton Act (15 USC Section 15) or under the Cartwright Act (Chapter 2 of Part 2 of Division 7 of the Business and Professions Code, commencing with Section 16700), arising from purchases of goods, services, or materials pursuant to this public works contract or subcontract. This assignment shall be made and shall become effective at the time District tenders final payment to Contractor, without further acknowledgment by the parties.

#### **Section 24.07 Contractor Not Agent, Nor Employee**

Neither Contractor nor any Subcontractor, or any officer, agent, or employee of either, is, nor shall they represent themselves to be, an officer, agent, or employee of District for any purpose whatsoever.

No person employed by Contractor, or by any Subcontractors are, nor shall they be construed to be in any manner or for any purpose whatsoever, employees of District.

Indeed, both Contractor and any Subcontractors are and shall at all times be deemed to be independent contractors and shall be wholly responsible for the manner in which they perform the services required.

#### **Section 24.08 Access to Records**

District or District's authorized representative shall have access, upon reasonable notice, during normal business hours, to any books, documents, accounting records, papers, project correspondence, project files, scheduling information and other relevant records of Contractor and all Subcontractors directly or indirectly pertinent to the Work, original as well as change and claimed extra work, to verify and evaluate the accuracy of cost and pricing data submitted with any change order prospective or executed, or any claim for which additional compensation has been requested.

Such books, documents and other records mentioned above shall include, but are not limited to all those reasonably necessary in the opinion of District to determine the accurate amount of direct and indirect costs, job site, area and home office overhead, delay and impact costs, however characterized, and shall include the original project proposal cost and all documents related to the project proposal and its preparation, as well as the as-planned Contract Schedule and all related documents.

Such access shall include the right to examine and audit such records, and make excerpts, transcriptions and photocopies at District's cost.

#### **Section 24.09 Change in Name**

Before Contractor makes any change in the name or legal nature of Contractor's entity, Contractor shall first notify District in writing and cooperate with District in making such changes as District may request in the Contract Documents.

#### **Section 24.10 State Audit**

Pursuant to and in accordance with the provisions of Government Code section 8546.7, or any amendments thereto, all books, records and files of District, Contractor, or any Subcontractors connected with the performance of this Facilities Lease involving the expenditure of public funds in excess of Ten Thousand Dollars (\$10,000.00), including, but not limited to, the costs of administration of this Facilities Lease, shall be subject to the examination and audit of the State Auditor at the request of District or as part of any audit of District for a period of three (3) years after final payment is made under this Facilities Lease. This provision shall not apply to Work performed on a lump-sum or fixed price basis

#### **Section 24.11 Provisions Required By Law Deemed Inserted**

Each and every provision of law and clause required by law to be inserted in this Facilities Lease shall be deemed to be inserted herein and this Facilities Lease shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon application of either party, this Facilities Lease shall forthwith be physically amended to make such insertion or correction.

#### **Section 24.12 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.A., Sec. 651 *et seq.*).

#### **Section 24.13 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 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 excise tax for such materials shall be included in any project proposal price.

#### **Section 24.14 No Assignment**

Contractor shall not assign, transfer, convey, sublet or otherwise dispose of this Facilities Lease or of its rights, title or interest in or to the same or any part thereof. If Contractor shall assign, transfer, convey, sublet or otherwise dispose of this Facilities Lease or its right, title or interest therein, or any part thereof, such attempted or purported assignment, transfer, conveyance, sublease or other disposition shall be null, void and of no legal effect whatsoever; and this Facilities Lease may, at the option of District, be terminated, revoked and annulled, and District shall thereupon be relieved and discharged from any and all liability and obligations growing out of the same to Contractor, and to its purported assignee or transferee.

Notwithstanding anything herein to the contrary, the Parties may mutually agree in writing to assign the Facilities Lease or portions thereof to third parties as may be necessary to carry out the project.

#### **Section 24.15 Governing Law/Venue**

This Facilities Lease shall be governed by the laws of the State of California. The parties agree that any litigation arising out of this Facilities Lease shall be venued in the County of Sacramento.

#### **Section 24.16 Convict Made Materials**

No materials manufactured or produced in a penal or correctional institution shall be incorporated in the Project under this Facilities Lease.

#### **Section 24.17 Attorney's Fees**

In any legal or equitable action or proceeding, including arbitration and mediation, and other litigation, brought either to enforce or interpret the terms of this Facilities Lease, the prevailing party shall be entitled to recover all reasonable attorneys' fees, costs and expenses incurred therein, including expert witness fees and costs.

#### **Section 24.18 Mutual Waiver of Consequential Damages**

Notwithstanding anything to the contrary contained in this Agreement, District and Contractor waive all claims against each other (and against their respective Subcontractors, members, shareholders, officers, directors, agents and employees) for any consequential, incidental, indirect, special, exemplary or punitive damages (including loss of actual or anticipated profits, revenues or product; loss by reason of shutdown or non-operation; increased expense of operation,

borrowing or financing; loss of use or productivity; and increased cost of capital) ("Consequential Damages"); and, regardless of whether any such claim arises out of breach of contract, guaranty or warranty, tort, product liability, indemnity, contribution, strict liability or any other legal theory, and District and Contractor each hereby releases the other and each of such persons from any such liability. Any liquidated damages payable by Contractor under this Agreement shall not be deemed Consequential Damages



## SECTION 25: SCHEDULE OF VALUES OUTLINE

This outline is provided to demonstrate the general logic that should be used to breakdown the contract value for the Project(s). Contractor shall review Districts requirements for preparing the schedule of values, together with this Section, Section 12 of the General Conditions (Part II of the Project Manual, Exhibit B to the Facilities Lease) and the Project Specific Conditions. Contractor shall work with the District Representative to further develop the schedule of values.

### OUTLINE

#### **I. GENERAL:**

- A. Mobilization (not greater than two percent (2%) of contract value)
- B. General Conditions
- C. Supervision
- D. Scheduling (Minimum Five Hundred Dollars {\$500} per month)
- E. Closeout
- F. As-Built Drawings

#### **II. SCHEDULE WORK BY PHASE, THEN BY:**

- A. Site Work
  - 1. Landscape (labor, material and equipment)
  - 2. Non-Structural Concrete Paving (labor, material and equipment)
  - 3. Asphalt Concrete Paving (labor, material and equipment)
  - 4. All Other Site Paving (labor, material and equipment)
  - 5. Electrical and Low Voltage Utilities (labor, material and equipment)
    - a) Trenching
    - b) Piping and wire
    - c) Equipment
  - 6. Gas Utilities (labor, material and equipment)
    - a) Trenching (labor, material and equipment)
    - b) Piping Systems (including in-line appurtenances)
    - c) Equipment
  - 7. Water Utilities (labor, material and equipment)
    - a) Trenching
    - b) Piping Systems (including in-line appurtenances)
    - c) Equipment
  - 8. Site Drainage (labor, material and equipment)
    - a) Trenching
    - b) Piping Systems (including in-line appurtenances)
    - c) Equipment
- B. By Building
  - 1. Site Work (inside five foot line)
    - a) Building Pad
    - b) Utilities
    - c) Site furnishings
  - 2. Demolition (not hazardous material)
  - 3. Roofing Hazardous Material Abatement
  - 4. Other Hazardous Material Abatement
  - 5. Labor, material and equipment for the following:
    - a) Structural Concrete
    - b) Structural Steel
    - c) Masonry
    - d) Structural Framing
    - e) Roofing
    - f) Doors and Hardware
    - g) Windows, Storefront, Window Systems
    - h) Ceiling Systems
    - i) Wall Board and Finishes (not painting)

- j) Floor Finishes
- k) Painting
- l) Equipment
- m) Mechanical
  - (i) Equipment
  - (ii) Start-up and/or Commissioning
  - (iii) Test and Balance
- n) Plumbing
  - (i) Equipment/Fixtures
- o) Piping Systems
- p) Electrical & Low Voltage
  - (i) Equipment
  - (ii) Conduit and Wire
  - (iii) Panels
  - (iv) Electrical Trim and Finish
  - (v) Testing and Commissioning

## **SECTION 26: DVBE REQUIREMENTS**

### **Section 26.01 General**

#### **Contractor Responsibility:**

Contractor will perform all advertising and solicitations in order to meet the specified DVBE goals and/or comply with the participation goals or “good faith” effort requirements. All required forms will be submitted to the District with closeout documentation. Contractor shall make every effort to solicit DVBE subcontractors and/or suppliers and try to meet the following DVBE requirements.

### **Section 26.02 DVBE Policy**

#### **Definitions:**

The term “Disabled Veteran Business Enterprise” (DVBE) means a business concern that is certified as a DVBE by the Office of Small and Minority Business (OSMB).

The term “Contract” means an agreement awarded by the District in which all or part of the funding is provided by the State Allocation Board (SAB) under the Leroy F. Greene School Facilities Act of 1998 (School Facilities Program).

The term “Entity” means any person or persons, firm, partnership, corporation, or combination thereof making an offer, a proposal, or submitting a response to a solicitation competitively or non-competitively, with the intent of forming a Contract with the District, directly and/or through Contractor, on a SAB-funded project.

The term “Contractor” means the Entity to whom the Contract is awarded.

The term “Participation Goal” or “Goal” means a numerically expressed DVBE objective that participating Entities are required to make efforts to achieve in accordance with Section 17076.11 of the Education Code.

#### **DVBE Goals:**

In accordance with Education Code section 17076.11, this District has a Participation Goal for DVBEs of at least three percent (3%) per year. This Goal applies to the overall dollar amount of SAB-funds allocated to and expended by the District pursuant to the Leroy F. Greene School Facilities Act of 1998 for construction or modernization of District facilities. Prior to, and as a condition precedent for, final payment under any Contract for such project, the Contractor shall provide appropriate documentation to the District identifying the amount paid to DVBEs in conjunction with the Contract, so that the District can assess its success at meeting this Goal.

In order for any sole proprietorship, partnership, corporation or other enterprise to obtain certification or to be counted toward meeting the DVBE contract goals, such business concern must possess current and valid certification as a DVBE through the OSMB.

### **Section 26.03 Requirements**

Contractor shall conform to the most current regulations and requirements as published by the California Department of General Services (DGS), Office of Small Business Certification and Resources (OSBCR) and DVBE Participation Requirements:

- a. DVBE Participation Program Requirements
- b. DVBE Good Faith Effort Documentation
- c. DVBE Participation Summary – Standard Form 840 Revised 7/98

### **Section 26.04 Substitutions**

If awarded the Contract(s), Contractor must use the DVBE Subcontractor and/or supplier proposed in the final GMP proposal unless Contractor requested a substitution from the District prior to the execution of the Site and Facilities LLB Agreements and the District approved such substitution. At a minimum, the request must include:

- a. A written explanation of the reason for the substitution;
- b. The identity of the person or firm substituted; and
- c. Satisfactory evidence that the DVBE contract participation certified in the original GMP proposal will still be met after the substitution.

The District's approval or disapproval of the substitution is not to be construed as an excuse for non-compliance with any other provision of law including, but not limited to, the Subletting and Subcontracting Fair Practices Act or any other Contract requirements relating to substitution of subcontractor.

FAILURE TO ADHERE TO AT LEAST THE DVBE PARTICIPATION PROPOSED BY THE SUCCESSFUL CONTRACTOR MAY BE CAUSE FOR CONTRACT TERMINATION AND RECOVERY OF DAMAGES UNDER THE RIGHTS AND REMEDIES DUE THE DISTRICT/STATE UNDER THE DEFAULT SECTION OF THE CONTRACT.

### **Section 26.05 DVBE Certification**

A DVBE cannot self-certify. An OSMB letter must be attached to the CONTRACTOR CERTIFICATION OF DISABLED VETERAN BUSINESS ENTERPRISE PARTICIPATION form for each DVBE participating in the contract. The DVBE letter is obtained by application through the OSMB and must be provided at the time of GMP proposal submittal. If the letter is not provided, the GMP submittal proposal may be deemed non-responsive and may be ineligible for award of the contract.

### **Section 26.06 Contract Audits**

The Contractor agrees that the State or the District has the right to review, obtain, and copy all records pertaining to performance of the Contract. The Contractor agrees to provide the State with access to its premises upon reasonable notice for purposes of interviewing employees and inspecting records. The Contractor shall maintain records for a period of at least three (3) years after final payment under the Contract.

### **Section 26.07 Forms**

DVBE Documentation – Advertisement

Except as set forth below, Contractor must place one (1) advertisement in a paper that focuses on DVBE (focus paper and trade combined or one (1) advertisement in each type) or on the internet. These advertisements should be published at least fourteen (14) days prior to the proposed GMP submittal due date. These advertisements must state that Contractor is soliciting for DVBE companies and the advertisement must also state the name(s) of the school site(s) Contractor is requesting participation on. Except as set forth below, Contractor must include a copy of this advertisement with its proposed GMP submittal binder.

For additional information contact the DGS website at - click on "DVBE Resource Package". All documentation Contractor will need to complete this DVBE requirement will be found at the website.

Schedule of Values:

Contractor is advised that a section of the Schedule of Values has been established for monthly reporting on the percentage of DVBE participation. Each month, and at the final application for payment, Contractor will indicate the percentage of DVBE participation in dollars for the Project. This information should be used by the District to report DVBE participation to the SAB.

### **Section 26.08 DVBE Documentation – Other**

If Contractor achieves DVBE participation on this Project through a means other than advertisement, Contractor must include proof of its solicitation method

**SCHOOL YEAR CALENDAR**

**Insert School Year Calendar**

**Attachment 2  
to the Project Manual**

**WORK PLAN AND SCHEDULE**

**General**

The purpose of this Attachment 2 is to provide Contractor with the conceptual requirements for developing the work schedule and planning for resources. Contractor will use the requirements of this Attachment 2 to prepare the schedule in accordance with the General Conditions (Part II of the Project Manual, Exhibit B to the Facilities Lease).

**Abatement of Hazardous Materials on Exterior of Buildings** may occur any time the school campus is not occupied. If abatement activities are planned to occur while the school campus is occupied, Contractor must provide a secure and monitored fenced barrier around the building on which the work is being done.

**Abatement of Hazardous Materials Inside Buildings** may occur any time of day provided that the building is not occupied and entry to buildings is restricted.

**Utility Outages** are to be scheduled so as to not interfere with instruction time at the Site. Work that will result in utility outages is to be started and completed when school is not in session.

**Crew and Resources** – Contractor is responsible for causing work to progress adequately. Work scheduled for completion during summer break period requires aggressive resource loading to complete the phases on time. Critical activities must begin immediately after the Notice to Proceed is issued to achieve completion milestones.

**Milestone Schedule**

**Preliminary Schedule for: Natomas Unified School District New Classroom and Modernization Project.**

The milestone schedule in Exhibit A of the Facilities Lease establishes the Contract Time for Contractor to achieve Completion, as defined in Section 21.05.

The Contract Time for Completion shall be finalized and attached with the GMP as Exhibit A. Any extensions of time are governed by the Contract Documents.

**Attachment 3  
to the Project Manual**

**DSA STRUCTURAL TEST AND INSPECTION REQUIREMENTS**



State of California • Department of General Services • Arnold Schwarzenegger, Governor  
**DIVISION OF THE STATE ARCHITECT**  
 Headquarters • 1102 Q Street, Suite 5100 • Sacramento, CA 95814 • (916) 445-8100

**STRUCTURAL TESTS AND INSPECTIONS**

Testing Laboratory:	Date:	File Number:
Name:		Application Number:
District / Owner:		
Architect:		
Structural Engineer:		

The following tests and inspections, as checked, will be required as detailed in applicable specifications.

	Concrete	Shotcrete	Grout	Mortar	
<b>COMPACTED FILL</b>					
<input type="checkbox"/> Fill material, acceptance tests					Test of aggregates for mix design only
<input type="checkbox"/> Compaction control, continuous					Suitability tests of aggregates as detailed below
<input type="checkbox"/> Compaction tests only as ordered					Mix designs
<input type="checkbox"/> Bearing capacity of compacted fill					Continuous batch plant inspection
<b>REINFORCING STEEL</b>					Inspect placing
<input type="checkbox"/> Sample and test bar steel					Sample
<input type="checkbox"/> Sample and test mesh					Compression tests
<input type="checkbox"/> Inspect placing at job					Pick up samples at job
<b>STRUCTURAL STEEL</b>					Samples delivered to laboratory
<input type="checkbox"/> Sample and test as detailed below					Deliver sample forms to job site
<input type="checkbox"/> Shop fabrication inspection					Sample and test cement
<input type="checkbox"/> Field erection inspection					
<input type="checkbox"/> Inspection of welds – Shop					
<input type="checkbox"/> Inspection of welds – Field					
<input type="checkbox"/> Inspection of bolting – Shop					
<input type="checkbox"/> Inspection of bolting – Field					
<input type="checkbox"/> Sample and test high strength bolts and washers					
<b>BRICK AND BLOCK</b>					
<input type="checkbox"/> Sample and test					
<input type="checkbox"/> Test only					
<input type="checkbox"/> Inspection of placing					
<input type="checkbox"/> Core drill samples					
<b>GLUED LAMINATED STRUCTURAL LUMBER</b>					
<input type="checkbox"/> Fabrication inspection					
<input type="checkbox"/> Sample and test steel accessories					
<input type="checkbox"/> Inspect fabrication of steel accessories					

List of structural steel members to be tested:

Is this list continued on reverse?  YES  NO

Other tests and inspections, together with special instructions:	Copies of reports to:
Are these instructions continued on reverse? <input type="checkbox"/> YES <input type="checkbox"/> NO	By: _____ Authorized Representative

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**Attachment 4  
to the Project Manual**

**PROCEDURES MANUAL**

This Procedures Manual will provide the District Representative, Architect/Engineer, Project Inspector and Contractor detailed information concerning specific administrative requirements and procedures that will be implemented during the construction of the Project.

**TABLE OF CONTENTS**

- 1. Organization**
- 2. Project Procedures**
  - A. Communication
  - B. Meetings
  - C. Submittals
  - D. Request for Information
  - E. Non-Compliant Work
  - F. Change in Scope: Time and/or Cost
  - G. Application for Payment / Prevailing Wage Form
  - H. Schedules
  - I. Permits, Inspection and Testing
  - J. Safety
  - K. Closeout
  - L. Guidelines for Conduct
- 3. Forms**
  - A. Affidavit of Payment
  - B. Application for Payment
  - C. DSA Change Order Form
  - D. Request for Proposal (RFP)
  - E. Proposed Change Order (PCO)
  - F. Proposed Change Order Estimate
  - G. Construction Change Directive (CCD)
  - H. Reconciled Change Report (RCR)
  - I. Daily Field Report
  - J. Request for Inspection
  - K. Notice of Non-Compliance
  - L. Warranty Maintenance Bond
  - M. DSA 6 Verified Report
  - N. Meeting Agenda
  - O. Request for Information (RFI)
  - P. Submittal Transmittal
  - Q. Submittal Substitution
  - R. Daily Extra Work Report
  - S. Key Receipt
  - T. Three Week Schedule



## 1. Organization

### A. Natomas Unified School District

The Board of Trustees of the Natomas Unified School District will be represented by the District's Construction/Project Manager, referred to as District Representative hereafter and in the project specification book. District is responsible for the following:

1. Development of Program Requirements
2. Formal Liaison with District Staff
3. Contract Administration
4. Payment and Change Order Review
5. Participation in Final Acceptance of the Project

District will be responsible for such activities as monitoring time, cost and construction administration.

### B. Architect / Engineers / Engineering Consultants (A/E)

The A/E is responsible for the design and clarification of the Contract Documents. The A/E is also responsible for review of submittals, Shop Drawings, requests for information, payment requests, requests for material substitutions and other contract administrative functions. The A/E will advise District concerning all technical decisions. The A/E will also make Project Site visits as required by the General Conditions (Part II of the Project Manual, Exhibit B to the Facilities Lease).

### C. Testing Laboratories

In special cases, as District and DSA deems necessary, a specialized testing lab will be hired by District to provide special testing and inspection services. The District Representative, Architect and Project Inspector will be responsible for coordinating and monitoring the testing firm's activities. Contractor is responsible for coordinating the scheduling of all required testing with the Project Inspector.

### D. Contractor

Contractor has contracted with District to perform work as detailed in the Contract Documents and is responsible for the performance and coordination of all subcontractors and suppliers providing services under this Facilities Lease. Contractor will have a full-time superintendent on site at all times during construction of contract work.

### E. Project Inspector

District has hired DSA Certified Project Inspectors to conduct inspections for conformance to the Contract Documents and code compliance as required by DSA. The Project Inspector will complete and submit to the District Representative a Daily Field Report.

### F. Hazardous Waste Consultants

District may contract with a hazardous material firm when necessary to provide hazardous materials engineering, and related inspections and reports. Contractor will be required to comply with all federal, state and local ordinances, regulations and laws.



## 2. Project Procedures

### A. Communication

1. In carrying out the terms of the Contract, Contractor will interact with the Project Team through the District Representative as shown on the Organization Chart. The District Representative will refrain from communicating with Contractor's subcontractors and suppliers.  

All correspondence, Shop Drawings, samples, descriptive data, reports, proposals or requests of any nature shall be submitted by and to Contractor through the District Representative, who will distribute further as required.
2. Prior to execution of this Facilities Lease, Contractor will forward to the District Representative a list outlining the key project personnel. At the same time, Contractor will provide a letter of authority identifying Contractor's personnel who are authorized to sign official project documents on behalf of Contractor, and the specific documents they are empowered to sign.
3. According to the Contract Documents, Contractor will provide the name, address, phone, and fax number of all proposed subcontractors (including those who are to furnish material or equipment and those who are sub-tier contractors to the subcontractors).
4. The A/E shall make written field reports for each site visit. If the A/E observes any work that does not conform to the Contract Documents, he or she shall clearly state this in his or her report and deliver copies to the Contractor, Project Inspector and District Representative.
5. The Project Inspector and Contractor shall prepare daily written field reports, on a form mutually agreeable to them and the District Representative.

### B. Meetings

1. Pre-Construction
  - a. The Architect will schedule a Pre-Construction Meeting to be held at a time and location designated by the District Representative. This meeting will follow the Pre-Construction Meeting Agenda and will be conducted by the Architect with representatives from Natomas Unified School District, Project Inspectors, Testing Firms, and Contractor in attendance. In some cases, manufacturer's representatives or major subcontractors may be requested to attend.
2. Project Meetings
  - a. The Contractor and Architect will conduct project meetings (as needed, but not less than weekly) at the Project Site. Meetings will be conducted according to the weekly project meeting agenda, an example of which is included in Form N of this Procedures Manual.  

The purpose of these meetings is to provide a formal and regular forum for the District Representative, Architect, Project Inspector, and Contractor to present questions, problems or issues that need to be addressed. They will also provide an opportunity to review the progress on previous issues and action items along with submittal, Request For Information, payment application, and schedule review.

Persons required to attend the weekly project meetings include Contractor's supervisory personnel, subcontractor personnel (as appropriate), the District Representative, Architect, Project Inspector, and others as requested. District personnel may attend at any time.

At each of these regularly scheduled progress meetings, Contractor shall bring any documentation as may be required to accomplish a joint review and status of the Project activities.

Contractor shall prepare for each weekly meeting a Three Week Schedule. The Three Week Schedule shall be prepared according to the scheduling section of this Procedures Manual and will be reviewed with the contract schedule at each weekly meeting. See Three Week Schedule template, Form V of this Procedures Manual.

Contractor shall provide to District Representative the Daily Field Reports from the previous week.

Contractor and Architect shall provide to District Representative Logs for ASI's, Submittals, RFI's and PCO's.

3. Special Meetings

- a. The District Representative or the Architect may call special project meetings at any time during the Project. Special project meetings, if deemed necessary, shall include representatives of Contractors and Subcontractors as requested, to provide an adequate line of communication to discuss problems and/or solutions that are common to the project. These meetings may also include District, Architect and other consultants, as required.

C. Submittals

1. See Section 11 of the General Conditions, Part II of the Project Manual (Exhibit B to the Facilities Lease).

D. Request for Information

1. Should Contractor require clarification or additional information of the Contract Documents, and has consulted with the Project Inspector, Contractor will direct the request to the District Representative and/or Architect on a Request for Information (RFI) form provided, Form O of this Procedures Manual.
2. Each RFI will be submitted to the District Representative and/or Architect. The Architect will review and consult with the District Representative prior to providing a response. The Architect will maintain an RFI log as will Contractor. Using the form provided in this section, Contractor shall describe on the RFI the problem or clarification being requested. The description provided should be complete and adequate to permit a written response without additional communications with Contractor. Contractor shall attach any related information or correspondence that may have been received from subcontractors or vendors on the subject. Contractor shall provide recommendations where possible as part of the RFI. In instances where Contractor believes there may be a conflict between elements of the plans and specifications, Contractor should clearly identify the conflict and indicate the manner in which it interprets the Contract Documents.
3. The Architect will review the request and take one or more of the following steps:
  - a. Return the request to Contractor for additional information.
  - b. Consult with the District Representative for an adequate response.
  - c. Return response to Contractor, Project Inspector and any other parties as applicable.
4. The Architect will attempt to provide a response to Contractor within five (5) calendar days of receipt. Should the response to an RFI be required by a specific critical date, Contractor shall indicate that date on the RFI.
5. If the Architect's review indicates a change or revision is necessary to the Contract Documents, the Architect will prepare the appropriate drawings and/or specifications required to define the change or revision and obtain DSA approval, if required. These documents will be transmitted to the District Representative for review and approval for incorporation into the Contract Documents. The District Representative and/or Architect will transmit the revised documents to Contractor.
6. If Contractor believes the clarification or direction provided by the response to the RFI will impact the cost or schedule of the project, Contractor shall provide prompt notification to the Architect and/or District Representative, according to the General Conditions (Part II of the Project Manual). If the Architect, in consultation with the District, agrees that there is additional cost and/or a change in schedule see item F below.
7. See Section 15 of the General Conditions, Part II of the Project Manual (Exhibit B to the Facilities Lease) for additional guidelines to this item D of the Procedures Manual.

E. Non-Compliant Work

1. See Section 9 of the General Conditions, Part II of the Project Manual (Exhibit B to the Facilities Lease).

F. Change in Scope: Time and/or Cost

1. Changes that involve additional cost to the GMP shall be related to unforeseen conditions and/or owner directed changes. No other costs will be accepted.
2. See also, Section 15 of the General Conditions, Part II of the Project Manual (Exhibit B to the Facilities Lease) for detailed guidelines to cost related changes.
3. Process
  - a. Change in cost and/or schedule is identified
  - b. The District Representative, in consultation with District if consultant issues this document, issues an RFP to Contractor, Form D of this Procedures Manual
  - c. Architect provides District Representative with cost and/or time estimate as related to the RFP
  - d. Contractor prepares and submits a PCO, Form E and F of this Procedures Manual, to District Representative in response to the RFP
  - e. Architect will review the submitted PCO and provide District Representative with a recommendation
  - f. District Representative will review PCO and Architects recommendation as related to the PCO. If PCO is accepted by District, the District Representative will issue a CCD to Contractor, Form G of this Procedures Manual
  - g. Contractor shall proceed with CCD on Time and Materials (T&M), unless otherwise noted, using the Daily Extra Work Report, Form R of this Procedures Manual
  - h. Contractor shall complete the Daily Extra Work Report, one each, for each day performing T&M work
  - i. Contractor shall contact Project Inspector to provide notice of work to be performed on T&M and request monitoring of such work to receive the inspectors daily signatures
  - j. Project Inspector shall monitor T&M work and sign the Daily Extra Work Report at the end of each day to confirm labor and materials claimed on the report by the Contractor
  - k. After completion of T&M work, per the respective CCD, Contractor shall reconcile and submit to District Representative an RCR, Form H of this Procedures Manual, with all associated Daily Extra Work Reports, including invoices, receipts and/or other documents that justify all related costs. See item "I" below for proper submission of T&M review request
  - l. Contractor shall submit in this order, the final reconciled cost report for review:
    - i. RCR cover sheet
    - ii. PCO Estimate Sheet to summarize Daily Extra Work Reports
    - iii. Daily Extra Work Reports, Signed by Project Inspector
    - iv. Invoices, receipts and any other documents to justify costs on associated Daily Extra Work Report
    - v. Corresponding CCD
    - vi. Corresponding PCO and PCO Estimate Sheet
    - vii. Corresponding RFP
    - viii. Corresponding ASI and/or RFI and/or other related correspondence
  - m. The District Representative will provide a copy of reconciled submission to the Architect and request review and comment
  - n. After review and acceptance by District, Contractor shall submit billing request for the Extra T&M Work item on the following billing cycle

G. Application for Payment / Prevailing Wage Documentation

1. See Sections 7 and 12 of the General Conditions, Part II of the Project Manual (Exhibit B to the Facilities Lease)

#### H. Schedules

1. All submitted schedules shall clearly identify the project critical path.
2. See Section 13 of the General Conditions, Part II of the Project Manual (Exhibit B to the Facilities Lease)
3. See the Work and Plan Schedule, Attachment 2 to the Project Manual (Exhibit B to the Facilities Lease)

#### I. Permits, Inspection and Testing

1. See Section 4 of the General Conditions, Part II of the Project Manual (Exhibit B to the Facilities Lease)

#### J. Safety

1. See Section 10 of the General Conditions, Part II of the Project Manual (Exhibit B to the Facilities Lease)

#### K. Closeout

1. See Section 21 of the General Conditions, Part II of the Project Manual (Exhibit B to the Facilities Lease)
2. Punch List
  - a. When Contractor has completed the items on the punch list, a signed copy of the list stating that each item has been completed with the date of completion and/or an explanation of each item otherwise resolved for acceptance must be submitted to the Architect and/or the District Representative.
  - b. The Architect, District Representative, and Project Inspector shall review, verify and sign off as a show of acceptance when satisfied with the completed list prior to release of the final Tenant Improvement Payment.

#### L. Guidelines for Conduct

1. The safety of students is District's highest priority. Contractor, its agents, representatives and subcontractors shall follow these guidelines as they visit and work on District campuses. At each site there will be many students, staff, and parents who will be curious of what is happening on their campus. **Contractor, its agents, representatives and subcontractors shall not engage in conversation with the students, staff or parents.** All questions and concerns should be directed to the District Representative.
2. Start and End Times  
The daily beginning and end of the school day is a busy time. Contractor, its agents, representative and subcontractors should avoid arriving and/or leaving schools during these times. The office of the school has the daily schedules.
3. Parking  
Contractor shall coordinate with the District Representative for approved parking and staging locations. Certain locations have been designated at each school. In some cases, parking areas have been arranged on school grounds, at the end of parking lots or adjacent properties. In other cases, parking is on the street.
4. Worker Identification Badges: District Issued  
See Section 8 of the General Conditions, Part II of the Project Manual (Exhibit B to the Facilities Lease). The District will issue District Identification badges, which are site specific, to the approved project superintendent, project manager and project engineer. Form T (see Procedures Manual, Attachment 5 to the Project Manual, Exhibit B to the Facilities Lease)
5. Worker Identification Badges: Contractor Issued  
The District has spent a great deal of time educating students about "possible danger of strangers." Some teachers, students, and parents will be suspicious of any unknown person on campus, so all non-school personnel will be required to wear an identification badge at all times – no exceptions.

6. Driving On School Grounds

When children are present on campus and a vehicle must be driven on the school grounds, especially playground or blacktop areas where physical education classes are held, it is mandatory that a “spotter” WALK alongside the vehicle. Students are sure that they can run faster than a truck and may try to cross in front of a moving vehicle, etc. Contractor shall use a “spotter” when backing up at any time on school grounds. Contractor will not exceed ten miles per hour when students are on a school site.

7. Working Within Fenced Areas

Modernization work is allowed only in areas fenced by Contractor for each phase of construction as shown on the Schedule. Workers, materials, and equipment (including storage) will not be allowed outside fenced areas.

8. Classroom Disruptions

Before entering an area where instruction is in process, Contractor is required to clear access with the District Representative. **Contractor, its agents, representatives or subcontractors shall not engage in conversation with the students, staff or parents.**

9. Lunch

Lunchtime at schools is busy and congested. Contractor shall avoid getting in the student path of travel. Lunch times vary by site. The office of the school has the daily schedules.

10. Recesses

These are usually 15-20 minutes. In most elementary schools, there is a morning and an afternoon recess. See the office of the school for the daily schedules.

11. Construction Breaks and Lunches

Coffee breaks and lunch should be taken at a location removed from the playground/blacktop areas and from the buildings. It is perfectly acceptable to relax in a corner of the grounds or other out-of-the-way areas acceptable to the school. There is no food service available for workers on the site. Use of student restrooms is not allowed. All workers must use the Contractor-provided temporary restroom facilities only.

12. Smoking, Drugs, Radios, Appropriate Language and Dress

- a. **Contractor, its agents, representative shall not engage in conversation with the students, staff or parents.** Direct all questions and concerns to the District Representative.
- b. Natomas Unified School District is a “tobacco-free facility” District-wide. No smoke or chewing tobacco is allowed on District property.
- c. Use or possession of drugs or alcohol of any kind is strictly forbidden.
- d. Radios are not allowed during school hours. Talking should be kept to normal levels.
- e. Acceptable language is a must. This means the avoidance of swearing, foul language, and racial, ethnic, or sexual slurs or comments, which could be considered harassment.
- f. Dress appropriately for the work site. Specifically, tank tops, open toe shoes and cut-off shorts are not allowed. Additionally, what is written or pictured on shirts must comply with the requirement of acceptable language above.

**Violation of any of the above may result in immediate dismissal**

THANK YOU FOR YOUR COOPERATION

AFFIDAVIT OF PAYMENT

TO ALL WHOM IT MAY CONCERN:

WHEREAS, the undersigned has been employed by \_\_\_\_\_

to furnish labor and materials under a contract dated \_\_\_\_\_ for:

Project: \_\_\_\_\_

School: \_\_\_\_\_

in the County of Sacramento, State of California, of which the Natomas Unified School District is the Owner.

NOW, THEREFORE, this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_, the undersigned, as the Subcontractor to the Contractor for the above-named Facilities Lease pursuant to the Conditions of the Facilities Lease, hereby certifies that, except listed below, he or she has paid in full or has otherwise satisfied all obligations for all materials and equipment furnished, for all work, labor, and services performed, and for all known indebtedness and claims against Subcontractor and/or Contractor for damages arising in any manner in connection with the performance of the Facilities Lease referenced above for which District or its property might in any way be held responsible.

EXCEPTIONS: (If none, write "None". If required by District, Contractor and/or Subcontractor shall furnish bond satisfactory to District for each Exception).

Table with 6 columns: Name and Address, What For, Contract Price, Amount Paid, This Payment, Balance Due. Rows 1, 2, 3.

Subcontractor to Contractor (Name of sole ownership, corporation or partnership)

Corporate Seal

Signature of Authorized Representative (Subcontractor to Contractor)

Printed Name of Authorized Representative

Title Description of Authorized Representative



**APPLICATION FOR PAYMENT**



DSA CHANGE ORDER FORM

Natomas Unified School District

Lump Sum\_\_\_\_. T&M\_\_\_\_.

Project Name:	_____	Change Order No.	_____
Project Address:	_____	Job No.	_____
Contractor Name:	_____	DSA File No.	_____
Contractor Address:	_____	DSA Application No.	_____
	_____	Date:	_____

You are hereby authorized to make the following changes relative to your work on Project:

Scope: \_\_\_\_\_

Background: \_\_\_\_\_

Justification: \_\_\_\_\_

For final settlement between the above mentioned Contractor and the Natomas Unified School District of all real claims including but not limited to the following:

Original Contract Amount:	\$
Net Change by previously authorized change orders:	\$
GMP will be increased / decreased by this change order in the amount of:	\$
GMP including this change order	\$

Contract Time increased by: \_\_\_\_\_ days  
 Completion Date as of the date of this change order: \_\_\_\_\_

Acceptance of this Change Order constitutes an agreement between the District and the Contractor, and the work is to be performed subject to the same terms and conditions as are contained in the original Contract with the Contractor and for the work on the above mentioned project.

Acceptance of this Change Order constitutes acceptance of the Change Order as full and complete satisfaction of any direct or indirect additional costs incurred by the Contractor in connection with performance on the change work.

It is understood that the work shall be performed in accordance with the revised Plans and Specifications enumerated above or in accordance with the original Plans and Specifications supplemented by the instructions stated herein.

**Not Valid Until Signed by the A/E, Contractor and Owner**

<b>Approved</b>	<b>A/E USE ONLY</b>	<b>Accepted</b>	<b>Accepted</b>
_____	DSA Approval <input type="checkbox"/> Yes <input type="checkbox"/> No	_____	_____
Date		Date	Date
_____		_____	<b>Natomas Unified School District</b>
A/E (Company)		Contractor (Company)	Owner
_____		_____	_____
Authorized Signature	DSA Date Approved	Authorized Signature	Authorized Signature
_____		_____	_____
Print Name		Print Name	Print Name

Purchasing Signature: _____	Date: _____
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REQUEST FOR PROPOSAL (RFP)

Natomas Unified School District

Project Name:	_____	RFP No.	_____
Project Address:	_____		
	_____	Job No.	_____
Contractor Name:	_____	DSA File No.	_____
Contractor Address:	_____	DSA Application No.	_____
	_____	Date:	_____

Subject: \_\_\_\_\_

Please submit an itemized proposal for changes in GMP and Contract Time for proposed modifications to the Contract Documents described herein.

Submit proposal by: \_\_\_\_\_

**THIS IS NOT A CHANGE ORDER, CONSTRUCTION CHANGE DIRECTIVE OR A DIRECTION TO PROCEED WITH THE WORK DESCRIBED IN THE PROPOSED MODIFICATIONS.**

Description of Proposed Modifications:
Scope: Provide cost proposal for all labor, materials and equipment, as required to furnish and install ....
Background:
Justification: It is necessary to ....
Attachments:

PREPARED AND REQUESTED BY NATOMAS UNIFIED SCHOOL DISTRICT:

_____	_____	_____
Name	Signature	Date:

**Proposed Change Order Reply Notification**

**Date:**

**To:**

**Project:** **Project Name Here**

**Proposed Change Order Number:**

**Dated:**

**Description:**

**Status:**

**Comments:** This has been reviewed by our Design Team and the District. The approved amount is fair market value for the work and materials provided.

**Action:** Please confirm acceptance so this PCO can be added to the next change order.

- 1 No Days requested. No days granted.
- 2 Minor price difference, if accepted this is the price the district will pay
- 3 Materials need to have invoices-This one was approved without
- 4 Labor rates are too high-Adjusted to Prevailing wage rate

**Type of PCO/Reason**

4

**Total Amount**                      **\$0.00**

**Accepted By**

**Date**


Contractor

Paul Anderson  
 Director, Facilities & Strategic  
 Planning  
 Natomas Unified School District  
 (916) 567-5468

**PROPOSED CHANGE ORDER ESTIMATE  
TO BE MUTUALLY AGREED UPON BY CONTRACTOR AND DISTRICT REPRESENTATIVE**



CONSTRUCTION CHANGE DIRECTIVE (CCD)

Project Name:	_____	CCD No.	_____
Project Address:	_____	Reference PCO No.	_____
	_____	Job No.	_____
Lessor Name:	_____	DSA File No.	_____
Lessor Address:	_____	DSA Application No.	_____
	_____	Date:	_____

Subject: \_\_\_\_\_

When signed by School District, this document becomes effective immediately and the Lessor shall proceed with the change(s) described below. The Lessor is hereby directed to make the following change(s) to the Work of the Contract:

(Replace this Text with Scope Description)

Proposed Adjustments		
1.	The Proposed basis of adjustment to the GMP is:	
a.	Time & Material (Not to Exceed):	\$
b.	Lump Sum:	\$
c.	No Change	
2.	The Proposed adjustment to the Contract Time is:	
a.	An Increase of (calendar days)	
b.	A decrease of (calendar days)	
c.	No Change	

PREPARED AND AUTHORIZED BY DISTRICT REPRESENTATIVE

_____	_____	_____
Name	Signature	Date:

REVIEWED BY ARCHITECT

_____	_____	_____
Name	Signature	Date:

Signature by the Lessor indicates the Lessor's full and complete agreement with the proposed basis of adjustment in the GMP and Time set forth in this Construction Change Directive. Change Directives accepted by the Lessor shall be incorporated into a Change Order without further adjustment.

ACCEPTED BY LESSOR

_____	_____	_____
Name	Signature	Date:

**RECONCILED CHANGE REPORT  
TO BE MUTUALLY AGREED UPON BY CONTRACTOR AND DISTRICT REPRESENTATIVE**



**DAILY FIELD REPORT**  
**TO BE MUTUALLY AGREED UPON BY CONTRACTOR AND DISTRICT REPRESENTATIVE**







NOTICE OF NON-COMPLIANCE

Natomas Unified School District

<b>Project Name:</b>	_____	<b>Notice No.</b>	_____
<b>Project Address:</b>	_____	<b>Job No.</b>	_____
<b>Contractor Name:</b>	_____	<b>DSA File No.</b>	_____
<b>Contractor Address:</b>	_____	<b>DSA Application No.</b>	_____
	_____	<b>Date:</b>	_____

Pursuant to the specifications and general conditions, District and District's Representative shall have authority to stop work whenever provisions of Project Documents are not being complied with and such non-compliance is discovered or when there are safety concerns.

The Contractor shall instruct its employees, subcontractors, material and equipment suppliers, etc., accordingly. The notice or rejection of any portion of the work shall not relieve the Contractor from any of its obligations pursuant to the Project Documents.

Prior to issuing a Notice of Non-Compliance whenever provisions of Project Documents are not being complied with, the District's Representative may elect to notify the Contractor with a "Notice of Non-Compliance". The Contractor shall thereafter comply with the instructions of the District Representative regarding corrections needed to cure the defect.

**Site and Building Location:**

**Non conforming issue:**

**Name of Subcontractor:** (if applicable)

**Comments:**

**Issued by Project Inspector:**

<b>Signature:</b>	_____	<b>Date:</b>	_____
-------------------	-------	--------------	-------

<b>cc:</b>	<b>Architect:</b>	_____	<b>Title:</b>	_____
	<b>Owner:</b>	_____	<b>Title:</b>	_____
	<b>File:</b>	_____		

**WARRANTY MAINTENANCE BOND  
TO BE MUTUALLY AGREED UPON BY CONTRACTOR AND DISTRICT REPRESENTATIVE**





MEETING AGENDA

Natomas Unified School District

---

<b>Project Name:</b>	_____	<b>Meeting No.</b>	_____
<b>Project Address:</b>	_____	<b>Job No.</b>	_____
<b>Contractor Name:</b>	_____	<b>DSA File No.</b>	_____
<b>Contractor Address:</b>	_____	<b>DSA Application No.</b>	_____
	_____	<b>Date:</b>	_____

---

- I. Project Significant Dates
  - A. Notice to Proceed Date:
  - B. Completion Date:
- II. Approve Previous Meeting Minutes
- III. Review Schedules
  - A. Short Interval/Three-Week Schedule
  - B. Master Schedule
    - 1. Date Revised:
    - 2. Current Completion Date:
- IV. Review Document Control Logs
  - A. Submittals
    - 1. No. Submitted for Review:
    - 2. No. of Outstanding Items:
  - B. RFI's
    - 1. No. Submitted to Date:
    - 2. No. of Outstanding Items:
  - C. ASI's
    - 1. No. Issued to Date:
  - D. Potential Cost Items
    - 1. No. Submitted for Review:
    - 2. No. Approved:
  - E. Allowances (per GMP)
    - 1. Description and Amount
    - 2. Description and Amount
- V. Review Open Items
- VI. Review New Items
- VII. Review and Collect Daily Field Reports
- VIII. Review Project Safety Issues

**REQUEST FOR INFORMATION (RFI)  
TO BE MUTUALLY AGREED UPON BY CONTRACTOR AND DISTRICT REPRESENTATIVE**



**SUBMITTAL TRANSMITTAL  
TO BE MUTUALLY AGREED UPON BY CONTRACTOR AND DISTRICT REPRESENTATIVE**



DAILY EXTRA WORK REPORT (TIME AND MATERIAL)

Natomas Unified School District

Project Name:	_____	Report No.	_____
Project Address:	_____	PCO No.	_____
	_____	Job No.	_____
Contractor Name:	_____	DSA File No.	_____
Contractor Address:	_____	DSA Application No.	_____
	_____	Date:	_____

Description of Work in Progress: (Be Specific and Include Building / Area)

Name	Craft/Classification	Hours	Pay Rate	Total
1				
2				
3				
4				
5				

Equipment: By Type, Number and Hours (Invoice is mandatory with reconciliation)

Materials: By Type, Units (Invoice is mandatory with reconciliation)

Contractor Name \_\_\_\_\_

Signature \_\_\_\_\_ Date \_\_\_\_\_

Check Box if Final T & M

Acknowledgment \_\_\_\_\_ Date \_\_\_\_\_

411-131/4499351.1

Note: Inspector, Construction Manager or T&M Monitor must sign this form on the day that the work is being performed or Contractor will forfeit payment. It is the Contractors responsibility to notify and coordinate with the



person in charge of monitoring the work.

*Form S*

**SITE ACCESS KEY RECEIPT**

The undersigned acknowledges receipt of a high security key or keys for the location indicated below. By accepting the key or keys, the Contractor accepts all responsibility in the event that the key (s) are lost or stolen, along with the following conditions:

1. Should any key be lost or stolen, Contractor is to notify Natomas Unified School District immediately.
2. Any key(s) distributed to the Contractor are to be returned to the District within the time specified below or on demand.
3. Any lost or stolen Key will result in a charge to the Contractor as restitution to the District.
  - a. High School = \$10,500.00
  - b. Middle School = \$7,000.00
  - c. Elementary School = \$7,000.00
4. Contractor is responsible for locking and securing all facilities for which a key is held. Contractor may be held responsible for any missing District property while in possession of Key(s).
5. School locations may be alarmed. Contractor is responsible for notifying District Representative at least 48 hours in advance of any intention to enter the site during typical off-work hours. (Monday– Friday 3:30PM – 7AM and all day Saturday, Sundays and Holidays).

Any and all access to school sites is to be coordinated with the District Representative.

6. Duplication of Key(s) violates California Penal Code. Per Section 469 of California Penal Code:

“Any person who knowingly makes, duplicates, causes to be duplicated, or uses, or attempts to make, duplicate, cause to be duplicated, or use, or has in his possession any key to a building or other area owned, operated, or controlled by State of California, any state agency, commission, a county, city, or any public school or community college district without authorization from the person in charge of such building or area or his designated representative and with knowledge of the lack of such authorization is guilty of a misdemeanor.” (Added by Stats. 1970, c.1090, p. 1934)

\_\_\_\_\_  
Job No. and School Site

\_\_\_\_\_  
Number of Keys

\_\_\_\_\_  
Name of Company

\_\_\_\_\_  
Date of Issuance

\_\_\_\_\_  
Contractor Representative (Print Name)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Phone

\_\_\_\_\_  
Fax

\_\_\_\_\_  
Return By

\_\_\_\_\_  
Extended Date (if necessary)

**KEY RETURN CONFIRMATION**  
(District use only)

\_\_\_\_\_  
Date Returned

\_\_\_\_\_  
Received by

\_\_\_\_\_  
Keys Returned

\_\_\_\_\_  
Keys Lost or Not Returned

\_\_\_\_\_  
Amount Due by Contractor

**THREE WEEK SCHEDULE**



**Attachment 5  
to the Project Manual**

**CONTRACTOR GUARANTEE FORM**

To: Natomas Unified School District

Site: \_\_\_\_\_ {School Name}

\_\_\_\_\_ {Contractor's Name} hereby unconditionally guarantees that the Work performed for \_\_\_\_\_ {Project Name} has been done in accordance with the requirements of the Facilities Lease therefore and further guarantees the Work of the Facilities Lease to be and remain free of defects in workmanship and materials for a period of one year from and after the recordation of the Notice of Completion of the Project and completion of all Facilities Lease obligations by the Contractor, including formal acceptance of the entire Project by the District, unless a longer guarantee period is called for by the Contract Documents, in which case the terms of the longer guarantee shall govern. Contractor specifically acknowledges and agrees that completion shall mean the Contractor's complete performance of all Work required by the Contract Documents, amendments, change orders, construction change directives and punch lists, and the District's formal acceptance of the entire Project, except with regard to prior occupancy, substantial completion doctrine, beneficial occupancy, or otherwise. Contractor hereby agrees to repair or replace any and all Work, together with any adjacent Work which may have been damaged or displaced in so doing, that may prove to be not in accordance with the requirements of the Facilities Lease or that may be defective in its workmanship or materials within the guarantee period specified, without any expense whatsoever to District, ordinary wear and tear and unusual abuse and neglect only excepted. Contractor has provided payment, performance and warranty bonds, which will remain in full force and effect during the guarantee period.

Contractor further agrees that within ten (10) calendar days after being notified in writing by District of any Work not in accordance with the requirements of the Facilities Lease or any defects in the Work, it will commence and prosecute with due diligence all Work necessary to fulfill the terms of this guarantee, and to complete the Work within a period of time stipulated in writing.

Notwithstanding the foregoing paragraph, in the event of an emergency constituting an immediate hazard to the health or safety of the students or employees of District, or members of the public, or its property or licensees, District may undertake at Contractor's expense without prior notice, all Work necessary to correct such hazardous condition when it was caused by the Work of the Contractor not being in accordance with the requirements of this Facilities Lease, or being defective, and to charge the same to Contractor as specified in the preceding paragraph.

The guarantee set forth herein is not intended by the parties, nor shall it be construed, as in any way limiting or reducing District's rights to enforce all terms of the Facilities Lease referenced hereinabove or the time for enforcement thereof. This guarantee is provided in addition to, and not in lieu of, District's rights on such contract.

\_\_\_\_\_  
PRINTED NAME (Principal/Owner)

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE

\_\_\_\_\_  
TITLE

\_\_\_\_\_  
CONTRACTOR'S LICENSE NO.

\_\_\_\_\_  
CONTACT NAME

\_\_\_\_\_  
PHONE/FAX

**SUBCONTRACTOR GUARANTEE FORM**

To: Natomas Unified School District

Site: \_\_\_\_\_ {School Name}

\_\_\_\_\_ {Subcontractor Name} hereby unconditionally guarantees that the work performed for \_\_\_\_\_ {Project Name} pursuant to the Project Drawing and/or Specification \_\_\_\_\_ (the "Work") has been done in accordance with the requirements of the Drawings and Specifications, and further guarantees the Work to be and remain free of defects in workmanship and materials for a period of one year from and after the recordation of the Notice of Completion of the Project, including formal acceptance of the entire Project by the District, unless a longer guarantee period is called for by the contract documents, in which case the terms of the longer guarantee shall govern. Subcontractor specifically acknowledges and agrees that completion shall mean the Subcontractor's complete performance of all Work required by the contract documents, amendments, change orders, construction change directives and punch lists, and the District's formal acceptance of the entire Project, except with regard to prior occupancy, substantial completion doctrine, beneficial occupancy, or otherwise. Subcontractor hereby agrees to repair or replace any and all work, together with any adjacent work which may have been damaged or displaced in so doing, that may prove to be not in accordance with the requirements of the Drawings and Specifications or that may be defective in its workmanship or materials within the guarantee period specified, without any expense whatsoever to District, ordinary wear and tear and unusual abuse and neglect only excepted. Subcontractor has provided payment, performance and warranty bonds, which will remain in full force and effect during the guarantee period.

Subcontractor further agrees that within ten (10) calendar days after being notified in writing by District of any work not in accordance with the requirements of the contract documents or any defects in the Work, it will commence and prosecute with due diligence all work necessary to fulfill the terms of this Guarantee, and to complete the Work within a period of time stipulated in writing.

Notwithstanding the foregoing paragraph, in the event of an emergency constituting an immediate hazard to the health or safety of the students or employees of District, or members of the public, or its property or licensees, District may undertake at Subcontractor's expense without prior notice, all work necessary to correct such hazardous condition when it was caused by the work of the Subcontractor not being in accordance with the requirements of the Drawings and Specifications, or being defective, and to charge the same to Subcontractor as specified in the preceding paragraph.

\_\_\_\_\_  
PRINTED NAME (Principal/Owner)

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE

\_\_\_\_\_  
TITLE

\_\_\_\_\_  
SUBCONTRACTOR'S LICENSE NO.

\_\_\_\_\_  
CONTACT NAME

\_\_\_\_\_  
PHONE/FAX

**Attachment 6  
to the Project Manual**

**DEPARTMENT OF JUSTICE**

PO Box 903387 - Sacramento, CA 94203-3870 - (916) 227-2720

**REQUEST FOR AUTHORIZATION TO RECEIVE STATE SUMMARY CRIMINAL HISTORY INFORMATION  
CONTRACT EMPLOYER FOR PUBLIC SCHOOL - EDUCATION CODE SECTION 45125**

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

Street Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Telephone: \_\_\_\_\_ Fax Number: \_\_\_\_\_

---

In accordance with California Education Code Section 45125.1, a school district may require an entity that has an existing contract with a school district to obtain a criminal history clearance. In keeping with the restrictions and requirements set forth in California law, the following are guidelines and restrictions:

On behalf of the company named above, I hereby acknowledge and agree to the following:

1. The information provided by the Department of Justice (DOJ) to this company is confidential and shall not be disseminated to any other person or agency not authorized by law (11105 PC). A violation of this section is a misdemeanor (11142 PC).
2. This company shall notify the DOJ with regard to any change in company name, address, telephone number or contact person.
3. Fingerprints received will be retained by the DOJ per 11105.2 PC until notified that the affected individual is no longer employed by this company.
4. Access is granted **ONLY** to the primary contractor (there is no authority for subcontractors to gain direct access to DOJ records).
5. Services provided under contract must be performed on school grounds.
6. The entity must have a contract (entities in the project proposal process are not authorized).
7. Original signatures only (no photocopied signature or faced forms will be accepted or processed).

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

Printed Name: \_\_\_\_\_ Title: \_\_\_\_\_

(Authorized Representative)

---

**PLEASE PROVIDE A SIGNATURE FROM EACH DISTRICT VERIFYING THAT A BACKGROUND CHECK HAS BEEN  
REQUIRED OF YOUR COMPANY.**

**(You may attach additional letters or signatures as necessary.)**

School District/County Office of Education Background Check Requirement Verification:

1. Name of Contracting School District: Natomas Unified School District

2. Name of School Official: \_\_\_\_\_

3. Signature: \_\_\_\_\_

4. Phone and Fax: \_\_\_\_\_

---

In accordance with statutory, regulatory, and constitutional restrictions governing the use and dissemination of criminal offender record information, the above mentioned Education Code Sections allow for exemptions from backgrounding all employees under the following conditions:

1. The installation of a physical barrier at the work site to limit contact with pupils.
2. Continual supervision and monitoring of all employees of the entity by an employee of the entity whom the DOJ has ascertained has not been convicted of a violent or serious felony.
3. Surveillance of employees of the entity by school personnel.

**The exemptions listed above are granted at the discretion of the school district.**

---

**For Department of Justice use only**

Your request to receive state summary criminal history information pursuant to 45125.1 is approved. Information regarding procedural requirements is enclosed or will be forwarded under separate cover.

\_\_\_\_\_  
Contractor

\_\_\_\_\_  
Date

**Attachment 7  
to the Project Manual**

**INDEPENDENT CONTRACTOR CERTIFICATION OF EMPLOYEE CLEARANCE**

I, \_\_\_\_\_, on behalf of \_\_\_\_\_ (Company), certify that, pursuant to Education Code Sections 45125.1 and 45125.2, Section 8 of this Facilities Lease, this business entity has conducted the required criminal background check(s) of all persons who will be providing continual supervision and monitoring of all persons who will be providing services to the Natomas Unified School District on behalf of this business entity, and that none of those persons have been reported by the Department of Justice as having been convicted of a serious or violent felony as specified in Penal Code sections 667.5(c) and/or 1192.7(c).

I understand that this Certification is not to be signed and submitted until I have received clearance from DOJ regarding those persons named.

As further required by Education Code 45125.1, submitted herewith is a list of names of the employees or agents of \_\_\_\_\_ (Company) who will be providing continual supervision and monitoring of all persons who will be providing services to the Natomas Unified School District on behalf of this business entity and who are required to be fingerprinted as provided in this Facilities Lease. I agree to keep this list current and to notify Natomas Unified School District of any additions/deletions as they occur.

**I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.**

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, in \_\_\_\_\_, County, California.

Name of Company: \_\_\_\_\_

Name of Authorized Representative: \_\_\_\_\_

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

Company Address: \_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_

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

*Corporate Seal*

**Attachment 8  
to the Project Manual**

**PRELIMINARY CONSTRUCTION SCHEDULE**





**Attachment 9  
to the Project Manual**

**FIRST APPLICATION FOR PAYMENT  
SUBMITTAL SCHEDULE**

1. Payment Bond
2. Performance Bond
3. Insurance Certificates
4. Contact Information: Full-Time Superintendent and Project Manager
5. Contact Information: Subcontractors and Suppliers
6. Asbestos-Containing Building Material (ACBM) Notification Statement
7. Asbestos Documentation
8. Lead Based Paint Surface Preparation Certification
9. Contract Schedule with Critical Path shown in RED
10. Schedule of Values
11. Submittal Matrix
12. Department of Justice: Fingerprint Documentation

The foregoing apply to the first application for payment related to actual construction work. For the first billing for preconstruction services, Contractor shall be required to provide:

1. Insurance certificates for Commercial General Liability, Workers' Compensation; and
2. Fingerprinting certificate.

**Attachment 10  
to the Project Manual**

**Intentionally Left Blank. Reserved.**

**Exhibit C  
to the Facilities Lease**

**LEGAL DESCRIPTION OF THE SITE**

The description of the site in the accompanying Site Lease is incorporated herein by reference.

**Exhibit D  
to the Facilities Lease**

**LEASE PAYMENT SCHEDULE**

First Month after Notice of Completion	1/12 <sup>th</sup> of the total 5% Lease Payments
Second Month after Notice of Completion	1/12 <sup>th</sup> of the total 5% Lease Payments
Third Month after Notice of Completion	1/12 <sup>th</sup> of the total 5% Lease Payments
Forth Month after Notice of Completion	1/12 <sup>th</sup> of the total 5% Lease Payments
Fifth Month after Notice of Completion	1/12 <sup>th</sup> of the total 5% Lease Payments
Six Month after Notice of Completion	1/12 <sup>th</sup> of the total 5% Lease Payments
Seventh Month after Notice of Completion	1/12 <sup>th</sup> of the total 5% Lease Payments
Eight Month after Notice of Completion	1/12 <sup>th</sup> of the total 5% Lease Payments
Ninth Month after Notice of Completion	1/12 <sup>th</sup> of the total 5% Lease Payments
Tenth Month after Notice of Completion	1/12 <sup>th</sup> of the total 5% Lease Payments
Eleventh Month after Notice of Completion	1/12 <sup>th</sup> of the total 5% Lease Payments
Twelfth Month after Notice of Completion	1/12 <sup>th</sup> of the total 5% Lease Payments

Nothing herein shall be construed to restrict the District's ability to pay the Lease Payments early, and/or exercise its Purchase Option pursuant to Article 9 of this agreement.

Any Lease Payment not paid at the time the Final Lease Payment is due, shall be increased by 5% to compensate Contractor as interest.

# **CERTIFICATIONS**

**CONTRACTOR'S CERTIFICATE REGARDING  
NON-ASBESTOS CONTAINING MATERIALS**

We hereby certify that no Asbestos, or Asbestos Containing Materials shall be used in this Project or in any tools, devices, clothing, or equipment used to affect the Project which we have installed in the Natomas Unified School District.

- (a) The CONTRACTOR further certifies that he/she has instructed his/her employees with respect to the above mentioned standards, hazards, risks and liabilities.
- (b) Asbestos and/or asbestos containing material shall be defined as all items containing but not limited to chrysotile, corcidolite, amosite, anthophyllite, tremolite and actinolite.
- (c) Any or all material containing greater than one-tenth of one percent (.1%) asbestos shall be defined as asbestos containing material.
- (d) Any disputes involving the question of whether or not material contains asbestos shall be settled by electron microscopy. The costs of any such tests shall be paid by the CONTRACTOR if the material is found to contain asbestos.
- (e) All work or materials found to contain asbestos or work or material installed with asbestos containing equipment will be immediately rejected and this work will be removed at no additional cost to the District.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name of Contractor

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

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

\_\_\_\_\_  
Title

**CONTRACTOR'S CERTIFICATE  
REGARDING DRUG-FREE WORKPLACE**

This Drug-Free Workplace Certification form is required from all successful bidders pursuant to the requirements mandated by 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 performing 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.

Pursuant to Government Code section 8355, every person or organization awarded a contract or grant from a State agency shall certify that it will provide a drug-free workplace by doing all of the following:

- a) 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;
- b) Establishing a drug-free awareness program to inform employees about all of the following:
  - 1) The dangers of drug abuse in the workplace;
  - 2) The person's or organization's policy of maintaining a drug-free workplace;
  - 3) The availability of drug counseling, rehabilitation and employee-assistance programs; and
  - 4) The penalties that may be imposed upon employees for drug abuse violations;
- c) Requiring that each employee engaged in the performance of the contract or grant be given a copy of the statement required by subdivision (a) and that, as a condition of employment on the contract or grant, the employee agrees to abide by the terms of the statement.

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

I also understand that if the Natomas Unified School 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: \_\_\_\_\_

\_\_\_\_\_  
Contractor

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

**CONTRACTOR'S CERTIFICATE REGARDING  
ALCOHOLIC BEVERAGE and TOBACCO-FREE CAMPUS POLICY**

The CONTRACTOR agrees that it will abide by and implement the DISTRICT's Alcoholic Beverage and Tobacco-Free Campus Policy, which prohibits the use of alcoholic beverages and tobacco products, at any time, on DISTRICT-owned or leased buildings, on DISTRICT property and in DISTRICT vehicles. The CONTRACTOR shall procure signs stating "ALCOHOLIC BEVERAGE AND TOBACCO USE IS PROHIBITED" and shall ensure that these signs are prominently displayed in all entrances to school property at all times.

DATE: \_\_\_\_\_

\_\_\_\_\_  
CONTRACTOR

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

Signature



**WORKERS' COMPENSATION CERTIFICATE**

Labor Code Section 3700.

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

- (a) By being insured against liability to pay compensation in one or more insurers duly authorized to write compensation insurance in this state.
- (b) By securing from the Director of Industrial Relations a certificate of consent to self-insure either as an individual employer, or as one employer in a group of employers, 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 his or her employees.
- (c) For any county, city, city and county, municipal corporation, public district, public agency or any political subdivision of the state, including each member of a pooling arrangement under a joint exercise of powers agreement (but not the state itself), by securing from the Director of Industrial Relations a certificate of consent to self-insure against workers' compensation claims, which certificate may be given upon furnishing proof satisfactory to the director of ability to administer workers' compensation claims properly, and to pay workers' compensation claims that may become due to its employees. On or before March 31, 1979, a political subdivision of the state, which, on December 31, 1978, was uninsured for its liability to pay compensation, shall file a properly completed and executed application for a certificate of consent to self-insure against workers' compensation claims. The certificate shall be issued and be subject to the provisions of Section 3702.”

**CERTIFICATE**

I am aware of the provisions of Labor Code Section 3700 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 on the Work of this Contract.

\_\_\_\_\_  
Name of the Contractor

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

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

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**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.**



**BOND FORMS**

**PERFORMANCE BOND**  
**(CALIFORNIA PUBLIC WORK)**

WHEREAS, the NATOMAS UNIFIED SCHOOL DISTRICT (the "Obligee") has awarded to \_\_\_\_\_ (the "Principal") a contract for the Work commonly described as:

[PROJECT NAME]

(the "Project"); and

WHEREAS, the Work to be performed by the Principal is more particularly set forth in that certain Agreement between the Principal and the Obligee, dated \_\_\_\_\_, 2017, which Agreement and all other contract documents set forth therein (collectively, the "Contract Documents") are incorporated herein and made a part hereof by this reference; and

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

NOW THEREFORE, we, \_\_\_\_\_, as Principal, and \_\_\_\_\_, as Surety, are held and firmly bound, along with our respective heirs, executors, administrators, successors and assigns, jointly and severally, unto NATOMAS UNIFIED SCHOOL DISTRICT, as Obligee, for payment of the penal sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_), said sum being not less than one hundred percent (100%) of the total amount payable by the Obligee under the terms of the Contract Documents, in lawful money of the United States, as more particularly set forth herein.

The condition of the obligation is such that if the Principal promptly, fully and faithfully performs each and all of the obligations and things to be done and performed by the Principal in strict accordance with the terms of the Contract Documents as they may be modified or amended from time to time, and if the Principal indemnifies and saves harmless the Obligee and all of its officers, agents and employees from any and all losses, liability and damages, claims, judgments, liens, costs, and fees of every description which may be incurred by the Obligee by reason of the failure or default on the part of the Principal in the performance of any or all of the terms or the obligations of the Contract Documents, including all modifications and amendments thereto, and any warranties or guarantees required thereunder, then this obligation shall be void; otherwise, it shall be, and remain, in full force and effect.

The Surety, for value received, hereby stipulates and agrees that no change, adjustment of the Contract Time, adjustment of the Contract Price, alterations, deletions, additions, or any other modifications to the terms of the Contract Documents, the Work to be performed thereunder, or to the Specifications or the Drawings shall limit, restrict or otherwise impair Surety's obligations or Obligee's rights hereunder. Surety hereby waives notice from the Obligee of any such changes, adjustments of Contract Time, adjustments of Contract Price, alterations, deletions, additions or other modifications to the Contract Documents, the Work to be performed under the Contract Documents, or the Drawings or the Specifications.

In the event of the Obligee's termination of the Contract due to the Principal's breach or default of the Contract Documents, within sixty (60) days after written notice from the Obligee to the Surety of the Principal's breach or default of the Contract Documents and Obligee's termination of the Contract, the Surety shall notify Obligee in writing of Surety's assumption of obligations hereunder by its election to either remedy the default or breach of the Principal or to take charge of the Work of the Contract Documents and complete the Work at its own expense ("Notice of Election"); provided, however, that the procedure by which the Surety undertakes to discharge its obligations under this Bond shall be subject to the advance written approval of the Obligee, which approval shall not be unreasonably withheld, limited or restricted. The insolvency of the Principal or the Principal's mere denial of a failure of performance or default under the Contract Documents shall not by itself, without the Surety's prompt, diligent inquiry and investigation of such denial, be justification for Surety's failure to give the Notice of Election or for its failure to promptly remedy the failure of performance or default of the Principal or to complete the Work.

In the event the Surety fails to issue its Notice of Election to Obligee within the time specified herein, the Obligee may take all such action or actions necessary to cure or remedy the Principal's failure of performance or default or to complete the Work. The Principal and the Surety shall be each jointly and severally liable to the Obligee for all damages and costs sustained by the Obligee as a result of the Principal's failure of performance under the Contract Documents or default in its performance of obligations thereunder, including without limitation the costs of cure or completion exceeding the then remaining balance of the Contract Price; provided that the Surety's liability hereunder for the costs of performance, damages and other costs sustained by the Obligee upon the Principal's failure of performance under or default under the Contract Documents shall be limited to the penal sum hereof, which shall be deemed to include the costs or value of any Changes of any Work which increases the Contract Price.

In the event that Contract Documents are found invalid, or if there is a Reverse Validation Action and Obligee or Principal elects to have the parties transaction terminated, the Surety and Principal are exonerated and there shall be no obligations owed under this Agreement.

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

In the event that suit or other proceeding is brought upon this Bond by the Obligee, the Surety shall pay to the Obligee all reasonable costs, expenses and fees incurred by the Obligee in connection therewith, including without limitation, attorneys' fees.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF, the Principal and Surety have executed this instrument this \_\_\_\_\_ day of \_\_\_\_\_, 2017 by their duly authorized agents or representatives.

(Corporate Seal)

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

By:

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Typed or Printed Name / Title)

(Corporate Seal)

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

By:

\_\_\_\_\_  
(Signature of Attorney-in-Fact for Surety)

(Attach Attorney-in-Fact Certificate)

\_\_\_\_\_  
(Typed or Printed Name)

\_\_\_\_\_  
(Address)

(\_\_\_\_\_) \_\_\_\_\_  
(Area Code and Telephone Number)

**IMPORTANT: THIS IS A REQUIRED FORM.**

Surety companies executing bonds must possess a certificate of authority from the California Insurance Commissioner authorizing them to write surety insurance defined in California Insurance Code section 105, and if the Work or Project is financed, in whole or in part, with federal, grant or loan funds, Surety's name must also appear on the Treasury Department's most current list (Circular 570 as amended).

Any claims under this bond may be addressed to:

(Name and Address of Surety)

(Name and Address of agent or representative for service for service of process in California)

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

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

Telephone: \_\_\_\_\_

Telephone: \_\_\_\_\_

STATE OF CALIFORNIA                    )  
  ) ss.  
COUNTY OF \_\_\_\_\_                    )

On \_\_\_\_\_, before me, \_\_\_\_\_, a Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public in and for said State

(SEAL)

Commission expires:

NOTE: A copy of the power-of-attorney to local representatives of the Surety must be attached hereto.

**LABOR AND MATERIAL PAYMENT BOND  
(CALIFORNIA PUBLIC WORK)**

WHEREAS, the NATOMAS UNIFIED SCHOOL DISTRICT (the "Obligee") has awarded to \_\_\_\_\_ (the "Principal") a contract for the Work commonly described as the:

**[INSERT PROJECT NAME AND NUMBER]**

(the "Project"); and

WHEREAS, the Work to be performed by the Principal is more particularly set forth in that certain Agreement between the Principal and the Obligee, dated \_\_\_\_\_, 2017, which Agreement and all other contract documents set forth therein (collectively, the "Contract Documents") are incorporated herein and made a part hereof by this reference; and

WHEREAS, by the terms of the Contract Documents, and in accordance with California Civil Code §§ 9550 et seq., the Principal is required to furnish a bond for the prompt, full and faithful payment to any Claimant, as hereinafter defined, for all labor, materials or services used, or reasonably required for use, in the performance of the Work on the Project ("Bond"); and

WHEREAS, the term "Claimant" shall refer to any of the persons described in California Civil Code § 9100, who provide or furnish labor, materials or services used or reasonably required for use in the performance of the Work under the Contract Documents, without regard to whether such labor, materials or services were sold, leased or rented.

NOW THEREFORE, we, \_\_\_\_\_, as Principal, and \_\_\_\_\_, as Surety, are held and firmly bound, along with our respective heirs, executors, administrators, successors and assigns, jointly and severally, unto NATOMAS SCHOOL DISTRICT, as Obligee, for payment of the penal sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), said sum being not less than one hundred percent (100%) of the total amount payable by the Obligee under the terms of the Contract Documents, in lawful money of the United States, as more particularly set forth herein.

This Bond shall inure to the benefit of all Claimants so as to give them, or their assigns and successors, a right of action upon this Bond.

The condition of the obligation is such that if the Principal, or its subcontractors, heirs, executors, administrators, successors or assigns fail to pay (1) any Claimant, (2) amounts due under the Unemployment Insurance Code with respect to Work or labor performed on the Project, or (3) amounts required to be deducted, withheld, and paid to the Employment Development Department from the wages of employees of the Principal and its subcontractors under Section 13020 of the Unemployment Insurance Code with respect to the Work and labor, then Surety will pay for the same in an amount not to exceed the sum specified above and, if an action is brought to enforce the liability on the Bond, the Surety shall pay such reasonable attorneys' fees as fixed by the court, as set forth in Civil Code § 9554.

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

In the event that Contract Documents are found invalid, or if there is a Reverse Validation Action and Obligee or Principal elects to have the parties transaction terminated, the Surety and Principal are exonerated and there shall be no obligations owed under this Agreement.

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

time, alteration, deletion, addition or other modification to the Contract Documents, the Work to be performed under the Contract Documents, the Drawings or the Specifications of any other portion of the Contract Documents.

IN WITNESS WHEREOF, the Principal and Surety have executed this instrument this \_\_\_\_\_ day of \_\_\_\_\_, 2017 by their duly authorized agents or representatives.

(Corporate Seal)

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

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Typed or Printed Name)

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

(Corporate Seal)

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

By: \_\_\_\_\_  
(Signature of Attorney-in-Fact for Surety)

(Attach Attorney-in-Fact Certificate)

\_\_\_\_\_  
(Typed or Printed Name of Attorney-in-Fact)

\_\_\_\_\_  
(Address)

(\_\_\_\_\_) \_\_\_\_\_  
(Area Code and Telephone Number of Surety)



**IMPORTANT: THIS IS A REQUIRED FORM**

Surety companies executing bonds must possess a certificate of authority from the California Insurance Commissioner authorizing them to write surety insurance defined in California Insurance Code section 105, and if the Work or Project is financed, in whole or in part, with federal, grant or loan funds, Surety's name must also appear on the Treasury Department's most current list (Circular 570 as amended).

Any claims under this bond may be addressed to:

(Name and Address of Surety)	(Name and Address of agent or representative for service for service of process in California)
_____	_____
_____	_____
Telephone: _____	Telephone: _____

STATE OF CALIFORNIA                    )  
   ) ss.  
 COUNTY OF \_\_\_\_\_                    )

On \_\_\_\_\_, before me, \_\_\_\_\_, a Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____ Notary Public in and for said State  Commission expires: _____	(SEAL)
---	--------

NOTE: A copy of the power-of-attorney to local representatives of the Surety must be attached hereto

**INSURANCE  
CERTIFICATES**

**GENERAL LIABILITY SPECIAL ENDORSEMENT**



**AUTOMOBILE LIABILITY SPECIAL ENDORSEMENT**



**WORKERS' COMPENSATION AND  
EMPLOYER'S LIABILITY SPECIAL ENDORSEMENT**

**CERTIFICATE OF INSURANCE**



**ADDITIONAL INSURED ENDORSEMENT**



**ESCROW AGREEMENT FOR SECURITY DEPOSITS  
IN LIEU OF RETENTION**

This Escrow Agreement is made and entered into by and between the Natomas Unified School District, hereinafter called "OWNER", and \_\_\_\_\_ whose address is \_\_\_\_\_, hereinafter called "CONTRACTOR", and \_\_\_\_\_ whose address is \_\_\_\_\_, hereinafter called "Escrow Agent."

For the consideration hereinafter set forth, the OWNER, CONTRACTOR and Escrow Agent agree as follows:

- (1) Pursuant to section 22300 of the Public Contract Code of the State of California, CONTRACTOR has the option to deposit securities with Escrow Agent as a substitute for retention earnings required to be withheld by OWNER pursuant to the Construction Contract entered into between the OWNER and CONTRACTOR for \_\_\_\_\_ in the amount of \_\_\_\_\_ dated \_\_\_\_\_ (hereinafter referred to as the "Contract"). Alternatively, on written request of the CONTRACTOR, the OWNER shall make payments of the retention earnings directly to the escrow agent. When CONTRACTOR deposits the securities as a substitute for Contract earnings, the Escrow Agent shall notify the OWNER within ten (10) days of deposit. The market value of the securities at the time of the substitution shall be at least equal to the cash amount then required to be withheld as retention under the terms of the Contract between the OWNER and CONTRACTOR. Securities shall be held in the name of \_\_\_\_\_, and shall designate the CONTRACTOR as beneficial OWNER.
- (2) The OWNER shall make progress payments to the CONTRACTOR for such funds which otherwise would be withheld from progress payments pursuant to the Contract provisions, provided that the Escrow Agent holds securities in the form and amount specified above.
- (3) When the OWNER makes payments of retentions earned directly to the Escrow Agent, the Escrow Agent shall hold them for the benefit of the CONTRACTOR until such time as the escrow created under this contract is terminated. The CONTRACTOR may direct the investment of the payments into securities. All terms and conditions of this agreement and the rights and responsibilities of the parties shall be equally applicable and binding when the OWNER pays the Escrow Agent directly.
- (4) CONTRACTOR shall be responsible for paying all fees for the expenses incurred by Escrow Agent in administering the Escrow Account and all expenses of the OWNER. These expenses and payment terms shall be determined by the OWNER, CONTRACTOR, and Escrow Agent.
- (5) The interest earned on the securities or the money market accounts held in escrow and all interest earned on that interest shall be for the sole account of CONTRACTOR and shall be subject to withdrawal by CONTRACTOR at any time and from time to time without notice to the OWNER.
- (6) CONTRACTOR shall have the right to withdraw all or any part of the principal in the Escrow Account only by written notice to Escrow Agent accompanied by written authorization from the OWNER to the Escrow Agent that OWNER consents to the withdrawal of the amount sought to be withdrawn by CONTRACTOR.
- (7) The OWNER shall have a right to draw upon the securities in the event of default by the CONTRACTOR. Upon seven (7) days' written notice to the Escrow Agent from the OWNER of the default, the Escrow Agent shall immediately convert the securities to cash and shall distribute the cash as instructed by the OWNER.
- (8) Upon receipt of written notification from the OWNER certifying that the Contract is final and complete, and that the CONTRACTOR has complied with all requirements and procedures applicable to the Contract, Escrow Agent shall release to CONTRACTOR all securities and interest on deposit less escrow fees and charges of the Escrow Account. The escrow shall be closed immediately upon disbursement of all moneys and securities on deposit and payment of fees and charges.
- (9) Escrow Agent shall rely on the written notifications from the OWNER and the CONTRACTOR pursuant to sections (5) to (8), inclusive, of this agreement and the OWNER and CONTRACTOR shall hold Escrow Agent harmless from Escrow Agent's release and disbursement of the securities and interest as set forth above.



(10) The names of the persons who are authorized to give written notice or to receive written notice on behalf of the OWNER and on behalf of CONTRACTOR in connection with the foregoing, and exemplars of their respective signatures are as follows:

On behalf of Owner:

On behalf of Agent:

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Address

\_\_\_\_\_  
Address

On behalf of Contractor:

\_\_\_\_\_  
Title

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Address

At the time the Escrow Account is opened, the OWNER and CONTRACTOR shall deliver to the Escrow Agent a fully executed counterpart of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement by their proper officers on the date set forth above.

OWNER

CONTRACTOR

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature



**SITE LEASE**

By and Between

**NATOMAS UNIFIED SCHOOL DISTRICT**  
as Lessor

and

**[CONTRACTOR]**  
as Lessee

## **SITE LEASE**

**THIS SITE LEASE** (the “Site Lease”) is dated as of \_\_\_\_\_, for reference purposes only, and is made by and between the **NATOMAS UNIFIED SCHOOL DISTRICT** (the “District”), a school district duly organized and validly existing under the laws of the State of California, as lessor, and **[CONTRACTOR]** (“Lessee”), a California corporation, as lessee.

### **RECITALS**

**WHEREAS**, the District currently owns a site in Sacramento, California, as more particularly described in Exhibit A **[TO BE INSERTED]** attached hereto and incorporated herein by reference (the “Site”), at which Site the District has determined to cause to be performed the work described in the Facilities Lease being executed concurrently herewith (the “Project”);

**WHEREAS**, District desires to lease the Site to Lessee in order for it to perform the work necessary for the Project on the Site and to lease it back, as more particularly described in the Facilities Lease, a copy of which is attached hereto and incorporated herein by reference as the "Facilities Lease;"

**WHEREAS**, the Board of Trustees 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 develop the Project by leasing the Site to Lessee and by simultaneously entering into the Facilities Lease (as defined below) under which the District will lease back the Site and improvements from Lessee;

**WHEREAS**, the District is authorized under Section 17406 of the Education Code of the State of California to (i) lease the Site to Lessee, (ii) have Lessee develop and cause the construction of the Project thereon, and (iii) lease the Site (with improvements thereon) back to the District by way of the Facilities Lease, and the Board has duly authorized the execution and delivery of this Site Lease in order to effectuate the foregoing, based upon a finding that it is in the best interest of the District to do so;

**WHEREAS**, Lessee is authorized to lease the Site from District as lessee and to implement the Project on the Site, and has duly authorized the execution and delivery of this Site Lease;

**WHEREAS**, District has 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 Site Lease, and those conditions precedent do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the parties hereto are now duly authorized to execute and enter into this Site Lease;

**WHEREAS**, District has a substantial need for the construction of the Project at the Site and has entered into this Site Lease and the Facilities Lease under the authority granted to District by Section 17406 of the Education Code of the State of California in order to fill that need; and

**WHEREAS**, the District and Lessee further acknowledge and agree that they have entered into this Site 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 work at the Site to accommodate and educate students served by the District.

**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:

**ARTICLE 1**  
**DEFINITIONS**

- 1.1 **Definitions.** Unless the context clearly requires otherwise, all words and phrases defined in Section 1.1 of that certain Facilities Lease and Construction Provisions executed simultaneously herewith, by and between the District and Lessee (the “Facilities Lease”) shall have the same meanings when used in this Site Lease.

**ARTICLE 2**  
**DEMISING CLAUSES**

- 2.1 **Lease of the Site.** The District hereby leases to Lessee and Lessee hereby leases from the District, the Site, in accordance with the terms and provisions of this Site Lease, to have and to hold for the term of this Site Lease. The effectiveness of this Site Lease depends upon the execution of the Facilities Lease. If the Facilities Lease is not executed by the District and Lessee within three (3) days after execution of this Site Lease, this Site Lease shall terminate and shall be of no further force or effect and neither party shall have any obligation to the other hereunder except for those obligations that expressly survive termination of this Site Lease.
- 2.2 **Rental.** In consideration for the leasing of the Site by the District to Lessee, and for other good and valuable consideration, Lessee shall pay the District rent of One Dollar (\$1.00) per year.
- 2.3 **Merger.** The leasing of the Project (and the Site thereon) by Lessee to the District pursuant to the Facilities Lease shall not affect or result in a merger of the estates of the District in the Site, and Lessee shall continue to have a leasehold estate in the Site pursuant to this Site Lease throughout the term, as described hereinafter below.

**ARTICLE 3**  
**QUIET ENJOYMENT**

- 3.1 **Possession.** The parties intend that the Site will be leased back to the District pursuant to the Facilities Lease for the term thereof.

- 3.2 Access to Site. Prior to the acceptance of the Project by District, the District shall have the right to enter upon the Site at reasonable times for the purposes of inspection of the progress of the Work on the Project and the District shall comply with all reasonable safety precautions required by Lessee and Lessee's contractors.

**ARTICLE 4**  
**SPECIAL COVENANTS AND PROVISIONS**

- 4.1 Waste. Lessee agrees that at all times that it is in possession of the Site, it will not willfully or knowingly use or permit use of the Site for any illegal purpose or act.
- 4.2 Further Assurances and Corrective Instruments. The District and Lessee agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, any such further instruments as may be reasonably required for correcting any inadequate or incorrect description of the Site hereby leased or intended so to be leased or for carrying out the expressed intention of this Site Lease and the Facilities Lease.
- 4.3 Representations of the District. The District represents and warrants that the District is a school district, duly organized and existing under the Constitution and laws of the State of California, has the power to enter into this Site Lease; is possessed of full power to own, rent and hold real and personal property, and to lease and sell the same; and has duly authorized the execution and delivery of all of the aforesaid agreement.
- 4.3.1 Authorization. District has the full power and authority to enter into, to execute and to deliver this Site Lease, and to perform all of its duties and obligations hereunder, and has duly authorized the execution of this Site Lease.
- 4.3.2 No Litigation. There is no pending or, to the knowledge of District, threatened action or proceeding before any court or administrative agency which will materially adversely affect the ability of District to perform its obligations under this Site Lease.

**ARTICLE 5**  
**ASSIGNMENT, SUBLEASING, MORTGAGING AND SELLING**

- 5.1 Assignment and Subleasing. This Site Lease (and the Site or improvements thereon) may not be assigned, as a whole or in part, by Lessee without the prior written consent of the District to such assignment or sublease.
- 5.2 Liens. Lessee agrees to keep the Site and every part thereof free and clear of any and all liens, including without limitation, pledges, charges, encumbrances, claims, materialmen liens, mechanic liens and 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 Site or the Project. Lessee further agrees to pay promptly and fully discharge any and all claims on which any such lien may or could be based, and to save and hold harmless the District from any and all such liens, mortgages, judgments and claims of liens and suits or other proceedings pertaining thereto. This section shall survive termination of this agreement.

## **ARTICLE 6** **IMPROVEMENTS**

- 6.1 Improvements. Title to all improvements made by Lessee on the Site during the term of this Site Lease shall vest in Lessee until conveyance to the District at the end of the Facility Lease's Term.

## **ARTICLE 7** **TERM AND TERMINATION**

- 7.1 Term. The term of this Site Lease shall commence immediately prior to commencement of the term of the Facilities Lease, and shall terminate upon the expiration or earlier termination of the Facilities Lease whereupon title to all improvements made on the Site during the term of this Site Lease shall vest in District. Notwithstanding the foregoing, if on the date scheduled for the expiration or termination of this Site Lease any earned Lease Payments (subject to District's right to offset) owing under the Facilities Lease have not been fully paid to Lessee by District, then the term of this Site Lease shall be extended until the date upon which all such Lease Payments shall be fully paid, and Lessee shall continue to have the right of possession of the Site during such time period.
- 7.3 Termination Upon Purchase of Project. If the District exercises its option to purchase the Project, pursuant to the Facilities Lease, then this Site Lease shall terminate concurrently with the close of escrow for the District's purchase of the Project. Upon the District's request, Lessee shall execute a lease termination agreement upon the close of escrow.
- 7.4 Termination Due to Default. If either party defaults under this Site Lease or the Facilities Lease, and the default is not cured by the end of any applicable cure period, the non-defaulting party may terminate this Site Lease and the Facilities Lease upon ten (10) days' written notice to the defaulting party. Upon any such termination, (a) title to the Site and any improvements built upon the Site shall vest in the District upon the date of termination, and (b) the parties shall be entitled to receive compensation and exercise the remedies set forth in the Facilities Lease and/or (c) the non-defaulting party may pursue legal action for the damages caused by the breach.

## **ARTICLE 8** **MISCELLANEOUS**

- 8.1 Binding Effect. This Site Lease shall inure to the benefit of and shall be binding upon the District, Lessee and their respective successors, transferees and assigns.

- 8.2 Severability. In the event any provision of this Site Lease shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof, unless elimination of such invalid provision materially alters the rights and obligations embodied in this Site Lease or the Facilities Lease.
- 8.3 Amendments, Changes and Modifications. This Site Lease shall not be amended, changed, modified, or altered without the written agreement of both parties hereto. No provision of this Site Lease shall be considered waived unless such waiver is in writing.
- 8.4 Execution in Counterparts. This Site Lease may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.
- 8.5 Applicable Law. This Site Lease shall be governed by and construed in accordance with the laws of the State of California. The parties further agree that any action or proceeding brought to enforce the terms and conditions of this Site Lease shall be maintained in Sacramento County, California.
- 8.6 Recitals. The recitals set forth at the beginning of this Site Lease are hereby incorporated herein by reference and each party stipulates and agrees that such recitals are true and correct.
- 8.7 Captions. The captions or headings in this Site Lease are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Site Lease.
- 8.8 Time of Essence. Time is of the essence of this Site Lease and each of its provisions.
- 8.9 Remedies. The parties shall have any and all legal and equitable remedies available under applicable California law, except that the District shall have no right to terminate this Site Lease as a remedy for default by Lessee or any assignee of Lessee separate and apart from a concurrent termination of the Facilities Lease due to a default by Lessee or its assignee. The remedies of the parties under this Site Lease are cumulative and shall not exclude any other remedies to which either party may be lawfully entitled.
- 8.10 Notices. Any notice to either party shall be in writing and given by delivering the same to such party in person or by sending it by nationally recognized overnight delivery service for next business day delivery, such as Federal Express, or by mailing the same by certified mail, return receipt requested, with postage fully prepaid, to the following addresses:

If to District: Natomas Unified School District  
750 College Ave.  
Sacramento, CA 94904



Attention: Superintendent.

With a copy to: Fagen Friedman & Fulfrost LLP  
520 Capitol Mall, Suite 400  
Sacramento, CA 95814  
Attention: Paul G. Thompson

If to Lessee: [To be Inserted.]

Any party may change its mailing address at any time by giving written notice of such change to the other party in the manner provided herein for notices. All notices under this Site Lease shall be deemed given, received, made or communicated on the date personal delivery is effected, or if mailed or sent by overnight delivery service, on the delivery date or attempted delivery date shown on the return receipt or delivery record. No party shall evade or refuse delivery of any notice.

- 8.11 Eminent Domain. In the event the whole or any part of the Site or the improvements thereon is taken by eminent domain, the financial interest of Lessee shall be recognized and is hereby determined to be the amount of all Lease Payments then due or past due. The balance of the award, if any, shall be paid to the District.
- 8.12 Indemnification by the District. The District covenants and agrees to indemnify, defend and hold Lessee harmless from and against any and all losses, claims, suits, damages and expenses (including reasonable attorneys' fees) asserted by third parties arising out of the condition of the Site existing prior to the commencement of this Site Lease and/or the Facilities Lease, whether or not known to District; provided, however, that the District shall not be required to indemnify Lessee in the event that such liability or damage is caused by the negligent or intentional wrongful act or omission of Lessee. All liabilities under this Site Lease on the part of District are solely liabilities of District, and Lessee hereby releases each and every trustee, officer, employee, agent, representative, and volunteer of District from any personal liability or individual liability under this Site Lease. Except as otherwise provided in this section, no trustee, officer, employee, agent, representative, or volunteer of District shall at any time or under any circumstances be individually or personally liable for anything done or omitted to be done by District under this Site Lease.
- 8.13 Indemnification by Lessee. Lessee covenants and agrees to indemnify defend and hold District harmless from and against any and all losses, claims, suits, damages, and expenses (including reasonable attorneys' fees) asserted by third parties arising out of the condition of the Site if caused by Lessee, provided, however, that Lessee shall not be required to indemnify the District in the event such liability or damage is caused by the negligent or intentional wrongful act or omission of the District. All liabilities under this Site Lease on the part of Lessee are solely liabilities of Lessee, and District hereby release each and every member, director, shareholder and officer of Lessee from any personal liability or individual liability under this Site Lease, provided, however, that the District does not release any member, director, shareholder or officer of Lessee from any personal or

individual liability arising from such person's intentional act or intentional omission. Except as otherwise provided in this section, no member, director, shareholder or officer of Lessee shall at any time or under any circumstances be individually or personally liable for anything done or omitted to be done by Lessee under this Site Lease.

- 8.14 Further Assurances and Corrective Instruments. To the extent permissible under California law and as long as there are no additional costs to the District, the District agrees that it will execute and deliver estoppel certificates, financing statements or other assurances as may be reasonably necessary or requested by Lessee to carry out assignments of this Site Lease and the Facilities Lease, including without limitation, to perfect and continue any security interests herein intended to be created or to correct any inadequate or incorrect description of the Site being leased or intended to be leased.
- 8.15 Interpretation. It is agreed and acknowledged by the parties hereto that the provisions of its Site Lease and its exhibits have been arrived at through negotiation, and that each of the parties has had a full and fair opportunity to revise portions of this Site Lease and its exhibits and to have such provisions reviewed by legal counsel. Therefore, the normal rule of construction of documents that any ambiguities are to be resolved against the drafting party shall not apply in construing or interpreting this Site Lease and its exhibits.
- 8.16 No Assignment. This Site Lease may not be assigned, pledged encumbered or amended without written consent of both parties.
- 8.17 No Partnership or Joint Venture. The parties acknowledge that they will not hold themselves out as an agent, partner or co-venturer of the other and that this Agreement is not intended and does not create an agency, partnership, joint venture or any other type of relationship except the contract relationships established hereby.
- 8.18 Entire Agreement; Integration. This Agreement and the exhibits attached hereto contain the entire agreement of the parties with respect to the subject matter of this Agreement, and supersede all prior negotiations, agreements and understandings with respect thereto. This Agreement may only be amended by a written document duly executed by all parties.

**SIGNATURE PAGE**

**IN WITNESS WHEREOF**, the parties hereto have executed this Site Lease by their authorized officers as of the dates so indicated below.

**DISTRICT:**  
**NATOMAS UNIFIED SCHOOL DISTRICT,**  
a school district organized and existing under the laws  
of the State of California

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

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

Its: \_\_\_\_\_

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

**LESSEE:**  
**[TO BE INSERTED]**

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

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

Its: \_\_\_\_\_

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

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

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

Its: \_\_\_\_\_

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

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of \_\_\_\_\_

On \_\_\_\_\_, 2019, before me, \_\_\_\_\_, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
County of \_\_\_\_\_

On {date} \_\_\_\_\_, 2019, before me, {Notary's Name} \_\_\_\_\_, personally appeared {document signer} \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

## EXHIBIT A

[TO BE INSERTED]

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